

**REPORT OF THE INDIGENT DEFENSE ORGANIZATION
OVERSIGHT COMMITTEE TO THE APPELLATE DIVISION
FIRST DEPARTMENT FOR FISCAL YEARS 2008-2009**

I. Introduction and Summary of IDOOC History

The first Report of the Indigent Defense Oversight Committee (the “Committee”) issued in 1996 provides background information regarding the formation of the Committee, The Rules of the Appellate Division, First Department relating to the Committee (22 NYCRR Part 613), and the process by which the Court promulgated the standards entitled “General Requirements for All Organized Providers of Defense Services to Indigent Defendants.”

Since the Committee began its monitoring functions in 1996, it has regularly collected and examined detailed information from the First Department’s institutional providers of defense services to the indigent. In addition, the Committee has issued periodic reports addressing the degree to which those institutional providers have complied with the standards promulgated by the First Department in 1996 (amended in 1997). For the first twelve years of its operation, it was the Committee's practice to collect data from each provider through a lengthy questionnaire. That questionnaire was, however, revamped for the FY 06-07 reporting period to solicit most information in short form questions and charts so that Committee members could more effectively assess compliance with the First Department’s standards and identify issues that needed to be addressed at site visits.

In the current reporting period, the Committee once again used its revamped questionnaire and sought additional data regarding the handling and disposition of cases assigned to the trial offices in order to better assess the impact of the workloads carried by those offices. Although differing data collection practices among the offices seriously affected the quality and consistency of the data that the offices were able to provide to the Committee, certain portions of that data – with a caveat regarding the use to which the data can fairly be put – appear as an addendum to this report and are referred to at various points in the report.

In order to produce the detailed findings that appear in Section III of this report, two Committee members visited each provider office and followed up, as necessary, with additional inquiries. In addition, for the first time, the Committee invited a representative from the Office of the Criminal Justice Coordinator for the City of New York to meet informally with the Committee so that the Committee could better understand the perspective and concerns of that Office.

II. Summary of Conclusions

A. The Trial Offices

As this Committee has previously noted, the problem of excessive caseloads at the trial level has been a central theme of every report the Committee has issued. Indeed, as we observed in our report for the FY 04-05 reporting period, “[a]fter a decade of monitoring indigent defense in the First Department, it has become clear to the Committee that indigent defense providers – and, in particular, the Legal Aid Society – cope continuously with limited resources for expanding caseloads.”

Unfortunately, though unsurprisingly, FY 08-09 proved to be no different. Once again the Committee is constrained to report that the First Department’s indigent defense trial offices in general – and the Legal Aid Society in particular – labored under seriously excessive caseloads. Throughout the FY 08-09 reporting period, every one of the First Department’s trial offices carried caseloads significantly in excess of the maximum set by the First Department’s standards.

Thus, for example, at Legal Aid – which, as in the past, provided representation to the vast majority of poor people facing criminal prosecution in the First Department – the number of new cases assigned to the trial units was nearly 50% above the First Department’s maximum. Nearly 600 new misdemeanor-equivalent cases per full-time equivalent attorney were assigned in each of FY 08 and FY 09 – a number far in excess of the First Department’s maximum of 400¹ – and the number of individual attorneys who were assigned an excessive number of new cases approached or equaled 70% of the trial staff.

Similarly, at the other indigent defense trial offices, the average number of new cases per attorney ranged from a “low” of 436.1 (or 9% above the First Department’s maximum) at the 13-lawyer Neighborhood Defender Service of Harlem in FY 09 to 554.4 (or 39% above the First Department’s maximum) at Bronx Defenders in FY 08. And at New York County Defender Services – where the average new caseload ranged from 499.6 cases per attorney in FY 08 (or 25% above the First Department’s maximum) to 469.8 in FY 09 (or 17% above the First Department’s maximum) – fully 100% of the trial staff was assigned an excessive number of new cases.

¹ Under the First Department’s standards – which have been in place since 1996 – no full-time indigent defense attorney is to be assigned more than 400 new misdemeanor cases or 150 felony cases (with the number of misdemeanors reduced proportionately for each felony) during any single calendar year. That caseload cap has come to be expressed in terms of “misdemeanor-equivalent cases,” with a felony being the equivalent of 2.66 misdemeanors. Additional information about the First Department’s caseload standards – including information about permissible supervisory caseloads and the weight to be accorded to violations and other offenses – can be found in the addendum to this report.

As in previous reporting periods, those profoundly troubling statistics were accompanied by others no less troubling – most notably, a substantial number of guilty pleas entered at arraignment. At Legal Aid and New York County Defender Services, for example, no less than 38-40% of the cases that were assigned at arraignment during FY 08-09 resulted in guilty pleas at arraignment. Moreover, while the percentages at the First Department’s other two trial offices were lower (ranging from 22% to 25%), those offices handled only a small fraction of the First Department’s indigent defense caseload. Accordingly, when the statistics for the First Department’s overburdened indigent defense trial offices are combined, fully 38% of *all* cases assigned at arraignment during FY 08-09 resulted in an immediate plea of guilty.

While the Committee appreciates that some might regard those arraignment statistics as evidence of an “efficient” criminal justice system, the Supreme Court’s decision this Term in *Padilla v. Kentucky* – which held that the Constitution does not permit a guilty plea to be entered without an understanding of the potential immigration consequences of the plea – confirms that a hurried guilty plea can be very much a false economy. Wholly apart from the societal shame of a system structured to rush its poor toward guilty pleas, *Padilla* makes clear that whatever such a system may gain in front-end “efficiency” is likely to be outweighed by the burden imposed from collateral attacks to pleas that were entered without the effective assistance of counsel.

Obviously, there will be times when a guilty plea at arraignment is the best (or “least worst”) choice for a particular defendant. In addition, the Committee does not doubt that the overburdened attorneys working in the First Department’s indigent defense trial offices are doing their best to cover as much ground as they can in the few minutes they are able to spend with a defendant before arraignment. Nonetheless, given the wide array of collateral consequences (immigration and otherwise) that now accompany a guilty plea to even a minor offense, and given the substantial number of guilty pleas that continue to be entered at arraignment, this Committee unfortunately must reiterate its previously expressed view that “it is hard to imagine that each indigent person charged with a crime or offense is receiving sufficient legal counseling.”

Further still, even for the cases that survived arraignment during the FY 08-09 reporting period, the statistics were anything but comforting. As demonstrated by the summary charts provided as an addendum to this report, trials were a rarity for the First Department’s poor. Trial rates at all but one of the providers (Neighborhood Defender Service of Harlem) hovered at 0.2% to 0.3%, and even NDS brought no more than 1% of its cases to trial. Moreover, while the First Department’s overburdened indigent defense trial offices still managed to win dismissals in 23% to 47% of their cases (with the number varying depending upon the year and the provider), it is impossible not to wonder what the statistics would have been if all – or even simply most – of the trial-level attorneys had carried manageable caseloads and had been provided with adequate investigative support.

It was, of course, in recognition of the obvious – namely, that it is much harder for an overburdened defense attorney to be an effective one – that the First Department adopted standards in 1996 for maximum caseloads at its indigent defense offices. Since that time, as the number of identified wrongful convictions has mounted nationwide, and as even the most minor offenses have come to carry grave collateral consequences, there has been growing recognition of the importance of the attorney who stands beside the defendant, and growing willingness to insist that the system providing for those attorneys make the right to counsel established in *Gideon* a truly meaningful one.

Indeed, in the short time since this Committee’s last report, there has been powerful evidence of increased commitment to the principle that, as *Gideon* stated, “lawyers in criminal courts are necessities, not luxuries.” Thus, in the span of less than a year:

- the Supreme Court issued its decision in *Padilla*, which, as noted above, confirmed that the right to effective assistance of counsel requires that a defendant be made aware of the collateral consequences of a guilty plea;
- the New York Court of Appeals issued its decision in *Hurrell-Harring v. State of New York*, which confirmed that states are not immune from suit for systemic flaws in their provision of indigent defense services; and
- through a combination of legislative and court action, the First Department’s longstanding caseload caps have now been given the force of law in New York City, with the caps to be phased in over a four-year period and full compliance mandated by April 1, 2014.

It remains to be seen, however, how effectively that long-overdue mandate for binding caseload caps will be implemented, and how well we will succeed in heeding *Hurrell-Harring*’s reminder that the right to counsel recognized in *Gideon* is not simply a theoretical one.

In the months since the caseload cap legislation was enacted, the City’s Office of the Criminal Justice Coordinator has expressed understandable concern that despite the legislation’s provision for state-level funding, the City will nonetheless find itself facing an unfunded mandate in what are already difficult economic times. Among the indigent defense offices, there is a no less understandable concern that the City’s contract process not become a “race to the bottom,” in which contracts are simply awarded to the lowest bidder – thereby creating the risk that contracts will be awarded to unproven providers who may be less well-positioned to provide high-quality defense services, or that established providers will be forced to accept contracts that might require cutbacks on investigative and other vital support services at a time when, if anything, even more such support is needed. And various bar associations, for their part, have gone so far as to file suit against the City challenging its efforts to reconsider the role that 18-B panel members play in the provision of criminal defense services to the City’s poor.

It is well beyond the mandate of this Committee to determine the best means of implementing what is unquestionably a critically needed – and, arguably, constitutionally required – measure of relief to the City’s indigent criminal defendants. Nonetheless, we believe that the perspective this Committee has gained in its years of operation, and its continuing role in overseeing the offices that provide indigent defense services in the First Department, qualify it to offer certain observations at this important moment in the City’s history.

One of the most serious challenges that the First Department’s indigent defense offices have faced over the years – second in importance only to excessive caseloads – is uncertainty of funding. The effects of such uncertainty can be seen, for example, at Neighborhood Defender Service of Harlem – where the need to petition each year for renewed funding has, in this Committee’s view, hindered the ability of NDS to effectively plan for and build upon the important array of services it provides to the Harlem community. The Committee was therefore heartened to see that the City’s recently issued Request for Proposals (“RFP”) allowed, for the first time, catchment-level providers such as NDS (*i.e.*, those who seek to provide services in a particular geographic region rather than throughout an entire county) to bid for a multi-year City contract.

At the same time, however, the Committee has noted with concern that the RFP was unclear as to how the presence or absence of City Council funding – which historically has represented a substantial portion of the Legal Aid Society’s budget – would figure in the bidding and award process. While the Committee fully appreciates that the City itself is facing worrisome fiscal uncertainty, it nonetheless is very much the Committee’s hope that the City will recognize the importance of, and give appropriate priority to, a contract process that enables the City’s indigent defense offices to negotiate intelligently and plan responsibly for the provision of a level of defense services to the City’s indigent that meets both the requirements of the Constitution and the expectations of an enlightened society.

In addition, the Committee hopes that the City will recognize – as this Committee certainly does – what an enormous asset the City already has in the indigent defense offices that currently serve the poorest of the First Department’s residents. Over the years, this Committee’s members have consistently returned from indigent defense office site visits struck by the dedication of the men and women who work so hard there, and impressed that so much is achieved under such difficult circumstances. No two providers operate under quite the same model, and each has worked hard to find the model that it believes best enables it to meet the needs of the community it serves. As a result, it is very much the Committee’s hope that the City will regard this historic time as an opportunity to augment and build upon, rather than jeopardize, the assets it already has.²

² Because this Committee’s prior reports are quoted at length in a lawsuit recently filed against the City in connection with the current indigent defense contract process, it should also be noted what can – and cannot – be inferred from our past and current findings. Although the complaint at issue could be read as suggesting otherwise,

In sum, as this report is issued, everything is the same, yet everything is different. The current reporting period shows no lessening of the excessive workloads that have plagued the First Department's trial offices for years. But, for the first time, the First Department no longer stands alone in insisting that this unacceptable condition be addressed. As a result, it is very much the Committee's hope that our next report will bring news of good-faith efforts and substantial progress toward the goal of ensuring that, in the words of *Hurrell-Haring*, "*Gideon's* mandate is being met in practice," not merely in theory.

B. The Appellate Offices

The First Department's appellate offices historically have received scant, if any, mention in the Summary of Findings section of this Committee's reports. That omission, however, has in no way been the product of a belief that the work of appellate attorneys is any less important than that of their colleagues at the trial level. The work of appellate attorneys is, of course, no less important; in fact, it can fairly be said that their work has the potential to affect – for good or ill – *every* case at the trial level.

This Committee has simply had less occasion to discuss the appellate offices because those offices have not historically suffered from the challenge that has been the principal focus of this Committee's reports – namely, excessive caseloads. Stated otherwise, the emphasis on trial offices in this Committee's past reports is no more than a function of the fact that the First Department's indigent defense system has historically – and ironically – operated to provide indigent defendants with an attorney who is not overburdened only *after* the defendant has been convicted.

The situation for the FY 08-09 reporting period was no different. The caseload of each of the First Department's appellate offices was – in sharp contrast to the caseloads of their trial-level colleagues – well within the maximum mandated by the First Department's standards. In addition – and often through the use of student volunteers, other outside resources and/or effective consultation and collaboration among the First Department's three appellate offices – the appellate offices as a group were able to provide significant additional assistance to convicted defendants in the form of early screening and investigation of cases for wrongful conviction, energetic litigation of Drug Law Reform Act resentencing and post-release supervision cases, and the provision of support to clients who had completed their sentences and were re-entering society.

this Committee has never recommended that the overburdened state of the City's indigent defense trial offices be alleviated by increased reliance on the services provided by Article 18-B panel members. This Committee – which is charged solely with the oversight of the *offices* providing indigent defense services in the First Department – has never had occasion to review the performance of the First Department's 18-B attorneys. Nor, to the Committee's knowledge, does a comparable oversight mechanism exist for individuals appointed under Article 18-B. As a result, this Committee cannot responsibly speak to the role that 18-B attorneys should play in the provision of indigent defense services in the First Department.

There was, however, one respect in which the FY 08-09 reporting period brought unfortunate news on the appellate front. The Office of the Appellate Defender – which historically had been funded through City Council appropriation – was encouraged to seek funding instead through the RFP process, with the result being a substantial decrease in the funding awarded to OAD. For FY 09 (the first year of funding under the contract awarded through the RFP process), OAD’s funding was reduced by nearly 17% – from \$2.4 million to \$2 million. For FY 10, OAD’s budget was reduced by another 19% – from \$2 million to \$1.624 million.

As the Committee understands it, the funding cuts imposed upon OAD amount to a rejection of OAD’s fundamental model – namely, one that seeks both to provide high-quality indigent defense services at the appellate level *and* to add to the ranks of highly proficient public interest attorneys by hiring relatively inexperienced attorneys and providing them with rigorous training and intensive supervision. As noted above, it is beyond the mandate of this Committee to suggest to the City how its resources are best deployed. Nonetheless, we would be remiss if we did not note our belief that OAD’s model has, over the years, redounded to the greater benefit of the City. We therefore express our hope that, as the Office of the Criminal Justice Coordinator and the City Council assess their priorities in the months ahead, they will revisit the level of funding awarded to OAD.

III. Detailed Findings³

A. The Trial Offices

1. LAS: NEW YORK AND BRONX COUNTY CRIMINAL DEFENSE DIVISIONS

(a) Overview

The Legal Aid Society (LAS) is the largest provider of public defense services in New York City. LAS’s Criminal Defense Division has trial offices in the Bronx and Manhattan, and those CDD offices continue to play a unique role in the provision of criminal defense services to Bronx and New York County indigent defendants. Most notably, unlike those of the other trial offices, LAS’s contract with the City historically has required LAS to represent qualifying clients in the vast majority of criminal cases, without a cap, for a fixed sum. More specifically, as in prior reporting periods, LAS’s contract with the City during FY 08-09 required LAS to handle all non-conflict indigent defense cases in its arraignment shifts, with financial penalties imposed upon LAS if its caseload fell below 88% of all non-conflict cases.

A spike in arrests in Bronx County that began in 2007 dramatically highlights the

³ This section of our report provides detailed findings with respect to each provider’s compliance with nine of the ten criteria specified in the First Department’s standards. With respect to the 10th criterion – compliance with standards of professional responsibility – we note that each provider is in compliance with this criterion, and no significant issues have arisen with respect to this criterion since the issuance of our prior reports.

difficulties posed by the fixed funding contract between LAS and the City. Predictably, the spike in arrests led to increases in LAS attorneys' already excessive caseloads. As a result, during FY 08-09, the percentage of individual attorneys with caseloads significantly exceeding the First Department's maximum ranged from 68% to 70% in the Bronx and from 64% to 70% in Manhattan. Moreover, LAS's trial units as a whole had a collective caseload that was nearly 50% above the First Department's maximum.

Staggeringly excessive caseloads are, unfortunately, nothing new for LAS, and this Committee has repeatedly urged that LAS's contract with the City be restructured so as to enable compliance with the First Department's caseload maximum. Now, of course, with the advent of legislatively mandated caseload caps, the restructuring of LAS's contract is not merely an option, but a necessity.

As this report is submitted, the City is in the midst of reviewing responses to an RFP it issued earlier this year for indigent defense contracts to commence on January 1, 2011. While there is much in the City's RFP that this Committee finds encouraging, we note with concern that the RFP is unclear as to how the presence or absence of City Council funding – which historically has represented a substantial portion of LAS's budget – would figure in the bidding and award process.

This Committee has repeatedly stressed the importance not only of manageable caseloads, but also financial stability, in ensuring that the First Department's indigent defense offices are in a position to provide effective representation. It accordingly is the Committee's hope that the City will recognize the importance of, and give appropriate priority to, a contract process that enables LAS to negotiate intelligently and plan responsibly for the provision of an appropriate level of defense services to the City's poor. The Committee further hopes that the City will recognize what a substantial asset it has in LAS – which has served for years as the City's primary indigent defender – and that the City will use this historic time as an opportunity to augment and build upon, rather than jeopardize, the assets it already has.

(b) Compliance with First Department Performance Standards

(i) Professional Independence

LAS's governing structure – which provides for direct reporting to an independent Board of Directors on all operational and policy matters – satisfies the First Department's standards for promoting professional independence. LAS reports that it experienced no threats to its professional independence during the FY 08-09 period. As evidence of their professional independence, LAS notes that they continue to sue New York City when appropriate to effectively represent criminal defense clients. Thus, by way of example, LAS points to five writs of habeas corpus that were brought against the City in Brooklyn to enforce the 24-hour arrest-to-arraignment requirement.

As we have observed in past reports, however, the First Department's standards recognize that financial stability is an important component of professional independence, and the terms of the historical contract between LAS and the City pose a very real threat to LAS's financial stability. As a result, it is very much the Committee's hope that the reworking of LAS's contract that has been made necessary by last year's case cap legislation will yield a contract that better enables LAS to continue its important role as the City's primary indigent defender.

(ii) Qualifications of Lawyers

Overall, LAS's hiring criteria and certification practices meet IDOOC performance standards, and LAS affirmatively works to create a diverse legal staff. Its hiring practices are effective in attracting legal staff committed to zealous advocacy, many coming from some of the most prestigious law schools in the country. For the FY 08-09 reporting period, however, a significant number of trial attorneys lacked the experience required by First Department standards.

As to attorneys representing clients charged with misdemeanor crimes, the standards require experience as lead, sole or co-counsel to an experienced criminal law practitioner in at least five criminal cases during the previous three years involving: (1) at least three non-trial dispositions, (2) one litigated motion in which oral testimony was taken and a decision was rendered and (3) one trial that proceeded to verdict.

LAS reported that 14 of the attorneys in New York County and 21 in the Bronx did not meet this standard. Those attorneys were reported to be recent law graduates, permanent arraignment attorneys or recent transfers from LAS's Parole Revocation Unit. The figures for FY 08-09 represent a welcome decrease in Manhattan from the last reporting period, during which 25 misdemeanor attorneys lacked the requisite qualifications, but a troubling increase in the Bronx, where only seven misdemeanor attorneys lacked the requisite qualifications during the last reporting period.

As to attorneys representing clients charged with felony crimes, the standards require experience in at least 30 criminal cases during the previous five years involving: (1) at least 15 non-trial dispositions (at least five of which occurred post arraignment), (2) five hearings in which oral testimony was taken and a decision was rendered, and (3) two post-indictment jury trials that proceeded to verdict in which the attorney was lead counsel; *or* experience in at least 10 criminal cases during the previous five years as lead or sole counsel and at least 20 non-criminal cases including at least five jury trials as lead or sole counsel.

The number of attorneys not meeting these First Department's performance standards unfortunately rose in New York County from 11 in the last reporting period to 19. In the Bronx, there was an increase as well: from 8 to 10.

LAS attributes the deficiency in hearing and trial experience to “a lack of trial capacity in New York City courts” and the recent certification of attorneys to handle low level felonies. LAS further – and fairly – notes that because it hires attorneys directly out of law school to replace experienced staff who leave LAS (often to work at other indigent defense offices in the City), there is an inherent lag in meeting the First Department’s misdemeanor and felony experience level, and the lag is one that ultimately operates to the benefit of the City by increasing the pool of experienced defense counsel. Nonetheless, it will be of particular interest to the Committee in the next reporting cycle to see whether LAS is able to reduce the number of trial attorneys whose experience falls short of the First Department’s standards.

(iii) Training

During the FY 08-09 reporting period, the training and CLE provided by LAS’s trial divisions was in full compliance with the First Department’s performance standards. As the largest institutional provider in New York City, LAS has a unique responsibility for training the City’s young criminal defense attorneys, and LAS takes that responsibility very seriously.

As in the past, LAS provided intensive training for all attorneys hired during the FY 08-09 reporting period. Specifically, 75 newly hired attorneys (37 of whom were assigned to the Manhattan or Bronx Criminal Defense Division offices) attended a five-week New Attorney Training Program at the LAS Headquarters. The training program drew upon expertise throughout LAS and thus included taking new attorneys to housing, immigration and family courts and providing concrete guidance on civil issues that overlap with criminal practice. During their first year in practice, attorneys also took mandatory follow-up training in their borough office that was a combination of lecture, workshop/skills training, shadowing, mentoring, and close supervision within each complex of 20 to 24 attorneys.

After their first year, the attorneys were permitted to choose among an array of in-house and outside CLE Programs. As an accredited NYS CLE provider, LAS offered a robust selection of courses in both the Bronx and New York County CDD offices covering such topics as new developments in substantive law, advocacy skills, forensics, and collateral consequences of conviction. LAS attorneys in the Bronx and Manhattan offices had access to programs in both offices as well as the programs offered in the central LAS office and programs available on video.

Finally, LAS augmented its own training through the use of outside providers. Thus, during the current reporting period, many LAS attorneys participated, at LAS expense, in programs offered by the New York City Bar Association, the New York County Lawyers’ Association, the National Institute for Trial Advocacy, the New York State Bar Association, the National Association of Criminal Defense Attorneys, and the New York State Defenders Association.

Although LAS offered a rich array of training opportunities, attendance at continuing training programs was, unfortunately, not always mandatory. The Criminal Defense Division did, however, consider attendance at in-house and external training programs in its annual performance review of staff attorneys. In addition, LAS notes that attendance at what it regards as the most critical of its continuing training programs – such as, for example, a program currently being run on collateral immigration consequences resulting from criminal cases – is, in fact, mandatory.

(iv) Supervision

LAS reports compliance with the First Department’s supervisor/staff attorney required ratio of 1-to-10. The ratio was 1-to-8.7 in FY 08 and 1-to-8.9 in FY 09. Those figures represent a significant improvement from the last reporting period in which LAS was out of compliance with First Department standards. This development is especially welcome since – by virtue of LAS’s overall heavy caseload – supervising attorneys in the Bronx carried a pending caseload of approximately 24 cases, and New York County supervisors handled approximately 50 cases.

(v) Workloads

A recurring theme of this Committee’s reports has been its deep concern about the ability of LAS’s trial divisions to provide adequate representation when they are so seriously overburdened. As in past reporting periods, the terms of LAS’s contract with the City – under which LAS was required to handle 88% of all non-conflict indigent defense cases for a fixed amount of funding – operated to guarantee that LAS’s trial divisions were seriously out of compliance with the First Department’s maximum caseload standards. Throughout the FY 08-09 reporting period, the collective caseload of LAS’s trial divisions was nearly 50% above the First Department’s maximum standard of 400 misdemeanor-equivalent cases per attorney. As a result, no less than 68-70% of the trial division attorneys in the Bronx and 64-70% of the trial division attorneys in Manhattan labored under caseloads significantly in excess of the First Department’s maximum during FY 08-09.

As we noted in our last report, “it is hard to imagine that caseload pressures have no effect on LAS, and other institutional providers, to hurriedly resolve charges at arraignment.” And while the Committee recognizes that any particular guilty plea at arraignment may be the result of a variety of factors, the statistics collected for FY 08-09 do nothing to dispel the Committee’s concern. In each of FY 08 and FY 09, LAS disposed of more than 50% of its assigned cases at arraignment, with more than 70% constituting dispositions by plea. Thus, while LAS’s response to our questionnaire justifiably takes pride in pointing to cases in which excellent investigative work eventually led to the dismissal of all charges, those examples ultimately serve to reinforce the Committee’s belief that if LAS’s attorneys were handling reasonable caseloads – and had reasonable investigative support – many more cases that *should* be subject to dismissal might in fact be dismissed.

The additional burdens faced by attorneys at the Bronx CDD also bear special mention. A combination of permanent specialty court assignments and a new initiative to reduce the arrest-to-arraignment time in the Bronx led to an increase in both the number of arraignment shifts and the number of cases assigned per shift, and that in turn caused Bronx CDD attorneys to work additional arraignment shifts and accept more case assignments. Moreover, as noted in our report for FY 06-07, the logistical problems created by the physical layout of the Hall of Justice significantly increased the amount of time required to cover cases and speak with clients. The combined effect of that decreased efficiency and increased caseload has understandably heightened what can fairly be characterized as the “under siege” mentality that permeates the Bronx staff.

(vi) **Evaluation, Performance, and Discipline**

LAS reports that during FY 08-09 it required written evaluations of new attorneys after four, six and eight months. All other staff attorneys received an annual written performance evaluation. Supervisory attorneys received written evaluations semi-annually. That structure was well within First Department requirements.

(vii) **Support Services**

Support service staff at LAS includes paralegals, investigators and social workers. As of June 30, 2009, there was a 1-to-11.6 ratio of investigators to attorneys in Bronx County and a ratio of 1-to-11.4 in New York County. LAS reported, however, that given the current high caseloads, investigators were only able to conduct investigations in 6% of all cases. As a result, attorneys were left to conduct investigation themselves (to the extent they were able to do so) in many other cases.

While the investigator-attorney ratio in place at LAS might well be sufficient if its attorneys were less overburdened, it is apparent that additional investigative support is sorely needed at LAS, and this Committee believes that the current investigator-attorney ratio should be enhanced. Indeed, given the consistency with which the Committee heard from appellate-level providers that a significant number of cases on appeal warranted extra-record investigation, we believe that the importance of adequate investigative support at the trial level cannot be overstated.

The social worker to attorney ratio as of June 30, 2009 was 1-to-12.4 in Bronx County and 1- to-8.8 in New York County, with social workers used in 1% of misdemeanor cases and 3% of felony cases. Experts, in turn, were used in .02% of misdemeanors and .3% of felony cases. The low percentage of cases in which social workers and experts were used suggests that additional support would be beneficial in these areas as well.

Finally, it bears noting that while there is little good news to report from the Bronx in terms of workload and working conditions at the Hall of Justice, there is one bright spot on the horizon for the Bronx CDD staff. After thirty years in dilapidated, overcrowded “temporary” space, the office is moving into newly renovated space across the street from the Hall of Justice. The vastly improved working quarters and shorter walk to the court house should have a positive impact on morale and productivity.

(viii) Case Management and Quality Control

As in past reporting periods, the Criminal Defense Division maintained a comprehensive, city-wide computer case management system, designed and customized in-house to address the many specialized needs of its practice. This computer system was recently upgraded to a Linux operating system running a Cache database. The interface infrastructure, however, remains basically unchanged from its inception in 1991. A new system designed by Law Manager is expected to be in operation in 2010.

LAS handled client complaints through a chain-of-command approach (from the complex supervisor level to the borough attorney-in-charge to the Criminal Practice attorney-in-charge to the LAS attorney-in-chief). LAS reports that complaints regarding an attorney’s lack of communication with a client were looked into quickly, and, if valid, the attorney was made aware of the unacceptability of this conduct. Manhattan CDD further reports that when any client complaint had merit (as was the case on three occasions in each of FY 08 and FY 09), appropriate remedial steps were taken to make sure the mistake was not repeated. In addition, the annual staff attorney evaluation included detailed performance criteria regarding, among other things, client communication.

LAS did not, however, have any formal mechanism for evaluating client satisfaction. LAS did not, for example, make use of surveys, questionnaires or exit interviews with clients. Particularly given LAS’s size, the Committee finds its lack of a formal system for evaluating client satisfaction to be of concern, and we recommend that LAS consider instituting such a system.

(ix) Reporting Obligations

The LAS trial divisions met all reporting obligations to the City and this Committee during the FY 08-09 reporting period.

2. THE BRONX DEFENDERS

(a) Overview

The Bronx Defenders (“BD”) has contracted with the City since 1997 to handle 12,500 cases per year, and the Office of the Criminal Justice Coordinator began to insist on strict compliance with the terms of that contract during FY 06-07. As we noted in our FY 06-07 report, the Criminal Justice Coordinator’s insistence on strict compliance resulted in individual and collective caseloads at BD that were significantly out of compliance with the First Department’s maximum. Unfortunately, the same is true for the FY 08-09 reporting period. Nearly two-thirds of BD’s staff attorneys consistently carried caseloads in excess of the First Department’s maximum, and BD’s supervisors were seriously overburdened as well. As in the past reporting period, BD’s excessive caseloads are a source of great concern to the Committee.

Notwithstanding the caseload challenges it faces, BD reports that it remains committed to a holistic model of representation, and that it continues to devote a substantial amount of energy and resources to assessing and, where possible, mitigating the collateral consequences of the criminal charges lodged against its clients. In addition, and of particular significance, BD reports that its impressive track record in this regard enabled it to obtain a grant from the Department of Justice to fund BD’s Center for Holistic Defense. As envisioned by BD, the Center will have two components: a website with a “how to manual” on various topics for setting up a holistic defense model (such as assessing a community’s needs and measuring success) and a training component (in which BD selects three offices nationwide and provides hands-on training in setting up a holistic model of representation).

(b) Compliance with First Department Performance Standards

(i) Professional Independence

BD’s governing structure satisfies the First Department’s standards for ensuring professional independence, and BD reports that it experienced no threats to its professional independence during the current reporting period.

(ii) Qualifications of Lawyers

BD has consistently attracted highly qualified attorneys, and that pattern continued during the FY 08-09 reporting period. In addition, while BD hired a significant number of relatively inexperienced attorneys during FY 09, it still was able to attract and retain an impressive number of attorneys with substantial experience. Five out of the 19 attorneys hired during the current reporting period had more than five years of experience in criminal defense, and three of the new hires had more than 15 years of experience. Overall, some 60% of the staff attorneys employed by BD during the reporting period had at least two years of prior experience at the time they were hired, and nearly 35% had at least four years of prior experience. In addition, as a result of

BD's ability to both recruit and retain experienced counsel, approximately 40% of the trial attorneys on staff as of the end of the reporting period had at least five years of criminal defense experience.

BD reports that in an effort to recruit attorneys of color, it participated in Urban Career fairs such as the Black Law Students Association Career Fair and the Equal Justice Work Career fair. BD further reports that it followed up with all attorneys of color with whom it met at these fairs to encourage them to apply. During FY 08, 34.4% of BD's staff attorneys were people of color, but that percentage decreased to 28% in FY 09. These numbers are similar to those reported in FY 06-07, where the percentages were 25% and 37.5%, respectively. A substantial percentage of BD's attorneys were also fluent in languages other than English, with 36 % and 29% fluent in Spanish during FY 08 and FY 09, respectively. However, the percentage of supervising attorneys of color unfortunately decreased from 25% in FY 06-07 to 0% in FY 08-09.

(iii) Training

BD's procedures for training its staff were well within the First Department's guidelines. BD provided each of its attorneys with the NY Defender Digest, all recent decisions by the New York criminal courts, and all United States Supreme Court decisions pertaining to criminal law. All BD attorneys also had online access to the New York Law Journal.

Moreover, while BD did not become an accredited provider of Continuing Legal Education until the end of the FY 08-09 reporting period, it nonetheless conducted an impressive series of mandatory training sessions during the reporting period. The topics included interviewing clients, Huntley hearings, preservation of issues for appeal, trial skills training, meeting the needs of mentally ill clients, SORA training, immigration consequences of criminal cases, and grand jury practice.

In addition, because BD could not issue CLE certificates for in-house training, it paid for its attorneys to receive CLE credits from outside providers. The CLE programs attended by BD attorneys during the reporting period included NYSDA Basic Trial Skills Training, National Criminal Defense College ("NCDC") Extensive Trial Skills Training, NCDC Advanced Cross Examination, and NCDC Storytelling, Theories, Themes. In addition, in January 2009, supervising attorneys began working in small groups with the Deputy Director on effective management of interdisciplinary team meetings and other supervision issues. The small groups now meet about once a month.

Each new criminal defense attorney was put on a training team for the first year of practice. After three weeks devoted exclusively to in-house training, new attorneys were then permitted to handle misdemeanor cases under close supervision, with weekly meetings held throughout the first year of practice. New attorneys also attended a week-long trial skills training

session offsite. At the end of their first year, attorneys were provided with in-house training on felony practice.

(iv) Supervision

BD's staff/supervisor ratio was 4.5-to-1 for FY 08 and 4-to-1 for FY 09, and thus was significantly lower than the First Department's maximum of 10-to-1. At the same time, however, each of BD's supervisors appears to have carried a very heavy caseload – a circumstance that is at odds with the First Department's standards, and that necessarily limits the amount of time available for supervision, feedback and evaluation of less experienced attorneys.

(v) Workloads

In our previous report, we noted that in FY 06, the Office of the Criminal Justice Coordinator began to demand strict compliance with the 12,500 caseload specified in BD's contract with the City. As a result, BD was required to take on a significantly higher percentage of both misdemeanors and felonies than it had previously been assigned, which resulted in caseloads that were substantially above the maximum specified in the First Department's standards. For the current reporting period – during which the City continued to insist on strict compliance with the terms of BD's contract – BD's caseload continued to exceed the First Department's specified maximum, with nearly two-thirds of BD's staff attorneys consistently carrying excessive caseloads. Moreover, each of BD's supervisors appears to have carried a caseload in excess of the First Department's standards. As we noted in our report for the FY 06-07 reporting period, it is a source of great concern to the Committee that BD has joined the ranks of the City's overburdened trial offices.

(vi) Evaluation, Performance and Discipline

BD reports that new attorneys were formally reviewed both in writing and orally twice during their first year, that all attorneys received such review at least on an annual basis, and that contemporaneous feedback was given at all hearings and trials. BD further reports that where problems were identified, supervisors and staff met to discuss the problems and develop a plan to remedy the situation. When remedial efforts failed, or when serious wrongdoing was identified, BD's practice was to issue verbal and written reprimands, probation and, if necessary, termination.

In our report for FY 06-07, the Committee noted that BD's plan, as formulated, provided an adequate mechanism for the evaluation, performance and discipline of its attorneys. Given the heavy caseloads carried by BD's supervisors during the reporting period, however, the Committee expressed its concern about the degree to which it was possible to implement BD's supervisory plan. In response, BD reports that supervisors are now given fewer arraignment shifts than their staff attorney counterparts, and that when a supervisor's caseload becomes too high, that supervisor will transfer some of his or her cases to the staff attorneys. While such

measures are a welcome step in the right direction, it is apparent from the single-day caseload snapshot provided by BD that each supervisor's caseload is, unfortunately, still well in excess of the First Department's guidelines.

(vii) Support Services

The support services provided to BD's attorneys were within the First Department's standards during the FY 08-09 reporting period. Each attorney was assigned a cubicle, with a dedicated computer, email account, telephone, and filing space. Several conference rooms were available for private conferences.

Team administrators were available to provide office supplies and clerical needs as required. In addition, due to the significant number of Spanish speakers on staff, there appeared to be no difficulty obtaining translation as needed. BD also maintained an adequate legal library, as well as an in-house database of motions and access to Westlaw for each attorney. In addition, as noted above, pertinent decisions were circulated to all attorneys.

Consistent with BD's longstanding emphasis on holistic representation, staff attorneys were assigned to teams of six, with each team having its own social worker and investigator. There were five interdisciplinary teams of criminal defense lawyers, family defense lawyers, other civil lawyers, social workers and parent advocates, and investigators. In addition, BD reports that all attorneys were trained with respect to client eligibility for diversionary programs and other alternatives to incarceration.

As we noted in our prior report, BD's Civil Action Project and Reentry Net Clearinghouse greatly enhances the quality of criminal defense representation BD provides to its clients. These resources and tools, in the Committee's view, significantly help BD defense teams address the issues arising from the collateral consequences of their clients' criminal convictions.

(viii) Case Management and Quality Control

BD's system for case management and quality control during the reporting period complied with the First Department's standards. BD used a web-based case management system called PIKA, which maintained a complete list of all open and closed cases for each attorney, tracked upcoming court appearances for each case, and allowed for centralized access to any case information provided by the attorney or the team's social worker.

(ix) Reporting Obligations

BD met its reporting obligations to the City and to this Committee during the FY 08-09 reporting period.

3. NEW YORK COUNTY DEFENDER SERVICES

(a) Overview

Like the Bronx Defenders, the New York County Defender Services (NYCDS) has contracted with the City of New York since 1997 to provide representation to indigent defendants in a fixed number of criminal cases. During the FY 08-09 reporting period, as in past periods, NYCDS's contract with the City required NYCDS to provide representation in 16,000 criminal cases annually. In addition, NYCDS contracted to staff an IDV part for an additional \$125,000 per year.

NYCDS receives case assignments by staffing set arraignment sessions each week. During both FY 08 and FY 09, NYCDS fulfilled its contractual commitment of staffing its assigned arraignment shifts. But, as in the past, staffing the assigned arraignment shifts resulted in NYCDS taking on more case assignments than its contract required. NYCDS reports that it exceeded its contractual obligations by approximately 3,000 cases in FY 08 and 1,700 cases in FY 09.

The combined effect of those additional cases and the relative number of felonies included among those cases (since felonies are weighted more heavily in calculating caseloads) once again caused NYCDS to be seriously out of compliance with First Department standards during FY 08-09. Indeed, fully 100% of the NYCDS staff attorneys exceeded the First Department caseload maximum during each of FY 08 and FY 09. In addition, the NYCDS supervisory attorneys exceeded First Department caseload standards for supervisors.

NYCDS understandably has been reluctant to alienate the City by declining to staff arraignment shifts once its contractual number of cases has been reached, and NYCDS appears to have done its best to distribute the excess as equally as possible among its attorneys so as to minimize its impact. Nonetheless, the extent to which excessive caseloads have become a fact of life at NYCDS underscores the need for binding caseload caps.

(b) Compliance with First Department Performance Standards

(i) Professional Independence

NYCDS's governing structure satisfies the First Department's standards for ensuring professional independence, and NYCDS reports that it experienced no threats to its professional independence during the FY 08-09 reporting period.

(ii) Qualifications of Lawyers

Since its inception, NYCDS has had a very experienced staff due to its ability to both attract and retain experienced attorneys. As in the previous reporting period, more than 50% of the staff attorneys (17 out of 33) employed during FY 08-09 had at least twenty years of

experience, and only 15% (5 out of 33) of the staff attorneys had fewer than ten years of experience.

In the FY 08-09 reporting period, a significant percentage of the staff attorneys were people of color (8 out of 33) and/or fluent in Spanish (5 out of 33). Unfortunately, as in the prior reporting period, there were no people of color among the five managing and supervising attorneys.

(iii) Training

NYCDS's training procedures were in keeping with First Department requirements during the FY 08-09 reporting period. NYCDS is an accredited CLE provider, and it both offered in-house programs and sent attorneys (substantially at NYCDS's expense) to outside CLE programs. More specifically, NYCDS offered six in-house CLE programs during FY 08-09 on a range of timely topics, and a majority of the NYCDS staff attended the programs. In addition, the outside programs attended by NYCDS's staff included: Last Chance Ethics, Cross to Kill, Technology and the Law, Immigration Consequences of Criminal Convictions, NYSDA's Annual Metropolitan Trainer, A New Legal Architecture: Litigating Eyewitness Identification Cases in the 21st Century, Brooklyn Law School's Annual Seminar on Criminal Law Procedure & Evidence, and programs on the Rockefeller Reform and new ethics rules.

NYCDS also provided its attorneys with resources to keep abreast of developments in the law. All attorneys had access to the New York Law Journal, e-mail distributions of new decisions from all relevant Courts, the NY Defender Digest, and the NYSDA's Public Defense Back-up Center Report.

While NYCDS's supervisory attorneys did not attend supervisory training programs during the FY 08-09 reporting period, we note that there was also no turnover in supervisors during that time. In addition, NYCDS supervisors served periodically as faculty for area law school trial advocacy programs and attended trainings held at those schools.

(iv) Supervision

The ratio of supervisors to staff at NYCDS was in compliance with First Department standards during the FY 08-09 reporting period. NYCDS staff consisted of 33 attorneys and four supervisors (plus a supervisory attorney for administrative matters), yielding a satisfactory ratio of approximately 1-to-8. However, each of the non-administrative supervisors carried a substantial caseload, working an average of six arraignment sessions per year and keeping the cases he or she picked up. The resulting caseloads – while characterized by NYCDS as “manageable” – were nonetheless at odds with First Department's standards and necessarily limited the amount of time available for supervision. While the Committee recognizes that there are benefits to having supervisors handle cases, and that NYCDS's staff is relatively

experienced, the high caseloads carried by NYCDS's supervisors are of concern to the Committee.

(v) Workloads

Under the terms of its contract with the City of New York, NYCDS is required to provide representation in a fixed number of cases. In the FY 08-09 reporting period, as in past reporting periods, the contractually specified number of cases was 16,000. In fact, however, in each year of the FY 08-09 reporting period, NYCDS took on – for no additional compensation – a caseload in excess of what was required under its contract. Specifically, NYCDS took on 19,010 cases in FY 08 and 17,736 cases in FY 09.

NYCDS's management stoutly maintains that its workload is "manageable" and stresses that when there is an imbalance in workload among its attorneys, the more heavily burdened attorneys are taken out of arraignment shifts for a period of time. Given the uncertainty that afflicts all of the First Department's indigent defense offices at this moment in time – and particularly since the issuance of a new RFP from the City that can fairly be read as seeking to cast as broad a net as possible for new providers – it is scarcely surprising that NYCDS's management would be slow to complain or decline arraignment shifts on the ground that its annual caseload numbers had already been satisfied. The Committee also has no doubt that NYCDS has done – and continues to do – all that it can to ensure that caseloads are distributed among its staff as equitably and responsibly as possible.

The fact remains, however, that caseloads which are unquestionably excessive – both under the First Department's well-settled standards and under the newly adopted caseload caps – have become a fact of life at NYCDS. As a result, this Committee regards the troubling trend at NYCDS as further confirmation of the legislature's wisdom in taking action to make reasonable caseload caps not merely desirable, but legally required.

(vi) Evaluation, Performance and Discipline

Prior IDOOC reports have, on more than one occasion, criticized NYCDS for the lack of a formal evaluation system, with NYCDS responding that its small size, collegial atmosphere, experienced staff, and high supervisor-to-attorney ratio obviated the need for more formal evaluation of its attorneys. In FY 09, however, NYCDS began a formal system of annual evaluation for all attorneys. Using the NLADA standards and evaluation form, NYCDS supervisors completed the first set of written and oral evaluations of each staff attorney in December 2009. The Committee commends NYCDS for the steps it has taken to improve its evaluative process, and for its stated commitment to continue conducting formal reviews each year. As we have noted in prior reports, we believe that even experienced attorneys benefit from having standards of practice that provide a consistent yardstick by which to measure their performance.

In addition, while NYCDS handled complaints from judges or clients on an ad hoc basis, it reports that on the rare occasion when such a complaint was made, the appropriate supervisor remained in contact with the party who made the complaint and closely monitored both the individual case and the rest of the attorney's caseload. Particularly given NYCDS's size, such a procedure is sufficient to satisfy the First Department's performance standards.

(vii) Support Services

The support services offered by NYCDS during the FY 08-09 reporting period were within First Department standards. Each attorney had computer access to, among other things, Westlaw, a motion bank, and NYCDS's case management system.

NYCDS also had on staff two MSW-credentialed social workers and two social work students who did their clinical internships at NYCDS, with additional social work support available as needed on a contractual basis. As reported by NYCDS, those services were used in 196 cases in FY 08 and 242 cases in FY 09.

NYCDS also employed two investigators (both of whom are Latino and fluent in Spanish) and a trial assistant. In addition, staff attorneys had assistance from six law student interns in each of the fall, spring and summer semesters to assist with fact investigation and legal research. While NYCDS's staff attorneys report great satisfaction with the work performed by NYCDS's investigators, the Committee notes that the investigators were used in a relatively small number of NYCDS's cases – 144 cases during FY 08 and 142 cases during FY 09 – thus suggesting that NYCDS (like the First Department's other trial offices) would benefit from additional investigative support.

(viii) Case Management and Quality Control

NYCDS has been using the same case tracking system since its inception in 1997, and the difficulties NYCDS experienced in responding to this Committee's requests for caseload data make clear that NYCDS would surely benefit from a new system. NYCDS reports that it is well aware of the defects of its current system, and that it is in the process of taking appropriate remedial measures. The Committee will be particularly interested in the progress of that project during the next reporting cycle.

During the FY 08-09 reporting period, as in the past, NYCDS tracked cases as they progressed and generated daily calendars for each attorney. The calendars were sent to the individual attorney and to the attorney's supervisor. The case management system was also accessible from the lawyers' and supervisors' desktop computers. The system relied on individual attorneys' reporting adjourned dates and dispositions which were then input by the data entry clerks. It did not generate "ticklers" for filing deadlines or speedy trial time, but management reports that NYCDS's attorneys are experienced professionals who regularly file motions and have never been precluded from filing motions because of a missed deadline.

Nonetheless, as NYCDS itself recognizes, an updated case tracking system could provide more data and allow NYCDS to better manage cases and analyze quality.

During the FY 08-09 reporting period, NYCDS instituted post-arraignment file reviews to supplement its more informal methods of quality control, but still continued to rely mainly on informal quality control. The procedures that have been described to the Committee by NYCDS met the First Department standards for case management and quality control largely because NYCDS has remained small enough for relatively informal oversight. If the office becomes larger, it would be important for NYCDS to establish more formal and more frequent case file reviews.

(ix) Reporting Obligations

NYCDS met its reporting obligations to the City and to this Committee during the FY 08-09 reporting period.

4. NEIGHBORHOOD DEFENDER SERVICE OF HARLEM

(a) Overview

Neighborhood Defender Service of Harlem (“NDS”) continues to be the smallest of the First Department’s institutional indigent defense providers, with 11 FTE criminal defense trial attorneys on staff during the FY 08-09 reporting period and one attorney assigned to arraignment shifts. During this reporting period, NDS unfortunately joined the ranks of the First Department’s overburdened trial offices, but it was otherwise in compliance with First Department standards. In addition, as in prior reporting periods, the staff – both professional and paraprofessional – that met with the Committee were uniformly impressive in both their skill and dedication to the work at hand.

In past reports, the Committee has stated that its chief concern with respect to NDS was its ability, in light of the precariousness of its funding, to maintain and build upon the holistic range of services it provides. The current reporting period – during which NDS suffered a \$250,000 funding reduction (or more than 8% of its budget) – has demonstrated that the Committee’s concern was well-founded. It is our hope, however, that the contracts negotiated pursuant to the City’s most recent RFP – which, for the first time, allowed “catchment” providers such as NDS to join other providers in bidding for two-year contracts – will operate to increase the financial stability of NDS. It is likewise the Committee’s hope that the new contract process will enable NDS to return to a caseload level that is consistent with the First Department’s standards.

(b) Compliance with First Department Performance Standards

(i) Professional Independence

The governing structure for NDS complies with the First Department's standards for ensuring professional independence, and the composition of the Board appropriately reflects the diversity of the community that NDS serves. NDS reports that it experienced no threats to its professional independence during the FY 08-09 reporting period.

NDS further reports that it does not believe that any economic or other factors affected its professional independence during the reporting period. Nonetheless, the First Department's standards recognize that financial uncertainty can hamper professional independence, and in that regard, the Committee hopes that the recently revamped contract process will yield greater financial stability for NDS.

(ii) Qualifications of Lawyers

NDS had a certification system in place during the reporting period that conformed to the First Department's standards and was sufficient to ensure that attorneys were suitably qualified for the cases they were assigned. Moreover, because an increasing number of NDS attorneys have remained on staff for a period of several years or more, the overall experience level of NDS trial attorneys during the reporting period increased. As of the end of the FY 08-09 reporting period, only one trial attorney had less than two years' experience, eight attorneys had at least four years' experience (with a few of them significantly higher), and one attorney had more than 20 years' experience. NDS's two criminal defense supervisors also had appropriate levels of criminal trial experience, each more than ten years.

Over the years, NDS has maintained a sub-team of attorneys and support personnel (called defensaNDS) who were fluent in Spanish and who had received targeted training in immigration issues. The defensaNDS unit continues to provide services, but (due mainly to budget constraints) at a more reduced level than NDS would like. An additional concern is the potential loss this fall of the attorney (a Fellow) currently handling immigration issues. NDS reports, however, that it is in the process of hiring more Spanish-speaking staff to supplement the sub-team's work.

The Committee further notes that although NDS has succeeded in increasing the ethnic diversity of its staff attorneys, it would be preferable to improve the diversity still further by the addition of Hispanic/Latino attorneys and staff to replace those who were recently lured away to the private sector. The Committee is satisfied that NDS appreciates the importance of this issue and will continue its efforts to have a staff that is reflective of the community that NDS serves.

(iii) Training

NDS provided an appropriate level of training and orientation to newly hired attorneys and support staff, as well as continuing legal education to all of its attorneys during the reporting period. Training was provided either through formal group training, shadowing senior attorneys or a combination of both. NDS attorneys, both trial and supervisory level, also attended a broad array of outside CLE programs during the reporting period – including the NYSDA Basic Trial Skills Program in Troy, NY and the NCDC program in Macon, GA – with NDS paying for attendance at a sufficient number of sessions so as to enable each NDS attorney to fulfill his or her CLE requirements.

The office also maintained subscriptions to a number of legal publications, including the New York Law Journal. In addition, a NDS supervisor kept abreast of significant new criminal law decisions and emailed the staff regarding the same. The Committee notes that NDS is currently awaiting (and expecting) approval of its application to become an accredited CLE provider.

(iv) Supervision

NDS has structured the office around two criminal defense teams (of 5 to 6 attorneys), each headed by a supervising attorney. As a result, staff/supervisor ratios were well within First Department standards during the reporting period, and no supervisor carried a caseload so high as to hinder his ability to render adequate supervision. The system of supervision at NDS, while not as formal a process as the First Department's standards encourage, was sufficient (given the office structure and size) to ensure effective supervision of NDS's staff attorneys. NDS's team-based representation – with junior and senior attorneys often sharing responsibilities on cases, and with most trials staffed by two attorneys – was also an asset in this regard.

NDS also maintained a substantial internship program – both during the school year (as a result of ongoing relationships with Columbia, NYU and CUNY Law Schools) and during the summer. The supervisory systems in place were sufficient to ensure adequate supervision of the student interns. Also closely monitored were NDS's Volunteer Attorney Project and the pro bono attorneys who lend assistance during the year.

(v) Workloads

During the FY 08-09 reporting period – and for the first time since this Committee began receiving caseload data from NDS – the office's caseload levels exceeded the maximum set by the First Department. While the degree of NDS's departure from the First Department's

standards was not as severe as that of several other trial offices – NDS’s collective caseloads exceeded the First Department’s permissible maximum by approximately 14% in FY 08, and by approximately 9% in FY 09 – it nonetheless bears remembering that the First Department’s standards specify a *maximum*, not a target, and thus caseloads that exceed the First Department’s standards by any degree are a cause for concern.

NDS has, in various respects, an enviable track record in the handling of its cases. As the addendum to this report shows, NDS’s dismissal rate rose as high as 47% in FY 09. Moreover, as one of the City’s trial-level providers committed to holistic representation, NDS’s attorneys and support staff provided services far beyond what occurred in the courtroom. This Committee would be sorry to see the effectiveness of NDS’s work jeopardized by having it become a long-term member of the ranks of the First Department’s overburdened providers, and it is our hope that the contract process now underway will enable NDS to return to a caseload level in keeping with the First Department’s standards.

(vi) **Evaluation, Performance and Discipline**

While the evaluation procedures at NDS during FY 08-09 were relatively informal, the Committee is satisfied with the adequacy of those procedures, based, as they were, upon written standards both appropriate and sufficient in light of the relatively small size of the office. In a new attorney’s first year, his or her supervisor performed caseload reviews twice, at formal meetings. In subsequent years, barring any specific concern, the supervisor conducted an annual case review. During the reporting period, NDS also had in place disciplinary procedures adequate to address any serious performance deficiencies.

(vii) **Support Services**

At the close of the FY 08-09 reporting period, NDS had one investigator and one social worker assigned to each of the two criminal defense teams. NDS noted that although most of the less serious cases it handled had no need for extensive investigation, about 75% of the felony cases did require both investigative and social worker attention. From interviews with both attorneys and support personnel, it is clear to the Committee that NDS could use at least one additional investigator and social worker on staff. While the attorneys acknowledge the good quality of the work currently being done, they note that the present support staff is overworked, and the support staff agrees. Accordingly, it is the Committee’s hope that NDS will be in a position to augment both its investigative and social work staff in the near future.

The remaining categories of support identified by the First Department standards – physical working conditions, availability of interpretive services, and access to legal research resources – all appear to have been adequate at NDS during the FY 08-09 reporting period.

(viii) Case Management and Quality Control

NDS still had its outdated, DOS-based, computerized case management system in place during the FY 08-09 reporting period, but an upgrade was underway. At the recommendation of the technical consultants advising NDS, the office's remote access and email systems were upgraded first. The case management system is reportedly next in line, and the Committee hopes that this goal will be achieved before the end of the next reporting period.

(ix) Reporting Obligations

NDS timely met all of its reporting obligations to the City and to this Committee during the FY 08-09 reporting period.

B. The Appellate Offices

1. OFFICE OF THE APPELLATE DEFENDER

(a) Overview

The Office of the Appellate Defender ("OAD") is a nonprofit corporation, established in 1988, which is dedicated to the representation of indigent defendants with criminal appeals in state court, as well as collateral proceedings in both federal and state courts. OAD places great emphasis on training inexperienced lawyers, and to that end it has historically devoted a significant amount of its resources to training attorneys to become highly proficient in criminal appellate practice. OAD's ultimate goal is to develop highly motivated and experienced attorneys who will continue to represent indigent defendants in all aspects of criminal defense practice after they leave OAD. OAD has also developed a social work program to assist its clients with the social, familial and economic problems that they face while in prison and after their release from prison.

OAD historically has been funded through City Council appropriation. During the current reporting period, however, OAD was encouraged to seek funding instead through the City's RFP process. The result was a dramatic decrease in the funding awarded to OAD. For FY 09 (the first year of funding under the contract awarded through the RFP process), OAD's funding was reduced by nearly 17% – from \$2.4 million to \$2 million. For FY 10, OAD's budget was reduced by another 19% – from \$2 million to \$1.624 million. As the Committee understands it, the significant funding cuts imposed upon OAD amount to a rejection of OAD's fundamental model as an office that devotes significant time and resources to training attorneys who are relatively inexperienced but show a commitment to public interest work.

While the Committee appreciates that the City must make difficult choices in these challenging economic times, we regard the City's actions with respect to OAD as unfortunate and, arguably, shortsighted. A significant number of the young lawyers trained by OAD remain in public interest positions in New York City even after they leave OAD. By way of example, eight out of the ten attorneys who left OAD during the current reporting period took other public interest positions, and all but one of those positions were in New York City. As a result, the training provided by OAD worked to the continuing benefit of Neighborhood Defender Service of Harlem, the Bronx Defenders, the Legal Aid Society, Legal Services in Queens, the Center for Constitutional Rights, New York City's Department of Education and (moving beyond the five boroughs) the Hague International Criminal Courts.

Based upon our review of OAD's work over the past fourteen years, this Committee has no doubt that OAD's unique training model has proved to be of significant value to the First Department's indigent population. The Committee accordingly hopes that as the City assesses its priorities in the months ahead, it will revisit – whether at the City Council level or through the Office of the Criminal Justice Coordinator – the level of funding awarded to OAD.

(b) Compliance with First Department Performance Standards

OAD was in substantial compliance with all First Department performance standards throughout the FY 08-09 reporting period.

(i) Professional Independence

In past reports, this Committee has expressed the view that the greatest challenge to OAD's professional independence was the uncertainty and unpredictability of its yearly funding. As we noted in our last report, "OAD was faced each year with the uncertainty of whether it would be granted an annual contract from New York City, and what its annual budget would be if a contract was awarded. This uncertainty adversely affected OAD's long-range planning, and the unpredictability of its annual budget made it difficult for OAD to accurately assess its ability to recruit and hire attorneys and other staff."

Unfortunately, and ironically, OAD's efforts to address that issue by bidding for a two-year contract through the RFP process yielded an outcome that was even worse – in the form of a contract that appears to reject OAD's fundamental model and dramatically reduces OAD's level of funding. For the reasons described above, the Committee hopes that the City's decision is one that the City is willing to revisit.

(ii) Qualifications of Lawyers

The qualifications and quality of counsel at OAD continued to remain high during the FY 08-09 reporting period. As noted above, OAD's mission is to hire attorneys with limited or no

appellate experience, and then provide them with rigorous supervision and extensive training, with the goal of having them develop into highly qualified appellate lawyers. Although inexperienced, the lawyers hired by OAD are motivated, and have demonstrated excellent skills in legal research and writing and a strong commitment to indigent defense work. OAD also reports that it is committed to promoting diversity in hiring by seeking out applicants associated with minority bar associations and law student organizations.

As of June 30, 2009, there were 14 staff attorneys and six supervising attorneys. This favorable ratio between the number of staff attorneys and supervising attorneys allowed for the close supervision of staff attorneys. All OAD cases were double-teamed by a staff attorney and an experienced supervising attorney who was familiar with the case, including the complete appellate record. All new attorneys participated in a comprehensive training program, and all attorneys were required to participate in several moot arguments before every court appearance.

The First Department's guidelines provide that appellate lawyers briefing and arguing their own appellate cases should have experience in at least 10 criminal cases, including writing at least five appellate briefs and arguing at least five criminal appeals. While OAD was not in strict compliance with this guideline during the FY 08-09 reporting period, its extensive training regimen and intense supervision satisfied the objectives of the First Department's attorney qualifications performance standard.

Newly hired attorneys are offered two year positions at OAD with the possibility of a third year. The relatively short tenure of employment guarantees a continuous turnover of lawyers from OAD into the pool of lawyers capable of handling criminal appeals and trial-level representation of indigent defendants. The limitation on the length of an attorney's employment at OAD, coupled with the relative inexperience of the staff attorneys, tends to put OAD at a disadvantage when competing with other indigent defense organizations for a New York City contract. Nevertheless, and despite the funding cuts described above, the quality and overall morale of OAD's attorneys appears to have remained high during the reporting period.

(iii) Training

With its strong emphasis on training, OAD devoted a substantial portion of its resources to training. During FY 08-09, OAD's training program consisted of nearly 40 formal sessions on an impressive array of topics, including all significant procedural and substantive areas of criminal law and appellate practice, as well as federal habeas corpus, representation of children, immigration issues, and social work assistance to clients and their families. Subjects covered also included oral advocacy skills, issue spotting and brief writing.

Each session lasted two hours and was usually accompanied by extensive written materials. The written materials from these training sessions constituted OAD's Training Manual, which was updated annually. OAD also maintained a Legal Manual, which contains

directions, sample forms, advice, and information on most appellate proceedings. Many of the offered courses were CLE credited, and OAD was an accredited provider of Continuing Legal Education (CLE) during the reporting period. Over the course of approximately six weeks, new attorneys were required to participate in the comprehensive training program described above.

An important component of OAD's training model was the requirement that for every case handled by a staff attorney, he or she was coupled with a more experienced supervising attorney who was very familiar with the case. Throughout the life of the case, the supervising attorney would frequently conference the case with the staff attorney, discuss strategy, and review every written submission by the staff attorney.

Oral advocacy skills were honed by regular moot courts, in addition to the formal training sessions described above. All oral arguments were mooted before both the supervising attorney who was double teamed in the case and other staff attorneys. New attorneys, or those with limited appellate experience, were required to participate in two to three moot arguments before they were allowed to argue before an appellate court. In addition, OAD continued a program, initiated in 2007, through which volunteer OAD Board members helped OAD attorneys moot their cases in preparation for arguing before the New York Court of Appeals or the Second Circuit.

As in past reporting periods, OAD also trained law students and attorneys outside its organization. OAD conducted the Volunteer Appellate Defender Program, where supervising attorneys from OAD mentor attorneys from private law firms who are handling pro bono appeals. OAD supervising attorneys also provided classroom instruction on criminal appellate practice to law students from New York University School of Law, and they closely supervised those students assigned to handle appeals from OAD's caseload. OAD also conducted a social work internship program for social work graduate students.

(iv) Supervision

An excellent 1-to-2 ratio between the number of supervising and staff attorneys allowed OAD to closely supervise its staff attorneys. A supervising attorney was paired with a staff attorney for each case that was assigned to that staff attorney. Caseloads for supervising attorneys (which consisted primarily of cases in which the supervisor had double-teamed with a staff attorney who had since left OAD) were kept intentionally light so that the supervisor's own work did not interfere with his or her ability to work closely with current staff attorneys. The double-teaming of staff and supervising attorneys for each case began when a case was first assigned to a staff attorney and continued throughout the life of the case. The double-teamed supervising attorney assisted the staff attorney with every aspect of the case from start to finish.

All appellate arguments were mooted by the staff attorney with his or her supervising attorney on the case. Other staff attorneys were also present at these moot courts, and the staff

supervising attorney and staff attorneys critiqued the argument. The required number of moot court arguments depended on the complexity of the case and the experience level of the staff attorney, but there were always at least two moot arguments in preparation for each appellate argument.

(v) **Workloads**

As in prior reporting periods, OAD maintained a system for weighing and assigning cases in order to equitably apportion the workload among its attorneys and to ensure that the more complex cases were assigned to the more experienced attorneys. The average number of cases assigned to an attorney increased as that attorney gained more experience and training during his or her employment at OAD.

Although the number of case assignments varied from attorney to attorney at any given time, each attorney at OAD had a manageable workload, and none was required to handle more than 25 appeals in either year of the FY 08-09 reporting period. Overall, OAD received 197 new Appellate Division appeals in FY 08 (including 16 homicide cases) and 159 new Appellate Division appeals in FY 09 (including 16 homicide cases). In addition, OAD was assigned 18 Court of Appeals cases during the reporting period and performed significant work in other proceedings such as those brought under CPL Articles 440 or 78, Drug Law Reform Act resentencings, post-release supervision resentencings, federal habeas corpus petitions, parole or prison administrative proceedings and CPLR Article 78 proceedings.

(vi) **Evaluation, Promotion and Discipline**

Each staff attorney had a formal annual written evaluation during the reporting period, which was prepared jointly by all of the supervising attorneys familiar with that attorney's work performance and productivity. The written evaluation covered various performance areas, including research skills, writing, oral argument and client relations. Each staff attorney was provided with a copy of the written evaluation, and was given the opportunity to discuss it with his or her supervisors if they so chose. In addition to annual formal written evaluations, each staff attorney met quarterly with their supervising attorneys in order to review and discuss the quality of his or her work performance and productivity.

Supervising attorneys were provided annual performance reviews, and staff attorneys were encouraged to anonymously submit their input regarding their supervising attorneys.

(vii) **Support Services**

During FY 08-09, each OAD attorney had access to the various technologies and office equipment necessary to do his or her job. In addition, OAD maintained an extensive forms file, a brief bank and a library with publications necessary for criminal appellate practice in New

York. There was likewise adequate support staff at OAD during the FY 08-09 reporting period. Support staff included, in part, an administrative attorney, two administrative assistants and a paralegal.

OAD also continued to maintain a social work staff, though the size of that staff decreased from two full time social workers (in FY 08) to one (in FY 09). OAD also utilized the services of social work interns during the reporting period. To the extent resources permitted, OAD's social work staff provided assistance to incarcerated clients (in matters such as crisis intervention and preparation for parole board appearances) and post-release assistance to clients and their families (in connection with housing, medical and mental health needs, employment and job training, drug and alcohol rehabilitation and obtaining governmental benefits). OAD social work staff also conducted a series of pre-release workshops in the state prisons.

(viii) Case Management and Quality Control

OAD used a custom-designed, computerized case-tracking database system which contained comprehensive information about every case in the office. The database tracked information about client contacts, case events, due dates and other information. All cases assigned to OAD were entered into this case tracking system. At quarterly meetings between supervising attorneys and staff attorneys, the information retrieved from the case-tracking system was used to determine an attorney's productivity, and to assist that attorney in properly prioritizing his or her cases based upon their age and whether a client is incarcerated. Although OAD's case tracking system allowed for adequate case management and quality control, the system is fifteen years old and is now outdated. OAD is aware of the limitations of their current case tracking system, and reports that it is nearing completion of a project to create and implement a new state-of-the-art tracking system. OAD expects the new system to be fully operational by the end of FY 10.

As part of OAD's case management and quality control, attorneys were required to keep their clients well informed about the progress of their appeals. To that end, attorneys were strongly encouraged to meet personally with their clients, including prison visits, which often required long-distance travel. OAD attorneys were also required to write to their clients in order to keep them informed about their pending appeals, and to contact the trial attorneys in order to gain a more informed understanding of the case and possible appellate issues. OAD reports that it was also receptive to accepting collect calls from their clients, and encouraged its clients to maintain contact in that way.

(ix) Reporting Obligations

OAD met all reporting obligations to New York City and to this Committee during the FY 08-09 reporting period.

2. LAS: CRIMINAL APPEALS BUREAU

a) Overview

The Legal Aid Society's Criminal Appeals Bureau ("CAB") provides full post-conviction services to its clients by taking direct appeals to New York's intermediate appellate courts (First and Second Departments) and to the New York Court of Appeals. CAB also represents clients in state court habeas corpus proceedings, as well as in federal district courts and the United States Court of Appeals for the Second Circuit. During the FY 08-09 reporting period, CAB's collateral litigation efforts, which are often undertaken in conjunction with volunteer attorneys from private firms, yielded three victories in the Second Circuit and one in the New York Court of Appeals.

CAB also represented nearly one thousand clients in post-release resentencing proceedings throughout the five boroughs, continued its role as the State's leading defender in Sex Offender Registration Act cases (litigating at the trial level, in the intermediate appellate courts and in the New York Court of Appeals) and initiated a Parole Release Advocacy Program, through which a team of CAB attorneys and student interns marshaled mitigating evidence and advocated before the parole board as incarcerated clients became eligible for release. CAB also continued to provide re-entry services to clients through its Social Work Re-Entry Program and to provide training to other criminal defense practitioners in programs on a wide variety of topics (including a two-day seminar organized by CAB on the use of scientific evidence in criminal cases).

(b) Compliance with First Department Performance Standards

CAB was in substantial compliance with all First Department performance standards throughout the FY 08-09 reporting period.

(i) Professional Independence

As noted above, LAS's governing structure satisfies the First Department's standards for promoting professional independence. LAS's management team reports on all operational and policy matters directly to an independent Society Governing Board of Directors ("Board") whose president serves without compensation. The Board is responsible for the oversight of all practices within LAS, including CAB.

(ii) Qualifications of Lawyers

As in prior reporting periods, CAB maintained a staff of exceptionally well-qualified staff and supervisory appellate attorneys and had an extremely low turnover rate. As of FY 08,

all of CAB's staff appellate attorneys had been with CAB for at least nine years, and the majority had been with CAB for at least 19 years. In addition, all of CAB's seven supervisory attorneys had worked at CAB for at least 14 years and had served as a supervisory attorney for at least nine years.

(iii) Training

Although CAB has in the past utilized an elaborate and comprehensive mix of internal and external training programs to equip its appellate lawyers, it once again had no new class of appellate lawyers during the FY 08-09 reporting period and thus did not engage in any new lawyer training. CAB instead offered periodic training programs for its appellate lawyers.

(iv) Supervision

CAB had an excellent staff-supervisor ratio, particularly given the high experience level of its staff. For FY 08, the staff-supervisor ratio was 5.3-to-1; for FY 09, the ratio was 4.9-to-1. In addition, and as in past reporting periods, supervision at CAB appears to have been very thorough, consisting of several levels of review of appellate briefs, routine and informal strategy sessions between staff and supervisory attorneys involving review of the record on appeal and the issues to be addressed both in the appellate brief and at oral argument, and, where appropriate, moot court sessions prior to oral argument. In addition, CAB attorneys were divided into appellate "teams" that met weekly to discuss specific cases and general developments in their areas of practice.

(v) Workloads

As in prior reporting periods, caseloads for the vast majority of CAB's attorneys during FY 08-09 were well within the First Department's limit of 25 briefs per year. In addition, and again as in prior reporting periods, the four attorneys whose caseloads exceeded that limit worked on specialized projects and thus cannot be regarded as having carried a standard appellate caseload. More specifically, one attorney supervised the Student Intern Project (under which law interns drafted *Anders* and excessive sentence appellate briefs) and the remaining three attorneys participated in the Guilty Plea Project (under which a team of highly specialized attorneys drafted briefs raising excessive sentencing and other straightforward issues that may arise when a client pleads guilty).

(vi) Evaluation, Performance and Discipline

During FY 08-09, CAB continued a commendable practice begun in the prior reporting period of providing each attorney with a written evaluation of his or her body of work for the

entire year. As described to the Committee, the evaluations “rate the attorney in all areas of the practice, including the quality of written work; legal analysis, research and oral arguments; meeting productivity and timeliness requirements; the quality of relations with clients, the courts and adversaries; and contribution to the work of the office as a whole.” The written evaluations were then discussed by the attorney and his or her supervisor, and a plan of improvement was formulated to remedy any identified deficiency.

CAB likewise continued its practice of having supervisors maintain a file of any complaints received from clients or judges and taking those complaints into consideration in the evaluation process.

(vii) Support Services

As in past reporting periods, CAB maintained a support staff of five paralegals, four word processors and a sentencing mitigation specialist who worked extensively on Drug Reform Act resentencing cases. CAB likewise continued to maintain a staff that was fluent in a wide variety of languages (including Spanish, Yiddish, Hebrew, Portuguese, Urdu, Punjabi, French, Italian and Japanese) and made use of outside interpreters as needed.

(viii) Case Management and Quality Control

During FY 08-09, CAB continued to utilize a case tracking system known as “LAS CTS,” which essentially allowed it to generate pre-programmed letters, motions and additional documents, as well as track cases for which the record had yet to be received. In addition, the actual files for cases awaiting receipt of the record were maintained in the Managing Attorney’s office. After a complete record was received, it became the responsibility of the individual attorney assigned to the case to maintain the file. All closed files (with the exception of recently closed matters) were maintained off-site along with all of their pertinent orders, decisions and briefs.

(ix) Reporting Obligations

CAB satisfied all reporting obligations to the City of New York and this Committee for FY 08-09.

3. THE CENTER FOR APPELLATE LITIGATION

(a) Overview

The Center for Appellate Litigation (“CAL”) is a not-for-profit corporation providing criminal appellate and post-conviction representation to eligible clients in the First Department. CAL took in 330 new Appellate Division appeals in FY 08 and 340 in FY 09. In addition, like each of the First Department’s other two appellate providers, CAL devoted a substantial amount of time and energy during the reporting period to representing prisoners in Drug Law Reform Act and post-release supervision resentencing litigation. Indeed, in what amounts to a symbol both of CAL’s success in resentencing litigation and of the spirit and commitment of its attorneys, CAL prominently displays in its office a large jar to which a Skittle is added for each year by which a client’s sentence was reduced through Drug Law Reform Act sentencing litigation. As CAL’s managing attorney explained to the Committee, the Skittles jar provides a vivid reminder to CAL’s staff of how many years of misery their clients have been spared through CAL’s resentencing efforts.

During the reporting period, CAL also continued and expanded its Justice First Project, which both provides a substantial array of post-release services to CAL’s clients and conducts an early screening and investigation program for cases bearing the indicia of wrongful conviction. Through the efforts of the Justice First team, CAL has succeeded in obtaining reversal of 15 convictions – representing some 70% of the cases accepted into the program.

(b) Compliance with First Department Performance Standards

CAL was in substantial compliance with all First Department performance standards throughout the FY 08-09 reporting period.

(i) Professional Independence

The majority of CAL corporate officers during the reporting period were appellate practitioners. CAL reports that, during this period, it was free to exercise its own professional judgment. It has never experienced any problems or interference with its professional independence.

(ii) Qualification of Lawyers

Most of the 15 CAL staff attorneys (11 full-time, 4 part-time) employed during the reporting period had substantial experience in criminal appellate representation. The only exception was an attorney hired in 2008 who had clerked with the Third Circuit Court of Appeals and had substantial law school clinical experience. The average tenure of CAL attorneys was eight years and the average level of criminal defense experience was 12 years. Six of the

attorneys on staff have been with the office since its inception in 1997. The office has experienced relatively little staff turnover.

(iii) Training

CAL is an accredited New York State CLE provider, and it conducted twelve CLE sessions during the FY 2008-09 reporting period, frequently in conjunction with Appellate Advocates, a Second Department appellate defender office. Training topics included: Introduction to, and Deconstruction of, the Resentencing Statutes, An Update on Briefing Sufficiency, Harmless Error Analysis, and Drafting Point Headings and Arguments. CAL also encouraged its lawyers, both staff and supervisors, to attend relevant CLE offerings of bar associations and criminal defense organizations. Tuition and/or registration fees for such programs were paid by CAL.

In addition to addressing its own staff training needs, CAL staff members participated in CLE programs for 18-B counsel and other defense providers. CAL regularly distributed handouts of criminal decisions of the First and Second Department, significant Third and Fourth Department appellate decisions, all New York Court of Appeals decisions, and significant United States Supreme Court, federal Circuit Court and District Court decisions. All attorneys were expected to read and annotate their own handouts and maintain their own files.

CAL's training program for new hires was coordinated, and conducted jointly with, Appellate Advocates (also an accredited CLE Provider). Training sessions covered a wide range of topics relevant to appellate practice. CAL also maintained an extensive internal "Practice Manual" setting forth office procedures and recommended practices with respect to representation, ranging from initial client contact and issue spotting to oral argument and case closing. During an attorney's first year of hire, all oral arguments were moot courted. After that, moots were done either at the attorney's discretion or when the oral argument was to be in the New York Court of Appeals or the Second Circuit. Weekly "team" meetings of a small group of attorneys with their assigned supervising attorney provided further opportunities to discuss complex or difficult case-related issues.

(iv) Supervision

In addition to the Attorney-in-Charge, CAL had five supervising attorneys during the FY 08-09 reporting period. CAL had an excellent ratio of supervising attorneys to staff attorneys of 1-to-3, and an efficient system for meaningful supervisory review. All supervising attorneys had ample experience, time and capability to discharge their responsibilities, both supervisory and administrative.

All substantive staff attorney briefs were edited and reviewed by a supervising attorney, with the detail of review depending on the experience level of the staff attorney. For new

attorneys, a supervisor read all records. Supervisors also oversaw caseload management and reviewed case development. All law students working in various capacities in the office were closely and directly supervised by senior attorneys.

(v) **Workloads**

CAL was assigned 330 new Appellate Division cases in FY 08 and 340 in FY 09. Staff attorneys briefed on average approximately 14 substantive cases per year, a workload well within the First Department's standards. Typically, each staff attorney was likely to be working on one trial brief, while having two briefing-ready cases behind it being prepped for briefing. Cases were assigned to an individual CAL attorney for briefing only after the complete appellate record had been received. Prior to assignment, a supervising attorney reviewed the completeness of the record as well as its length and complexity, including the complexity of the issues likely to be raised. Assignments were made with a view to matching the complexity of the case to the experience level of the attorney, and to varying the lengths and types of cases assigned. CAL supervisors carried a half caseload. Since CAL's staff to supervisor ratio was low, supervisors had sufficient time and resources both to perform their supervisory duties and to remain working lawyers – this latter being an important part of CAL's overall philosophy.

During the FY 08-09 reporting period, CAL also devoted a substantial amount of time and energy to the representation of 135 prisoners in Drug Law Reform Act and post-release supervision resentencing litigation. In addition, CAL continued and expanded its Justice First Project – a program that screens and investigates cases bearing the indicia of wrongful conviction, and that also provides post-release support to CAL's clients. For example, with the assistance of funds obtained through outside grants, CAL created a resource handbook for clients and their families to assist with the re-entry process. CAL also continued its program of family outreach for clients nearing the completion of their sentence. At the other end of the spectrum, CAL continued to review each case at intake to determine whether it should be referred to the Justice First coordinator for further review and investigation for evidence of wrongful conviction. Moreover, CAL reports that its Justice First screening program has proven so successful – yielding reversals in approximately 70% of the cases accepted into the program – that the Appellate Defender in Michigan is in the process of instituting a program based upon CAL's model.

(vi) **Evaluation, Performance, and Discipline**

A staff attorney's caseload management and productivity was reviewed monthly by the attorney's immediate supervisor. Any shortfall was addressed orally at those times, and any disciplinary or remedial action was conveyed orally by the Attorney-in-Charge. More formal productivity reviews were conducted four times per year, overseen by the Attorney-in-Charge with input from the management staff. Quality of written work was noted when each brief was reviewed before filing, and then evaluated in writing and orally in July. The Attorney-in-Charge

would discuss any disciplinary/remedial action at that time. The performance of supervising attorneys was reviewed on a yearly basis by the Attorney-in-Charge.

(vii) Support Services

The space occupied by CAL during the FY 08-09 reporting period was well-maintained and sufficient for housing CAL's staff. The physical library was adequate and augmented by individual online access to extensive web-based resources. CAL also maintained a computerized brief and motion bank that was accessible through the office network.

The mailroom was fully equipped for the production of briefs and was staffed by two clerks. CAL also employed a paralegal, who assembled the record on appeal and tracked the appeals prior to assignment, and an administrative assistant who answered the door and phone, did typing and performed data entry for CAL's MIS system. Spanish translation was available in-house; contract translators were available for other languages.

(viii) Case Management and Quality Control

CAL's database management program provided detailed information on each case's history, progress, and outcome. Procedures were also in place to allow for timely and efficient transfer of cases due to conflict of interest or substitution by retained counsel.

Requests for an enlarged briefing schedule were made only by the Attorney-in-Charge, thus providing a built-in "notice" mechanism for this eventuality. On average, CAL perfected its cases well within the required 120-day period. CAL office policy also required that, should complaints arise from any source (judicial, client), they be brought to the attention of the Attorney-in-Charge for review and resolution.

When an appeal was exhausted and no additional relief was sought, the case file was returned to CAL's central file area; after four years, it was archived and moved off-site. Formal case-closing procedures included a file review by the paralegal and periodic audits by a supervising attorney.

(ix) Reporting Obligations

Under its contract with the City, CAL submitted quarterly programmatic and statistical reports and timely met all IDOOC reporting requirements.

ADDENDUM

to the

Report of the Indigent Defense Organization Oversight Committee to the Appellate Division First Department for Fiscal Years 2008-2009

As it has in the past, the Indigent Defense Organization Oversight Committee (the “Committee”) sought a variety of statistical data from the trial offices for FY 08-09 in order to better assess the impact of the workloads carried by those offices. Unfortunately, differing data collection practices among the offices significantly affected the quality and consistency of the data they were able to report to the Committee.

As the 2006 Kaye Commission noted in its findings on the state of indigent defense services in New York, the absence of consistent and accurate statistics “significantly hampers the ability of policy makers and administrators to make informed judgments and plan meaningful improvements in the administration of indigent defense services.”¹ We therefore commend the Office of the New York City Criminal Justice Coordinator for its focus in the current contract process on the importance of maintaining uniform, accurate and complete statistics, and we recommend that consistent data collection and reporting methodologies be a condition of future provider contracts.

In the meantime, for the FY 08-09 period, this addendum reports certain data that the Committee was able to obtain from all or most of the trial offices, and it is our hope that the addendum will provide a helpful quantitative dimension to our evaluation of each office. In providing the addendum, however, we are mindful that no set of statistics ever tells a complete story. Each of the First Department’s trial offices has a different operating model, philosophy and contract with the City. Certain of the offices, for example, are committed to the provision of holistic representation and accordingly offer a substantial array of services that are not reflected in the statistics reported in this addendum. The Legal Aid Society, in turn, engages in a substantial amount of affirmative litigation that benefits all criminal defendants, and that is likewise not directly reflected in the data that follow. Thus, while we believe that this addendum will help to inform the discussion of the state of trial-level indigent defense services in the First Department, it cannot and should not be used as the sole basis for assessing the performance of any of the First Department’s trial offices.

¹ Commission on the Future of Indigent Defense Services, Final Report to the Chief Judge of the State of New York (June 18, 2006), at 25.

The Legal Aid Society - Manhattan and Bronx CDD				
	FY 2008		FY 2009	
Total Staff*	462		442	
Staff Attorneys	276		273	
Supervising Attorneys	33		33	
Investigator/Paralegal/Social Worker	116		99	
Support Staff	37		37	
Full-Time Equivalent Staff*				
Staff Attorneys	227		230	
Supervising Attorneys	25.8		25.8	
Cases Contracted for	**		**	
Cases Assigned	110,506		114,606	
Felony Cases	16,650	15%	15,887	14%
Misdemeanor Cases	82,462	75%	86,855	76%
Violation Cases	9,527	9%	10,087	9%
Other Cases (Including ROWs)	1,867	2%	1,777	2%
Cases Assigned at Arraignment (Including ROWs)	109,816		113,964	
Cases Disposed at Arraignment	57,942	53%	60,773	53%
Cases Disp @ Arrgn. by Plea	44,475	40%	45,198	40%
Percent of Individual Attorneys with Caseloads Above First Department Maximum	70%		66%	
Avg. Misd. Equiv. Cases Assigned per FTE Atty***	592.9		597.8	
Percent Above First Department Standards <i>(400 Misd. Equiv. per FTE Atty)</i>	48%		49%	
Total Cases Disposed	90,420		94,474	
Disposed by Plea	61,594	68%	63,337	67%
Disposed by Trial	237	0.3%	220	0.2%
Disposed by Dismissal / ACD	21,468	24%	22,107	23%
Relieved - Conflict	2,725	3%	2,870	3%
Relieved - Other	4,226	5%	3,695	4%
Other Dispositions	170	0%	2,245	2%

* Staff numbers are stated as of the last day of the fiscal year.

** Under LAS's contract with New York City, LAS was required to accept all non-conflict indigent defense cases in the arraignment shifts to which it was assigned with a financial penalty to be assessed if the percentage of cases assigned fell below 88% of all non-conflict indigent defense cases.

*** The statistics reported in these columns calculate the average caseload of the office as a whole, using the weighting specified by the First Department's standards (i.e., weighting a felony as the equivalent of 2.66 misdemeanors) and factoring in the permissible level of caseloads for supervisors (i.e., a percentage caseload that corresponds to the staff-supervisor ratio). While the First Department standards do not specify the weight to be accorded a violation, the Committee believes that violations should (particularly in light of the potential collateral consequences they carry) be accorded the same weight as misdemeanors, and the statistics reported above reflect that weighting. In addition, while the Committee believes that cases classified as "Other" should not be disregarded in assessing caseload, those cases have not been included in the calculation reported above.

The Bronx Defenders				
	FY 2008		FY 2009	
Total Staff*	58		59	
Staff Attorneys	28		29	
Supervising Attorneys	6		9	
Investigator/Paralegal/Social Worker	14		13	
Support Staff	10		8	
Full-Time Equivalent Staff**				
Staff Attorneys	27		31	
Supervising Attorneys	6		7	
Cases Contracted for	12,500		12,500	
Cases Assigned	12,623		12,570	
Felony Cases	2,570	20%	2,426	19%
Misdemeanor Cases	8,418	67%	8,706	69%
Violation Cases	446	4%	460	4%
Other Cases (Including ROWs)	1,189	9%	978	8%
Cases Assigned at Arraignment (Including ROWs)	10,100		10,602	
Cases Disposed at Arraignment	3,781	37%	4,335	41%
Cases Disp @ Arrgn. by Plea	2,268	22%	2,514	24%
Percent of Individual Attorneys with Caseloads Above First Department Maximum	65%		74%	
Avg. Misd. Equiv. Cases Assigned per FTE Atty***	554.4		476.9	
Percent Above First Department Standards (400 Misd. Equiv. per FTE Atty)	39%		19%	
Cases Disposed	12,183		13,654	
Disposed by Plea	7,312	60%	8,197	60%
Disposed by Trial	33	0.3%	40	0.3%
Disposed by Dismissal / ACD	4,414	36%	4,807	35%
Relieved - Conflict	297	2%	410	3%
Relieved - Other	127	1%	200	1%
Other Dispositions	---	---	---	---

* Staff numbers are stated as of the last day of the fiscal year.

** Although Bronx Defenders had no part-time attorneys during the reporting period, lags between attorney arrivals and departures caused the year-end staff numbers to be an inaccurate reflection of the total number of attorneys working during the year. The full-time equivalent numbers reported above correct that inaccuracy by calculating the total number of months worked by each staff or supervisory attorney and then dividing the totals by 12.

*** The statistics reported in these columns calculate the average caseload of the office as a whole, using the weighting specified by the First Department's standards (i.e., weighting a felony as the equivalent of 2.66 misdemeanors) and factoring in the permissible level of caseloads for supervisors (i.e., a percentage caseload that corresponds to the staff-supervisor ratio). While the First Department standards do not specify the weight to be accorded a violation, the Committee believes that violations should (particularly in light of the potential collateral consequences they carry) be accorded the same weight as misdemeanors, and the statistics reported above reflect that weighting. In addition, while the Committee believes that cases classified as "Other" should not be disregarded in assessing caseload, those cases have not been included in the calculation reported above.

New York County Defender Services				
	FY 2008		FY 2009	
Total Staff*	50		50	
Staff Attorneys	33		33	
Supervising Attorneys	5		5	
Investigator/Paralegal/Social Worker	5		5	
Support Staff	7		7	
Full-Time Equivalent Staff*				
Staff Attorneys	33		33	
Supervising Attorneys	4		4	
Cases Contracted for	16,000		16,000	
Cases Assigned	19,010		17,736	
Felony Cases	2,516	13%	2,394	13%
Misdemeanor Cases	9,296	49%	8,620	49%
Violation Cases	749	4%	751	4%
Other Cases (Including ROWs)	6,449	34%	5,971	34%
Cases Assigned at Arraignment (Including ROWs)	18,984		17,301	
Cases Disposed at Arraignment	7,269	38%	6,683	39%
Cases Disp @ Arrgn. by Plea	7,235	38%	6,666	39%
Percent of Individual Attorneys with Caseloads Above First Department Maximum	100%		100%	
Avg. Misd. Equiv. Cases Assigned per FTE Atty**	499.6		469.8	
Percent Above First Department Standards (400 Misd. Equiv. per FTE Atty)	25%		17%	
Cases Disposed	18,779		17,722	
Disposed by Plea	9,155	49%	8,765	49%
Disposed by Trial	38	0.2%	35	0.2%
Disposed by Dismissal / ACD	7,552	40%	6,868	39%
Relieved***	1,507	8.0%	1,478	8.3%
Other Dispositions	527	3%	576	3%

* Staff numbers are stated as of the last day of the fiscal year.

** The statistics reported in these columns calculate the average caseload of the office as a whole, using the weighting specified by the First Department's standards (i.e., weighting a felony as the equivalent of 2.66 misdemeanors) and factoring in the permissible level of caseloads for supervisors (i.e., a percentage caseload that corresponds to the staff-supervisor ratio). While the First Department standards do not specify the weight to be accorded a violation, the Committee believes that violations should (particularly in light of the potential collateral consequences they carry) be accorded the same weight as misdemeanors, and the statistics reported above reflect that weighting. In addition, while the Committee believes that cases classified as "Other" should not be disregarded in assessing caseload, those cases have not been included in the calculation reported above.

*** NYCDS was not able to provide the Committee with the number of cases in which NYCDS was relieved due to a conflict of interest and instead could only report the total number of cases in which NYCDS was relieved for any reason.

Neighborhood Defender Service of Harlem				
	FY 2008		FY 2009	
Total Staff*	35		31	
Staff Attorneys	14		12	
Supervising Attorneys	2		2	
Investigator/Paralegal/Social Worker	10		8	
Support Staff	9		9	
Full-Time Equivalent Staff*				
Staff Attorneys	11		11	
Supervising Attorneys	2		2	
Cases Contracted for	3,630		3,630	
Cases Assigned	4,011		3,870	
Felony Cases	717	18%	653	17%
Misdemeanor Cases	2,844	71%	2,810	73%
Violation Cases	450	11%	407	11%
Other Cases (Including ROWs)	---	---	---	---
Cases Assigned at Arraignment (Including ROWs)	4,011		3,870	
Cases Disposed at Arraignment	1,510	38%	1,464	38%
Cases Disp @ Arrgn. by Plea	978	24%	972	25%
Percent of Individual Attorneys with Caseloads Above First Department Maximum	Not Provided		Not Provided	
Avg. Misd. Equiv. Cases Assigned per FTE Atty**	457.9		436.1	
Percent Above First Department Standards (400 Misd. Equiv. per FTE Atty)	14%		9%	
Cases Disposed	3,419		3,724	
Disposed by Plea	1,732	51%	1,668	45%
Disposed by Trial	27	0.8%	38	1%
Disposed by Dismissal / ACD	1,421	42%	1,734	47%
Relieved - Conflict	101	3%	127	3%
Relieved - Other	138	4%	157	4%
Other Dispositions	---	---	---	---

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