



NEW YORK STATE BAR ASSOCIATION

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Testimony

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Proposed 2012-13 Public Protection Budget

I am Vincent E. Doyle, President of the New York State Bar Association, the oldest and largest voluntary state bar association in the nation. On behalf of our 77,000 members, I thank you for the opportunity to submit testimony regarding the Unified Court System's budget proposal and to address some related issues of importance to both the public and the legal profession.

The New York State Bar Association, with members skilled in all disciplines of the law, is the statewide voice of the profession and an advocate for the public. Our members are involved in every aspect of the legal system, enabling us to speak from a broad and balanced perspective. We hope you will find our comments constructive as you face the challenges of this budget cycle.

BUDGET OF THE UNIFIED COURT SYSTEM

Year in and year out, New York's courts adjudicate millions of disputes, both great and small, and guarantee a "day in court" to all people, including the weak, the poor and the unpopular. New York's courts are crucial to maintaining an orderly society.

The Judiciary is one of the three, co-equal branches of our state's government. And, the Judiciary is comprised of relatively few judges, given the caseloads that confront them. Yet, on a daily basis, New York's judges resolve a substantial number of cases equitably and efficiently. Similarly, our court administrators face significant challenges, given the size of the court system and

While it is clear that judicial leaders are working hard to keep courthouse doors open, we see that the courts have struggled to adapt to recent budget cuts as they work to serve the public fairly, efficiently, and effectively. We believe that the Legislature should approve the Judiciary's proposed budget request in order to prevent further erosion of court services resulting from reduction of the 2011-12 budget and to begin rebuilding public confidence in our judicial system.

Report on impact of 2011-12 budget cuts

The Association's Executive Committee recently issued a comprehensive report about the impact of the 2011-12 budget cuts on the court system. The report includes a statewide analysis, as well as findings about each of the thirteen judicial districts.

The report followed months of intensive study by the Executive Committee about the impact of a \$170 million decrease in funding. We are grateful to the administrative judges, trial judges, local bar associations, and practitioners who provided helpful feedback in response to our request for information.

However, adequate funding is necessary to ensure that ‘essential’ sense of confidence.” A copy of the report was delivered to the entire Legislature earlier this month and may be viewed at: www.nysba.org/CourtFundingReport.

Again, we support approval of the Judiciary’s budget request as submitted. However, we ask that you continue to monitor the effects of last year’s cuts, that you be sensitive to any further erosion of services due to the cuts, and that you take appropriate steps to help to assure public trust and confidence in our system of justice.

FUNDING CIVIL LEGAL SERVICES

I turn now to an issue that has been among the State Bar’s highest priorities for many years: funding for civil legal services. Unfortunately, the need for civil legal services has far outpaced the available resources.

It has long been the position of this Association that it is the obligation of the State to provide a stable funding mechanism for civil legal services. To that end, it is important to reiterate our view that New York State should: 1) create a permanent Access to Justice Fund in the State budget; 2) provide for administration and oversight of this Fund by an appropriate office, such as one within the Judiciary; and 3) work with the legal community to ensure that access to justice receives sufficient support, attention and priority.

citizens. The Task Force included judges, lawyers, business executives, and labor leaders from all parts of the state. During the fall, for the second consecutive year, the Chief Judge presided over a set of public hearings in each of the state's four Judicial Departments. Members of the State Bar Association assisted in presiding over these hearings. I was privileged to participate in the hearings held in Albany and New York City. The hearings assessed the extent and nature of unmet need for civil legal services throughout the State in order to help formulate recommendations to the Governor and the Legislature on the appropriate level and source of public resources to meet those needs.

In November 2011 the Task Force released its comprehensive report, which provides a roadmap with common sense recommendations to address the critical need to provide counsel to low-income New Yorkers in civil cases. The findings of the task force are overwhelming. The quality of justice in New York's courts is diminished and the rule of law undermined when so many New Yorkers go without legal representation in matters that involve day-to-day life. Clearly, it is the most vulnerable, low-income New Yorkers who suffer the consequences. As the report documents, failure to provide these New Yorkers with a lawyer to advocate on their behalf results in increased homelessness, domestic violence, and poverty – something we can ill afford during this time of fiscal uncertainty.

by the bar have been conservatively calculated to be more than 2 million hours annually. However, these voluntary efforts alone are insufficient to meet the needs of the indigent. Ultimately, society as a whole, acting through its elected leaders, must provide adequate public funding to do so.

New York must be able to provide a steady source of funding targeted to the “essentials of life” – housing, preventing or escaping from domestic violence, access to health care – reliably and quickly. Accordingly, the Judiciary’s proposed budget includes \$25 million to begin implementation of the Task Force’s recommendations to address the crisis in civil legal services.

In an era when some members of Congress are calling for the elimination of the Legal Services Corporation, the need for responsible action in New York State is all the more critical. The New York State Bar Association strongly supports the Judiciary’s \$25-million request for civil legal services.

INDIGENT CRIMINAL DEFENSE

At the request of then-Chief Judge Judith S. Kaye, the Commission on the Future of Indigent Defense Services examined New York State’s county-based indigent criminal defense system. The Commission concluded that there is “a crisis in the delivery of defense services to the indigent throughout New York State and that the right to the effective assistance of counsel, guaranteed by both the

DNA and Wrongful Convictions

On January 4th, during his State of the State address, Governor Cuomo announced his support for a proposal to expand the State's DNA databank. The Governor stated that, "DNA can be the key to exonerating the innocent, convicting the guilty, and protecting all New Yorkers in a fair and cost-effective way." The proposal would require the collection of DNA from all defendants convicted of any Penal Law misdemeanor and any felony defined in any New York law.

No one can seriously argue with the Governor's objective of exonerating the innocent and convicting the guilty. However, we submit that isolating the issue of the collection of DNA upon conviction, as the budget proposal does, is not the best approach to accomplishing this worthwhile goal, nor is it the only proposal that should be enacted to achieve the Governor's objectives.

Current law provides for the collection of DNA samples from those convicted any Penal Law felony and some Penal Law misdemeanors. As I stated, the Governor's proposal would require the taking of DNA samples from all those convicted of any felony and all penal law misdemeanors and include them in the DNA databank. The Association is supportive of the Governor's proposal insofar as it would extend collection of DNA samples to all Penal Law misdemeanors.

My overriding concern with the proposal is that it is limited in its scope and effect, so as not to address many of the root causes of wrongful convictions and the

fairly simple to implement, and would significantly enhance the ability of juries to reach a correct conclusion.

- Address mistaken identification testimony. The reality is that human error all too often comes into play. While there is no mechanism to assure that identifications are correct, what we can do is reduce the likelihood of mistakes by improving the procedures by which identifications are made, including lineups. One simple improvement would be to require that any lineup be conducted by an officer who is unaware of which individual is the suspect. This is called a “double blind” lineup, and it is one of the Bar Association’s proposals. Others have proposed what is called a “sequential” lineup as yielding more accurate results, although the Association has called for further study on this approach. This is a subject that needs to be a part of any wrongful convictions bill.
- Strengthen the prosecution’s obligation to turn over evidence favorable to the defense. This would assure better compliance with the requirement imposed by the seminal United State Supreme Court decision in *Brady v. Maryland*. One easy concept is to require that a prosecutor certify compliance with Brady, and that a pre-trial conference be held for the court to review any outstanding Brady issues. Not only would this better assure compliance with the Brady requirements, but it would avoid the difficulties that arise when it is discovered during a trial that the defendant had not been supplied with Brady material. When a failure is discovered at trial, a judge is placed in the nearly impossible position of trying to continue the trial while, at the same time, giving the defense the time needed to effectively make use of the material just handed over. It is to everyone’s advantage to try to minimize the risk of this occurrence.
- Permit a defendant who has pleaded guilty to a crime to, upon making a showing based on a statutory standard, obtain a DNA test. We are not proposing that every defendant who has entered into a guilty plea be permitted to obtain a DNA test. However, where a DNA evidence exists, and the defendant can show that a plea of guilty would not have been entered if the evidence had been available at the time of the plea, he/she should be able to ask a court to order a test.

PLS helps to provide equal access to our system of justice for those who are incarcerated and would otherwise be deprived of such access. The program reflects one of the State Bar's highest priorities -- the concept that the impoverished or unpopular individual should be able to invoke the power of the world's most advanced legal system to protect his or her rights.

We believe that PLS helps inmates resolve problems and reduce tensions associated with incarceration. Also, we submit that PLS helps to foster a sense of fairness and to enhance the positive attitudes and behavior of prisoners. It also helps in the development of sound correctional policy. One of the greatest values of PLS is that it works to avoid conditions of confinement that resulted in the devastating Attica riot.

PLS is -- and should remain -- a vital, integral part of the state's criminal justice system and a critical component of public safety.

We respectfully urge that you work with the Governor to ensure adequate funding for PLS in the 2012-13.