Law Day 2011

The Legacy of John Adams: a Challenge for New York

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I have chosen to focus my remarks today on what has been a longstanding challenge for our society -- making sure that all persons accused of a crime receive competent legal representation.

On March 5, 1770, in Boston, eight British soldiers opened fire on an unruly crowd and killed five Americans. Samuel Adams promptly began distributing a pamphlet published by Paul Revere which described the incident as a bloody slaughter of the innocent, and so it became fixed in the public's mind, and in history, as the Boston Massacre. Thirty-four year old lawyer John Adams was asked to defend the British soldiers. With public outrage so high, no one else was willing to take the case. Adams accepted it without hesitation, in the belief, as he said, that no man in a free country should be denied the right to counsel and a fair trial.

This belief, for which an ambitious future president was willing to sacrifice his popularity and political career, is so sacred to what it means to be an American that it was constitutionally enshrined by the United States Supreme Court nearly 50 years ago in *Gideon v. Wainwright,* where the court said:

> In our adversary system of justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.

Toward the end of Anthony Lewis's famous book about the case, Gideon's Trumpet, written in 1964, Lewis set forth the national challenge presented by *Gideon*:

> It will be an enormous social task to bring to life the dream of Gideon v. Wainwright – the dream of a vast, diverse country in which every man charged with crime will be capably defended, no matter what his economic circumstances, and in which the lawyer representing him will do so proudly, without resentment at an unfair burden, sure of the support needed to make an adequate defense."

Nearly half a century later, there is a disturbing disconnect between the promise of Gideon and what is sometimes the reality of our criminal justice system. In 2006, New York's Commission on the Future of Indigent Defense Services issued a report which found that New York is failing to comply with the basic spirit and ethos of Gideon. The Commission concluded that our indigent defense system here in New York is in many respects dysfunctional and incapable of providing poor defendants with effective legal representation.

The basic fairness of our criminal justice system is being compromised by the reality -- in New York and around the country -- of chronically overburdened public defenders who have very little time to investigate the facts, get to know a client or build a competent legal defense in each case. Countless defendants are processed every day in an assembly line fashion miles removed from the ideal of equal justice for all. In New York, as has been reported prominently in the press, defendants in our vitally important Town and Village Courts, the courts closest to the people, are routinely arraigned and sometimes even jailed in lieu of bail -- all without a lawyer present to argue for their pretrial liberty or to begin to prepare their defense.

The vast majority of states and the federal government have long recognized the critical need to have counsel present at arraignment -- generally the first court appearance for a defendant accused by the state of committing a crime. In principle, New York ranks with that vast majority of states, but in practice that is not the case in many areas of our State. This is contrary to our professed public ideals in New York, which historically has been a national leader in protecting the rights of our citizens.

As Chief Judge, I see the provision of adequate legal representation for our people, rich and poor alike, as the greatest challenge to the continued legitimacy of our justice system. I believe we are finally on the road to meeting this challenge in New York, both on the civil side, where in no small measure, thanks to the work of the Task Force to Expand Access to Civil Legal Services, chaired by Helaine Barnett, we are in the process of laying the foundation for a permanent systemic funding system for civil legal services; and on the criminal side, where last year the Legislature and the Governor created the Office of Indigent Legal Services.

The Indigent Legal Services office and its 9-member governing Board, which I have the privilege of chairing as Chief Judge, have the overriding responsibility to undertake efforts to "improve the quality of services" provided to persons charged with crimes and to parents in Family Court matters who cannot afford counsel. The ILS Office will collect information, monitor performance and distribute funds appropriated in the executive branch budget. Its mission is to support and work cooperatively with county governments and defenders to improve the quality and cost-effectiveness of New York's indigent defense system and to bring it into compliance with nationally accepted norms, particularly the ABA's Ten Principles of a Public Defense Delivery system, which address workload standards, attorney qualifications and training, and supervision and evaluation of attorney performance.

Already, the ILS Office has identified major deficiencies such as excessive caseloads, inadequate or non-existent investigation, lack of qualification standards, poor training and supervision, and lack of oversight for appellate representation. But looming over all of these and other deficiencies is the continuing practice of arraigning and jailing accused persons without affording them the assistance of counsel.

Today, I announce the first major policy objective to be undertaken by the ILS Board and Office -- to address and remedy this practice, which has long been impervious to change. Our goal is to ensure that all defendants arraigned before the courts of this State are represented by counsel at their first court appearance.

In the weeks and months ahead, the ILS Office, working cooperatively with the policymaking branches of state government, the Counties, the State Magistrates Association, and all affected stakeholders will make this issue its absolute top priority and work to develop and implement practical solutions and legislative and rule making changes to facilitate the availability of counsel at first court appearance. The Office will use its discretionary grant authority and technical expertise to encourage and support localities in crafting creative approaches to this problem, including where adjoining localities agree, utilizing centralized arraignments, as well as taking full advantage of modern technology, streamlining inter-agency procedures and improving communications and information sharing.

As Chief Judge and Chair of the ILS Board I am committed to seeing that effective reforms of this longstanding failure are identified and, most critically, acted upon now. While there are pending legal and constitutional challenges in this area that will continue to run their course, there is an independent and compelling moral obligation for every participant in the criminal justice system to work together to forge policy solutions to this problem -- because the arraignment and pretrial jailing of

defendants who are not represented by counsel is a fundamental failure that can no longer be tolerated in a modern, principled society governed by the rule of law. The problem may not be totally solved in one day, one month, or even one year, but it is my pledge to you today that by next Law Day, the norm in our great State will be that defendants are represented by counsel at arraignment, and that anything less than that will be aberrational in nature.

A great deal of additional work lies ahead if we are to make good on the promise of Gideon and provide competent, efficient, ethical, conflict-free legal representation for criminal defendants who cannot afford an attorney. It will require nothing less than deep reform of the current system, beginning with the engagement of the policymaking Executive and Legislative Branches, along with the participation and investment of state and county government, and every entity and person involved in administering, funding and delivering public defense services.

Outreach by the ILS Office's Executive Director, William Leahy, has emphasized cooperation, communication, creative problem solving, and a renewed focus on the quality and efficiency of services. The goal is to listen, support and encourage -- not to impose new mandates on localities, but rather to move forward together with a common purpose and unswerving commitment shared by all stakeholders.

One of the key ways in which we will promote reform is by transitioning away from payments to localities that are based solely on local expenditures and by moving toward a funding system in which future payments will be based on performance, attention to quality, and need.

Earlier this year, in advance of implementing this performance-focused grant process, the Board authorized the ILS Office to set aside initial grants to be awarded in exchange for commitments by counties and local defender leaders to implement

innovative, quality-enhancing measures to improve the delivery of services. The results of this initiative could not be more encouraging. Dozens of counties have submitted plans that would, for example: add attorneys to provide representation at arraignment in high-volume Town Courts; reduce excessive caseloads through enhanced attorney staffing; establish a multi-county immigration advisory center to provide constitutionally required services in this highly important area; obtain labor-saving case management systems to monitor caseloads, identify conflicts, and prepare mandated reports; add alternatives to incarceration coordinators to link eligible defendants to drug and mental health treatment services; restore necessary attorney training which had been lost to budget cuts; upgrade existing investigatory capacities, and many, many others.

This is the process -- balancing challenge, innovation and cooperation -- by which we will, together, reinvigorate our public defense framework, improve the quality of services, and ensure that in these difficult fiscal times we are getting maximum results from the resources at our disposal, both at the state and local level. Together, in the next year, we commit to ensuring that the dream of Gideon is alive and well in the Empire State.