

1 DUTCHESS COUNTY BAR ASSOCIATION

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3
4 Remarks by
5 WILLIAM J. LEAHY

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8
9 October 13, 2011
10 1:00 p.m.
11 Poughkeepsie, New York

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23 Reported by: KAREN SCHMIEDER, CSR
24 Registered Diplomat Reporter

1 in a nice January snowstorm on Sunday
2 morning, and we did the mansion and
3 all that and had a delightful time.

4 I started in late February,
5 and we had our first meeting of the
6 Board, which as you may know is
7 chaired by Judge Lippman. The Board
8 consists of two Judges, two County
9 Executives, Mike Breslin from Albany
10 and Joe Mareane from Tompkins. It
11 contains representatives appointed by
12 the Governor, nominated by State Bar
13 Association, former Senator John
14 Dunne, Lenny Noisette, former head of
15 the Neighborhood Defender Service in
16 New York and now with the Soros
17 Institute. There are a total of nine
18 members.

19 We had our first Board
20 meeting on March 8th, and the very
21 first thing that the Board decided to
22 do was reach out to the counties with
23 a distribution statewide in the amount
24 of \$4.4 million. On March 18 I sent

1
2 WILLIAM J. LEAHY
3 Director
4 New York Office of Indigent Legal Services

5
6 Thank you very much.
7 I was looking for a new
8 challenge when it was time to complete
9 my work in Massachusetts, and I didn't
10 have to go far, because New York had
11 just passed its law just a month or so
12 before I retired. In the summer of
13 2010 New York had passed its law
14 creating the Office of Indigent Legal
15 Services and so here I am.

16 I wanted to say that by
17 happenstance I came into the position
18 late in February of this year, but in
19 January, as luck would have it, my
20 daughter was in Reading, Pennsylvania
21 on a medical student rotation; my
22 family was up in Boston, and we met at
23 Hyde Park, Poughkeepsie for a weekend.
24 So I walked over the pedestrian bridge

1 notice out to the County Executives or
2 County Budget Directors and asked them
3 to confer with their local chief
4 defenders and to propose to us for
5 consideration a proposal that would
6 improve the quality of legal
7 representation under County Law 18-B.
8 It was great to see, six days later, I
9 received a terrific response from
10 Valerie Summerville, Budget Director,
11 at least then, of Dutchess County. I
12 don't know her, but the proposal had
13 been put together in collaboration
14 with Tom Angel. It was really just
15 exactly the kind of proposal we were
16 looking to approve: To add a public
17 defender to maintain more reasonable
18 caseload levels than would otherwise
19 be available; to provide legislative
20 and legal reference materials that
21 once had been provided through county
22 budget but that no longer had been
23 able to support; to provide some
24 computer upgrade, and to increase the

1 fund for expert witnesses. So these
 2 were exactly the kind of quality
 3 improvements that we were looking to
 4 do, and it's exactly what our statute
 5 says we are obliged to do. That is to
 6 make efforts to improve the quality of
 7 representation or services as the
 8 statute uses the term.

9 So that is what we are
 10 about. And I want to take pains to
 11 say this is not just -- a lot of
 12 people think this is just criminal
 13 defense, and I know a lot of judges
 14 and a lot of Family Court judges are
 15 in the room and of course you know,
 16 but we want everyone to know this
 17 includes parental representation in
 18 the Family Court, and that's a
 19 critical piece. It is a critical
 20 piece for quality. It is a critical
 21 area of cost concern for just about
 22 every county I've spoken with.

23 So in the intervening months
 24 what I have been doing is reaching out

1 was a very intensive and thoughtful
 2 effort. They asked me to come up;
 3 they took my perspective and
 4 everyone's perspective they could get
 5 as to how they could manage. It is
 6 our job to help assist places like St.
 7 Lawrence County and just like Dutchess
 8 County to have the State be a partner
 9 under the limited share of state
 10 funding that comes in. There is no
 11 extra pot of gold; this office did not
 12 come with any additional funding. So
 13 we are working to make the existing
 14 systems better.

15 Another example I can give
 16 you was out in Jamestown, New York,
 17 out in Chautauqua county. I went out
 18 there because a very thoughtful county
 19 legislator, who was not a lawyer -- in
 20 fact he was a doctor, collaborated
 21 with the City Court Judge in
 22 Jamestown, New York -- and this is
 23 before Chief Judge Lippman's Law Day
 24 speech about counsel at first

1 both politically and geographically
 2 all over the state. To give you a
 3 couple of examples, I went up to
 4 Canton, up in St. Lawrence County in
 5 June. Canton, St. Lawrence County had
 6 instituted a Conflict Defender Office
 7 some five or six years ago -- perhaps
 8 more than that, in an effort to reduce
 9 costs in their county. As you know,
 10 huge county; economically somewhat of
 11 a depressed county with problems of
 12 logistics and problems of
 13 ever-increasing spending on indigent
 14 representation. That county had set
 15 up a special committee to look at what
 16 could be done to reduce costs while
 17 maintaining quality. The county had
 18 the District Attorney from St.
 19 Lawrence County, the sheriff, it had
 20 probation, the Public Defender, the
 21 Conflict Defender, the assigned
 22 counsel, the administrator; it had the
 23 County Legislature represented, it had
 24 the County Executive Deputy. So it

1 appearance. In this legislator's
 2 opinion it was wrong for the county to
 3 be locking up as many of its citizens
 4 pretrial and without counsel, as they
 5 were then doing. So I was asked to
 6 come out, and Judge Sheila DiTullio
 7 from Erie County Criminal Court, who
 8 is also a member of my Board, she came
 9 down and we had a very good meeting,
 10 and that's a Pilot Program that is
 11 underway now. It appears to be
 12 serving its intended purposes, and it
 13 is something that the county is going
 14 to be looking to the state, to us to
 15 support in the future, and we'll see
 16 if we can manage to do that.

17 So I give these examples as
 18 just a couple, among many, of what we
 19 are trying to do. What we are trying
 20 to do is to move the State of New York
 21 forward, and particularly the parts of
 22 New York State that are outside New
 23 York City, which have long
 24 established, as you know, defender

1 agencies, and which has let's just say
 2 a different sort of budget situation
 3 than many of the more rural counties
 4 have. So we are working around the
 5 state to make things better.
 6 Our guiding star is to have
 7 a hand out and to have an ear open,
 8 and not to be dictating, as county
 9 representative after county
 10 representative tells us is their
 11 typical reaction in dealing with the
 12 general mill of state agencies. So
 13 that is what we are doing.
 14 Our Board at its most recent
 15 meeting in late September approved
 16 four items I think that are of
 17 interest to you. One is a second
 18 general distribution of funds to come
 19 out early next year under which
 20 counties, such as Dutchess, will be
 21 eligible for a partnership among the
 22 county, its defender agencies and the
 23 Office of Indigent Legal Services to
 24 figure out how the additional state

1 State Senate actual opposition last
 2 year to the continued existence of
 3 this effort to improve the quality.
 4 Not because the Senate leadership
 5 disagreed with the aim of the
 6 improving quality, but because of the
 7 instability it was thought to put in.
 8 So our Board at the March
 9 meeting, when it approved this year's
 10 distribution and at the September
 11 meeting when it approved next year's
 12 in the amount of \$8.1 million -- so in
 13 the case of Dutchess County this
 14 year's discretionary distribution is
 15 about \$120,000, next year's \$270
 16 thousand dollars. If it sounds like
 17 an increase, it's not, because it
 18 makes up for the 75 percent. So I
 19 don't want the District Attorney or
 20 others thinking that additional money
 21 coming in for defense and Family Court
 22 representation, and that's not the
 23 case. What it does do is it says the
 24 legislators and the executives of this

1 funding -- let me back up a little bit
 2 here and talk about a kind of
 3 structural flaw in the law that was
 4 created. That structural flaw may be
 5 very familiar to some of you and not
 6 so to others. It sets out that over a
 7 five-year period, from 2010 through
 8 2014 or 15 that while the City of New
 9 York gets a steady \$40 million stream
 10 of state funding, each individual
 11 county outside the city has 90
 12 percent. Earlier this year in March
 13 2011, Dutchess County and other
 14 counties received 90 percent of what
 15 they received the year earlier in
 16 2010. The rest of the funds were left
 17 for discretionary distribution. That
 18 goes to 75 percent in March 2012; 50
 19 percent; 25 percent, and zero down to
 20 2014. That provision, especially when
 21 juxtaposed with the guaranteed \$40
 22 million annually to the City of New
 23 York, has understandably caused a lot
 24 of unease, and in the case of the

1 county and other upstate counties, we
 2 are going to keep a floor under your
 3 feet, and we are not going to allow
 4 you to fall through the cracks and
 5 disserve our statutory purpose, which
 6 is to improve the quality of
 7 representation. It would be a
 8 terrible thing, I think and my Board
 9 thinks, if we were to allow reduced
 10 funding or the instability that comes
 11 with the threat of reduced funding to
 12 detract from our purpose of improving
 13 quality, because we are afraid that's
 14 what it would do.
 15 The second thing the Board
 16 did at the late September meeting that
 17 relates to counsel at first appearance
 18 in criminal cases, and most of you
 19 probably are familiar with Judge
 20 Lippman's Law Day speech earlier this
 21 year in May where he talked about
 22 counsel at first appearance being norm
 23 in the state in a year. Now, when
 24 that speech was made everybody

1 thought, I thought this was pretty
 2 much exclusively a town and village
 3 court problem. In June, after we
 4 consulted with a few City Courts which
 5 said, hey, wait a minute, we have got
 6 the same problem or a similar problem,
 7 whether it is nights, weekends or more
 8 than nights and weekends, the Office
 9 of Court Administration conducted a
 10 survey of City Courts, 61 City Courts
 11 outside the City of New York. 58 of
 12 those courts responded that they do
 13 not provide counsel at first
 14 appearance 100 percent of the time.
 15 So this is not exclusively a town and
 16 village court problem, and it is not
 17 exclusively a problem of courts that
 18 are so geographically remote that one
 19 can hardly conceive of how to get a
 20 lawyer to those courts in a quick time
 21 in the middle of the night for those
 22 arraignments and so forth. So bad
 23 news good news. The bad news is that
 24 the problem is more extensive than we

1 we are willing to fund and able to
 2 fund.
 3 Now, will this get us to
 4 counsel at first appearance as the
 5 norm in a year? It will not and our
 6 Board understands that and the Chief
 7 Judge and Chair support and understand
 8 that. What we will do is we will
 9 create success stories in county after
 10 county. We will put the lie to the
 11 myth that it can't be done. Because
 12 we will show that it can be done with
 13 a smart approach and with dedicated
 14 funding. And again, this is not part
 15 of a funding increase; this is all
 16 part within the appropriation that is
 17 not larger than in previous years.
 18 And we will show success stories that
 19 will then, we hope, generate state
 20 legislative interest and state
 21 executive interest and perhaps further
 22 reforms that might make counsel at
 23 first appearance in additional courts
 24 more feasible and more economical.

1 thought, but the good news is it is so
 2 much more fixable.
 3 The further good news is
 4 this Office and this Board are
 5 listening to the many defenders and
 6 the many county officials who have
 7 said to us that this is yet just
 8 another unfunded mandate. You're
 9 telling us we have to do it, and
 10 you're not funding it. Well, we have
 11 listened and we have acted. What the
 12 Board did in September is to authorize
 13 \$4 million this year and the next two
 14 years coming and has converted that
 15 so-called unfunded mandate into
 16 something that is not a mandate and
 17 that is funded. In other words, what
 18 I mean by that is this: We will be
 19 sending out request for proposals to
 20 all the counties outside of New York
 21 City. We will be saying to those
 22 counties: Tell us what you can do
 23 with a piece of this money, and we
 24 will not ask you to do more than what

1 Because right now it is neither. So
 2 we are trying to be realistic on that
 3 front and we are trying to make steady
 4 progress. We are not going to change
 5 a century of practice in a year, but
 6 we are going to get started.
 7 The third thing the Board
 8 did in late September is it authorized
 9 additional funding to create regional
 10 training and resource centers so that
 11 New York State can become one of the
 12 few states -- and it might even be
 13 first state to comply with the
 14 requirement of the United States
 15 Supreme Court in Padilla vs. Kentucky,
 16 which came down in 2010 which said --
 17 and this was in the context of a
 18 criminal case -- that it is part of
 19 effectively representing a client to
 20 advise that client about immigration
 21 or deportation consequences of
 22 criminal conviction, so that when that
 23 plea comes up and I can get you
 24 probation, often you have to think

1 about more than that. The problem is
 2 that we as individual practitioners,
 3 we don't always know. A few of us
 4 might be also experts in immigration
 5 law, but most of us aren't. There is
 6 Joanne Macri of the New York State
 7 Defenders Association is a wonderful
 8 resource, but there's not enough. So
 9 the idea there is to create six,
 10 seven, eight regions around New York
 11 State in which you will have -- and it
 12 will be based in an existing Public
 13 Defender Office, you will be able to,
 14 first of all there, will be trained
 15 throughout that region. Secondly,
 16 there will be a hotline, so when
 17 you're in court or the case is coming
 18 up the next day and you've got a
 19 question, there will be someone
 20 knowledgeable at the other end of the
 21 line to help you answer that question,
 22 help you serve that client
 23 appropriately, and help keep yourself
 24 out of a professional sling perhaps

1 not done it yet, and Dutchess I dare
 2 say might have a ways to go still as
 3 well. Again, we have a city/upstate
 4 dichotomy.
 5 Since 2009 there has been
 6 money flowing in the state budget
 7 through the Office of Court
 8 Administration to defender agencies in
 9 New York City. To do what? To reduce
 10 caseloads to comply with national
 11 norms. You've probably heard about
 12 them -- this isn't Bible, but
 13 generally accepted numbers 150
 14 felonies, 400 misdemeanors and so on.
 15 That money is real and it's flowing.
 16 What are the upstate counties getting?
 17 Goose egg. So the Board authorized a
 18 request for a budget increase next
 19 year. When I say a budget increase,
 20 all of our funding comes from the
 21 Indigent Legal Services Fund. It
 22 doesn't come from the state
 23 appropriations, so I just want to
 24 clarify that. But it's real money,

1 for being accused of inadequate
 2 representation. That I think would be
 3 a real feather in New York State's cap
 4 and a real benefit to defenders all
 5 across the state.
 6 Those services by the way,
 7 while Padilla is a criminal case,
 8 those services would be available to
 9 lawyers under 18-B who represent
 10 parents in Family Court where
 11 immigration issues are obviously also
 12 common and may relate to custody and
 13 may impact traditional decisions. So
 14 those attorneys and their clients
 15 would be fully eligible for those
 16 services as well.
 17 The fourth thing that the
 18 Board did at its meeting in September
 19 is that it took note of the fact that
 20 while Dutchess County has already
 21 commendably moved ahead this year to
 22 start to address the issue of case
 23 overload, cases far in excess of
 24 national standards, many counties have

1 and that fund has maybe 110, 115
 2 million dollars in it. 77 million of
 3 that is appropriated to the Indigent
 4 Legal Services function this year.
 5 The fund, the balance of it, gets
 6 swept annually back into the General
 7 Fund of New York State. Our position
 8 is that that fund was created for the
 9 purpose of supporting the defense of
 10 the indigent and the representation of
 11 indigent parents. But the specific
 12 proposal that we create is to add \$6
 13 million, so take a little more of that
 14 fund, a lot of which goes back to the
 15 General Fund under current practice,
 16 and dedicate it to upstate caseload
 17 relief to match the money that's
 18 already flowing into the city for the
 19 very proper purpose of reducing
 20 caseload levels in the city.
 21 So again, it's a matter of
 22 fairness, and it's a matter of
 23 compliance with constitutional
 24 mandates and compliance with

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1 constitutional norms should not be
 2 restricted to the city; it should be
 3 statewide. That's all a part of our
 4 mission. And I'll wrap up with this,
 5 because I've been a little longer than
 6 I intended to be, and I don't want to
 7 bore you. Part of our mission, the
 8 way we see the future in New York
 9 State is that one day it should not
 10 matter from a client's perspective
 11 whether you are in a custody dispute
 12 or whether you've been charged with a
 13 violation or criminal defense should
 14 not matter what part of the state you
 15 hail from or what part of the state
 16 you are unlucky enough to be wrapped
 17 up in that case in. You should have
 18 an expectation that you will have a
 19 competent, loyal and live attorney
 20 with you at first appearance and
 21 throughout the case. It shouldn't
 22 matter whether you're in Buffalo or
 23 Montauk or Essex County or Dutchess or
 24 Brooklyn. It shouldn't matter.

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1 the current activities of the Indigent
 2 Legal Services Office and Board.
 3 I just want to say a word,
 4 Dutchess has been one of my favorite
 5 counties because I've had so much
 6 contact with you all and you've had
 7 your little discussion going on about
 8 Family Court and representation, the
 9 Bar Association and the judges, the
 10 defender and all of that. I've been
 11 very careful to keep my fingers out of
 12 it as much as possible, but I just
 13 want to say this to you. My own
 14 career in Massachusetts -- and I
 15 started as a rookie public defender.
 16 So I started as a public defender in
 17 what was then -- this is 1974, a
 18 completely public defender agency, all
 19 staff, no private lawyers. Private
 20 lawyers were those other people
 21 outside the agency, right. By 1991 I
 22 had become the chief of an agency that
 23 had 90 percent of the clients
 24 represented by private lawyers and was

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1 So that's the goal that we
 2 have. It's a long, long road, but the
 3 way we look at it is New York, the
 4 Gideon case came down in 1963. New
 5 York passed County Law 18-B in 1965,
 6 and the next concerted state action to
 7 fulfill what is ultimately the State's
 8 responsibility was in 2010. So that
 9 took a long time; in fact, it took 45
 10 years for the State of New York to
 11 act, and not with the full-scale
 12 Public Defender Commission that the
 13 Kaye Commission recommended in 2006,
 14 something much more modest but
 15 something that makes a difference.
 16 Because the way we see it, 2011 is the
 17 first time that the State has
 18 partnered with counties to provide
 19 State money, admittedly small State
 20 money, to the counties to help improve
 21 the quality of defense we expect. And
 22 we hope and we are working to be
 23 around a lot longer so we can do a lot
 24 more of that. So that's my report on

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1 constantly accused of, well, private
 2 lawyers, you know, they are
 3 undisciplined, you can't fire them,
 4 they can't provide good
 5 representation, so how can you call
 6 that a good program. And what I know
 7 is that it's about, number one, client
 8 service; it is about results and
 9 performance for clients. That's the
 10 bottom line, so I'm agnostic between
 11 public defenders and private lawyers.
 12 Secondly, I know that the public
 13 defender system can be a good system
 14 or a bad system. There's plenty of
 15 bad ones in this county. I've seen
 16 tons of them, overloaded with cases,
 17 jaded, depressed. And I know, because
 18 I led this program in Massachusetts,
 19 you can have an excellent program
 20 composed primarily of private lawyers.
 21 But my bottom line and where I'm not
 22 agnostic is I think you need both. I
 23 think the clients need both. They
 24 need a solid institutional presence

1 and they need the active participatory
2 support of the private bar. Without
3 that, you're isolated politically,
4 you're marginalized in your effort to
5 improve quality.
6 So I wish you well here, and
7 just as I've gone up to Canton and
8 Jamestown, and if I could go to those
9 places if at any point you want me to
10 come down here and just chat with you
11 about what's going on and so forth,
12 I'd be happy to do it. I'm an honest
13 broker. The only thing where I might
14 diverge a little bit -- I hope not
15 with many of you -- is I'm not about
16 lawyers, I'm about clients. We are
17 important because of who we serve, not
18 because of who we are. But with that
19 side, which I probably shouldn't say
20 at a Bar Association luncheon, but
21 truth in advertising, I don't come
22 with institutional biases towards
23 public defenders or private lawyers or
24 anybody else. What I want to know is

1 what works for clients. And also
2 because our statute requires and
3 because it is right and because it is
4 public funds, how efficiently can you
5 do it. That's important as well.
6 The bottom line for me is
7 quality of service to clients. They
8 have enough of an uphill battle as it
9 is, confronted with the powers of the
10 county and often the state. Our role
11 is an important role, and it is a
12 societal useful role. My job and the
13 job of my Board is to provide support
14 for you in that effort. So thank you
15 very much.
16
17 (Applause.)
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