

**Testimony Before The Task Force to Expand Access to Civil Legal
Services in New York**

First Department of the New York State Supreme Court
Cyrus R. Vance, Jr., District Attorney, New York County
September 19, 2013

Good morning. My name is Cyrus R. Vance, Jr., and I am the District Attorney of New York County. I first want to thank Chief Judge Lippman, Chief Administrative Judge Gail Prudenti, Presiding Justice of the First Department Luis Gonzalez, and New York State Bar Association President David Schrauer for inviting me to testify about the need for civil legal representation for low-income New Yorkers. It is a privilege to be here and to speak about this critical issue.

I had the opportunity to read the hearing testimony of my esteemed colleagues District Attorney Charles Hynes and District Attorney Kathleen Rice. I share their commitment to helping to promote access to free civil legal services and I agree with their conclusions that civil representation for indigent New Yorkers is essential to a comprehensive approach to reducing crime, maintaining stable communities and making families and neighborhoods safer.

Today I'd like to discuss the need for civil representation from the viewpoint of the front line of our prosecutor's office.

My role as the District Attorney is guided by two overarching principles: the pursuit of justice, and the prevention of crime. Adequate funding of civil legal assistance is critical to both of these goals.

First, civil legal representation for low-income individuals is a matter of *justice*. Each year, we have to turn away from our door hundreds of people with real problems - but whose problems are civil and not criminal in nature. We try to refer people to appropriate government agencies and nonprofits to seek assistance. But, the reality is that the demand for civil representation outstrips the resources available, and often the

other agencies are unable to represent these individuals or help them get restitution or a just resolution of their cases.

Even in cases that have a criminal component that we can pursue, the District Attorney's Office is not able to represent the complainants on their related civil claims. This could lead to irreparable outcomes. For example, in cases involving a fraudulent deed transfer, if the legitimate owner of the property is not represented by civil counsel and a lis pendens is not filed to prevent a further transfer of the property, the property can be lost to the rightful owner forever. Deed fraud rings look for properties where the legitimate owner, for any number of reasons, is not managing the property. It may be owned by an elderly or deceased individual, it may have fallen into disrepair, it may have numerous tax liens or essential utility services may have been turned off. At this point, the criminals file a fraudulent, sometimes forged, deed transferring ownership to a straw buyer or corporation. If the legitimate owner does not file a lis pendens to prevent further transfer of the property and the straw buyer sells the property to a bona fide purchaser for value without notice, the property will be lost, even if we are able to prosecute and convict the criminals for the initial fraudulent transfer. Then, the only civil remedy is for the legitimate owner to sue the fraudulent seller - again requiring the victim to have civil legal counsel.

In addition to these compelling issues of individual justice, the everyday experience of my Office shows that civil legal representation is also vital to preventing crime. The lack of adequate and affordable civil counsel creates opportunities for criminals to move in to fill that hole in legal representation and take advantage of unsuspecting individuals. New Yorkers who cannot afford an attorney are often driven to use unscrupulous and unreliable non-attorneys and alternative quasi-professionals, predators who claim they will provide the needed representation only to steal litigants' hard-earned money.

Through my Office's Special Prosecutions Bureau, or SPB, as we call it, we see firsthand how a lack of civil representation too often leads to victimization and exploitation.

Let me give you some examples of the types of cases we see that illustrate how crime emerges when civil legal representation is not available:

One of the areas that are most susceptible to fraudulent criminal practices is immigration assistance. Here, phony immigration consultants and fake lawyers prey on some of the most vulnerable victims – poor, undocumented immigrants. These heartless criminals advertise in foreign-language papers offering to assist clients with citizenship, green card and asylum applications, and work visas for relatively low rates. They rely on the fact that the immigration laws are complicated and the forms are complex to deceive and confuse their victims. The money the victims scrape together for this representation is frequently all they have, and once it's gone, they have no additional means to get real representation. Often, victims are told they are eligible for certain amnesty programs or visas only to discover later, when they are contacted by the Department of Homeland Services about their immigration status, that the program has not been open for years. While we have been successful prosecuting the criminals in these cases, the victims are left with no money and, even worse, sometimes face a deportation proceeding that never would have commenced, had their fake lawyer not filed fruitless or fraudulent papers.

If these victims had had access to legitimate, affordable, competent counsel in the first place, a crime would have been prevented and the chances of a successful outcome would have been much higher. A report by the Steering Committee of the New York Immigrant Representation Study Report, initiated by Judge Robert A. Katzmann of the U.S. Court of Appeals for the 2nd Circuit, found that 74% of clients facing deportation who were not detained, but were represented, had successful outcomes to their cases versus only 13% of clients who were unrepresented. Similarly, 18% of clients facing deportation who were detained, but were represented, had successful outcomes versus only 3% who were not represented.¹ These statistics show the importance of affordable competent representation to protecting individuals' lives.

Another area where we see a cottage industry of crime is in uncontested divorces. We receive numerous complaints about companies that promise quick no-contest divorces that are, in fact, simply sham businesses set up to steal money. Sometimes the practitioner says she's a lawyer; sometimes she claims she's a paralegal who will fill out and file all the required paperwork to finalize the victim's divorce. For "only" several hundred dollars, a fortune to our complainants, these businesses promise to process and complete divorces in a matter of a few months. Invariably, the victims pay by cash or by money order, and the scammers keep the victims on the hook until all the money is paid by having them sign papers, telling the victims that the paperwork is being processed or that an additional filing fee is required. Sometimes the victims are given an index number or even a document called a "judgment of divorce" to make them believe that the paperwork has been filed and that the divorce is final. It is only after a victim seeks to change her name back to her maiden name or seeks to remarry that she discovers that she was never divorced from her previous spouse. In some cases, the victim discovers that she is married to two people. By the time the victims realize that they are not divorced, the fake practitioner is long gone, the office space is empty, and the phone number is no longer working.

In 2011, SPB prosecuted a woman for operating a sham express divorce business where she forged judgments of divorce using the same authentic index number over and over for different people, all the while taking in thousands of dollars from her unsuspecting victims. Among other things, she was charged with eight counts of forgery in the second degree and scheme to defraud in the first degree. The defendant pled guilty to forgery as a felony, and the sentence included restitution and a fine. Despite this successful prosecution, we continue to receive and investigate similar complaints. We will continue to receive them until New Yorkers of modest means have greater access to competent legal counsel.

In closing, let us remember that adequate legal representation is vital to effective law enforcement for a reason that is perhaps less obvious, but equally urgent. Our greatest asset in our efforts to build safe and stable communities is respect for law. Where the law

does not engender respect, no level of police staffing can provide security, no prosecutor or judge can bring civility to our streets. When people feel disenfranchised from the justice system – when their rights are being trampled, when they are being taken advantage of and victimized, and they have no recourse to the courts to right their wrongs – then the law itself is diminished. That, I am sorry to say, is the current situation for too many New Yorkers, many of whom come through our doors every week. It is hard enough when my office must turn them away, telling them that theirs is a civil, not a criminal case. How much harder must it be when civil legal assistance, the attorneys of last resort, tell victims that indeed they have a civil case - perhaps a compelling one - but that funding cuts make it impossible to bring that cause before a judge?

That is why I am encouraged that so many prominent New Yorkers have come before you to testify in support of expanded funding for legal assistance. It is not just a humanitarian priority; it is a law enforcement priority as well.

Thank you.