



HOUSE OF REPRESENTATIVES

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Testimony submitted by Representative Jeffrey Evangelos to the Maine Commission on Indigent Legal Services, Tuesday, November 19, 2019.

Good morning Chairman Tardy and other distinguished members of the Commission, I'm Rep. Jeffrey Evangelos from Friendship and I serve on the Judiciary Committee. I'm honored to appear before you today, honored because we're here to discuss and work to improve Maine's legal and criminal justice system as it relates to the right of a criminal defendant to obtain effective legal counsel and more specifically, to ensure and protect those rights for those who cannot afford the cost of a lawyer. This important work intersects with our most important core constitutional protections, the 5th, 6th, and 14th Amendments to the United States Constitution, or put more plainly, the right to due process, the right to have the assistance of effective legal counsel, and the right to equal protection under the law.

Last spring, the Judiciary Committee heard testimony from David Carroll of the Sixth Amendment Center in Boston, who was commissioned by the Maine Legislative Council in 2018 to undertake a study "to evaluate right to counsel services provided by MCILS and to recommend any needed changes." There were some fairly disturbing findings, however, I want to make it clear, some of the findings do not relate to the work of the Commission but point to systemic and unconstitutional practices ongoing in our court system, in particular, Finding #2:

Some prosecutors in some jurisdictions engage in plea discussions with uncounseled defendants, and some courts actively encourage such negotiations. These practices result in actual denial of counsel.

This practice is clearly unconstitutional and I would recommend an immediate directive to all prosecutorial districts to immediately cease and desist. No criminal defendant should ever face the power of the State's prosecution without counsel present. Furthermore, recent prosecutorial misconduct in Hancock and Kennebec Counties point to a real need for reforms by prosecutors. Judge Woodcock's scathing indictment of Hancock County's prosecutors and law enforcement in the Filler case, March, 2019, should be a reminder that the problems in our judicial system run far beyond the subject matter before us today. However, when one intersects the power of prosecutors to engage in malicious prosecutions, using unethical conduct, the weaknesses exposed in the Sixth Amendment Center Report become even more serious, resulting in sending innocent people to prison. Let's be clear, one innocent person in prison is too many. A bill I submitted in 2019, LD-302, aims to expand the post-conviction review rights of those unjustly incarcerated.

In the interests of brevity, I will summarize additional concerns which require reform:

Qualification standards for those who are on the roster of Indigent Legal Services must be improved, with efforts at enhanced training and more critically, to assure the court appointed counsel has defense specific skills that fit the specific client and legal case that is being defended. As you may be aware, I recently filed a complaint with your agency concerning a specific attorney on your roster who in my opinion lacks the ethical integrity and qualification standards to be serving our poor and disadvantaged defendants at taxpayer expense.

The "lawyer for the day" system is overworked, understaffed, and most importantly lacks continuity, leaving a defendant with uninformed legal counsel, as the Report stated, "The lawyer for the day system provides limited representation because it is only "for the day," not for the case. In most instances the "lawyer of the day" does not continue with the case." This is a recipe for disaster, almost assuring that a defendant represented under these circumstances is in fact receiving ineffective counsel. In addition, because indigent legal defenders are overwhelmed with case work, they lack adequate time to prepare for a case or even the time to visit a defendant in jail

or prison to plan a defense.

Financial and accounting reforms must also take place to assure that all billing is accurate and reflects the work undertaken to defend a client. I want to be clear here, most of our accounting issues are simple fixes, filling out daily log time cards accurately. I'm sure the public defenders who are overworked and exhausted probably get behind on their daily bookkeeping in reference to case work, resulting not in over billing but in hastily produced invoices and time cards. A recent press report that alleged that many of our public defenders are liars and thieves, and which actually questioned the integrity of these public defenders and Mr. Pelletier, was so prejudicial that a response was required. I have included my response to that particular article as an attachment to my testimony.

Now for the hard part. It's going to cost money to reform our public defender system. The fact is, the sum total of staff and budgets for our County prosecutorial offices and State Attorney General dwarf the budget for public defense. This alone puts public defenders at a disadvantage. More training, supervision, and oversight will cost money. Mr. Pelletier's office is underfunded and understaffed. Our indigent criminal defendants need more qualified lawyers to help them, the lawyer for the day program is way understaffed and as I said above, lacks the essential continuity to provide adequate counsel.

Our judges are the lowest paid in the country. Our public defenders make \$60 an hour, 1/5th of what a private attorney makes. Quite frankly, I'm tired of always being in last place. It's inexcusable. We have to do better. You have my commitment as a member of the Judiciary Committee that I will work with my other members to fix these problems with new legislation starting this January. I'm positive Senator Carpenter and Representative Bailey, our chairs, will work with us to address these needs. But we're not going to do it on the cheap, Maine needs to grow up and accept that real solutions cost money, especially when we're talking about the basic constitutional protections that define us as a Republic.

Thank you for the opportunity to testify. I'm happy to answer any questions.

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Serious concerns RE: Defending the poor: \$2.2 million in suspect billing has lawmakers asking questions



Evangelos, Jeffrey

Fri 11/15, 12:49 PM

dan@pinetreewatch.org; Pelletier, John; Maciag, Eleanor; amy@fairfieldandassocia

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Dear Dan,

While I have long collaborated with your publication, which I like and support 100%, and have worked with your journalists and owners as a source and as a legislator and standing member of the Judiciary Committee, I must say that I am very concerned with this article because it contains materially false information, single and unverified sourcing, and other critical errors that must be addressed.

First, re Mr. John Pelletier, he does appear before the Judiciary Committee quite often, but much of his activities are around the Maine Commission on Indigent Legal Services. John also serves on the Criminal Law Advisory Commission (CLAC). Until June, 2019, Mr. Pelletier would deliver testimony at public hearings for that Commission to the Judiciary Committee on various bills and also appear at our work sessions. In reference to Pelletier's role with CLAC, he presented the testimony of the entire Commission for or against a bill, not necessarily his own position, but that of the entire commission.

During the proceedings around LD-302, the post-conviction reform bill that I sponsored and was the subject of Jordan Bailey's award winning article with Pine Tree Watch, (Evidence of Innocence), I raised a very serious objection with Mr. Pelletier on mike and in Committee concerning his role as the "presenter" of CLAC's testimony. The Commission testified **against** the bill and I became concerned that prosecutors and members of the Attorney General's staff were dominating the opinions and testimony coming out of CLAC. I told the Committee and Mr. Pelletier that as the Director of the Indigent Legal Services Commission that his testimony on behalf of CLAC was in conflict with the interests of indigent defendants who **did not** receive a fair trial, where such concerns were documented in the Sixth Amendment Center Report. I told Mr. Pelletier that while I had no objection to his service on CLAC and actually wanted his input at that agency, that as the protector of our poor defendants he should not be put in the position of delivering testimony opposing the constitutional rights of poor defendants, that it represented a classic conflict of interest.

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Commission agreed with me and that Mr. Pelletier would no longer be the person with CLAC to present the testimony for that agency. This information was totally omitted from the article.

The article just published attempts to make the case that Mr. Pelletier was in fact shirking his duties and was out of the office too much because of he was serving on CLAC and at their meetings. First, it is critically important that someone representing our indigent defendants serve on CLAC so their interests are represented and protected.

Second, and more importantly, Mr. Pelletier's service on CLAC and 'his time out of the office' to do so was **never** an issue, it was **never** brought up in connection with any Judiciary Committee discussions. In effect, this allegation is a falsehood, apparently perpetuated by a disgruntled accountant (Nash). I serve on the Judiciary Committee. I lodged the complaint in reference to John's role at CLAC. It had absolutely **nothing** to do with his 'time out of the office', nor his work effort, just my concern that poor defendants be protected.

This statement " Multiple lawmakers, defense attorneys and advocates interviewed by Pine Tree Watch also raised concern with Pelletier dividing his work day between completing tasks for the commission and a volunteer role as chair of the state's Criminal Law Advisory Commission (CLAC)... is not supported by any evidence or sourcing besides Nash. She is the only source. Meanwhile I was the actual source of the complaint and it had absolutely nothing to do with Pelletier's time management, which the reporter then leverages into Pelletier shirking his oversight duties. It didn't happen that way Dan. I was the one who issued the complaint and Mr. Carey immediately went to work and rectified it.

Second: Last spring, the judiciary Committee heard the Sixth Amendment Center Report and testimony delivered by David Carroll. The Committee spent a lot of time on it and I can tell you that the vast majority of discussions centered around 5th, 6th, and 14th amendment concerns...the right to due process, the right to effective legal counsel, and equal protections under the law.

In reference to financial matters, the vast majority of discussions and concerns centered around how low the pay for indigent counsel was (\$60 an hour) and how underfunded the agency was. While there was a discussion about billing and financial screening, the Committee was presented evidence by Mr. Pelletier that most of the "apparent" billing irregularities were actually caused by the fact that payments were being made in the managing attorney's name, when in fact other attorneys who worked at a firm actually did the work. Your article: "Pelletier told lawmakers that the \$275,612 Fairfield billed in fiscal year 2018 was proper because it reflected the work of multiple lawyers at Fairfield & Associates and not Fairfield alone."

In fact, in Fairfield's case, her firm employs 14 different public defenders. Despite clarifying this to your reporter, the reporter then proceeds to double down on this despite conceding the point that payments reflect the work of multiple lawyers.

Quite frankly Dan, the article is treading very close to libel when it come to attorney Fairfield. She has a firm with 14 public defenders and is arguably the most active firm in the state in these matters. It should stand to reason that this firm would rank high on the payments list. Despite reporting in this article that "The

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Pelletier," Nash said.

The reporter continues to double down on Fairfield in reference to the Anthony Sanborn case, an historic and unprecedented case in the history of the State of Maine, freeing a person from prison after serving 27 years at the Maine State Prison:

"According to Pelletier, nearly every case that Fairfield was assigned by the courts — while she was working on the Sanborn case — was completed by other attorneys at her office."

That right there should have provided evidence to your reporter that Fairfield's bills were legitimate, just as Mr. Pelletier said they were.

Instead, we get this:

"In June 2018, Maine taxpayers paid Fairfield \$130,432 for Sanborn's case. It is the most expensive single invoice and post-conviction review ever paid out by the commission.

"Pine Tree Watch obtained through a public records request the invoice that Fairfield & Associates submitted for the Sanborn case, which showed that Amy Fairfield spent more than 2,113 hours between May 2016 and April 2017 working on the case. **It was the first post-conviction review that Fairfield had ever completed.**"

Well Dan, let's address the things your reporter left out. While it may have been Amy Fairfield's first post-conviction case, it was by far the most important and historic post conviction case in the State's history. It included badgered and threatened witnesses against Sanborn, witnesses who came forward and said they were threatened by Portland police to implicate Sanborn, and incredibly, the existence of exculpatory evidence hidden in a Portland police department detective's attic, raising enormous chain of custody concerns. Fairfield's bill for this case, considering what she was up against, the City of Portland (police misconduct and cover up, framing an innocent man), the State of Maine, and the largest law firm in the State, the Maine Attorney General's Office, including misconduct of the head of the Criminal Division documented in Jordan's article, one thing becomes clear:

Amy Fairfield's bill on the Sanborn case is a joke, because of how **LOW** it is.

In the recent annual review published by the Maine Attorney General's Office, the cost of private legal counsel was documented as follows:

"average cost of outside counsel is in the \$335 per hour range" or over 500% higher than Fairfield received in freeing Sanborn from prison.

It appears in the section:**Alternative Delivery Systems**. The AG's Report did not use pagination, but you can find the cost of private legal lawyers in the section I referenced.

<file:///C:/Users/jeffrey%20evangelos/Downloads/Program%20Evaluation%20Report%20-%202011.1.2019%20corrected.pdf>

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account. Singling Amy Fairfield out for alleged financial misconduct is libelous when the circumstances of the Sanborn case are taken into consideration. You should have known this because your paper documented Fairfield's achievements in Jordan's article and here it is in the Press Herald:

<https://www.pressherald.com/2017/04/13/man-convicted-in-1989-of-portland-could-be-freed-on-bail/>



Man convicted of 1989 Portland murder granted bail after star witness recants - Portland Press Herald

www.pressherald.com

The unprecedented decision comes after a legally blind witness from Anthony Sanborn's 1992 murder trial says detectives 'basically told me what to say' on the stand.

Finally, your reporter's closing statements:

Keim said she cannot read the Sixth Amendment Center report without concluding there had to be a breakdown in oversight within the commission.

The data on attorney earnings were at the executive director's fingertips, but he hadn't looked at it until the researchers requested it, Keim said.

"I think we need to clean house," Keim said. "The only way you rebuild the system and have faith in it is if you make sure you get rid of people that didn't have the integrity in the first place."

All this BEFORE an investigation hears any evidence: The scope of the OPEGA investigation has not yet been defined.

This article contains unfounded and misleading allegations, false information re the CLAC issue, single and unverified sourcing, accusations against the integrity of individuals, including Pelletier and Fairfield, said accusations which are entirely unsubstantiated because at the reporter's own admission, OPEGA hasn't begun the investigation. The article reads like judge, jury, and executioner...before the investigation even begins.

The main thrust of the Sixth Amendment Center Report centered on the defendant's right to effective counsel, due process, and equal protection under the law. Read it for yourself, it's attached. It does not begin with alleged financial irregularities, it's focus is **Gideon vs. Wainwright**.

That's the real story Dan, not the hatchet job presented to your readers, which is devoid of the real concerns outlined in "The Right to Counsel in Maine".

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Sincerely,
Rep. Jeffrey Evangelos
member, Judiciary Committee
Maine House of Representatives.

From: Pine Tree Watch <dan@pinetreewatch.org>
Sent: Thursday, November 14, 2019 2:05 PM
To: Evangelos, Jeffrey
Subject: Defending the poor: \$2.2 million in suspect billing has lawmakers asking questions

This message originates from outside the Maine Legislature.



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The high cost of a poor defense



Potential over-billing and a lack of visibility into the hours worked by lawyers defending Maine's poor have sparked multiple investigations

November 19, 2019

Chair Tardy, and Commissioners, good morning. My name is Alison Beyea, I am the Executive Director of the American Civil Liberties Union of Maine, and I appreciated the opportunity to speak with you today. I want to begin by thanking you all for agreeing to serve on this Commission, and for holding this public hearing. The Sixth Amendment Center issued its report on the right to counsel in April of this year, so when you all agreed to serve on this Commission, you knew what you were getting yourselves into. You knew how many significant problems there are with Maine's indigent defense system, and you knew how challenging it was going to be to fix them. And, you agreed to serve anyway. I am very grateful to you for that, and all of us here today who care about the right to counsel should all be very grateful.

The Sixth Amendment Center's report makes it clear that Maine is not meeting its constitutional obligation to provide counsel to people who are accused of crimes and who cannot afford an attorney. It found that the attorney qualification standards are too lenient, that training is inadequate, and that oversight is practically nonexistent. In no other area of government would we think it appropriate to outsource a critical public function to private contractors with no supervision or accountability. Yet for the constitutionally-required government function of ensuring fair trials for people at risk of losing liberty or property, we are doing just that.

The Sixth Amendment to the United States Constitution, and Article I Section 6-A of the Maine Constitution, guarantee that in all criminal prosecutions, the accused shall enjoy the right to have the

assistance of counsel for their defense. There are three key words in that provision that merit special attention. First, the word “right”—this is not optional. The state does not have a choice about whether or not to comply. Second, the word “counsel”—the Constitution guarantees a lawyer at all critical stages of the prosecution, and one who is assigned to the case and not simply the “lawyer of the day.” And third, and perhaps most critical for your work here today, the word “assistance.” In the words of the Sixth Amendment Center report, the Constitution requires more than simply “a warm body in a suit” standing next to the accused—the accused has the right to a lawyer who can and does provide assistance.

In *United States v. Cronin*, the Supreme Court held that the right to the assistance of counsel means the right to the *effective* assistance of counsel. Fundamentally, that means ensuring that only qualified attorneys are permitted to represent defendants, that those attorneys are well trained, and that they are supervised. No other state in the country relies entirely on private attorneys to fulfill this important public role, and for good reason: it is much more challenging to supervise private attorneys spread throughout the state as compared to public defenders housed in a few well-resourced offices.

Many lawyers in Maine who serve as appointed counsel do in fact provide excellent assistance. Some of them are here today. But, too many do not. And what’s worse—the state has no mechanism in place for sorting the good from the bad, or for giving remedial training to the lawyers who are underqualified to do their job.

Last Spring, the ACLU of Maine represented a woman who was due to report to jail for a 40-day sentence for shoplifting 40 dollars from the change return at a Wal-Mart self-checkout. Brenda Smith

was going to lose access to medication-assisted treatment when she entered jail, and we challenged that denial in federal court. Brenda had been in active recovery for over ten years, but this 40-day jail sentence with the loss of her medication could have meant the loss of all that she had worked for, and might even have threatened her life. The result of our case was that the courts ordered the jail to provide Brenda her medication. But beyond that, the district attorney agreed to convert her 40-day jail sentence into a \$100 fine.

Think of how much time and money and effort could have been saved if Brenda's court-appointed attorney had been able to make the same arguments we made in her criminal case. The attorney that MCILS entrusted to safeguard Brenda's rights in her criminal case had previously been suspended from the practice of law for failure to provide competent representation. He had twice been publicly reprimanded by the Board of Bar Overseers for conduct unworthy of an attorney. In other words, this Commission continued to hire a lawyer who had been sanctioned by the bar overseers *three times*, including a suspension. We represented another prisoner in a similar case in the fall of 2018, and his MCILS-appointed lawyer had previously been suspended and sanctioned by the bar overseers as well. What does that say about our commitment to the Constitution?

Maine is not going to be able to meet its constitutional obligation with its current staffing, its current reimbursement rate, or its current delivery model. At the state level, it is necessary to hire training staff who can provide meaningful training, auditors who can conduct oversight, and lawyers who can provide support to private lawyers who are handling difficult or unfamiliar issues. And in many communities, the state needs to establish public defender offices that have resources that are congruent to those of the district attorney's office: paralegals, investigators, and supervisors.

Building a successful indigent defense system will require many things: it will require you to convince the public that this is a problem worth caring about. It will require you to convince the legislature and the governor that this is a problem that cannot be solved without a significant increase in funding. It will require energy, and ideas, and vision. What we hope it will *not* require is litigation.

In New York, Montana, Michigan, Washington, Pennsylvania, Idaho, Missouri, Nevada, Indiana, California, and Utah, the ACLU had no choice but to take the state to court in order to force it to comply with the Sixth Amendment. But we do have a choice here. Long, protracted class-action litigation, and long protracted court-ordered consent decrees, are time-consuming and expensive. At the end of seven years of indigent defense reform litigation in New York, the state wrote a check to the ACLU for \$5.5 million in attorney fees. That is money that would be far better spent on improvements to the system.

There are people from across the state gathered here in this room ready to help in any way they can, including my colleagues at the ACLU of Maine. This is a problem that we can all solve together.

Petition: Fix Maine's Indigent Defense System

November 19, 2019

To the Maine Commission on Indigent Legal Services:

In 1963, in the landmark case *Gideon v. Wainwright*, the U.S. Supreme Court ruled unequivocally that a defense attorney is a necessity in criminal cases, and that if a defendant can't afford to hire a lawyer, the state must provide one. Earlier this year, the 6th Amendment Center – a nationwide non-partisan organization dedicated to studying effective counsel – found Maine's system for providing counsel in these cases to be deficient.

The absence of a strong, well-resourced indigent defense system – one where defendants have an attorney who is familiar with their case and mounts a robust defense on their behalf – undermines the Constitution, leads to deeply unfair results, and contributes to the overburdened and wasteful jail and prison systems in our state.

You now have an opportunity to make needed improvements to Maine's indigent legal system, so that all people in our state have access to the services that are their right.

Bringing Maine's system in line with our constitutional obligations and ideals of justice and fairness will require a broad and varied approach. But we trust that your expertise, combined with the guidance of the 6th Amendment Center report and the many advocacy organizations eager to work with you on this effort, can bring important change.

We urge you to act now.

Signed,

Makena	Bauss	04106
Rachel	Healy	04106
Meghan	Lee	29451
James	Chalfant	04856
Michael	C	03833
Catherine	Blount	04543
Donna	Ekart	04102
Howard	Evans	04614
Anne	Burg	04240
Sophie	Halpin	04011
Martha	Goodale	04092
Shantia	Wright-Gray	04063
Lisa	Savage	04979
Frank	Zimbardi	04979
Brigid	Chapin	04092
Meghan	Lee	29451
Amanda	Persichilli	04101
Leo	Barrington	04105
Jennifer	O'Connell	04101
Elizabeth	Grady	04345
Jessica	Oakes	04605
Jacqueline	Melissas	04011
Deborah	Nicklas	04105
Jeannine	Hashey	04468
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Peter	Mosqueda	04086
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Caryl McIntire	Edwards	04040
Meredith	Mick	04769
Barbara	Kunkel	04643
David	Parker	04843
Kim	Bailey	04038
Karsten	Sorensen	04032
Marlene	Potter	04107
Joanne	Barber	28763
William	Bausch	04543
Laurie	Davis	04103

Shannon	Wade	04102
Gary	Nettleton	04090
Thomas E.	Clouse	04074
Thea	Sames	04106
Adair	DeLamater	04530
Hannah	Wunderli	04401
Noah	Bragg	04102
Joanne	Painter	04015
Catherine	Teixeira	04976
Penelope Z	Andrews	04401
John	McKee	04011
Sarah	Lepoff	04345
Mary	Karren-Landry	04274
Jessica	Smith	04074
Kiersten	Van Syckle	04106
Genevieve	Welch	04102
Regena	Bradeen	04901
Abby	Longstaff	04038
Ashley	Ouellette	04005
Anne	Young	04347
Anne	Funderburk	04074
William	Pearce	04841
Gail	Roller	04046
Rima	Rosenthal	04605
Kendra	Mackenzie	04553
Lawrence	Reichard	04915
Savanna	Havey	04640
Virginia	Starbird	04263
Julie	Balsamo	04210
Wanda	Allen	04010
Jennifer	Flint	04072
Edward	Griffith	04937
Phyllis	Sommer	04974
Susan	Allison	04236
Seth	Mirsky	04578
Eileen	Kalikow	04107
Jeff	Reynolds	04401
Denise	Dreher	04005
Peter	Joyce	04357
Patti	Anderson	04568

Paul	Sheridan	04849
Donna	Walter	04021
Kate	Kalajainen	04011
Davian	Rawls	04103
Jimmy	McGirr	04102
Julian	Lambert	04101
Donald	Angevine	04217
isabelle	chasse	04210
Robert	Goodwin	04609
Alice	Shea	04101
Mary	Bussey	04008
Amy	Simoni	04347
Kelly	Clark	04989
Thomas	Keller	04106
Muriel	Allen	04102
Diane	Neal	04074
Alexandra D.	Pappano	04459
Holly	Lombardi	04862
Susan	Borg	04539
Fran	Hoef-Bouchard	04101
Douglas	Lynch	04101
Adam	Sherman	04210
Tracey	Walls	04920
Iris	Rogers	04330
Sheila	Rosenfeld	03903
John	Randolph	04856
Destiny	Cook	04038
Rachael	Pappano	04459
Christine	Kruysman	04103
Camelia	Mitu	04444
David	Manyan	04072
Kate	Manahan	04043
Peter	Selmayr	04011
Michael	Bell	04101
Edward	Perrin	04347
Jan	Rosenbaum	04866
Beverly	Stewart	04101
Maggie	Davis	04605
Lortie	Marx-Adams	04042
Kathleen	Conrad	04097



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November 19, 2019

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Maine Commission on Indigent Legal Services
154 State House Station
Augusta, ME 04333

To Chairperson Tardy and Honorable Members of the Commission,

Thank you kindly for the opportunity to address the recommendations made by the Sixth Amendment Center in its recent report to the Legislature.

We wish to state at the outset that MACDL encourages close scrutiny of MCILS billing practices. Because MCILS lacks meaningful financial oversight, aspersions are cast generally against rostered attorneys. As a group, rostered attorneys are often maligned as grifters out to exploit the system. Nothing could be farther from the truth and it is incredibly frustrating that we cannot point to existing billing safeguards as evidence that this is not so. It boggles the mind that the previous Commission did so little, for so long, to ensure that taxpayer money was well spent. We ask this newly reconstituted Commission to make reforming the voucher process a high priority.

There are, of course, other important priorities that the Sixth Amendment Center identifies. Much of the report focuses not on taxpayer money, but on indigent defendants. As the report makes plain, there is much work to be done to ensure that all clients, rich and poor alike, enjoy the full measure of their constitutional protections. It is vitally important that the Commission's focus remain client-centered.

The report calls for reforms to the Lawyer of the Day system; better training and oversight of attorney performance; a system of vertical representation, that begins at arraignment; and a rate increase that recognizes, among other things, the skill and expertise needed to litigate complex cases. We know that it will take considerable time and effort to consider each recommendation. Our hope is that the Commission will come to see MACDL as a resource, and that it will seek out our perspective and our expertise when deciding what to do.

Thank you for your attention to this matter and for your service on this Commission. We look forward to working with you on these important issues moving forward.

With appreciation,

/s/ Jamesa J. Drake
Jamesa J. Drake, Esq.
MACDL President

TESTIMONY OF MUFALO CHITAM
Public hearing on the Sixth Amendment Center
The Maine Commission on Indigent Legal Services about the Right to Counsel
in the Judiciary Committee on Tuesday, November 19, 2019
at 9am Room 438
State House, 111 Sewall Street, Augusta

Good morning, Chair Tardy and members of the Commission. My name is Mufalo Chitam and I am the executive director of the Maine Immigrants' Rights Coalition (MIRC). MIRC is a unique collaboration of leaders - a majority of whom are people of color - representing diverse communities across our state.

We represent 69 member organizations including immigrant constituency groups, advocacy groups, direct service organizations, grassroots community organizations. We are dedicated to creating programs and policies that facilitate immigrant inclusion and integration, and developing autonomous new leadership capacity to facilitate systemic change in Maine to benefit our immigrant and refugee communities.

This summer over 400 asylum seekers arrived in Maine, and the majority of them cannot afford their own lawyer. Last week, 15 immigrants in the Lewiston area were arrested by ICE. Immigrants are uniquely vulnerable in the legal system; they can face serious immigration law consequences if their lawyers do not know how to safeguard their rights.

Immigrants in Maine are already underserved due to insufficient and unaffordable immigration lawyers. The lack of proper training and oversight of criminal defense lawyers has a very real effect on who gets bail (and for how much), conditions of release, plea negotiations, trials, appeals, and – in the case of immigrants – who faces deportation back to potentially life-threatening conditions in the country they were trying to escape.

Immigrants suffer under the current system, and MIRC is very concerned about Maine's inadequate criminal defense system. We are leading the way toward a future Maine that is built on principles of justice, economic security, and inclusion – and we urge you to do the same.

Thank you.

DANIEL DUBÉ, ESQ.

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VIA E-MAIL AND HAND DELIVERY

Tuesday, November 19, 2019

State of Maine Committee on Judiciary
Clerk Susan Pinette
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

RE: Public Hearing on 6th Amendment Center Report

Honorable Committee Members:

I wish to provide some comments "from the trenches" regarding the 6th Amendment Center Report of April 2019, commissioned by your Committee. I understand the Judiciary Committee will be holding a public hearing on this report on November 19, 2019. Court obligations may make me tardy in attendance, or prevent my attendance entirely, and so I wish to submit remarks in writing. I refer to the full report, which I have read in full, and not to the executive summary, which I have not read recently. Overall, it is a quality report and I was positively impressed. However, I noticed some oversights worth mentioning. Oversights are understandable given that the report authors are consultants and not actors within the system, those seeing how it works on a day-to-day basis.

Background. For context, in court-appointed capacity I currently represent criminal defendants in the following counties: Cumberland, Oxford, Androscoggin, Franklin, and Kennebec. Also in court-appointed capacity, I represent parents in protective custody (DHHS) cases in the following counties: Oxford, Androscoggin, Franklin, and Somerset. I have been practicing almost six years in both private and court-appointed practice, here and out of state (I am actively licensed in four states). Combined with my representation in private cases, I have represented clients in 14 of Maine's counties, and in federal courts.

What's Missing. The focus of my remarks is on matters not addressed in the report, but which I believe ought to be addressed or considered by its authors or the Committee.

- **Protective custody cases.** Also called "PC" cases or "DHHS" cases. This case type, in which parents' attorneys almost exclusively are court-appointed, is mentioned only in passing; no substantive analysis of this system appears to have been conducted for the report. Although privacy laws prevent access to hearings, extensive interviews of

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key players ought to be conducted. The PC dockets are in crisis. They are increasing rapidly year-on-year in many counties, and there are too few attorneys and guardians ad litem, not only in more populous areas, but especially in rural counties. The rapid increase in these dockets, largely attributable to the opioid crisis, must significantly impact the court-appointed budget. Furthermore, the docket ought to be analyzed with reference to caseloads; these cases tend to be very time-consuming, and they can easily alter the analysis of whether a caseload is too large, whereas the report asserts that the data indicates no attorney to have a caseload that is too large.

- **Unified Criminal Docket.** The changeover to the "UCD" in 2015 is not mentioned in the report. The impact the UCD may have had on attorney billing ought to be analyzed. It is quite possible that although usage of the dispositional conference ("dispo"), the signature feature of the UCD, has reduced the number of trials and thereby decreased the budget of the judiciary and the need to hire more judges. But those decreases may be a budgetary "passing the buck" on to the MCILS budget. Many attorneys report significant expenditure of valuable hours in "hurry up and wait" at dispositional conferences. To be clear, I do not know if UCD has impacted the MCILS budget, but the transition to UCD ought to be addressed in the report for budgetary and other reasons.
- **Technology.** Deployment of technology needs to be explored as a possible means of cost reduction and for increase in quality.
 - Paper-based courts & scheduling conflicts. Maine is the last fully paper-based court system in the country. One of the things that means is no central calendar, so courts do not know attorneys' court schedules. Conflicts arise with great frequency. On a weekly basis, court-appointed attorneys have scheduling conflicts between courts in separate counties, between courts in the same county, and even within the same courthouse. Electronic attorney scheduling, OR a streamlining of the continuance process, would reduce motion for continuance costs and help to address the "horizontal representation" issues posed by "coverage". Coverage is a practical necessity so long as courts engage in paper-based, completely in-the-dark scheduling of attorneys. The frequency of scheduling conflicts encountered by court-appointed attorneys is astounding, and the mechanism for their resolution is cumbersome.
 - Telephonic and video appearances. Millions of dollars are being put into new courthouses and courthouse renovations. Primacy is placed on in-person appearances. The report does not consider exploring ways in which telephonic and video appearance technologies might be deployed to reduce expensive travel time and mileage costs, and increasing quality by freeing up time for actual casework.
 - Jail visits. The report cites a concern that jail visits are too few or too infrequent. This is a legitimate concern. The report mentions that attorneys tend not to take calls from jails. When inmates attempt a call, it is almost always a collect call. Attorneys have no way to be reimbursed for collect calls, and the cost is exorbitant. Therefore, the options for visiting are to work around court AND jail schedules during the daytime on weekdays, or to visit on weekends. Two Bridges Regional Jail in Wiscasset ("Two Bridges") is the only jail I know that offers telephonic and video meetings. It would be worth comparing jail visit rates (and

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costs to the State) in Sagadahoc County to those other counties. Increased frequency of jail visits not only promotes increased quality of representation but most likely reduces court time. The absence of call/video technology at other jails is another instance of "pass the buck" from another budget onto the MCILS budget.

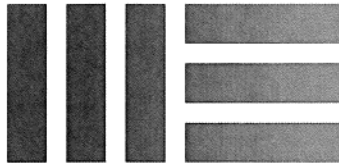
- **Training Costs.** The report refers to the need for increased training and belittles the annual MACDL two-day conference for being insufficient on its own. I agree, but continuing legal education is expensive. Attorneys pay hundreds of dollars to attend even the MACDL conference. I have the same certification (US NHTSA) in OUI standardized field sobriety tests as do police officers, but I had to fly across the country and to spend thousands of dollars to obtain it. Even as to books, treatises can be hundreds of dollars; a new and popular book written by Maine attorney Tim Zerillo sells for \$200. It is all well and good to require training, but who foots the bill? I say this as an attorney who averages 50-60 CLE credits per year, but I understand the budgetary constraints of those who do less.
- **Public Defender Trial Level Office.** Besides budgetary predictability, very little reasoning is provided in the report to support why a hybrid public defender/private attorney system is superior to a private attorney only system. I am not saying there are no further reasons in support, but there is little explanation. Besides budgetary predictability, Appendix C makes it unclear how such an office would be cheaper than the current system in which all overhead is born by the individual attorney. As to quality increases, the report cites increased supervision, but then gives as examples what seem like non-sequiturs: increased complexity of technology, and the complexities of the opioid crisis. Those clearly imply the need for training, but it is unclear how they relate to supervision. Second, the report cites the ABA endorsement of hybrid state systems. But that remains a bald quotation; no reason is inherent in the ABA quotation, nor is one spelled out in the report. Furthermore, the report does not discuss how putting attorneys on a fixed salary and employment hours differs from the flat fee contract system in Somerset County that the report finds against, given the similar conflict of interest and incentive in earnings per hours worked on cases. It also does not address concerns in state that have such systems that the public defender offices routinely are overburdened. The indigent in Maine are familiar with the term "public pretender" for those reasons, but they also tend to be aware and thankful that they have a private/independently contracted attorney instead.

Thank you for considering some views from the trenches. Please feel free to reach out anytime with any questions regarding either my remarks or any other aspects of the court-appointed system. I hope to see you at the hearing, but if not, I will be glad if you have considered this letter in my stead.

Kind regards,



Daniel Dubé, Esq.



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**Testimony of Frank D'Alessandro, Esq.
To the Maine Commission on Indigent Legal Services
Regarding the Sixth Amendment Center Report
November 19, 2019**

Good afternoon. I am the Litigation and Policy Director of Maine Equal Justice. We are a civil legal services organization and we work with and for people with low income seeking solutions to poverty through policy, education and legal representation. Thank for the opportunity to provide comments to you concerning the Sixth Amendment Report dated April 2019.

THE SIXTH AMENDMENT REPORT

The 6th Amendment Report raises many concerns regarding the quality of legal representation provided to defendants in criminal cases and juveniles. Some of the most serious concerns raised by the report are the findings that defendants enter into pleas to charges without first consulting counsel, less than optimal representation of counsel resulting from qualifications of counsel, and payment policies that do not incentivize counsel to provide the best representation possible to defendants and juveniles.

THE IMPACT OF THE CURRENT SYSTEM TO REPRESENTATION OF CRIMINAL DEFENDANTS AND JUVENILES

The criminal justice system as a whole and the findings of the 6th Amendment Report specifically have a very negative impact on the people represented by Maine Equal Justice. Though we do not represent low-income people in criminal matters, we see how even brief encounters with the criminal justice system can cause economic insecurity and hardship in our clients' lives.

RACIAL IMPACT

The racial inequities in our criminal justice system are well documented. The Center for American Progress has reported:

- **People of color are significantly overrepresented in the U.S. prison population, making up more than 60 percent of the people behind bars.** Despite being only 13 percent of the overall U.S. population, 40 percent of those who are incarcerated are black. On the other hand, whites make up 64 percent of the overall population but account for only 39 percent of those who are incarcerated.

- **People of color are more likely to become entangled in the criminal justice system.** Among black males born in 2001, one in three will go to prison at some point during their lifetimes, compared to only 1 out of every 17 white males. A similar pattern exists among women: 1 in 111 white women compared to 1 in 18 black women who will go to prison at some point.
- **The so-called War on Drugs has disproportionately affected people of color.** Despite using and selling drugs at rates similar to those of their white counterparts, African Americans and Latinos comprise 62 percent of those in state prisons for drug offenses.
- **People of color, particularly black males, face longer sentences than their white non-Hispanic counterparts for similar crimes.** According to the U.S. Sentencing Commission, between 2007 and 2011, sentences for black males were 19.5 percent longer than those for whites.
- **People of color are extremely overrepresented in the juvenile justice system.** According to a 2014 report on racial discrimination in America, juveniles of color represented 67 percent of “juveniles committed to public facilities nationwide,” nearly twice their share of the juvenile population. A 2010 study found that more than 70 percent of students who are “involved in school-related arrests or referred to law enforcement” are black or Latino.

See Jamal Hagar, *8 Facts You Should Know About the Criminal Justice System and People of Color*, Center for American Progress (May 28, 2015), <https://www.americanprogress.org/issues/race/news/2015/05/28/113436/8-facts-you-should-know-about-the-criminal-justice-system-and-people-of-color/>.

IMPACT ON LOW INCOME PEOPLE

The American prison system is bursting at the seams with people who have been shut out of the economy and who had neither a quality education nor access to good jobs. The Prison Policy Initiative found that, in 2014 dollars, incarcerated people had a median annual income of \$19,185 prior to their incarceration, which is **41% less than non-incarcerated people of similar ages**.

The gap in income is not solely the product of the well-documented disproportionate incarceration of Blacks and Hispanics. Incarcerated people in all gender, race, and ethnicity groups earned substantially less prior to their incarceration than their non-incarcerated counterparts of similar ages:

Median annual incomes for incarcerated people prior to incarceration and non-incarcerated people ages 27-42, in 2014 dollars, by race/ethnicity and gender.

Incarcerated people (prior to incarceration)		Non-incarcerated people	
Men	Women	Men	Women

All	\$19,650	\$13,890	\$41,250	\$23,745
Black	\$17,625	\$12,735	\$31,245	\$24,255
Hispanic	\$19,740	\$11,820	\$30,000	\$15,000
White	\$21,975	\$15,480	\$47,505	\$26,130

Not only are the median incomes of incarcerated people prior to incarceration lower than non-incarcerated people, but incarcerated people are dramatically concentrated at the lowest ends of the national income distribution:

- 57% of incarcerated men ages 27-42 earn below \$22,500 per year while only 23% of non-incarcerated men.
- 23% of incarcerated woman ages 27-42 earn below \$22,500 compared to 48% of non-incarcerated woman.

See Bernadette Rabuy and Daniel Kopf, *Prisons of Poverty: Uncovering the Pre-incarceration Incomes of the Imprisoned*, Prison Policy Initiative (July 9, 2015), <https://www.prisonpolicy.org/reports/income.html>.

COLLATERAL CONSEQUENCES OF INCARCERATION ON PERSONS WITH LOW INCOME

Finally, because our society penalizes those who have had contact with the criminal justice system, often without regard to the crime for which someone was charged or imprisoned, the collateral consequences of incarceration on people with low-income are severe. They include:

Loss of Employment

Many low-income defendants are employed in jobs do not provide with flexibility. As a result, defendants who are not able pay bail fees or otherwise meet the conditions of bail, defendants are often fired for missing work. In addition, many jobs are not available for person with certain criminal convictions.

Inability to Obtain Housing

Many private landlords refuse to rent to tenants with a criminal record. Many types of subsidized housing are not available to persons with certain types of criminal records. Either way, housing becomes less available to low-income people with a criminal record.

Inability to Obtain Certain Public Benefits

SNAP (Food Stamps)

While incarceration or conviction is not a bar to receiving SNAP benefits people who are in violation of a condition of probation or fleeing felons are ineligible to receive benefits. In addition, a person convicted of falsifying information to receive SNAP benefits may be ineligible to receive SNAP benefits for up to 10 years.

SSI

A person who is incarcerated will be ineligible to receive SSI while incarcerated and for at least one month after release. An individual who is in jail for more than 12 months will have to reapply for benefits even if their medical condition has not improved.

Unemployment Benefits

While an incarceration or conviction is not a bar to receiving Unemployment Benefits people who have been convicted of a felony or a theft at work will be ineligible to receive benefits.

CONCLUSION

Our society has, in the name of being tough on crime, made a series of policy choices that have fueled a cycle of poverty and incarceration. We send large numbers of people with low levels of education and low skills to prison, and then when they leave just as penniless as they were when they went in, we expect them to bear the burden of legally acceptable employment and housing discrimination. I have heard many people testify, both today and at earlier meetings, that the 6th Amendment Report does not say anything new and that the problems highlighted in its report are longstanding.

Acknowledging that the people in prison were, before they went to prison, some of the poorest people in this country makes it even more important that we make policy choices that can break the cycle of poverty and incarceration.

As a result of the impact that an incarceration or conviction can have upon housing, employment and public benefits, we must ensure that all people involved in the criminal and juvenile justice system receive adequate representation and are well represented at all stages of the case and fully advised of the potential consequences of any guilty plea.

While many policies may be at work in creating the inequitable impact our criminal and juvenile system has upon people living in poverty and on people of color, fulfilling our constitutionally mandated duty, to provide adequate representation to indigent defendants and juveniles is an essential first step to insure that all low-income people are fairly treated by our court system.

Pgs 1-4 on Indigent Criminal Defendants

To
John D. Pelletier, Esq.,
to the Maine Commissioner on
Legal Services,

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In regards to a hearing on the
6th Amendment. My name is Jeffrey Ruard.
I am writing because I believe I have
3 convictions, a direct result, of
Indigent Services provided by Anthony
Sineci Esq. Portland, ME, and old
flaws in the juvenile justice system
and the pleading process from the
time to today.

My input is experiential and I am only
educated in American Government where
I earned a B+ at Herkimer CC-SUNY
New York, and withdrew from Middlesex
CC, Massachusetts about 2010 AD.

First, I believe the State of Maine,
and nation or community should
provide children with legal representation
in all matters. It is with this
thought I argue those over 16 are
required to educate themselves on the
law and initially should be required
to navigate matters in criminal law
themselves at court beyond applying
for an attorney but before pleading
such as accompanying civil claims and
the delivery or acceptance of documents,
and agree communications with

pg 2-4 On Indigency

prosecutors unless and until an attorney is acquired, and especially regarding "High Crimes" or prisoners, are wrong if a fair and impartial system is ~~the~~ the ideal.

- I believe much can be solved by the State itself, if all juvenile crimes were considered civil offenses, and young adults to 21-25 were afforded a court 1 and court 2 for misdemeanors were instead^{ev} civil, with the lawyer of the Day like provisions or other legal advocacy for the criminal allegations.

My opinion stems from my own history JV Assault conviction, 2x Assault on an officer. Such a system would place the onus on the youthful offender without technical caution for error and no need for a post conviction review. The State would be alleviated and public attorneys could better prioritize defenses allowing for a better priority in delegation to private attorneys and fulfilling quotas for providing defense by attorneys.

That a child couldn't be charged with criminal offenses until they were 16-26 unless they are felons^{and} or habitual.

It still wounds me that juveniles are charged definably with "assault," "theft," or "Disorderly Conduct" and not "crime against person, property, public order, and defined generically at conviction ex. Assault versus Assault on an officer from my own history, crime against person offensive content public administration.

pg 3 - ~~4~~ On Indigency - + offer no
conclusion - Defending all citizens of
criminal allegations benefits the state itself
and better satisfied truth and proper mediation.

I think the old emphasis is
necessary here. I am not guilty
of the Jr Assault in the docket.
This was an accusation based
on what I would describe as a
fight by others without legal grounding
in regards to trespassing, either
at my mother's or the sidewalk in
Sanford over by the store and the
Church after I met a boy named
"Tom". I'm satisfied myself the
history so today speaks for itself.
Court Records do not reflect such
which is also why I'd recommend
better access to public defenders
in civil matters regarding alleged
criminal activity or accompanying
civil matters connected to criminal
matters. For instance, in regards to the
current Unified Docket System but
also in regards to post conviction
reviews. For example 1x Court
Assault on an officer is gotten by
pleading, in the matter, Maine Youth
Center Officer J. Coyne 2000 AD
swears spitte landed on his shirt
uniform as a collateral consequence of
spitting on another officer, lacking ident,
the staffer does counterfeit incidences, a
Habeas Corpus was issued and the
docket is a /alternatively Assou-Criminal
mischief but later Assault, JV-00-224
Rivard v Maine JV, approved by Investigator
who ~~took~~ ^{got} an illegal admission from myself, 2000 AD Rich Brooks

JV 00-226 →

So being too young to understand "railroading" I did spit on officer Peter McDermott MTC 2000 and am still sorry and believe this/these are administrative offenses. Public Defenders in every case were pivotal in defending me from false allegations and over prosecution and over sentencing. Although 2-4 would look 2/3 in fact 1-3 owed as the fact of law in the docket.

Heather
 P. Spittle
 P. McDermott
 Caribou
 P. Spittle
 P. McDermott

I want to say that I wholeheartedly believe lower level judges/judges were probably paid too much at Probate and District levels and that police departments got too much funding, being from Biddeford and York County. Looking at a provided download I hold my nose when I say public defenders appear to be too little by a small margin except that based on a \$60.00 to \$125.00 margin in unath public defenders in Maine ought to be provided with \$70.00 an hour if 10 cases a year were expected of every attorney. I should have thought I had access to an attorney for a post conviction review of Kennebec Augusta Superior Pocket 2018²⁰ Richard v DOL ME but I don't believe a public defender should get more than \$20- being a CV matter of \$50- were it from the diene in a Ct court anyway, or especially versus the AG.

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(P.D.) Allegation) improperly-fake report, admission, provocation directly assault that

False info/suicidal