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I HAVE REVIEWED COMMENTS FROM MY COLLEAGUES FROM AROUND THE STATE, MANY OF WHOM HAVE APPEARED IN FRONT OF YOU AND YOUR FELLOW ELECTED REPRESENTATIVES AND SEVERAL COMMON THEMES EMERGE. ON ONE SIDE THE ARGUMENT IS MADE THAT THE NEW DISCOVERY LAW IS A DISASTER, AND THE RESPONSE IS GENERALLY MET WITH THE CATCH PHRASE THAT OPPONENTS ARE "FEAR MONGERING" AND THE LAW NEEDS TO BE GIVEN A CHANCE. LET ME PUT SOME BALANCE ON THE TWO PERSPECTIVES.

#1, THE DISCOVERY STATUTE CLEARLY NEEDED TO BE CHANGED. PRIOR TO BEING ELECTED DA IN 1991, I SPENT FIVE VERY PRODUCTIVE AND SUCCESSFUL YEARS AS A DEFENSE LAWYER CONCENTRATING MY PRACTICE IN UPSTATE LOCALES. I RECALL VIVIDLY DEFENDING A YOUNG MAN CHARGED WITH VEHICULAR MANSLAUGHTER WHO ASSUREDLY WOULD HAVE BEEN WRONGLY CONVICTED BY AN UNETHICAL DA WITHOUT MY INTERVENTION. WHEN I ASKED ABOUT DISCOVERY, I WAS TOLD SUCCINCTLY "YOU'LL GET IT WHEN THE STATUTE ALLOWS" – NAMELY AFTER JURY SELECTION AND JUST BEFORE OPENING STATEMENT. AND THIS COUNTY WAS NOT AN EXCEPTION IN ADHERING TO THIS KAFKA-ESQUE POLICY. YET NO ONE STEPPED UP TO FIX IT.

# 2, I DON'T ADHERE TO FEAR MONGERING. IF I SMELL SMOKE IN A BUILDING AND SOMEONE SETS OFF AN ALARM, I DON'T CONSIDER THAT FEAR MONGERING BUT RATHER A PRUDENT EFFORT TO ENHANCE ONES SELF PRESERVATION.

SO LETS TRY AND DISCUSS THIS MATTER REALIZING THAT CHANGE DESPERATELY NEEDED TO BE MADE, BUT IN THE ADMIRABLE ZEAL TO IMPROVE THE SYSTEM, UNINTENDED CONSEQUENCES HAVE DEVELOPED THAT WILL HAVE A DRAMATIC BUDGETARY IMPACT ON THE STATE, THAT WILL ADVERSELY AFFECT PUBLIC SAFETY AND WILL ULTIMATELY RESULT IN UNFAIR DISPARATE TREATMENT FOR POOR OR INDIGENT OFFENDERS.

IN THE STATE CONSTITUTION AND IN STATE LAW, A PROSECUTOR'S JOB IS TO PROSECUTE CRIME AND HIS OR HER RESPONSIBILITY IS TO KEEP COMMUNITIES SAFE. BUT OVER MY 28 YEARS AS THE ELECTED DA, I HAVE SEEN THAT ROLE EVOLVE IN PROFOUND WAYS FOR THE BETTER. SOME WERE SO OUTRAGED BY THE CRIME SPIKE OF THE 70's AND 80's IN NEW YORK THAT THERE WAS A RUSH TO JUDGMENT TO PASS DRACONIAN SENTENCING LAWS. AND WHILE SOME WERE ENCOURAGED AT THE DRAMATIC DECREASE IN CRIME, OTHERS SAW THIS OVER INCARCERATION AS HAVING THE UNINTENDED CONSEQUENCES OF BREAKING UP FAMILIES, UNEQUAL JUSTICE FOR OFFENDERS OF COLOR AND SKYROCKETING COSTS OF PRISONS WITH LITTLE RETURN ON THE INVESTMENT. ENTER NEW YORK'S PROSECUTORS - - - WE STARTED DRUG DIVERSION PROGRAMS, FAMILY JUSTICE CENTERS, CHILD ADVOCACY CENTERS, MENTAL HEALTH COURTS, OPIOID COURTS AND SO MANY MORE INNOVATIVE PROGRAMS THAT MANY IN THIS LEGISLATURE ENTHUSIASTICALLY SUPPORTED BOTH WITH YOUR COMMENTS AND YOUR BUDGETARY ALLOTMENTS. AND AS A RESULT IN JUST A FEW DECADES NEW YORK'S PRISON POPULATION DROPPED BY OVER 25% YET WE STILL MAINTAIN OUR STATUS AS THE SAFEST LARGE STATE IN AMERICA. AND IN ADDITION TO THAT, WE HAVE THE LOWEST PER CAPITA PRISON POPULATION OF ANY LARGE STATE IN AMERICA. THESE THINGS DID NOT HAPPEN IN A VACUUM - THEY HAPPENED BECAUSE LEGISLATORS AND THE GOVERNOR AND DISTRICT ATTORNEYS AND OTHERS WORKED TOGETHER TO SHAPE POLICY.

IN THE SPIRIT OF THAT COLLABORATION, LET ME SUGGEST SOME IMPROVEMENTS TO THE CURRENT DISCOVERY LAW THAT WILL SAVE MILLIONS OF DOLLARS IN BUDGETARY ALLOCATIONS WHILE NOT AFFECTING IN THE SLIGHTEST THE FAIR AND EQUITABLE ADMINISTRATION OF JUSTICE.

- #1 CHANGE THE REQUIREMENT THAT ALL PHYSICAL EVIDENCE MUST BE TESTED PRIOR TO A DEFENDANT BEING ALLOWED TO ENTER A PLEA. ALMOST ALL OF OUR DRUG DIVERSION COURTS IN THIS STATE ARE PLEA BASED, FOR SOUND PUBLIC POLICY REASONS. WE ARE SEEING A DROP IN DRUG TREATMENT COURT ADMITTANCE BECAUSE LAWYERS ARE UNABLE TO COUNSEL THEIR CLIENTS TO ENTER A PLEA AND OUR CRIME LABS ARE BACKED UP TO THE BREAKING POINT.
- #2 EXPAND THE AMOUNT OF TIME FOR MANDATED DISCLOSURE FROM 15 DAYS TO 60 DAYS. THIS WILL HAVE ZERO EFFECT ON A CRIMINAL DEFENSE LAWYER'S ABILITY TO EFFECTIVELY REPRESENT HIS OR HER CLIENT. THE IRONY IS THAT WITH THE 15 DAYS RULE, MANY DEFENSE LAWYERS IN MY COUNTY DON'T EVEN OPEN OR REVIEW THE DISCOVERY PROVIDED IN THE 15 DAY PERIOD. INSTEAD OF A CALM RATIONAL PLEA NEGOTIATION PROCESS, WE NOW HAVE IN MY COUNTY ENTRY LEVEL ADA'S MANY OF WHOM ARE IN DEBT TO THE TUNE OF 6 FIGURES, SPENDING 12 HOUR DAYS TO DOWNLOAD BODY WORN CAMERA VIDEOS, POLICE REPORTS, CALLING THE LAB FOR TEST RESULTS, 911 CALLS, PRIVATE VIDEO SURVEILLANCE FOOTAGE, AND SO ON. LADIES AND GENTLEMEN, IT CAN'T BE DONE.

#3 INVEST IN FUNDING FOR STATEWIDE DISCOVERY MUST BEGIN WITH DEDICATING MONEY FOR THE PROSECUTORS CASE MANAGEMENT SYSTEM (PCMS). THIS IS A WEB-BASED SYSTEM THAT IS ALREADY IN PLACE AND IS ADMINISTERED BY THE NEW YORK PROSECUTORS TRAINING INSTITUTE (NYPTI).

CURRENTLY 55 OF NEW YORK'S 62 COUNTIES ARE ALREADY USING THIS PLATFORM THAT TRACKS INFORMATION, AUTOMATICALLY GENERATES REQUIRED NOTICES, TRACKS DISCOVERY AND GENERATES INDICTMENTS FOR PROSECUTIONS.

TO HELP OFFICES COMPLY WITH THE NEW DISCOVERY MANDATES, NYPTI ADDED THE DIGITAL EVIDENCE MANAGEMENT SYSTEM (DEMS) THAT CONNECTS PROSECUTORS, POLICE AGENCIES, CRIME ANALYSIS CENTERS, 911 CALL CENTERS, DEFENSE ATTORNEYS AND OTHERS. IN SHORT DEMS IS AN EFFICIENT SECURE SOLUTION TO ALL OF THE INDIVIDUAL COMPONENTS RELATED TO COMPLYING WITH THE NEW LAWS. PROSECUTORS ARE ABLE TO MANAGE DOCUMENTS, REVIEW BODY WORM CAMERA FOOTAGE, SURVEILLANCE VIDEOS, PHOTOS AND ALMOST ANY DIGITAL EVIDENCE IN AN ONLINE PLATFORM. LAW ENFORCEMENT AGENCIES THAT ARE TRAINED AND EQUIPPED TO UTILIZE DEMS CAN UPLOAD THEIR CASE FILES AND MULTI-MEDIA EVIDENCE TO THE PLATFORM AND IT IS DIRECTLY ACCESSIBLE TO DISTRICT ATTORNEYS AND THEN IT IS ABLE TO BE DIRECTLY ACCESSIBLE TO DEFENSE ATTORNEYS. PROPER INVESTMENT IN DEMS HARDWARE, SOFTWARE, STORAGE, STAFF AND TRAINING WILL RESULT IN AN EFFICIENT AND SECURE STREAMLINING OF THE DISCOVERY PROCESS.

#4 ALLOW CRIMINAL JUSTICE PROFESSIONALS – THE DEFENSE ATTORNEY, PROSECUTOR, AND JUDGE – TO USE THEIR KNOWLEDGE, EXPERTISE, AND EXPERIENCE TO COME TO PLEA RESOLUTION WITHOUT BARRIERS. DISCRETION AND CASE-SPECIFIC ANALYSIS ARE THE HEART OF THE CRIMINAL JUSTICE SYSTEM. BY STATUTORILY REMOVING THE ABILITY OF THE PROFESSIONALS TO USE THEIR DISCRETION TO NEGOTIATE (I.E. BY VASTLY PROHIBITING THE WAIVER OF DISCOVERY AND IMPOSING ARBITRARY TIME PERIODS DURING WHICH PLEA OFFERS MUST REMAIN OPEN [CPL 245.75]), THIS STATUTE HAS STRIPPED DEFENSE ATTORNEYS OF THE ABILITY TO GET THE BEST DEAL FOR THEIR CLIENTS FOR FEAR OF A COMPLAINT TO THE ATTORNEY GRIEVANCE COMMITTEE OR CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL.

THESE PROVISIONS ARE BEGINNING TO CLOG UP COURT DOCKETS AND GUARANTEEING INDICTMENTS AND TRIALS ON CASES THAT, WITH EFFECTIVE LAWYERING UNHINDERED BY ARBITRARY PROCEDURAL RULES, MIGHT OTHERWISE BE RESOLVED WITH MISDEMEANOR OR LOWER-LEVEL FELONY DISPOSITIONS AND NON-INCARCERTIVE OR MINIMUM JAIL SENTENCES. NOW, DEFENDANTS WHO CAN AFFORD RETAINED COUNSEL ARE GETTING BETTER DEALS, BECAUSE THESE ATTORNEYS, WHERE APPROPRIATE, RELY ON THEIR EXPERTISE TO WAIVE DISCOVERY AND

CONTEMPLATE PROMPT PLEA BARGAIN OFFERS, RESULTING IN MORE FAVORABLE OUTCOMES FOR THEIR CLIENTS EARLIER IN THEIR CASES. IN SHORT, ARTICLE 245 IS HAVING THE OPPOSITE EFFECT OF WHAT YOU INTENDED.

MYSELF AND MY 61 FELLOW ELECTED DA's STAND READY, WILLING, AND ABLE TO IMPROVE ON THE PRODUCT THAT WAS DRAFTED INTO LAW. I SINCERELY HOPE YOU WILL TAKE US UP ON THAT OFFER.

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