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Introduction

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INTRODUCTION

“ . . . [I]n 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.”

Gideon v. Wainwright, 372 U.S. 335, 344 (1963).

In the summer of 2006, the American Bar Association passed a landmark resolution calling upon

. . . federal, state and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.

This resolution brought into focus the “obvious truth” noted by the U.S. Supreme Court in *Gideon v. Wainwright*, that the fair administration of justice will often require the presence of counsel. In spite of that obvious truth, low-income people in New York and the rest of the country generally face legal proceedings affecting the most fundamental of human needs without the benefit of counsel. This must change.

This is a very special issue of *Touro Law Review*. It advances an enormously important discussion in New York State about how

we can and should go about securing a right to counsel in civil legal matters affecting fundamental needs for people who cannot afford legal help. The articles stem from and document the discussions at “An Obvious Truth: Creating an Action Blueprint for a Civil Right to Counsel in New York State,” a conference that was held at Touro Law School on March 7, 2008 and that was sponsored by the New York State Bar Association and Touro Law School. Many of New York’s best thinkers about access to justice, as well as colleagues involved in promoting access to justice from around the country, attended the conference and participated in the discussions. The materials in this issue make a substantial contribution to the growing body of literature on the civil right to counsel.

A civil right to counsel is an idea whose time has come, or at least, is on the not-too-distant horizon. There is increasingly strong support and leadership for the principle by the organized bar in New York State (particularly the New York State Bar Association, the New York City Bar Association, and the New York County Lawyers Association) and nationally. There is an expanding national movement that is advocating vigorously and effectively in many states. Most importantly, however, there is a growing recognition of the plain and obvious truth that our system of justice cannot fulfill its promise of “justice for all” without a meaningful right to counsel in civil legal matters that directly affect fundamental human needs.

This Law Review symposium and the “Obvious Truth” conference have been highly effective collaborative efforts. Many thanks and great appreciation go to the following: *Touro Law Review*

Editor-in-Chief Sarah Marx, for her creativity and persistence as she shepherded this issue through from beginning to end, the staff members of the *Touro Law Review* for all their hard work, and to the contributors whose writings shaped this issue. Special thanks in particular go to Laura Abel of the Brennan Center on Justice at NYU Law School for her tireless work in the national civil right to counsel movement, her drafting of the New York State Bar Association Report that is included in this issue, and her work on other pieces in this issue and on the conference.

Many thanks also go to the following for their part in planning and supporting the right to counsel movement in NY and in making the conference a success: Immediate-Past-President of the NYSBA Kathryn Grant Madigan, for barnstorming the state raising the civil right to counsel issue, for initiating a Civil Gideon Subcommittee of the President's Committee on Access to Justice, and for her help in planning the conference; current NYSBA President Bernice Leber, for her strong support and leadership and for enthusiastically carrying the torch during her presidency; Touro Law School Dean Lawrence Raful and Thomas Maligno, Executive Director of the Public Advocacy Center at Touro, for hosting the conference and Tom for taking on many of the planning tasks; Gloria Herron Arthur, Director of Pro Bono and her assistant Debra Harrington at NYSBA for masterfully handling the logistics and other details; additional planning committee members, Dave Robinson of Legal Services NYC, Kia Franklin of the Drum Major Institute, and Don Friedman of Empire Justice Center for all their help. And thanks to the conference

speakers, facilitators, and panelists for contributing their time, energy, and intellectual prowess.

This issue, and the Obvious Truth conference are, of course not ends in themselves, but rather, important steps in generating new strategic thinking and a new level of energy, enthusiasm, activism, coordination, and communication geared toward addressing the critically important issue of securing a civil right to counsel in New York. Our work is cut out for us.

Andrew Scherer, Executive Director, Legal Services NYC
January, 2009