

political independence compromised the ability of the Schuylers County Public Defender's Office to serve its clients.

5. In Schuylers County, there is no independent board or commission overseeing public defense services. The budget for the public defender's office is determined by the legislature on an annual basis. When I was Chief Public Defender, I had to lobby the legislature for the public defense budget annually.
6. The Schuylers County Public Defender's Office handles public defense services for at least 50% of criminal defendants in Schuylers County. In 2006, the Schuylers County Public Defender's Office handled 342 criminal cases. (*See* Schuylers County 2006 Indigent Legal Services Fund (ILSF) Annual Report (attached as Exhibit A) at 13). To staff all of these cases in County Court and eleven different justice courts, there were only two attorneys, the Chief Public Defender and one part-time assistant public defender. In addition, my office handled 51 Family Court cases. At any given time, I had about 50 open cases, both criminal and Family Court. Given the demand of the cases that I handled, this is a considerable workload.
7. When I was the Chief Public Defender, I handled felony and Family Court cases, and the part-time assistant public defender handled misdemeanor, violation, paternity, child support, and drug treatment court cases out of his own private office.
8. The constrained resources of the Schuylers County Public Defender's Office negatively impacted its ability to provide quality representation in cases that presented a conflict of interest. In those instances, the office would rely mainly on the contract that it had with a lawyer from an adjacent county to provide representation. The conflict defender was paid \$2,500 per month and had to pay for his own malpractice insurance, training, and overhead expenses. Since he was located in another county, it was also more difficult for him to meet with his Schuylers County clients.
9. The public defender's office also had a list of assigned counsel who handled conflict cases. However, the county never set any criteria that lawyers had to satisfy in order to be placed on the assigned counsel list, and it did not put any money into creating any management or oversight of assigned counsel. In fact, in order to create an assigned counsel list, my office had to draft and circulate an attorney referral list (attached as Exhibit B) asking attorneys if they wished to be on the assigned counsel list. The questionnaire did not ask about specific qualifications, experience, and/or skill-set, and because of the numerous demands already placed on my office, we were not able to evaluate the performance of the attorneys on the assigned counsel list. As a result, the attorneys had no oversight mechanism. Although my office tried to assign only counsel whom we knew to be competent, the quality of the representation provided by assigned counsel would vary greatly.
10. The attitude of the county legislature was that it was not very important to fund the public defender adequately. This arose from a belief that the public defender defends guilty people and that it is a waste of money to fund such services. As evidenced by a comment

to me from a legislator, the legislature seemed to believe that people should just plead guilty and it placed far more importance on funding the prosecution.

11. The county legislature's failure to understand basic criminal procedure meant that it also did not grasp the need to fund assigned counsel. Not surprisingly, these failures translated into a meager budget for assigned counsel. Getting funds for assigned counsel was an uphill battle and when the office went over budget, I had to account to the legislature as to why. A legislator once told me that he did not understand why I needed so much money for assigned counsel given that they had hired me. I explained, not just that time but also on other occasions, that when there are multiple defendants in a criminal case or opposing parties in Family Court, each defendant or party needs a separate lawyer because there are conflicts of interest between them. I explained that any time there is a conflict of interest with either of the two lawyers in the public defender's office, outside counsel must be assigned. I do not believe that the legislature ever fully understood this during my four-year appointment.
12. The county's failure to understand conflicts of interest also meant that it refused to create an independent position to make case assignments in multiple-defendant or multiple-party cases. Although I tried to explain to the county even before the outset of my employment that assignment of counsel should not be handled by the public defender's secretary and that there should be a separate office for such assignments, the response was that the county knew there was need for one, but an independent position would be too expensive.
13. Due to the county's desire to keep costs down for public defense, the eligibility guidelines for the public defender's office, which my office set according to state and federal poverty guidelines, were strict. Based on the 2007 state poverty guidelines (attached as Exhibit C), which followed the federal guidelines, a household of one person with an annual income of more than \$12,763 would likely be deemed ineligible. Defendants had to fill out a complex five-page application (attached as Exhibit D). In addition, the eligibility form did not consider any financial debts. If someone was under 21 years old, the person's parental income was taken into account, regardless of whether the parent was willing to contribute to the child's defense. I do not believe that the public defender's office could handle its caseload if it did not treat the applications of those under 21 this way.
14. As a result of these stringent eligibility guidelines, according to Schuyler County's ILSF forms for three of the four years that I was Chief Public Defender (2004-2006), each year 40 percent or more of the defendants who were referred to my office were denied services because they were deemed "not indigent." (*See* Ex. A at 13, Ex. E at 4, 12). Upon information and belief, because of the variance in standards from county to county, some people turned down by Schuyler County were deemed eligible for public defense services in another county.
15. Due to the lack of money from the legislature for staff, the Schuyler County Public Defender's Office could not cover critical proceedings for all indigent defendants. There

are eleven justice courts in Schuyler County, which meet weekly. Given that it would be virtually impossible for the part-time assistant public defender to appear more than once a month at each court, Schuyler County has a system called “district attorney sessions,” which many other counties have as well. Under this system, both the district attorney and the part-time public defender are scheduled to appear in each court once a month. (*See* schedule of Schuyler County DA sessions, attached as Exhibit F). As a result, defendants who appear before the court during times that are not “district attorney sessions” did not have the assistance of public defense counsel.

16. Compounding this problem is the fact that arraignments happen at any time of day or night. Bail determinations are made at arraignment, and discussions about plea offers and the facts charged occur directly between the prosecutor and defendants, and/or between the court and defendants. Although I had specifically advised all local courts that I would be available, at least by telephone, to make bail recommendations on behalf of defendants, there were only a couple of times during my tenure that my input was sought or requested, and then usually by my initiating a call after hearing from the jailed defendant or his or her family.
17. Because there was no money or staff to ensure that a lawyer appeared with a defendant at arraignment, defendants routinely appeared for arraignment in both felony and misdemeanor cases without lawyers. Left to advocate for bail on their own, defendants were often incarcerated when they should not be, or faced exorbitant bail amounts that they could not afford.
18. Due to the fact that there was money for only one full-time and one part-time public defender, the division of labor that used our limited resources most efficiently was to have the part-time public defender cover all the town and village courts and the chief defender cover county court, where felony cases are handled. As a result of this arrangement, in many felony cases a person would have two lawyers: one at arraignment in the town or village court, and another after the case was transferred to county court. This transfer could take months.
19. The lack of funds also made communication between clients and their lawyers difficult. Although incarcerated clients have a direct phone line—in a non-confidential space—to the public defender’s office from the Schuyler County Jail, there is no such direct line to the offices of the part-time public defender, the conflict defender, or assigned counsel. To my knowledge, there is no system in place for inmates at the Schuyler County Jail to directly contact the part-time public defender, the conflict defender, or assigned counsel.
20. Nor is there any convenient way for incarcerated women, who are held outside of Schuyler County, or defendants who are incarcerated in other facilities, to contact their attorneys.
21. As a result of these communication problems in jail, postponements of preliminary hearings and other court dates happen without defendants knowing, sometimes for several weeks.

22. Given that the conflict defender and most assigned counsel have offices in other counties, clients who are not incarcerated also have difficulty meeting and communicating with their lawyers. They may not have a phone at home or ready means of transportation to other counties.
23. I believe that due to the lack of state money and the lack of desire to invest in quality public defense, Schuyler County does not have any training requirements for anyone who provides public defense services. There are simply the Continuing Legal Education requirements set forth by the state bar, which do not specify that criminal defense lawyers must fulfill their requirements by taking courses in criminal law.
24. Because of the county's lack of desire to fund the public defender's office, there is a great disparity between the public defender's office and the district attorney's office in several areas. For example, the district attorney makes over 50% more than the Chief Public Defender. In 2007, my salary was \$75,849 and the district attorney's salary was \$119,800, about half of which was paid by the state. Despite the fact that the public defender is a full-time job, throughout my time as public defender, I needed to maintain a part-time private practice in order to supplement my salary. This obviously increased the already difficult workload I carried as Chief Public Defender.
25. The district attorney's office has three full-time lawyers plus an investigator and other staff to cover only criminal cases. In contrast, the public defender's office is staffed with one-and-a-half lawyers and no investigators or paralegals to cover all criminal cases and all Family Court cases.
26. When the public defender's office wanted to conduct an investigation, it would hire an investigator from a neighboring county and money was taken out of the budget to cover the bill. I once proposed to the county the option of contracting for ancillary services for the public defender's office, but the county turned it down.
27. The lack of funding for the public defender's office also meant that initially the county budget for experts was inadequate. One year, the office spent \$9,800 on a psychiatric expert for a case where the mental competency of the defendant was an issue. This caused the Public Defender's Office to exceed the budget line item for ancillary services. I was reprimanded by the legislature for doing so and asked why I needed to hire a psychiatrist for the defense. I was asked why I did not simply use the district attorney's psychiatrist's report. The legislature's failure to understand the need for an independent expert shocked me.
28. Another time, after painstakingly finding a psychologist who would perform a mental health evaluation on one of my clients, I provided the client with \$60 for gas so that she could travel to the psychologist (\$20 for each of three appointments). When I vouchered the county for reimbursement of the \$60 (attached as Exhibit G), I was denied. The legislature simply did not understand the need for the defense to consult with independent experts. To this date, I have never been reimbursed the \$60. This example is indicative

of the type of financial nitpicking I had to endure as Schuyler County's Chief Public Defender. I had to voucher the county for every expense. By way of contrast, the district attorney's office has discretionary funds that he himself controls.

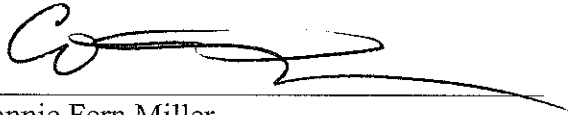
29. In fact, my funds were so limited that I had to use ILSF funds provided by the state to pay for ancillary services and conflict defense work, which was a direct violation of the state's maintenance of effort requirements rule. The requirement specifically states that counties should use state funds to supplement and not supplant their financial obligations. On October 4, 2007, I addressed my concerns about properly appropriating state funds in a letter to the Schuyler County legislature. (*See* Ex. H at 5; *see also* 9/18/07 Memorandum from Charlie O'Brien, NYSDA, to Chief Defenders (appended to Ex. H) at 1).
30. Due to the District Attorney's policy of settling cases, felony cases rarely went to trial. In my four years as public defender, I did one criminal trial. During this time, I did only two preliminary hearings. This was because the district attorney refused to have them.
31. The lack of funding and appreciation or understanding of my role from the legislature led to termination of my employment. I was not willing to sacrifice the independence of the public defender's office or my clients' interests in order to save the county money. Until December 31, 2007, I ran the county public defender's office from my private office. As part of my employment agreement (attached as Exhibit I), the county gave me a \$2,000 a month stipend, which covered only about two-thirds of my overhead expenses and did not give me any funds for a library, computer, copy machines or other necessary equipment.
32. Since March 2007, I had been concerned that the county was insisting on moving the public defender's office into the county courthouse complex. I voiced my strong resistance to this, first in a March 14, 2007 letter to the Schuyler County Administrator (attached as Exhibit J) and then again in an October 4, 2007 letter to the Schuyler County Legislature (*see* Ex. G at 1, 3, 4, 5). For one, the move would reveal my strategy to the prosecuting authorities located in the same complex. Law enforcement, prosecutors, sheriff's deputies, probation officers, and Department of Social Services attorneys and case workers would be able to see my clients, potential experts, and possible witnesses coming to meet with me.
33. Moreover, my clients' confidence—already shaky—in the independence of my office would be lost. Clients already questioned whether, because I was paid by the county, I would be able to provide them with a good defense. If I moved to the courthouse complex, I would have been regarded as completely allied with the prosecuting authorities. Without my clients' trust, I could not effectively represent them. This was the reason that I resisted the move.
34. Although the legislature reminded me constantly that I worked for them, as the public defender, my ethical obligations to my clients came first. Once I was chastised by the legislature for writing a letter to the editor in our local newspaper in defense of a client,

after the District Attorney had released inaccurate and privileged information to the press, resulting in a very negative, headline article. I was told that I was “putting the county in a bad light.” I felt that I was doing no more than what a private (retained) attorney would have done for a client in the same circumstances.

35. My employment was terminated as of December 31, 2007. I believe that I was terminated because people in political positions resented my doing a good job and being an aggressive advocate. I believe that the Department of Social Services was angry with me because I won cases against them. The DSS attorney who prosecutes abuse and neglect cases is a full-time Assistant County Attorney, with her office in the County Attorney’s office.
36. The lawyer replacing me was admitted to the bar in 2006. She has much less experience than I do and does not meet the minimum job requirements that were created when I was first appointed to the public defender’s position in 2004 (attached as Exhibit K).
37. I am very concerned about the quality of representation that clients of the Schuyler County Public Defender Office will receive going forward.
38. Attached as Exhibit A is a true and correct copy of Schuyler County’s 2006 Indigent Defense Legal Services (ILSF) Annual Report.
39. Attached as Exhibit B is a true and correct copy of the Schuyler County Public Defender’s Office Attorney Referral List.
40. Attached as Exhibit C is a true and correct copy of the 2007 State Poverty Guidelines.
41. Attached as Exhibit D is a true and correct copy of Schuyler County’s Application for Public Defender Services/Assigned Counsel.
42. Attached as Exhibit E are true and correct copies of Schuyler County’s 2004-2005 Indigent Defense Legal Services (ILSF) Annual Reports.
43. Attached as Exhibit F is a true and correct copy of Schuyler County’s Scheduled District Attorney Sessions.
44. Attached as Exhibit G is a true and correct copy of two vouchers that I submitted to the Schuyler County Legislature.
45. Attached as Exhibit H is a true and correct copy of my October 4, 2007 letter to the Schuyler County Legislature (with attachments).
46. Attached as Exhibit I is a true and correct copy of my 2007 Agreement for In-Kind Legal Support with the Schuyler County Legislature.

47. Attached as Exhibit J is a true and correct copy of my March 14, 2007 letter to the Schuyler County Administrator.
48. Attached as Exhibit K is a true and correct copy of the November 2003 job requirements for Schuyler County Public Defender.

Dated: February 29, 2008
Watkins Glen, New York



Connie Fern Miller