



The Association of the Bar of the City of New York

Office of the President

PRESIDENT

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Hon. Sheldon Silver
Speaker of the Assembly
932 Legislative Office Bldg
Albany, NY 12248

Dear Speaker Silver:

I am writing on behalf of the Association of the Bar of the City of New York to urge that you prevent the disbanding of the Capital Defender Office. It is not an appropriate time to cut the Capital Defender Office's funding severely when there are pending appeals in death cases, there are several cases in which death has been sought, and many cases are subject to being so certified. Further, the State Senate is poised to pass a bill that, if adopted, would retroactively make the death penalty applicable to pending cases, and the Governor's budget includes 100 percent funding for prosecution-oriented capital punishment efforts.

As everyone who testified about the quality of defense services at the recent Assembly death penalty hearings agreed, the Capital Defender Office has done a superb job in providing quality legal representation to indigent capital defendants. The outstanding quality of its staff was due to the fact that in 1995, when New York re-enacted the death penalty, Congress had recently de-funded post-conviction defender organizations around the country -- making numerous well-qualified people available to join the New York Capital Defender Office. If the office is disbanded now, there is no reason to expect that a similar situation would make it possible to assemble a staff even remotely close in quality to the present one.

If it were a certainty that the death penalty would not be re-enacted, then disbanding the Capital Defender Office could be a risk worth taking. But under the present circumstances, its dissolution would be a major mistake.

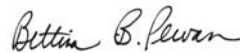
Further, indigent defense services are needed throughout the state of New York. To the extent, if any, that the Capital Defender Office's staff were to have excess capacity during the coming fiscal year, the Association endorses the suggestion that the Office's staff be devoted to helping counties deliver public defense services. Unmet needs for such services abound. Needs that could be addressed include the representation of inmates under the recent amendments to the Rockefeller drug law, SORA rehearings, cases caught up in appellate

backlogs in the various Appellate Divisions, first-degree murder cases and other serious felonies or conflict cases.

Finally, despite the recent Court of Appeals decision concerning the state budget, the current drive to de-fund the Capital Defender Office is especially troublesome when one considers that funding for three sources of prosecution-oriented death penalty projects continue. One of these sources is the State's funding of the New York Prosecutors Training Institute, a private entity with which the State contracts. Its formation was contemplated in the same 1995 law that enacted the New York death penalty. At a recent Assembly death penalty hearing, the head of the Institute testified that the vast majority of its state funding is devoted to death penalty-oriented activities. The second funded source is the Capital Prosecution Extraordinary Assistance Program, which was created by the same 1995 law. Third, trial courts have the authority to issue ex parte orders providing for payment to certain experts used by District Attorneys in capital cases. We understand the Governor's budget contains a lump sum amount that can be used in any of these three respects. The Assembly should not vote to de-fund the Capital Defenders Office while maintaining such funding for capital prosecutions.

Accordingly, the Association strongly urges the Assembly to keep the Capital Defender Office in existence for the immediate future.

Sincerely,

A handwritten signature in cursive script, reading "Bettina B. Plevan".

Bettina B. Plevan