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## Cahill Wins Reversal for Pro Bono Defendant in Criminal Appeal

**Date: 12/05/11**

Cahill prevailed on behalf of a pro bono client of The Legal Aid Society when the New York State Court of Appeals unanimously reversed an earlier decision of the Appellate Division that affirmed the defendant's conviction of first degree robbery.

In the unusual circumstances surrounding the case, the defendant was a paid informant for the Drug Enforcement Administration (DEA) when he participated in a robbery. Immediately following the robbery, the defendant approached the police officers who had arrived on the scene, turned over evidence, provided information which led to the arrests of the leaders of the robbery, and explained that his affiliation with the robbers and participation in the robbery arose from his work as an informant for the DEA. The defendant was deactivated by the DEA following his arrest for the events which led to his conviction in the case.

Following the presentation of evidence in the jury trial, the jury embarked on lengthy deliberations before returning a verdict on the fifth day. Over the course of deliberations, the jury sent several notes to the court indicating their difficulty understanding the meaning of intent and resolving whether the defendant had the requisite intent, as well as multiple deadlock notices. On appeal to the Appellate Division, the defendant challenged the court's failure to adequately instruct the jury as to the definition of larcenous intent and the court's refusal to declare a mistrial on the basis of a hung jury. Although the Court reduced the defendant's sentence, it upheld the first degree robbery conviction. Thereafter the Court of Appeals granted a motion for leave to appeal.

On October 11, 2011, Cahill associate Noah Bishoff argued the appeal in the Court of Appeals, challenging the court's failure to instruct the jury on the statutory definitions of the terms "deprive" and "appropriate" as they relate to the meaning of larcenous intent, and the court's refusal to declare a mistrial on the basis of a hung jury.

In its unanimous November 17, 2011 ruling, the Court of Appeals reversed the ruling by the Appellate Division, finding that the "jury's confusion concerning the concept of intent is evident from its own messages to the court during deliberations," and that coupled with "the facts underlying the conviction in this case, we find that the jury notes provide a clear basis for our conclusion that the court's failure to define 'appropriate' and/or 'deprive' was not harmless." Consistent with the ruling, a new trial for the defendant has been ordered.

Through our partnership with the Legal Aid Society, Cahill provides representation to indigent defendants in criminal appeals, young children who are the subjects of abuse and neglect proceedings in New York Family Courts, disabled individuals in need of social security benefits and tenants who are denied the most basic of services.