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3 THE NEW YORK STATE COMMISSION ON THE FUTURE OF
4 INDIGENT LEGAL SERVICES

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5 PUBLIC HEARING

6 42 West 44th Street
7 New York, New York
8 February 11, 2005

9 Before:

10 PROFESSOR WILLIAM E. HELLERSTEIN,
11 Co-Chairman

12 and the following commissioners:

- 13 Honorable Burton B. Roberts
- 14 Barry Kamins, Esq.
- 15 Honorable Elaine Jackson-Stack
- 16 Honorable Janet DiFiore
- 17 Klaus Eppler, Esq.
- 18 Professor Steven Zeidman
- 19 Casey Dunne, Esq.
- 20 Honorable Patricia Marks
- 21 Honorable Martin Smith
- 22 Honorable Joseph Fahey
- Michelle Zuflacht, Esq.
- Professor Laurie Shanks
- Christopher Chan, Esq.
- Honorable Joseph Zayas
- John Elmore, Esq.
- Honorable Penelope Clute
- Honorable Charles Tejada
- Honorable Martin Murphy
- Honorable Sallye Manazanet
- Paul Crotty, Esq.
- Anita Khashu, Esq.
- Honorable Robert Russell, Jr.
- Fern Schair, Esq.
- Lawrence Goldman, Esq.

23 Michael Barfield
 24 Sara Stanley
 25 Lester Isaacs
 26 Official Court Reporters

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2 CHAIRMAN HELLERSTEIN: I think we are ready to
3 begin.

4 MR. GRADESS: Good morning.

5 CHAIRMAN HELLERSTEIN: Let me just state I am
6 Professor William Hellerstein, co-chair of the Commission
7 on the Future of Indigent Defense Services. This is the
8 beginning of our New York City hearing.

9 Our first witness, Mr. Jonathan Gradess, is of
10 the New York State Defenders Association.

11 We welcome you, Mr. Gradess.

12 MR. GRADESS: Thank you very much.

13 It is really terrific to look at you,
14 particularly because I understand from at least one
15 conversation that you have been asked to dream big. That
16 pleases me. So in that regard, I want to share with you,
17 at least at the outset, a frame work for thinking about
18 the things I follow with.

19 When we think about being criminal defense
20 lawyers, the commodity we think about that is most
21 important is time; time to interview a client, to listen,
22 to build rapport, to investigate both the facts and the
23 law, to look at alternative dispositions, to review
24 documents and evidence, to file motions for discovery and
25 for pretrial relief, to find witnesses, to negotiate, to
26 counsel, to decide on a course of action in conjunction

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2 with the client and to build a theory of defense over
3 time, to make a decision on whether or not to go to trial
4 or to seek an appropriate alternative disposition.

5 I share that with you as the image that I hope
6 you will follow, because in no place in this state, from
7 Montauk to Chautauqua, from Erie County to the Capital
8 District, across the southern tier from Chumonk to
9 Franklin, wherever you look lawyers do not have the time
10 to do what is the model of our expectations. And if you
11 are to dream big, you need to give them that time. I want
12 to share with you my experience of 24 years at the Public
13 Defense Back-up Center and 36 years in the criminal
14 justice system to tell you what I see is going on.

15 In 1981 the state legislature made a decision
16 that the public defense system of this state was
17 defective. And our corporation, which had been started in
18 1967 as a not for profit association of criminal defense
19 lawyers, had a contract with the state to do a number of
20 things. To provide service, and we have probably done a
21 little bit more than 30,000 cases since then, to provide
22 training, to do publications and to create training
23 manuals, to review, assess and analyze the public defense
24 system, to make recommendations to the governor, the
25 legislature, the judiciary and other instrumentalities.

26 During this period of time we have done an awful

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2 lot of things. I have detailed it in the brief written
3 testimony that I have given to you. I won't say that they
4 were all a failure. I think many have had a salutary
5 effect. But things in some respects are substantially
6 worse now than A, when I began in this business, and B,
7 when the Back-up Center opened its doors. And it is the
8 structure of this system that has thrust us to this place.

9 At the outset let me say that for about three
10 centuries New York led the nation in having a commitment
11 to public defense services and the appointment of counsel.
12 Unfortunately, for the 40 years that count since Gideon we
13 have been in decline. What you will read in our Court of
14 Appeals decisions and elsewhere of the rule of law and the
15 right to counsel that goes back to when we were a British
16 colony and those hay-days of the 60s when at least three
17 attorneys general that one can note, Attorney General
18 Mondale of Minnesota, who was the lead author in Gideon,
19 the two other attorneys general saying that Gideon was
20 right. Clarence Earl Gideon was right. Bobby Kennedy the
21 next year creating the Criminal Justice Act. Louie
22 Lefkowitz in our own state creating 18-B as a study bill
23 which was passed in 1965.

24 But then we made a deadly mistake. And we are
25 still paying for it 40 years later. That mistake was to
26 allow the delegation of responsibility for public defense

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2 services to counties. When that happened we left the
3 State with nobody minding the store and we left the Sixth
4 Amendment with nobody minding the store. And we have been
5 in decline ever since without much oversight, without
6 knowing, silently, like kind of a deadly thing, it has
7 crept up on us and now is biting us.

8 There are today 104 different plans, at least at
9 last count. There are so many switches, which I will
10 detail later, that that number might have gone up in the
11 time that it took me to get to New York. 104 plans in 62
12 counties, and hardly any two of them are alike, except by
13 accident.

14 Throughout those plans the use of experts and
15 investigators is rare. The problem of eligibility,
16 although there are investigators -- and you will find if
17 you look -- I should at the outset state I believe today
18 is the release date for a report called Gideon's Broken
19 Promise. I read it on my way down here last night and
20 thought, "Why am I going to testify? I should just hand
21 it to them and read it." Because what you will read in
22 there about the nation, the hearings that were held by the
23 standing committee on legal aid and indigence really does
24 apply to our state in many respects. And one of the
25 things I read there, which I share with you, is that while
26 many offices have investigators, they frequently are being

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2 deployed not to investigate cases but to determine
3 eligibility. For the eligibility determination in this
4 state has become a governor on the delivery of services.
5 It is used in many places to restrict access to counsel
6 for the poor.

7 There is also a process which has grown up
8 silently of mining clients for money. Abuses of 722(d) of
9 the county law, of the sua generis creation by members of
10 the judiciary who have come to view themselves as gate
11 keepers for the county treasury. Sliding fee scales, for
12 example. Recently there have been recommendations and
13 implementation of co-pays.

14 Throughout the state there is late entry of
15 counsel into cases. I know that for those of you from New
16 York City this may come as an amazing shock, and I have
17 had this occasion with a couple of members on the panel
18 who are amazed at it, but there are places in the state
19 where it may takes weeks and sometimes months to get a
20 lawyer into the case. There are jurisdictions that have
21 to go not only throughout their county, but two or three
22 counties to the west or east to get a lawyer to represent
23 clients.

24 The delay is also a function of structure.
25 Throughout the state we have justice courts. I think
26 something like 2,300 of them. A goodly number of them

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2 with non-lawyer judges. A significant thing because they
3 are also courts without stenographers. And so much that
4 is done there, sometimes in the middle of the night after
5 an ex parte conversation by an arresting officer who,
6 unfortunately, has the choice of judge in many cases, may
7 have had an ex parte conversation, may he have disposed of
8 a case, may have sent someone to jail. You take a look at
9 some of the cases of the State Commission on Judicial
10 Conduct and you will see cases where a judge missed 79
11 times appointing counsel. That's an old case. It is
12 about 20 years old. You can still find it, as I will
13 detail in a moment.

14 Counsel miss appointments in upstate New York as
15 a rule. It is not just upstate New York. In the eastern
16 end of Suffolk County, yesterday I received a fax from the
17 Suffolk County Bar Association reflecting upon the fact
18 that a problem that had been testified to at a hearing
19 that we held in this building about five years ago was
20 still going on. Counsel missed arraignments and people
21 have found themselves indicted without ever having seen a
22 lawyer. Those with meritorious defenses, those who don't
23 speak English, those have who have mental disabilities.
24 These counsellless arraignments that occur in the east end
25 of Suffolk occur all over the State of New York.

26 I think it is worthy of note that the Office of

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2 Court Administration and the judiciary and John Amodio and
3 others have been working on a rule that I think was
4 inspired at the defense summit. I hope that that rule
5 will help, but we have a crisis in terms of appointments.
6 So those of you who have experienced New York City
7 arraignments, however deadly you may think those, in some
8 respects have the expectation that a client will come at
9 arraignment in upstate New York and have counsel. That
10 simply isn't the case.

11 The service in large portions of the state is
12 part time and thus it is riddled with conflicts of
13 interest for the lawyers performing it. The part-time
14 service is a function of the nature of the funding. The
15 funding at the county level is based on property taxes.
16 Indigent defense services, defense services, or those
17 unable to forward counsel, I should more correctly say.
18 In some cases it isn't a matter of their being unpopular.
19 It is a matter of them being last on the list. And in
20 many places they are unpopular. I have heard county
21 officials say to me, "Why are we paying for both the
22 prosecution and the defense?"

23 There is large scale disparity between
24 prosecution and defense funding. That has been the case
25 for as long as I have had this job. In the 80s that
26 disparity ran in some places from 8 to 1 to 10 to 1,

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2 prosecution to defense. The last capital -- I testified
3 last week before the death penalty hearings. The last
4 capital murder case we had in the past era, the Smith
5 case, the funding in that case was 10 to 1 prosecution to
6 defense. Much that wasn't done in that case was not done
7 because of financial disparity. That financial disparity
8 at the local level runs in some cases 2 to 1, 3 to 1. But
9 it is hidden in a strange way, because at the state level
10 substantial grants fund prosecutors and don't fund the
11 defense. The State has created a series of incentives,
12 beginning in 1969, to have full-time prosecutors but no
13 similar incentive system for defenders.

14 We have linked prosecutor's values to the values
15 of judges. Each time the judiciary and the legislature
16 get together to raise values up go the values of
17 prosecutors silently while some of our defenders make
18 \$28,000 a year.

19 So much of them are part-time. And the reason
20 is kind of -- there is a synergy between the lack of
21 funding and the interest of some of these lawyers and the
22 interest of counties. That synergy says, well, you know,
23 keep your private practice and you can continue to, you
24 know, work at this part-time job. And the disincentive
25 then for being a vigorous defender is, I think, apparent.

26 There is tremendous political interference in

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2 the delivery of defense services throughout the state.

3 Political interference in some places is insidious and in

4 other cases is sort of done routinely, kind of in the

5 budgeting process. But that interference is in many

6 respects an intimidating factor which makes lawyers less

7 aggressive. Even good lawyers who make political choices

8 about how to survive, recognizing that while they could be

9 a vigorous advocate they might be out of a job and the

10 person replacing them would be less able, that's a real

11 and continuing phenomenon.

12 The more gross and egregious kind of

13 interference is when a county will simply say to the

14 defender, look, if you can't tow the line in that area or

15 that respect, you are a public defender, we are going to

16 replace you with an assigned counsel panel. Or if they

17 are an assigned counsel panel, the threat is we are going

18 to bring in a public defender. And the mythology of cost

19 per case analysis and that stuff sort of wraps itself

20 around that. But the threats are to tow the line.

21 As you look across the state, and I hope your

22 report from Bob Spangenberg and your own inquiry will show

23 this, you will see in lots of places prosecutors and

24 defense lawyers play musical chairs. The D.A. may leave a

25 job and become public defender. The public defender may

26 leave the job and become a district attorney. That kind

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2 of switching takes place in many places. In some of your
3 experience that's kind of an odd thing. We sort of think
4 of ourselves as one or the other after a point in time.
5 In upstate New York that simply isn't so.

6 This report talks a lot about training. I am
7 not going to dwell on it, although I could, because we
8 have done a great deal of it. I think to a certain extent
9 if there is one salutary thing we have been able to
10 accomplish it is in having routine training for defenders.
11 But it is not routine enough. There are 5,000 or so
12 people nominally giving public defense services in this
13 state. We don't reach them all. We run the only entry
14 level basic trial scales program in the state, when we
15 can, but lots of lawyers can't even afford to leave their
16 docket to come to it. When we have regular training
17 programs there are lots of lawyers who can't travel.
18 There are many defender offices with no training budget
19 whatsoever.

20 This parallels another phenomenon that may amaze
21 you. Many of them have no fax. There are still some
22 without fax machines. There are a goodly number without
23 internet access. There are a fair number that have,
24 unfortunately, their case management access through their
25 county system, making the data somewhat at risk for the
26 issue of confidentiality.

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2 That data that you would expect from a public
3 defense case management system really is not forthcoming
4 because there is nobody to collect it. The single stream
5 of information up until 2003 in this state was under
6 722(f) of the county law which required public defenders,
7 assigned counsel administrators and legal aid attorneys to
8 file an annual report with the Office of Court
9 Administration. Somewhere around 1988 I talked to the
10 person who collected those forms who was spending less
11 than 1% of her time collecting them. And I asked, you
12 know, what do you do with them. The answer was when I get
13 them I put them in a drawer. At the time 50% of them were
14 not even being collected.

15 To our great credit the comptroller has made as
16 a requirement of now reporting that nobody get money under
17 the Indigent Legal Services Fund if their annual reports
18 are not filed. So the statute passed in 1965 expecting an
19 annual report? It has actually now been implemented.

20 As a microcosm as what I hope you will think
21 about, that sort of carrot and stick attached to money
22 worked for reporting, and it can work for other things if
23 you create the structure that allows that.

24 We have lots of -- and on data I should simply
25 say that many of you know that in New York people can
26 easily see rap sheets at arraignment. In upstate New York

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2 you can't even get the rap sheet of your client,

3 frequently, in some courts.

4 To the extent that you could have access to

5 witness's rap sheets, we are not -- defenders are not

6 deemed a qualified agency so they can't access criminal

7 history. And most defenders, to my knowledge, outside of

8 the City of New York don't seem to have criminal history

9 information from OCA. Some of those things will be simple

10 to solve as you go along.

11 Multi-jurisdictional cases which are easier to

12 solve in New York City are a nightmare in a upstate New

13 York. If you have aggravated unlicensed operator case in

14 Oswego, Monroe County and Warren County, you have a

15 problem in putting that together. Or dealing with a

16 warrant. Or dealing even with just simply getting the

17 defender across the river from Albany in Rensselaer to pick

18 up a case of your client because you know he has been

19 arraigned on a warrant is sometimes difficult. Some

20 defenders in the interest of saving money will, when

21 triaging a case, will say, "Until I am assigned I can't do

22 that."

23 There is an endemic problem of defenders being

24 thought of as second class citizens. They don't get a

25 seat at the table in those places. What I mean by that is

26 when decisions are made about reforms of the system we are

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2 frequently ignored. That has had its probably most
3 serious impact in the development of specialty courts,
4 which in some jurisdictions in this state there are
5 administrative judges, and there may be one or more in the
6 room, but I will share with you truthfully, that they have
7 never seen a court they didn't like. But what happens is
8 there is no increase in case loads for the defenders. So
9 in some places they are going to, and I think Rochester
10 being one of them, I think Family Court is something like
11 17 parts, if I am not mistaken. They are running in many,
12 many places. They simply cannot cover those.

13 In a minute I will share with you some notes
14 from a meeting last week that I think will amplify that.

15 There is a lack of confidentiality in many
16 places in terms of the interviewing process. It can take
17 place in the back of a Justice Court. And I should share
18 with you for those of you who don't know, Justice Court
19 arraignments can take place in the kitchen of a Justice
20 Court judge. They are not some majestic palace. They can
21 take place in a barn. As a matter of fact, they can take
22 place -- you go up the thruway. Some of you may ski. You
23 see those large sort of triangular structures that hold
24 the sand for the roads? We had one Justice Court not so
25 long ago that met in that and handled arraignments there
26 because he was with the highway department.

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2 The lack of confidentiality, however, I have
3 just been happy to acquire, or unhappy as the case may be,
4 in which we are providing back-up services, I have a
5 client at Rikers Island. I haven't been there in many
6 many years. I was surprised to find, as I don't recall it
7 being this way, that the way you implement confidentiality
8 in this city of Rikers when you now see your client is you
9 go into the visiting room, at least in the place I was in,
10 and you turn on the fan, and the fan is to cover up the
11 conversation because the guard is present. It was
12 disgraceful. But then I found out that if we made a stink
13 the current law is that we might not have contact visits.
14 So things are bad. And those things in upstate New York
15 are exacerbated in many ways because the resources that
16 are in downstate aren't in upstate.

17 Now, I say all this to give you the picture of
18 -- and I might add one thing to the question of political
19 interference. Because for the last decade most of you
20 know that one of the best things that has happened to this
21 state is the creation of the Capital Defender Office. In
22 this year's budget the governor has proposed the
23 disestablishment of that office. And I think the governor
24 is playing the kind of hardball political interference
25 that I am describing to you that has occurred in
26 localities. One of the things that I have been sharing

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2 with the state legislature, with the fiscal committees and
3 the assembly death penalty hearings, and I would be remiss
4 to not share it here, is the idea that, first of all,
5 with, I think, two cases still in the Court of Appeals,
6 some 18 cases that are under investigation for death, some
7 7 cases that have already been death noticed, that
8 interference is a disgrace. More importantly -- and I
9 also think we may abolish the death penalty in this state.
10 And at a certain point in time it is my hope that we will
11 face the question in the absence of a death penalty, what
12 should be done with this office that has been so
13 spectacular.

14 And I want to urge you in whatever capacities
15 you have, either on this commission or out, to be in the
16 position to suggest that this office be converted into and
17 put at the disposal of counties to begin to solve some of
18 the problems of our public defense system. The counties
19 are starved for resources and for skilled lawyers. There
20 are skilled lawyers at the CDo. There is a backlog in the
21 Fourth Department, if I am not mistaken, of about two
22 years on appeals. There are SORA hearings, sex offender
23 rehearings, which are going counselless in some places
24 because of the understaffing. They are putting 60 cases
25 on a calendar in the day. Advocates should be saying that
26 isn't acceptable. But that isn't this hearing.

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2 Rockefeller rehearings, we have a meeting in New York City
3 to generate pro bono resources next week because there are
4 problems in implementing that. And in some of the
5 decertified capital cases in the north, even republican
6 legislators have called for the Capital Defender Office to
7 handle those cases. So it is not a bad idea.

8 As I look at this array of in influential
9 people, I share it with you because anything which you can
10 do to accomplish that would be helpful in two respects.
11 The first being that should there ever be a death
12 penalty's return, we probably can't re-establish that
13 office in the same way. And I probably sense the Governor
14 knows that. And secondly, to have that office available
15 to localities would be the beginning, would be the
16 beginning to jump start a system of counsel for poor
17 people in localities, which would be a tremendous thing to
18 do. So I urge you to look at that.

19 Away from commercial and back to this.

20 So where does this lead us?

21 I want to talk really about two simple things.
22 Although at the rate I am going it is taking longer than I
23 thought.

24 The first is that at the time when we -- you
25 will recall that between 1999 and 2003, on the heels of
26 all that I have described to you, that portion of the

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2 public defense crisis that we would subset call the
3 Assigned Counsel Fee Crisis, took front and center.
4 Between 1999 and 2003, through the good graces of OCA and
5 the work of bar associations and litigation, the Nicholson
6 lawsuit, the litigation that went on in many
7 jurisdictions, or the courage of judges in many
8 jurisdictions to set extraordinary fees or excess fees,
9 fees in excess of the rates, led us not without a great
10 deal of delay and pain, but led us in four years to raise
11 assigned counsel fees. And the contribution of the state
12 to that was to be \$40 million a year to localities. I
13 will go into detail on that in a minute.

14 But we said, "Before you do that, please do not
15 do that without creating an independent public defense
16 commission to be the conduit for that finance. Don't
17 throw all that money at localities that, frankly, don't
18 know what to do with it. Don't repeat what you did.
19 Don't repeat what you did in 1965 which, frankly, was to
20 throw money at localities." The way that the delegation
21 took place in 1965 was Governor Rockefeller took advantage
22 of the first distribution of state revenue sharing. The
23 same year that 18-B passed. And so in that year for one
24 brief period of time localities got more to establish
25 defense services than ever since. That money dried up a
26 long time ago.

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2 Counties in this round, we thought, well, what
3 are they going to do with that? What if they, you know,
4 waste it? What if they squander it? How are you going to
5 know? You should give them standards. And it is time
6 that if you are going to give 20% of the state's budget,
7 you should create a commission which is independent of the
8 judiciary, independent of the executive. It is a stand
9 alone public benefit corporation that will be made up of
10 people who care about defense services, much as the folks
11 on this commission, who will come in and create standards
12 that can be enforced against which that funding should
13 take place. And you don't have to do it -- you don't have
14 to do it just with a club. You can have a carrot and
15 stick. Take the time to let them build up their system.
16 But have a change process that is not chaotic.

17 That was our message. It was ignored. We now
18 have, as I will detail in a minute, a change process that
19 is chaotic. But we said let's have an independent public
20 defense commission, let's look at the issue of
21 accountability, uniformity, standards, oversight and
22 increased state funding --

23 CHAIRMAN HELLERSTEIN: Mr. Gradess, in light of
24 our schedule, and since the commissioners may want to ask
25 questions, if you could move quickly.

26 MR. GRADESS: I will.

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2 I am going to move really quickly. I hope we
3 have another hearing sometime.

4 I actually thought before you cancelled Albany I
5 could do eight hours there by myself.

6 The 2003 change essentially has put our counties
7 into free fall. There is more than 50% of them that are
8 looking at scratching our systems, some of them with very
9 egregious details which I will detail in a memorandum to
10 you. Suffice it to say some of them are illegal. Most if
11 not all of them are in the interest of cost containment.
12 We have created more and more counties, more and more
13 systems.

14 Cattaraugus, Essex, Skyler, Steuben and Warren
15 County all created new public defender offices. Looking
16 at that you might say, "well, that's pretty good. Since
17 they did it in Cattaraugus ...". Cattaraugus has lost
18 itself and is underfunded. The Essex County defender quit
19 his job because he couldn't get the resources. The Skyler
20 County full-time public defender who was put into that job
21 because a poultry farmer on their Board of Supervisors
22 really stood for full-time defense services, that person
23 is the assigned counsel administrator, handles all the
24 felonies, handles all the Family Court work, and because
25 they didn't give enough of a stipend to the office has to
26 do wills and estates on the side. The Warren County

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2 public defender, who was the D.A., has since quit his job.

3 So this change process that could have been positive has

4 not been.

5 My last point and then I will be quiet.

6 During the period of that change process I had a

7 very exciting thing that happened. I want to share it

8 with you.

9 We had a community organizer working throughout

10 the state and an investigator court watching. I am

11 hopeful, if we live long enough, our reports will be

12 written and I will share them with you. But we had a

13 hearing at the Fortune Society with clients. We did

14 videotaping with clients on the streets of Brooklyn. We

15 were up with the Akwesasne people at the St. Regis

16 reservation. We did court watching all over the state.

17 We had a focus group with the deaf and hard of hearing.

18 We had speak outs. And Albany is a segregated town. In

19 fact, even its segregation is segregated. We had to have

20 one in the south end of Albany and we had to have one in

21 Arbor Hill. We had a public in hearing in Schenectady and

22 one in Stolaro. Some of you may have seen our preliminary

23 work with farm workers.

24 No providers testified. These were clients. We

25 invited clients to tell us what they would like to say.

26 At the same time, our client advisory board created a set

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2 of standards. I shared them with a group at the defense
3 summit and folks thought they might be aspirational. I
4 asked my staff to analyze those standards against national
5 professional standards. Our client advisory board didn't
6 look at national standards. They built those standards
7 from the ground up and submitted them to folks all across
8 the board; the focus groups, lawyers. All of them are
9 reflections of national standards that already exist. So
10 clients and bar associations, they all want the same
11 thing. The question is can we accomplish it. I am
12 hopeful that your commission will do that.

13 I have much more to say, but I would like to
14 yield to the questions. I will share with you information
15 as time goes on, as we put it together, and be very happy
16 to answer questions and come back or do whatever you would
17 like.

18 CHAIRMAN HELLERSTEIN: Thank you, Mr. Gradess.
19 Judge Roberts?

20 COMMISSIONER ROBERTS: Burton Roberts.

21 Mr. Gradess, I listened to your speech. And I
22 want to know -- as I listened to it I get the impression
23 there is a difference between the problems that exist in
24 the City of New York and the enormous problems that exist
25 upstate New York, and particularly in rural counties. Am
26 I correct?

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2 MR. GRADESS: There is a difference in degree,
3 not in kind.

4 HON. BURTON ROBERTS: I don't think we have many
5 cases in New York City where the arraignment takes more
6 than 24 hours and attorneys are not attained within those
7 24 hours.

8 MR. GRADESS: That's one of the differences that
9 you have, that's correct. Although I do believe you still
10 have a summons part in New York City, at least the last
11 time I looked, that violates *Ardress Singer versus Hamlin*.
12 I am not sure that isn't the case.

13 But that isn't precisely what I meant. I meant
14 in terms of the kinds of pressures that exist in upstate
15 New York from case loads and from a lack of resources or
16 from a specialty courts or the issue of confidentiality,
17 those things exist in New York and they are a problem. At
18 one level please let me state that if you compare the
19 planet of New York City to the planets and the
20 constellation of upstate New York there is a substantial
21 difference. But it is not one that I would allow your
22 commission, if I were you, I would not overlook New York
23 City in the process of examining these issues.

24 HON. BURTON ROBERTS: Certainly I think most of
25 the people will look at the problem and ascertain if it is
26 broken that we will fix it. If it is not broken we will

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2 leave it as it is. That's my own feeling.

3 But what about joining various rural counties

4 and having public defenders for three or four rural

5 counties? Do you think that can be done?

6 MR. GRADESS: That's the second time during this

7 inquiry I have heard that question. I know in the 1980s

8 we looked at the issues of creating regional defenders

9 under a then existing grant from the National Legal

10 Defender Association. It got mixed reviews, both in our

11 office and outside. Unfortunately, we didn't get the

12 grant so the experiment didn't take place.

13 Right now Essex is a good example. Essex was an

14 assigned counsel panel that switched to a public defender.

15 But it did so at about the same time that the State

16 Commission of Correction condemned its jail. So it had an

17 underfunded public defender and its clients were dispersed

18 all over the state and it couldn't see them.

19 In some cases -- and I would say if you

20 regionalize Suffolk and Nassau, if you were traveling from

21 Mineola to Riverhead or Mineola to Montauk you would have

22 a regional problem. If defendants are held -- I think

23 there is a distance question and time question that

24 already exists in this system that might be exacerbated

25 that way. I certainly think it is in my own view, and I

26 have said this in public and we have said at the county

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2 delegations, if there came a time when we had an
3 independent public defense commission examining that kind
4 of structure in appropriate places, such as the north
5 country, or other unique jurisdictions, that might be an
6 idea. So I don't rule it out. I worry about it a little
7 bit as the first line of defense.

8 COMMISSIONER KAMINS: Good morning.

9 Barry Kamins.

10 Just to sum up on Judge Roberts' question. You
11 said that the problems do exist in New York City, although
12 not to the extent they do upstate. But is it your
13 position that this statewide -- that this commission
14 should exist statewide and have authority over New York
15 City as well?

16 MR. GRADESS: Yes, it is.

17 COMMISSIONER KAMINS: You think problems exist
18 sufficiently in New York to warrant that?

19 MR. GRADESS: I do. But more importantly, I
20 think the reason why our position is that it ought to be
21 statewide -- and we have conversed with others. There are
22 many defenders in New York. Some support the idea, some
23 do not. In fact, there was an Appellate Division report
24 that said there ought to be oversight in New York City.
25 Our concern is that New York has a immense presence in the
26 rest of the state, number 1. Number 2, the standards that

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2 should apply to defense lawyering anywhere should apply
3 everywhere. And the suggestion that we distinguish other
4 than for turfism makes absolutely no sense to us.

5 COMMISSIONER KAMINS: Thank you.

6 CHAIRMAN HELLERSTEIN: Any other members of the
7 commission have a question. Miss Schair?

8 COMMISSIONER SCHAIR: Just a quick one. Your
9 study of services all over the state, and the census
10 showing the growth in immigrant population in New York
11 City as well as outside, are you seeing or can you tell us
12 about growth or sufficiency of translator services, of
13 language issues that exist around the state for those both
14 trying to help defendants and others within that system?

15 MR. GRADESS: Yeah. I think it is a growing
16 increasing problem and it is a problem that existed
17 before.

18 I will share with you some concrete examples
19 from western New York, from our inquiry with farm workers.

20 We went to look at western New York,
21 particularly Genesee, Monroe and Orleans County, in the
22 expectation as a result of the cases in our Back-up Center
23 over the years in the mid Hudson area down to the Putnam
24 area and out west, that we would find bad representation
25 taking place in some places of farm workers. Truth is, we
26 found very little representation taking place at all

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2 because of the process of local law enforcement
3 cooperating with what was then INS, which is now DHS, and
4 diverting cases immediately to immigration proceedings.

5 There is a tragic circumstance going on in this
6 state of the interface between illegal conduct by law
7 enforcement agencies that become sanitized by the
8 diversion to the Department of Homeland Security. That is
9 happening in hundreds of cases.

10 The border patrol -- Essex County. I am not
11 here as a commercial for Essex. But as an example, the
12 border patrol, that now can come within 90 miles from the
13 Canadian border, had a roadblock on the roadway that has
14 sent more cases to the Essex County Defender Office of
15 Strangers than you want to count.

16 The DHS that is now at prisons is meeting
17 families on prison buses.

18 The example that is relevant to your question as
19 to translators, now beyond witnesses testifying, when
20 people would be picked up in Albion, farm workers in the
21 middle of the picking season, the police would approach
22 then and instead of asking for their license would say, do
23 you have a green card. If they couldn't speak Spanish,
24 far from calling the public defenders office, you know, we
25 have a guy down at INS who speaks Spanish, let me get him
26 down there, we have had examples of people being

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2 apprehended on highways. The routine is when you get into
3 the courtroom, and recently the Commission on Judicial
4 Conduct actually just acted on one of our cases and our
5 investigation, we found a judge who found a farm worker
6 was trespassing, I think picking an apple on a farm, was
7 arrested, was taken into a local Justice Court. There was
8 no public defender there. The judge did not speak
9 Spanish. The client did not speak English. The judge
10 held him on \$1,500 bail. All he heard was \$1,500. He
11 thought he had a fine of \$1,500. Remanded him to jail.
12 The next day INS came, told the judge "we need him", the
13 judge signed a document that said, yeah, well, he pled
14 guilty to trespass, and they picked him up. The only way
15 we found out about that case is somebody happened to be in
16 the jail when he was being picked up. That judge was
17 merely censured. I don't want to -- that kind of conduct
18 I think is more routine than we know. Part of the problem
19 is that there will be adjournment after adjournment in
20 certain cases that's what our history shows of not getting
21 translators down.

22 The other issue with immigration is that the
23 collateral consequences now in these criminal cases are
24 now very, very, very, very, very substantial. You may
25 know that we have created the Immigrant Defense Project in
26 New York City to address this. Marion Yang is the

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2 director and Manny Vargas works there. We are trying to
3 train point people in each county of the state, also
4 trying to do so in New Jersey, so that defense lawyers can
5 have an understanding of the consequences of what they are
6 doing. But the process of translators comes up quite a
7 bit in that, the issue of people, both in court and out,
8 not having access in a defender's office to people who
9 speak the language and then not having access in court.

10 I would also just underscore here, and we did
11 have a problem develop, I am sorry I can't remember his
12 name, but the person who is in charge of translators in
13 both language and hearing impaired in Rochester came to
14 our focus group on the death and hearing impaired. And I
15 do think that there is a struggle going on in this. But
16 there is also a lot of confusion. There is a sense in
17 some town judges that "we will have to pay for this",
18 whatever you want to call it.

19 There is a permitted use of people who speak the
20 language. But in some cases they are people who would
21 otherwise have conflicts. It is pretty -- and I don't
22 claim -- this is something we have begun to look at most
23 recently. There is a lot that I am learning about it, to
24 tell you the truth. I think I took it for granted. You
25 walk into court and you ask for a translator. Because
26 most of my practice was in seven counties in downstate New

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York. But it isn't so in upstate New York.

COMMISSIONER SCHAIR: I appreciate we don't have the time to go into it. I just urge you to send, I think the commission, I hope the Chair agrees, information as you have it about these issues.

MR. GRADESS: I would be happy to do that.

CHAIRMAN HELLERSTEIN: Thank you, Mr. Gradess. I second Commissioner Schair's request. Any information, since we will be having a hearing in Albany at a future date, we would ask you to come back and supplement, if you would be willing.

MR. GRADESS: Terrific. It will also make my managing attorney very happy.

CHAIRMAN HELLERSTEIN: Thank you so much.

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3 PROF. HALLERSTEIN: Judge Miller.

4 JUDGE MILLER: Professor Hallerstein, good

5 morning.

6 PROF. HALLERSTEIN: Good morning, Judge

7 Miller. Thank you for coming.

8 JUDGE MILLER: Chairman Roberts -- I feel like

9 I'm before a Congressional committee.

10 PROF. HALLERSTEIN: We look forward to hearing

11 what you have to say.

12 JUDGE MILLER: Do you want me to make a

13 statement?

14 When I called, they said I would be asked a

15 series of questions.

16 PROF. HALLERSTEIN: Well, if you have

17 particular views on the subjective current status of

18 indigent defense, or what it should be, which I would

19 love to hear them.

20 JUDGE MILLER: Since I have views on most

21 everything, I guess I have views on this.

22 I'm the Supervising Judge of the Brooklyn and

23 Staten Island Criminal judges.

24 I've been a supervising judge for actually

25 quite a long time now.

26 When I started out, I was the Chief Assistant

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2 District Attorney at Brooklyn, which I was for ten
3 years.

4 I was Chairman of the Oversight Committee for
5 the 1-8-B attorneys, Brooklyn, Queens and Staten Island
6 for the Second Department where we formulated rules and
7 procedures for the attorneys who practiced in those
8 courts, the panel attorneys who represented indigent
9 defendants, and quite a number of your committee
10 members were actually on that committee.

11 I was also on the Oversight Committee for
12 Brooklyn, for the Brooklyn Defender Services, when that
13 organization came into existence.

14 So I have come -- I've been working with
15 defense attorneys actually for quite a long time.

16 And I can tell you, at least in my experience,
17 which is mostly in Brooklyn, in Staten Island, and
18 somewhat in Queens, and I do know pretty much what
19 happens in the rest of the City, and having spoken to a
20 lot of individuals in preparation for coming here I
21 think at least in New York City, at least in the
22 criminal courts of the City, I think the defense bar is
23 really alive and well.

24 A PANEL MEMBER: Phyllis Bamberger.

25 One of the primary issues is defense lawyers
26 getting information later on so they can begin their

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2 own investigation.

3 Can you tell us something about the discovery
4 practices in Brooklyn with respect to both misdemeanor
5 and felony cases so we can make a comparison?

6 JUDGE MILLER: Sure.

7 I think we were pioneers in this area, and I
8 think this is really very important.

9 I think it's my general belief, and I think
10 that's parts of the system that we have and -- in
11 Brooklyn and Staten Island and I think it's starting to
12 happen in other places in the City we have what's
13 called discovery by stipulation.

14 I would say ten, fifteen years ago, after
15 hundreds of meetings, or it seemed that way we reached
16 an agreement with the District Attorney's Office
17 wherein they would turn over practically everything,
18 and I mean just about everything with regard to a
19 criminal case; police reports; any scientific reports;
20 Grand Jury testimony; in a lot of cases the names of
21 witnesses, pretty much.

22 We called it discovery by stipulation.

23 But it was open-file discovery.

24 And the process, generally in Brooklyn, is
25 that, at least in terms of, as a case passes through
26 the system, after the initial arraignment, it goes

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2 into, for example, in Criminal Court it goes into the
3 all-purpose parts, we then ask the attorneys whether
4 they want discovery by stipulation.

5 And that's the term we use.

6 And the D.A. and the defense attorneys
7 uniformly say, "Yes."

8 And the District Attorney hands over
9 everything in their file, including everything that
10 they're supposed to get that we require them to,
11 everything that the stipulation requires them to get to
12 turn over to defense counsel.

13 So discovery is open and free and it's part of
14 the process.

15 It's encouraged. It's a way of life.

16 This is on felonies, this is on misdemeanors
17 and well you want me to expand upon this.

18 PROF. HALLERSTEIN: Judge Miller, may I build
19 on that?

20 JUDGE MILLER: Sure.

21 PROF. HALLERSTEIN: You say that the defense
22 function is alive and well.

23 Are there any improvements that you would
24 suggest?

25 JUDGE MILLER: Well, there are always
26 improvements.

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2 I know you're talking about a state-wide
3 system, and I know Legal Aid has a very good training
4 program, and I know the Brooklyn Defender Services and
5 Queens Defender Services and Staten Island Defender
6 Services, they all have very good training programs.

7 But the truth of the matter is, I would like
8 to see, just like we have the Judicial Institute for
9 Judges, which I think at the beginning it seemed like,
10 well maybe this is something that really wasn't
11 necessary, but now it's really something that's very
12 important, and I think it would be very important for
13 defense attorneys to have an even City-wide or
14 State-wide system where you have sort of something like
15 a training institute for defense attorneys.

16 The law has changed quite a bit over the
17 years.

18 The practice of law is different.

19 What happens, especially in the criminal
20 courts is quite different.

21 We have problem-solving courts.

22 Cases are not always to put a defendant in
23 jail. We have drug programs, and there's so many
24 things happening in the law that judicial education is
25 very very important; how to try a domestic violence
26 case; how to do this if you have a defendant who has a

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2 narcotics problem.

3 So I think, certainly a formalized City-wide
4 or State-wide training institute would really be
5 something that's extremely helpful.

6 A PANEL MEMBER: Barry Kamins.

7 Mr. Gradess mentioned earlier, eligibility for
8 assigned counsel in New York City.

9 Do the courts presently determine eligibility
10 or do the individual institutional defenders do that or
11 does it vary from county to county?

12 JUDGE MILLER: Well, I'm sure it does vary
13 somewhat from county to county.

14 But first of all, it's the responsibility of
15 the judge to determine whether somebody is eligible for
16 free representation or whether that person should
17 retain an attorney.

18 In all the counties, Legal Aid and whatever
19 defense organizations are in arraignments, you usually
20 get the files.

21 So they read the files first, and they are the
22 first line of defense in more than one way as to who
23 represents a defendant.

24 But we have constant meetings with the judges
25 and the defender organizations about what the standards
26 are.

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2 And I brought the standards with me because,
3 as you know, Mr. Kamins, we have a number of committees
4 setting what the standards should be, and I have those
5 standards in front of me.

6 Those standards have been given to the defense
7 organizations, to the judges.

8 So Legal Aid and the defender organizations
9 make a primary determination, but the judges are
10 directed and instructed to look at the C. J. A reports,
11 inquire about the defendant's ability to pay, and it is
12 their job to make the ultimate decision.

13 And I think we're doing a much better job in
14 that area, but it is the judge's determination.

15 A PANEL MEMBER: Laurie Shanks. I teach at
16 Albany Law School.

17 When you were talking about the discovery --

18 JUDGE MILLER: Yes?

19 A PANEL MEMBER: -- can you just tell me what
20 is the time, how much time elapses from the arraignment
21 to the time you said that it goes to this other court
22 and discovery is given by -- is it a matter of weeks?

23 JUDGE MILLER: It's a matter of weeks.

24 Usually when it gets to whatever part it is
25 and defense attorney requests discovery by stipulation,
26 usually the DA has about 30 days; gets all the material

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2 together.

3 I can't tell you it's a perfect system because
4 I've spent my whole life as a DA and as a judge trying
5 to get all the reports and all the police reports and
6 everything that's necessary for the defense to have a
7 complete picture of what the case is about.

8 But the process is that the defense attorney
9 gets everything and within the first 30 days they do
10 get most of the material and certainly before the case
11 goes to trial they should have just about everything
12 that's required to try the case, not just about
13 everything, everything. I think that's a good system.

14 A PANEL MEMBER: Burton Roberts. You deal in
15 the City of New York?

16 JUDGE MILLER: Yes?

17 A PANEL MEMBER: Do you find that there's any
18 problems in the City of New York dealing with Legal Aid
19 representations or do they provide, as humanly
20 possible, very good representations.

21 JUDGE MILLER: I've been working with the
22 Legal Aid Society my whole life, and I think they give
23 first rate, what I honestly believe they give first
24 rate representations.

25 They have a lot of young lawyers, they have a
26 lot of eager lawyers, they have some experienced

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2 lawyers, and anybody who has been in the courts of the
3 City of New York knows Legal Aid does good
4 representations, so they do a very good job.

5 Not that we all can't be improved.

6 A PANEL MEMBER: Joseph Zayas.

7 Do you see any difference between the
8 representations between Legal Aid attorneys and
9 individually assigned attorneys, the 18-B attorneys or
10 do you see any problems with the 18-B?

11 JUDGE MILLER: We have to talk about
12 individual attorneys.

13 I can tell you about each panel. You can draw
14 your own conclusion.

15 For example, in Brooklyn they handle about
16 128,000 cases.

17 Legal Aid handles about 48,000 cases.

18 There's probably about another 10,000 cases
19 that are handled by the panel.

20 With respect to the Brooklyn defender
21 services, they have 26 attorneys. Most of the lawyers
22 were previous Legal Aid attorneys. I believe all of
23 them the average experiences of 15 to 20 years, so you
24 get quite a lot of experienced representations.

25 Some of them were young lawyers, when I
26 started in the courts.

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2 Legal Aid has younger lawyers, but I think
3 that's good.

4 I think there should be a mix in all
5 organizations.

6 It's important to have young, eager, energetic
7 lawyers who are seeing the system for the first time,
8 because that's the only way any system could prosper by
9 seeing it for the first time, being involved.

10 As far as the panel attorneys, they handle
11 about 10 percent of the cases. I can honestly tell you
12 in the last ten years that the panel attorneys, I don't
13 want to say it's because of the committees we work on,
14 but there has been a tremendous improvement in the
15 panel attorneys; they are reviewed on a regular basis.

16 Every panel attorney gets -- I think there's
17 over a hundred of them -- they get reviewed every three
18 years, and it's a very comprehensive review.

19 First of all, they can't get on the panel
20 unless they have "X" amount of representations; they go
21 through the Bar Associations; they have a trial
22 background; they are reviewed every three years not
23 only by a committee that involves lawyers and judges
24 from Brooklyn, Queens and Staten Island, but the judges
25 in the individual counties; they're all sent forms to
26 fill, out very extensive forms; it's a very very

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2 extensive process for the panel attorneys.

3 And I know they do this, and I know the
4 chairman of the committee in Manhattan, and they do the
5 same thing.

6 So a panel attorney, the level of the panel
7 attorneys is very very good these days.

8 And if it doesn't meet a high standard, and
9 they have to be trained, also there are training
10 requirements each year, and if they don't meet a high
11 standards they're removed from the panel or they're put
12 on probation, they're spoken to.

13 So I think the level of the panel attorneys
14 these days is very high, and in Brooklyn they do all
15 the homicide cases, the felony panel attorneys.

16 PROF. HALLERSTEIN: Commissioner Goldman.

17 A PANEL MEMBER: Lawrence Goldman.

18 Let me go back to this open discovery or what
19 you call discovery by stipulation.

20 We're obviously looking for, among other
21 things, ways to save money or use it more effectively.

22 In your view, is there a savings in judge's
23 time, defendants' attorneys' time, including public
24 defenders and prosecutors' time by this kind of
25 discovery?

26 JUDGE MILLER: First of all -- well, it's

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2 always important to save money.

3 First of all, it makes the whole criminal
4 process -- it's an open process, that's what you want,
5 at least a -- that's what I want.

6 I don't want to speak for everybody, but you
7 want an open process and that's what it is. It's a
8 fair, just open process.

9 So not only is it a fair, just and open
10 process for everybody involved, of course it saves
11 money.

12 You don't have motion practice going on for
13 months and months, in my opinion, about really
14 unimportant things -- well, you know, everybody has
15 their own view about what's important, but if you
16 believe it should be a certain process where the
17 defense attorneys get a certain amount of material and
18 they could defend their clients properly, it certainly
19 speeds it up.

20 I don't want to say that making motions is a
21 waste of time, certainly there are motions in certain
22 cases, in more complex cases.

23 If there's a more complex legal issue, of
24 course the attorneys are not precluded from making
25 motions, but that initial sparring over things that
26 should be turned over is expedited, and it makes the

1 The Hon. William Miller

2 process a lot more efficient.

3 If you look at things like arrest and
4 disposition times, any type of efficiency you want to
5 put on a court system, you see how this makes the court
6 system and the process fair and more efficient, and I
7 guess if it's more efficient, it saves a lot of money.
8 I think it does.

9 A PANEL MEMBER: Steve Zeidman.

10 JUDGE MILLER: Yes, Professor Zeidman. I've
11 met you previously.

12 A PANEL MEMBER: Yes, indeed.

13 As you can see, you are the only member of the
14 judiciary speaking, so we have a lot of questions for
15 you.

16 My concern is the nature of the practice.

17 I would like to know why it is so many cases
18 are not fully litigated.

19 By that I mean, why aren't there so many
20 suppression hearings; why aren't there many trials?

21 And I say this in the context of recent
22 revelations about innocence, concerns about search and
23 seizure, we know this is going on, I don't mean just in
24 New York but Nationwide, why are there so many cases
25 not tried.

26 JUDGE MILLER: In New York City?

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2 A PANEL MEMBER: Everywhere.

3 I think the trial level in most counties in

4 any state is de minimis.

5 JUDGE MILLER: You mean in criminal court?

6 A PANEL MEMBER: And supreme as well.

7 JUDGE MILLER: I will address that issue.

8 First of all, you go back, one thing that we

9 do certainly in Brooklyn, is even in criminal court, we

10 do try a lot of cases but it goes back a long way maybe

11 culture, that's a word we use way too often, we'll take

12 criminal court, I'll give you that as an example.

13 Years ago criminal court had no trials.

14 The whole court was different.

15 You would build up cases -- I'm going back

16 quite a long way, but Justice Roberts, I'm sure,

17 remembers all of this -- in the criminal courts the

18 misdemeanor courts, you would have a buildup of cases

19 throughout the year, and then you would have Christmas

20 time, you know we have got to start all over, and we're

21 going to now have extra plea bargaining and things like

22 that, and then you would work on the inventory so to

23 speak, and then you would start all over the process

24 would start all over again.

25 And that happened in Supreme Court, in almost

26 a different way, they had the up front judges, the more

1 The Hon. William Miller
2 up front judges -- and it was an overwhelming number of
3 cases but it wasn't always only because -- for example,
4 in criminal court that there was an overwhelming number
5 of cases, that's the way they did things.

6 It was not a good way to do things, it was a
7 terrible way to do things, it is really are not done
8 that way any more.

9 If you look at the criminal courts, for
10 example, the criminal courts are entirely different
11 than they were years ago.

12 And one of the ways in which they are
13 different, other than the problem-solving courts, which
14 is a tremendously significant thing, is the fact that
15 in the criminal courts, we encourage trials.

16 In the criminal courts, we're constantly
17 saying that we need more trial judges, we need more
18 trial judges; any defendant who wants to try a case
19 should have the right to try the case.

20 And now in the criminal court -- and the
21 number is going up each year, though we have had some
22 back sliding to tell you the truth, we endeavor to try
23 more and more cases and I remember there was a study at
24 NYU -- I always remember -- this goes back ten, fifteen
25 years, who was the professor here --

26 PROF. HALLERSTEIN: Judge, we're really

1 The Hon. William Miller

2 running short on time.

3 JUDGE MILLER: Right, there aren't enough
4 trials. There should be more trials and we would like
5 to have more trial parts.

6 PROF. HALLERSTEIN: Can I ask you for a copy
7 of the standards you brought with you?

8 JUDGE MILLER: Can I hand this to you?

9 PROF. HALLERSTEIN: I want to thank you so
10 much for taking the time to testify.

11 JUDGE MILLER: Thank you. I give it to you,
12 The Honorable Charles Tajada?

13 A PANEL MEMBER: Charles Tejada.

14 Thank you.

15 PROF. HALLERSTEIN: We will mark it as Exhibit

16 A.

17 Our next witness is Mr. Steven Banks and Susan
18 Hendricks.

19 Are you testifying in tandem?

20 (Whereupon Sara Stanley was relieved by Lester
21 Isaacs, as Official Court Reporter.)

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1 S. Banks, Esq./S Hendricks, Esq.

2 PROFESSOR HELLERSTEIN: Good morning. You
3 are testifying before the first speaker.

4 STEVEN BANKS: Thank you.

5 My name is Steven Banks. I'm an attorney and
6 Chief of the Legal Aid Society. With me is Susan
7 Hendricks, my Dupuy in Charge of our Civil Division.

8 I have some brief overview comments to make,
9 then me and Miss Hendricks are prepared to take
10 questions based upon Judge Miller's testimony.

11 It seems very important, I am sure the
12 commissioners have their questions out. We have very
13 extensive written testimony which we will be happy to
14 go over. But I want to make sure, if there are
15 questions as amongst everybody that's sitting here.
16 And I see former leaders of the Legal Aid Society,
17 former leaders, former friends, former Legal Aid
18 Attorneys, former board members of the Legal Aid
19 Society and as I look at all the judges our staff
20 appear before regularly.

21 I, as I look at you, I know you all have an
22 understanding of what the Legal Aid Society does. What
23 it means to the City, how important is it that the
24 Legal Aid Society is able to move forward after some of
25 our recent issues.

26 I will be happy to take questions on those

1 S. Banks, Esq./S Hendricks, Esq.
2 matters with you. I will confine my comments to some
3 overview points with respect to the topics at hand.

4 First of all, the Legal Aid Society certainly
5 embraces the concept of standards under review, but
6 most importantly adequate funding. Funding is the bed
7 rock, to maintain our standards. Without adequate
8 funding, which are necessary, the Legal Aid Society in
9 it's own experience in this area is very revealing.

10 As many of you know, the First Department
11 Oversight Committee has been active over the past years
12 in working with the Legal Aid Society in term of
13 assuring quality representation, in terms of assuring
14 our ability to provide zealous defenses.

15 One of the issues that comes up in expressed
16 oversight of such standards is the ability to actually
17 carry out the standard, if the funding is not there to
18 do it, I think one of the frustrations that the
19 Oversight Committee, as well our staff and Ms.
20 Hendricks can speak to this issue. It is a terrific
21 process and review. It is a terrific process in making
22 recommendations, in moving forward, but we must have
23 the resources to get it done.

24 Having said that, I want to review a very
25 important development in the defense service in New
26 York City over the past two years. That was the

1 S. Banks, Esq./S Hendricks, Esq.
2 Bloomberg Administration's insight to restore the Legal
3 Aid Society as the primary defender in New York City.
4 That has had tremendous cost benefits for New York
5 City. But it has also had tremendous benefits in
6 enhancing defense benefits.

7 The Legal Aid Society which services are
8 throughout New York City, is able to provide
9 comprehensive legal services that are very, very
10 difficult, if not impossible for an individual, a sole
11 practitioner to provide. We have paralegals that are
12 able to work with clients in the jail. We have social
13 worker services which are able to provide vigorous,
14 post conviction services.

15 Appeals are able to take on the need of very,
16 very vulnerable clients, immigrants and others. And
17 this enables the over all quality of service in the
18 City to be as high as possible.

19 In terms of funding issues. A lot has been
20 talked about in terms of state wide standards and state
21 wide funding. Certainly standards are critically
22 important. And one standard ought to apply everywhere,
23 but that doesn't necessarily need an Oversight
24 Commission. We have a number of different oversight
25 entities that interact with the Legal Aid Society, the
26 Mayor's Office, Criminal Justice Service, they

1 S. Banks, Esq./S Hendricks, Esq.
2 generally provide services for the Legal Aid society
3 work in terms of quantity, statistical performance.

4 I note the First Department, Oversight
5 Committee provides oversight with respect to quality of
6 our service, in terms of state wide dollars.

7 The City of New York recently testified
8 before the City Counsel that some 52 percent of the
9 prosecutions State wide occur in New York City, but
10 some 70 percent of the resources state wide. That
11 doesn't mean state wide resources, that means dollars
12 including the City's contribution is actually allocated
13 to those prosecutions in New York City.

14 I think as was found in the education context
15 and others, that a state wide dollar doesn't
16 necessarily benefit a jurisdiction of New York City
17 which has tremendous needs. I think it's one of those
18 things that you have to be careful what you ask for. A
19 State Wide Commission results of more dollars may
20 simply result in reallocation of the funding that is
21 actually out there. It's critically important, as I
22 said before and continue to say, when I answer your
23 questions that adequate resources be provided for the
24 defense.

25 In terms of Appellate practice. There are
26 two points that I want to make that are critical. One

1 S. Banks, Esq./S Hendricks, Esq.
2 in New York State there isn't the same kind of
3 provision as there is in the Federal system, and in
4 Alabama, for the immediate continuation of counsel in
5 an appeal. There has to be an application for poor
6 persons relief in order to be able to proceed. This is
7 a tremendous hurdle to be able to handle appeals for
8 clients that may not be English speaking. They may be
9 illiterate. They may have other potential barriers in
10 the process. It's essential that there be attention to
11 this problem to insure that there is continuity of
12 counsel, that they can obtain counsel on appeal.

13 Similarly, in terms of --

14 PROFESSOR HELLERSTEIN: On that note, are
15 you suggesting or not suggesting that it be the same
16 attorney that handles the appeal as who handled the
17 trial?

18 Because other than an institution that had a
19 separate Appeals Bureau, would that recommendation of
20 yours, would it involve the trial attorney to also
21 handle the appeal?

22 STEVEN BANKS: Let me address the first part
23 of the question. In terms of an operation that has
24 separate appeal questions, absent conflicts, it's in
25 the community's interest for the continuation of
26 service on appeal.

1 S. Banks, Esq./S Hendricks, Esq.

2 PROFESSOR HELLERSTEIN: Service, but not the
3 same attorney.

4 THE WITNESS: Correct, I'm sorry.

5 However, the underlying problem here is that
6 a finding that someone is eligible for defense service
7 at the trial level, doesn't automatically continue to
8 the appellate level.

9 There is another step that the individual
10 client must take in terms of filing a poor person
11 application and clients are typically unaware, it's a
12 step beyond just filing a notice of appeal to obtain
13 counsel. I think New York State ought to join the
14 Federal system in Alabama having that.

15 SUSAN HENDRICKS: That is in place in the
16 Family Court. Also in place in the new sex offender
17 status of the continued appellate representation,
18 continuing in the appellate area. Also the need to
19 have recognition of post conviction work in addition to
20 direct appeals as part of a standard of appellate
21 practice. To frequently the focus on appellate work is
22 numbers of appeal, numbers of direct appeals leaving
23 out the very important work of the Legal Aid Society
24 and others, in people involving cases of actual
25 innocence, in other matters that are of post conviction
26 nature. This gets to the question of oversight with

1 S. Banks, Esq./S Hendricks, Esq.

2 respect to cases.

3 How do you count? What is the standard? Is
4 it the number of appeals or is it the quality of the
5 kind of effort that needs to be done to insure that
6 someone has been wrongly convicted?

7 JUSTICE ROBERTS: You will be following up,
8 but the question to you is: Would you say that the
9 person given Legal Aid during the course of his trial
10 and that Legal Aid representative represented the
11 person in the case, is going to do the appeal, would
12 you say that they should be the appellate attorney
13 through the appeals bureau?

14 Why is necessary to have at step here?

15 Is the person that's been convicted,
16 represented by Legal Aid, Legal Aid feels he or she
17 know knows the argument in point, why should he have to
18 make another step?

19 STEVEN BANKS: I quite agree with you, but
20 there is another step that needs to be taken in terms
21 of the Appellate level in terms of progress.

22 There ought to be a provision that extends
23 that finding to the trial level and the Appellate
24 level, so you don't need that extra step.

25 HON. JOSEPH ZAYAS: Why don't you
26 have counsel, the trial layer, to inform

1 S. Banks, Esq./S Hendricks, Esq.
2 the defendant who has been convicted?

3 SUSAN HENDRICKS: But the client has to
4 complete the form. The client has to get the form
5 filed. Many of our clients and one of the things is
6 the changing nature of the client nature of the client
7 population. More of our clients are noncitizens.
8 There are tremendous language barriers to this. There
9 are timing barriers there.

10 If they go to State Prison they are only
11 detained at Rikers for a couple of weeks before they
12 are shipped off. They are offered, just often there is
13 not enough time to do this. It's also just
14 inefficient.

15 In my experience no one gets richer during
16 the course of a criminal conviction and they certainly
17 don't get richer at the conclusion, that they are going
18 into the State prison system. It's just a waste of
19 paper and time. It actually takes a lot of time to get
20 the proper documents done and gather the financial
21 information from the client at that stage. And often
22 prosecutions drag on, for particularly serious felonies
23 for a couple of years and to up date all that at a
24 point where you really are trying to focus on
25 mitigating a sentence is just cumbersome.

26 The client is very focussed on "what is the

1 S. Banks, Esq./S Hendricks, Esq.
2 sentence going to be" not the appeal at that point. At
3 the point they start to think about the appeal, you
4 lose them into the system.

5 JUSTICE ROBERTS: There was a question asked
6 of Judge Miller, about the number of cases that go to
7 trial. Just so there is an understanding. Is it not
8 so, that in all boroughs about 85 percent of the cases
9 you have a plea, and five or six percent of the cases
10 are disposed of by trial.

11 SUSAN HENDRICKS: Over all, that's true.
12 Other statistics vary by borough at City wide average
13 that's true. We also know this because I studied in
14 preparing the First Department reports, we have a high
15 rate of dismissals, particularly in New York County. I
16 will relate that statistic, but it's City wide as you
17 pointed.

18 PROFESSOR LAURIE SHANKS: I do understand
19 your office, that you have an appellate section, but
20 what about the 18 B lawyer or the private lawyer, the
21 person obviously does get bored during obviously a very
22 long trial, becomes indigent or it's an 18 B lawyer.
23 you know, a single practitioner who doesn't do
24 appellate work. If their was an automatic continuation
25 couldn't you have a situation where someone who says
26 frankly, I can do an appeal, was now automatically the

1 S. Banks, Esq./S Hendricks, Esq.

2 lawyer on appeal?

3 SUSAN HENDRICKS: I think this could be. I

4 think there is a moving trend around the State to

5 institutional providers and they are funded to have

6 appellate offices or appellate attorneys on staff.

7 The vast majority of appeals will be handled

8 by institutional providers, to have continuity, we have

9 a wealth of providers in New York City and there are

10 additional appellate providers beside the Legal Aid

11 Society, which have adequate resources in the City to

12 represent every one who is indigent, and ones to take

13 an appeal. I think in the City, very few appeals are

14 handled by 18 B attorneys.

15 PROFESSOR LAURIE SHANKS: So you are saying

16 that 18 B should get an appeals attorney, but not

17 necessarily the attorney who did the trial.

18 SUSAN HENDRICKS: If they were represented

19 by an office that has appellate capacity, then the most

20 cost effective and frankly the best representation for

21 the client is frequently continuity within that office.

22 I know that when we try serious cases, we

23 frequently have the appeals attorney already involved

24 in the trial. The client has a relationship with the

25 appeals attorney. It makes no sense at that point for

26 the case to go to someone else, frankly, from just a

1 S. Banks, Esq./S Hendricks, Esq.
2 cost benefit analysis. It's crazy. You have someone
3 who is a qualified appeals attorney who knows the
4 client and knows the case very well. It just adds to
5 the delay in the process of the appeal.

6 PROFESSOR LAURIE SHANKS: I just have
7 another thought. Do you ever have an issue with a
8 conflict, if one of the issues on appeal is some
9 incompetents of counsel or improper conduct by trial
10 counsel?

11 SUSAN HENDRICKS: Yes, and we have clients
12 who want to raise that issue. And part of the
13 screening process for us is to communicate with the
14 client about issues that they want to raise on appeal
15 and the clients indicate that they wanted to raise the
16 issue of the effective assistance of trial counsel. We
17 asked to be relieved of the appeal.

18 Also, occasionally we don't rely on the
19 client to identify that issue, we review that issue and
20 we do get off a case because we think that claim could
21 be made on behalf of a client.

22 As I said, in the City we have a wealth of
23 providers, so I don't think clients suffer from that.

24 BARRY KAMINS: You would make the uniform
25 standard. That does exist in the local entity, that is
26 several oversight entities? Are you suggesting that

1 S. Banks, Esq./S Hendricks, Esq.
2 the commission recommend with respect to enforcing
3 standards that there be such entities around the State
4 or geographical jurisdiction rather than a uniform
5 state body to do that?

6 STEVEN BANKS: I don't think there was a
7 problem with having one set of standards, but certainly
8 the Appellate Divisions under which we practice are the
9 ultimate oversight for what we do in a particular
10 jurisdiction. So we have, as I noted, a First
11 Department oversight maybe as it is providing excellent
12 oversight and quality. The problem as I noted earlier
13 is that notwithstanding what the Society and the
14 Commission may agree on in terms of making changes,
15 there is a very great difficulty in making changes to
16 insure standards when there are funding issues.

17 I know this wasn't exactly the question, but
18 I want to also note the answer to it. When we looked
19 at the concept of adequate funding as a basic principal
20 for insuring adequate defense and compliance of
21 standards, parity between the prosecution and the
22 defense is a critical piece here.

23 There is many indicia, in many other systems
24 that we can draw upon. New York State for instance the
25 Federal system compensation in salaries between the
26 prosecution and defense are to be on a bar. That's not

1 S. Banks, Esq./S Hendricks, Esq.
2 the case in the State system. That certainly creates a
3 problem. The prosecution has the ability to draw upon
4 the police, the fire department, the FBI and other
5 sources of expertise that the defense has to pay for.
6 That's another aspect in terms of looking at what needs
7 to be done in terms of insuring the compliance and
8 standard

9 HON. PATRICIA MARKS: And the public
10 defenders have a point regarding visiting clients who
11 are in jail pending trial. Do you have any such
12 practice or policy within your office?

13 SUSAN HENDRICKS: Yes, it's challenging to
14 visit clients there. In the City because for the most
15 part they are detained in Rikers Island. It's an all
16 day endeavour to get there. One of the ways we deal
17 with that, we have a staff of para legals who work in
18 the jails on Rikers Island and actually in the other
19 City Jails to facilitate communication.

20 This is becoming an increasing problem with
21 the declining jail population, which is otherwise a
22 good thing, because they are closing borough houses
23 that are adjacent to court houses. That was what made
24 it fairly easy for us to visit clients. We tried and I
25 think for a large urban provider, in a place like New
26 York City it is essential to have other means to visit

1 S. Banks, Esq./S Hendricks, Esq.
2 clients other than going to Rikers Island because it is
3 time consuming. So we rely in court house visits with
4 clients and one of the things that we talked about in
5 our written testimony is the importance of having
6 adequate interview space in the court houses, because
7 that is so important to us. And in keeping in contact
8 with our in prison clients.

9 HON. PHYLIS BAMBERGER: Phylis Bamberger, of
10 Bronx County. I want to go back to the question of
11 discovery. There are different discovery rules in each
12 of the Counties of the City. I assume they differ from
13 other Counties. How fast do you get the materials?

14 SUSAN HENDRICKS: It varies, but generally
15 as Judge Miller indicated, the outside jurisdiction
16 with open file discovery, it is about 30 days. And in
17 New York County we do not get open file discovery, we
18 don't get discovery until we are in a trial part or we
19 are about to commence a Suppression Hearing.

20 It has a huge impact on the difference in
21 operation of the offices, whether or not we get open
22 file discovery.

23 HON. PHYLIS BAMBERGER: Is the discovery
24 that Judge Miller mentioned, that it takes 30 days
25 because that's how long it takes to get the case from
26 the Police Department. I don't remember if every

1 S. Banks, Esq./S Hendricks, Esq.
2 Police Department files a different type of paper for
3 the same material, it's very hard to get uniform
4 practices, because of the Police Departments. In your
5 view, is this an issue that we should be exploring,
6 this Commission should be looking at?

7 SUSAN HENDRICKS: I think that the resources
8 for technology exist to speed us up, at least urban
9 areas.

10 NYPD is highly computerized as most of its
11 reports can be e-mailed to prosecutors. There is a lot
12 that can be done to streamline it. Of course, when
13 you're dealing with the paramilitary organization, it's
14 always hard to persuade them to change the way they do
15 business. But, it could go much faster. I think
16 that's a really important thing both in terms of work
17 load for the courts and therefore for cost.

18 Also for locality, it adds to the amount of
19 people incarcerated that are waiting resolution of
20 cases. If they are unable to post bail, that's
21 extensive. It's really a hardship. You cannot give or
22 underscore how major a hardship that is on the clients.

23 HON. JOSEPH FAHEY: I want the follow up.

24 Do you have a situation down here where the
25 correctional institution, the jails, are charging the
26 inmates to make legal calls?

1 S. Banks, Esq./S Hendricks, Esq.

2 SUSAN HENDRICKS: No. They are charged for
3 phonecalls. They are not charged for telephone calls
4 to lawyers.

5 The problem we have is that the calls are
6 limited to six minutes. So one of the ways that we
7 deal with it is because we have paralegals working in
8 the jails and have for a very long time.

9 They have offices that when we need to have a
10 lengthy, a more lengthy phonecall with a client, they
11 can bring the client to that office so that we can have
12 a longer call.

13 STEVEN BANKS: As to the bureaucratic table,
14 the other problems, we have been unable to convince the
15 State or City jails to have an 800 number so we can
16 have collect calls. This is an extraordinary drain,
17 where having an 800 number would be a tremendous
18 ability to save money. I think any help on that point
19 would be greatly appreciated.

20 SUSAN HENDRICKS: We are spending in some
21 months well over ten thousand dollars a month in taking
22 telephone calls from clients who are incarcerated in
23 the State Prison system, that is really a drain.

24 CHRISTOPHER CHAN: Thank you. I just have a
25 few questions to ask you. Did you bring a copy, by any
26 chance, of your most recent budget?

1 S. Banks, Esq./S Hendricks, Esq.

2 SUSAN HENDRICKS: No, I did not. Our budget
3 is public record, it's attached to our city contract.
4 We can provide a copy of that to the commission, if you
5 would like us to do that.

6 CHRISTOPHER CHAN: I would like to see a
7 copy. If I may, what steps in the past 23 years has
8 the Legal Aid Society made in terms of making their
9 attorneys, staff attorneys more accountable in terms of
10 time, for instance. Has the Legal Aid Society
11 implemented a time sheet practice, like you do in the
12 private firms?

13 SUSAN HENDRICKS: We do have time sheets in
14 terms of sign in and sign out policies. We are in the
15 process of creating a computerized time tracking system
16 at the Society.

17 CHRISTOPHER CHAN: You will be able to keep
18 track of your staff attorneys on how efficient they are
19 in the cases they process, so there is some
20 accountability, that's the point I'm trying to get at.

21 SUSAN HENDRICKS: We already do that.

22 STEVEN BANKS: On that question of time
23 keeping, one of the aspects of the recent labor
24 management settlements of the Legal Aid Society, which
25 we were able to implement that kind of time keeping.
26 But in terms of productivity, the number of cases that

1 S. Banks, Esq./S Hendricks, Esq.
2 we have, the ability to continue to have the ability to
3 do this in order to manage the program adequately, we
4 thought it would be helpful, wherein various
5 perceptions are that it should take only a certain
6 amount of time to do a misdemeanor.

7 It's our understanding and our experience
8 that given all the collateral concerns of doing a
9 misdemeanor, it takes more time then you would think in
10 terms of -- from disqualification from public housing,
11 disqualification from benefits, deportation for an
12 increasing number of our clients. Each case needs to
13 have an appropriate time expense and the time is
14 showing how much time it takes.

15 We feel quite confident we have the controls
16 into seeing whether a particular lawyer is handling a
17 particular work load.

18 PROFESSOR HELLERSTEIN: We are running
19 really far behind and we have a lot of witnesses. It
20 would be appropriate, if you have more information, we
21 have questions for you. But I don't want to go on and
22 take that additional time.

23 STEVEN BANKS: Thank you. We welcome this
24 opportunity.

25 We are available to come back, if you would
26 like us to come back, to work with the staff. And one

1 S. Banks, Esq./S Hendricks, Esq.
2 of the points that I particular draw your attention to
3 is the importance of having an independent operation
4 like the Legal Aid Society to be able to provide the
5 service.

6 Thank you.

7 PROFESSOR HELLERSTEIN: Thank you so much.

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2 CHAIRMAN HELLERSTEIN: Our next is Miss
3 Steinberg of the Bronx Defenders. Is she here? Miss
4 Steinberg?

5 Welcome.

6 MS. STEINBERG: Good morning. Thank you very
7 much for this opportunity to address this committee.

8 One of the critical questions that this
9 committee will have to answer as it considers the future
10 of indigent defense in New York is what does adequate
11 indigent defense representation mean and what is the
12 baseline for clients in this state going to be? And to
13 put another perspective, what would clients and their
14 families and their communities in New York State
15 experience as adequate representation, as well? A voice
16 that may not be heard quite so clearly in these hearings.

17 I am here to try to persuade you that what we
18 have considered adequate indigent defense in the past is
19 in fact wholly inadequate in 2005, and that by looking
20 at only the criminal case, no matter how zealous or
21 competent a lawyer may be, you are going to be placing
22 your client in jeopardy of immediate harm, rearrest and
23 reincarceration.

24 By restricting the definition, as we have, of
25 indigent defense to the confines of the criminal complaint
26 or the indictment, we fail our clients, we fail the

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public, and we fail, ultimately, the cause of justice.
Only by representing a client as a whole person with a complex set of legal and social needs can we even begin to claim to provide what I believe is adequate indigent defense.

We are not representing cases, we are representing people. And while it sounds obvious when talking about representing a whole person, within the criminal justice system and within the indigent defense world holistic defense is still a revolutionary and startling concept to many.

Look, our clients live in poverty by definition. Most are going to cycle through the criminal justice system as a result of a wide array of social problems that will drive them into the criminal justice system over and over again; homelessness, drug addiction, mental illness and family violence. If you are treating only one symptom, the criminal case, you are not coming close to solving the disease. So it is no surprise that 2/3 of those released in state prisons will be rearrested within three years, and that one half will be convicted of a new crime. Something has got to change.

That change, I hope, can come from this commission. This is your opportunity and our opportunity to redefine the very basic definition of what it means to

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be a public defender and what public defense services ought to include for clients.

The new vision of indigent defense services in New York State must provide comprehensive services, holistic legal representation to the poor. We simply can't any longer afford to ignore the reality of our client's lives. To do so is going to doom the entire system to the revolving door of justice at the courthouse where clients are cycling in and out and in and out.

We have all seen it. Everybody on this commission has seen it. We have seen the same faces, the same problems, the same needs for services over and over, year after year, decade after decade -- I am finally old enough to be able to say decade after decade -- and yet public defense continues to be primarily case related and court based. It is time to re-envision that.

So how would holistic defense look different than what we have? Well, one of the first tenets that holistic defenders advocate is through interdisciplinary work and work groups that can address the host of issues that clients bring with them. So interdisciplinary groups might include, and do at the Bronx Defenders, criminal defense lawyers, social workers, investigators, civil lawyers, youth workers, ptevention programs and Family Court advocates.

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2 For example, a client who is charged with
3 endangering the welfare of a minor in criminal court would
4 work with a team and receive, under one roof, criminal
5 defense representation in the courthouse, advocacy in
6 Family Court, as on the related civil matter they try to
7 remove her children from her, advice and representation on
8 how to avoid the eviction notice that's going to render
9 her and her children homeless, and receive counseling and
10 referrals to other appropriate community-based service
11 providers with which we have ongoing collaborations. By
12 addressing both the legal and social service needs of
13 clients and their families we better defend and protect
14 our client and create the possibility that she can
15 actually avoid involvement in the criminal justice system
16 in the future.

17 Now, you might ask why is that a better system
18 and vision to house these comprehensive services under one
19 roof? Why is that better than what we have now, which is
20 a client who goes from one office for criminal defense
21 representation, one office for civil legal representation,
22 somebody, if there is somebody out there, to do counseling
23 or other social services, somebody else to get Family
24 Court advice or representation? The answer is that many
25 take the separate silos of legal representation. And the
26 separate silos of social service provision simply hasn't

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2 worked. First, many clients simply can't find the
3 services. They are not there. Even when they do exist
4 and they can find them, accessing them is an
5 administrative nightmare. Just sit for five minutes in a
6 welfare office and try to get some attention. Just sit
7 for ten minutes at a drug treatment center and try to talk
8 your way into treatment when you are at your most
9 desperate moments. Secondly, the existing services are
10 fragmented themselves and there is virtually no
11 communication or coordination among the service providers.
12 And further, even when the clients find the services,
13 providers are often uninformed about the wide ranging and
14 devastating consequences these days, and it is different
15 when I started practicing than now, but the devastating
16 consequences these days of criminal proceedings.
17 As the direct consequences of the criminal
18 conviction continue to grow both in number and in
19 intensity it is imperative that advocates become experts
20 in how the forums interact with each other. When a plea
21 to disorderly conduct makes a client presumptively
22 ineligible for New York City public housing, as it does
23 here, or where two convictions for turnstile jumping makes
24 a lawful, permanent resident non-citizen deportable, then
25 something has got to change and indigent defense needs to
26 look different. There needs to be more attention paid.

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Public defenders meet their clients at a very unique moment. It is a moment of great despair. It is also a moment of great opportunity. We meet our clients before or immediately after the arrest, a moment when all of these systems and all of these consequences are colliding, and where expertise, early intervention and immediate response is essential.

Public defenders are there from the beginning of the client's journey through the criminal justice system, and as a result are in the best position to foresee and forestall the consequences of the arrest and conviction and incarceration.

So the question really isn't why would public defenders do all this. The question is why aren't we? Why wouldn't we do all this? The legal realities demand that you look at more than just the criminal case. In fact, often the client is far less devastated by the consequences of a criminal case than he is with the loss of his housing, loss of his job, loss of his child and loss of the country that's become his own.

Further, judges are asked in this state to make hard decisions every day in courtrooms across the state. They are asked every day to determine someone's fate, someone's freedom and someone's future. And they are asked to do this with very little information about the

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2 client and little insight into the context from which the
3 client came into the criminal justice system. Holistic
4 advocates are, in my opinion, best suited to come armed to
5 the courthouse with this information, with this
6 perspective, with the client's voice, and are ready to
7 propose real solutions to the real problems their clients
8 face. And, frankly, once we look outside the box of the
9 criminal case, clients become real people with real
10 problems and you simply can't turn away and they must be
11 addressed.

12 To ignore a client's obvious drug problem or
13 hunger and mental illness or homelessness, regardless of
14 whether or not it is related to a disposition, is to fall
15 short of our obligation to be our client's most zealous
16 and loyal and caring advocates. Not working with clients
17 to solve the problems that drove them into the criminal
18 justice system in the first place simply guarantees their
19 return, and we will be here decade after decade after
20 decade struggling with the same issues.

21 When you treat the drug problem, your client
22 doesn't get arrested again for drug possession. When you
23 solve the homelessness problem he is experiencing, your
24 client doesn't get arrested for trespass. And when you
25 address and help the mental illness problem that's
26 plaguing your client, your client won't get arrested again

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2 for assault. Revolutionary, huh?

3 And isn't that in the end the job of the public
4 defender? And I am here to advocate to you that it is the
5 job of the public defender and it is the job of the
6 indigent defense and this commission to take this broader
7 vision on. To guard a client against the ravages of the
8 criminal justice system and incarceration. And if in that
9 process we enhance public safety, which I think we do, and
10 strengthen poor families and disenfranchise communities,
11 which I think it may, then we will have indeed seen the
12 future of the best of indigent defense services.

13 So I urge you as you move forward with this
14 incredibly important work to help us redefine what
15 representation of the poor means, what it includes, what
16 it should encompass, and to include in your blueprint for
17 the future a vision that incorporates comprehensive legal
18 services and holistic representation of indigent clients.

19 I appreciate the opportunity to address this
20 panel.

21 CHAIRMAN HELLERSTEIN: Can I just ask you, your
22 office operates in a densely populated urban setting.

23 MS. STEINBERG: Yes, we do.

24 CHAIRMAN HELLERSTEIN: How do you transfer your
25 model to a state such as New York with 62 counties, many
26 of which have a cultural rural, just in terms of

1
2 resources, assuming the model is the most -- is the
3 optimal model. How would you have -- do you have any
4 thought as to how this commission is to be persuaded that
5 the position you advance could be dealt with on a
6 statewide basis?

7 MS. STEINBERG: Surely. Clearly, it is easiest
8 to a public defender system to create comprehensive legal
9 services. Clearly, if you have a system where all the
10 services are coming together, and a broad system can have
11 that vision, have those standards and fund this work,
12 that's the easiest system. But if you looked at across
13 New York State, as we do now, even if what this commission
14 were to decide is that they weren't going to create a
15 statewide system, there are ways that resources could be
16 set up for panel attorneys, public defender attorneys,
17 individual non-profit contractors, to at least have
18 resources and access to resources in a collaborative way
19 that they could then access.

20 So an 18-B lawyer, for example, a client
21 represented by an 18-B lawyer should not be deprived of
22 access to all of the other services that a client at a
23 public defender office may be able to get. There could be
24 resource centers set up with just those inner disciplinary
25 teams that I have described that 18-B lawyers, panel
26 attorneys, contract attorneys, could actually access in

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2 much the same way the clients do when they walk through
3 our doors in the South Bronx.

4 COMMISSIONER ROBERTS: Miss Steinberg, it is
5 very nice to finally have met you after interviewing you
6 for about two or three hours over the phone.

7 MS. STEINBERG: Nice to meet you as well, Judge.

8 COMMISSIONER ROBERTS: I would like to know --
9 you came into being as a result of a strike, Legal Aid
10 strike.

11 MS. STEINBERG: As a result of the RMP.

12 COMMISSIONER ROBERTS: Right now you handle
13 cases where there is a conflict of interest, Legal Aid or
14 a member of the assigned counsel --

15 MS. STEINBERG: Not exactly, Judge.

16 We represent about 12,000 people a year, and we
17 do arraignments on Mondays and Tuesday, day court and
18 night court. So we do that percentage of the work in the
19 Bronx.

20 COMMISSIONER ROBERTS: It was formed, actually,
21 to handle that conflict of interest situation and be able
22 to represent one of the defendants when another one was on
23 trial.

24 MS. STEINBERG: I don't believe it was actually
25 formed for the conflict. Conflict representation, as
26 always, continues to be done by the 18-B panel in the

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2 Bronx.

3 COMMISSIONER ROBERTS: You handle 12,000 cases;
4 misdemeanors and felonies?

5 MS. STEINBERG: We, we do.

6 COMMISSIONER ROBERTS: Do you know how many --
7 what percentage of the cases -- how many cases Legal Aid
8 handles in the Bronx?

9 MS. STEINBERG: We do about 20% of the work in
10 the Bronx. So the other 80% is done primarily by the
11 Legal Aid Society and then by the 18-B panel.

12 COMMISSIONER ROBERTS: Don't you think it might
13 be worthwhile in order to preserve your holistic services
14 to recognize that you still are somebody that's lagging
15 behind, you are doing this good job, and then expanding it
16 bit by bit, rather than going all out for these holistic
17 services? I don't know if the State could ever have that
18 much money.

19 MS. STEINBERG: You know, I admit to being
20 somebody who likes to go whole hog about everything. So
21 that clearly is a personality trait I have got to live
22 with.

23 Would I want to go whole hog? Absolutely.
24 Would I want to transform the entire state? Absolutely.
25 Would I beg you to do it within 72 hours? Of course I
26 would. But I recognize that this is going to be a slow

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2 process and thoughtful process. And there are going to be
3 recommendations made from this committee, some, I assume,
4 will be taken up, and some will not be taken up. Some
5 will be funded and some won't be.

6 COMMISSIONER ROBERTS: I suggest that you hope
7 that this is a slow process.

8 MS. STEINBERG: I am very optimistic person.
9 But I only hope that this committee can, as we define --
10 it is easy for lawyers to define the work we are doing in
11 terms of cases. All I am asking is that when we are
12 thinking about the people we are actually representing and
13 the work we are actually doing and the needs the clients,
14 their voices, their communities, their families have, that
15 we think about that in a much broader way and redefine
16 what it means.

17 CHAIRMAN HELLERSTEIN: Judge DiFiore.

18 COMMISSIONER DiFIORE: Good morning, Miss
19 Steinberg.

20 MS. STEINBERG: Good morning.

21 COMMISSIONER DiFIORE: Do you think that the
22 implementation of the special aid courts such as the
23 integrated specialized drug courts, mental health courts,
24 assist in a significant way any holistic approach to
25 defense services?

26 MS. STEINBERG: That's a great question. I

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2 think that, and you will probably hear lots of other
3 people about this throughout the day, problem solving
4 courts have lots of separate issues that are difficult and
5 complicated for both people coming through the system and
6 for the defense counsel. I think you will hear a lot
7 about that. The difference -- and the problem with
8 problem-solving courts is public defenders can get in and
9 have early intervention in ways that problem-solving
10 courts cannot. There is a trust factor in a public
11 defender office that's in the client's community providing
12 holistic services that simply will never exist in a court
13 based program. There is the district attorney's control
14 over what happens in those problem-solving courts. There
15 is the legal coercion which, you know, works for some
16 clients. With some clients legal coercion actually makes
17 them comply. But for lots and lots and lots of clients
18 that form doesn't work.

19 But perhaps most importantly, my biggest concern
20 with problem-solving courts being the solution, and I
21 certainly think that there are some models that are better
22 than others, but one of the biggest concerns is how it
23 diminishes the very role that we have as defenders. One
24 of the things about housing holistic defense in a public
25 defender office is that they are not inconsistent. We
26 don't ask clients to give up their right to challenge

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2 police and governmental conduct to get services. That's
3 precisely what problem-solving courts are doing. We can
4 have our criminal defense lawyer litigating vigorously a
5 suppression hearing. If we can ever find one in criminal
6 court these days. But we can certainly vigorously do that
7 at the same time our social worker is working with the
8 family to unify them, to work out whatever problems they
9 are having. And they are not inconsistent and you don't
10 have to give up one for the other.

11 Frankly, my biggest concern about
12 problem-solving courts is the way it would diminish,
13 ultimately, our defense role. If we are not going to
14 safeguard against governmental intrusion and police
15 conduct, nobody else is in the system. So we are the last
16 stop for that. And I worry about things that will
17 diminish that.

18 COMMISSIONER DiFIORE: Thank you.

19 THE COURT: Miss Schair.

20 COMMISSIONER SCHAIR: I am wondering if the
21 logistics of how you are providing services now -- I love
22 your overview. I think it is terrific. Some of us have
23 been thinking about that.

24 You discussed Family Court advocates. You
25 discussed various court advocates. You didn't mention,
26 and I am just wondering, how you do that specialized

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2 personal or overall training, dealing with the issues we
3 had asked Mr. Gradess about earlier, the issues of
4 immigrant status, language barriers, cultural barriers,
5 how do you handle that to make sure that holistic view of
6 all these individuals incorporates that?

7 MS. STEINBERG: Right. We have an immigration
8 specialist on staff. We have four civil lawyers on staff
9 who specialize in different things, immigration, housing,
10 public benefits, civil rights and Family Court. We have a
11 multi-cultural staff and so translation has actually not
12 been a problem in our office in terms of working with
13 clients who are Spanish speaking.

14 COMMISSIONER SCHAIR: Bronx is easier,
15 obviously. And the staff is trained periodically?

16 MS. STEINBERG: The staff is -- well, because
17 they work in teams and because the civil lawyers work
18 literally, physically and otherwise, alongside the
19 criminal lawyers, and the social workers, there is
20 constant collaboration, it is not unusual for a client to
21 come to our office, sit down and talk to Peter, our
22 immigration specialist, and, you know, Scott, our criminal
23 defense lawyer, and Jenny, one of our social workers.
24 That's not an unusual scene to see you come into the
25 office and watch people engaged in conversation. They
26 will try to coordinate what's happening in the different

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2 forums in an effort to make sure the result is best for

3 the client.

4 COMMISSIONER ROBERTS: How many lawyers do you

5 have?

6 MS. STEINBERG: I have about 30 lawyers and

7 about 58 people on staff.

8 COMMISSIONER ROBERTS: Thank you.

9 COMMISSIONER KHASHU: Just follow up with Miss

10 Schair. What percentage of your staff is bilingual? Do

11 you know, approximately?

12 MS. STEINBERG: I don't know. If you want me to

13 get that information I can figure that out. It is a

14 fairly large percentage.

15 COMMISSIONER SHANKS: Laurie Shanks.

16 Do you know how your budget compares in terms of

17 the 20% with the Legal Aid? I mean, I am not asking -- I

18 know it is sort of apples and oranges, because you are

19 providing these other services, but it sounds to me like

20 if you added up all of the things you are probably saving

21 money. But in terms.

22 MS. STEINBERG: In the long run, certainly.

23 COMMISSIONER SHANKS: In the long run. Or

24 probably even in the short run. But do you have an idea

25 of how your budget compares? Also, we asked for the Legal

26 Aid budget and I wonder if you could provide yours to the

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commission, also.

MS. STEINBERG: Surely, yes.

Our cost per case, which is how the mayor's office and the city analyzes us, is comparable to the other public defenders in the city.

COMMISSIONER SHANKS: It is.

MS. STEINBERG: Yes.

COMMISSIONER SHANKS: Even including all of the other services?

MS. STEINBERG: It is. I also have to tell you that I spend an enormous amount of my time trying to raise funds to fund the piece of holistic representation and comprehensive services that the mayor's office still won't fund. I have tried to persuade the criminal justice coordinator's office that some of the areas of representation are so integral to criminal defense that they ought to be funded by the criminal defense representation, and we have had some successes and in those areas where we don't, which is primarily in the civil work, that Family Court work, the immigration work, the housing court work and -- we run a series of prevention programs out of our office for teen-agers and also for local kids in the neighborhood after school programs. Those are clearly not funded by the mayor's office. Although if we really wanted to expand my notion

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2 of this, prevention should be part of it, too. But I
3 figured this was too radical even for this day.

4 COMMISSIONER SHANKS: So you would provide that
5 to us?

6 MS. STEINBERG: Yes, I can provide that to you.

7 COMMISSIONER SHANKS: Just to follow up on that.

8 The civil attorneys and criminal defense attorneys, are
9 they paid on the same pay scale and are they all full
10 time?

11 MS. STEINBERG: They are all full time. And no,
12 they are not paid on the same pay scale, because we rely
13 heavily on fellowships and foundation grants to do the
14 civil work and the youth work. So sometimes those come in
15 at different levels than the criminal defense attorneys.

16 COMMISSIONER SHANKS: Is that broken down in
17 your budget?

18 MS. STEINBERG: I could do that. That wouldn't
19 be very difficult to do.

20 COMMISSIONER SHANKS: If you could do that, that
21 would be great.

22 MS. STEINBERG: One thing I didn't mention that
23 I want to, and I apologize. The training that goes on in
24 the office goes on -- all participants train all the time.
25 So social workers hold trainings for the lawyers how to
26 spot mental illness in clients. The immigration attorney

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2 will hold training for the rest of the staff about what
3 you need to think about in deportation consequences. So
4 the training goes on internally and across disciplines all
5 the time.

6 CHAIRMAN HELLERSTEIN: Mr. Crotty.

7 COMMISSIONER CROTTY: Miss Steinberg?

8 MS. STEINBERG: Yes.

9 COMMISSIONER CROTTY: You have been in -- Bronx
10 Defenders has been up and running for seven or eight
11 years?

12 MS. STEINBERG: Seven years.

13 COMMISSIONER CROTTY: Is there any side by side
14 comparison between the work that you do and the Legal Aid
15 Society in terms of dispositions? And longer term, in
16 view of the holistic approach that you take, achieving
17 better results for the clients that you serve, as opposed
18 to the indigent clients that Legal Aid Society serves.

19 MS. STEINBERG: The only thing that I have to
20 rely on are anecdotal stories. I could fill the room with
21 clients who could talk about that. I actually requested
22 of the mayor's office many years ago to fund an actual
23 evaluation study of the effects of holistic representation
24 and comprehensive services on recidivism. They have not
25 funded that. We were not able to find funding for that
26 evaluation. Although I would welcome that, if somebody --

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2 COMMISSIONER CROTTY: Anecdotally what do you

3 think?

4 MS. STEINBERG: I think anecdotally it makes a

5 difference. I don't think it makes a difference for all

6 clients. I think there are a percentage of clients that

7 will utilize the services that we offer and then a large

8 percentage of clients who will not. It is client driven.

9 It is about client choice. So for those clients -- I

10 mean, I happen to think we have a superlative staff of

11 very talented lawyers and social workers and investigators

12 and civil lawyers. So I think the results are as good as

13 they get in the Bronx. But I think that if you were to

14 look at, side by side, clients that received holistic

15 representation and comprehensive services and clients that

16 did not, in any organization, you would find that clients

17 who received those services come back -- I am not going to

18 say never come back, because they are living in

19 circumstances that I think drive them back in, often

20 times, but I would say that they probably come back less

21 often. And when they do come back it is for less serious

22 offenses. That's anecdotally what I believe it would

23 show.

24 CHAIRMAN HELLERSTEIN: Thank you.

25 COMMISSIONER ZAYAS: Can I ask one other

26 question?

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2 The Legal Aid Society has immigration lawyers on
3 staff, landlord/tenant lawyers on staff, as well as Family
4 Court lawyers. What's the real difference? Is it just
5 that the lawyers are not working -- it doesn't sound like
6 -- your office, you have the same lawyer sort of
7 cross-trained in all these fields. What's the big
8 difference, then? Is it that they are not in the exact
9 physical office?

10 MS. STEINBERG: There is some cross-training
11 that goes on, but there is a lot to be said for the
12 physical proximity. It shouldn't really be discounted.
13 The same way that our clients experience difficulties
14 accessing administrative services and other organizations,
15 I think other lawyers may have that same experience in any
16 other defender office as well. I think if I had a much
17 larger organization and I had my social -- when I worked
18 years ago my social workers were on the 9th floor and I
19 was on the fifth floor and I never actually interacted
20 with them at all on a day-to-day basis and in partnership
21 that way. I think there is something to be said about the
22 physical proximity and housing it under one roof. But if
23 not, I could imagine ways to house the public defender
24 lawyering under one roof and then at least have some
25 interdisciplinary team housed somewhere else. But some
26 place that a client could go and get those services in a

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wrap-around way from one place.

 Clients spend their entire lives trying to maneuver the administrative systems that they have to maneuver and get through and get around. Frankly, they just lose hope and strength and fortitude, and they just give up sometimes. And for anybody who has ever done this work for any length of time and tried to get to those agencies yourselves, I lose hope, too, and I wind up hanging up frustrated. I think that happens in organizations even when the services are in place. I think the physical proximity is important.

 CHAIRMAN HELLERSTEIN: Thank you so much.

 If you have any other information that you would like to convey to us in addition to what was asked, we would certainly appreciate it.

 MS. STEINBERG: Thank you for listening.

 Thank you very much.

1 Greg D. Lubow Esq.

2 CHAIRMAN HALLERSTEIN: Mr. Lubow.

3 Welcome, Mr. Lubow.

4 MR. LUBOW: Professor, nice to meet you.

5 You've seen my best half, I think.

6 CHAIRMAN HALLERSTEIN: Yes, sir, I have.

7 MR. LUBOW: Good morning.

8 I have to talk to the person who scheduled me

9 behind Robin Steinberg.

10 She's impossible to follow.

11 My name is Gregg Lubow.

12 I am the Greene County Public Defender, and

13 perhaps I can answer some of your questions about small

14 counties.

15 Greene County is located about 150-miles north

16 of here.

17 It takes about two-and-a-half hours to drive

18 on the New York State Thruway.

19 We're on the west side of the Hudson River

20 between Kingston and Albany.

21 Doing my civic bit, you're all invited to come

22 skiing this week. The weather is fine.

23 For the past 27 years I have been the Greene

24 County Public Defender.

25 Unless you think I'm someone just from

26 upstate, I was born and raised in Brooklyn; educated in

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2 Brooklyn; attended Brooklyn Law School; and then for
3 the past 27 years I've been the part-time Chief Public
4 Defender of Greene County.

5 I'd like to give you a perspective of what
6 small-town counties need in terms of the future of
7 indigent defense.

8 I'd like to begin with an adage and quotation,
9 paraphrasing, "To ignore history is to doom yourself to
10 repeat it."

11 And the quotation, "If the courts were
12 organized to promote justice, the people would elect
13 someone to defend all these criminals, somebody as
14 smart as the prosecutor, and give him as many
15 detectives, and as many assistants to help, and pay as
16 much money to defend you as the as to prosecute you."

17 The speaker was one of the greatest trial
18 lawyers in American history, perhaps in history in
19 itself, Clarence Darrow.

20 The audience were the inmates at the Cooke
21 County Jail, Chicago, Illinois.

22 The year was 1902.

23 I'm going to talk to you about two things:
24 Money, and politics.

25 Here we are 103 years later.

26 OCA is asking, "What is the future of indigent

1 Greg D. Lubow Esq.

2 defense?"

3 In a word, in my opinion it is dismal.

4 As long as the government refuses to provide
5 the funds necessary to meet its Constitutional mandate
6 there can never be a fair trial.

7 We can talk all day about state-wide defense
8 commissions, which I fully support; we can admire and
9 even try to replicate the incredible innovative
10 programs that Robin Steinberg and the Bronx Defenders
11 have, and I fully endorse those, and I wish I had the
12 money and manpower to do those in my small county.

13 Without the funds to support those endeavors,
14 we are spending wasting the talents of highly motivated
15 and dedicated attorneys.

16 We can cast blame at the Governor; State
17 Legislature; our local government officials; but they
18 are just the current incarnation of what seems to be an
19 inbred reluctance on the part of government to own up
20 to its own responsibilities.

21 For the most part, and with far too few
22 notable exceptions, government officials from across
23 the State simply do not demonstrate the political will
24 or personal desire or commitment to adequately fund
25 indigent defense services.

26 In Greene County, I head an office with five

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2 part-time attorneys.

3 We represent people in the family and criminal
4 courts.

5 Aligned against us are six District Attorneys,
6 five of them full-time, and two Assistant County
7 Attorneys in the Family Court.

8 Me and my four part-time attorneys earn
9 \$135,000 a year between the five of us.

10 The five full-time District Attorneys earn
11 over \$300,000 a year.

12 When you add in the part-timer and the
13 Assistant County attorneys, you're up to about
14 \$420,000.

15 Where is the equal justice under law in that?

16 That doesn't even take into account the
17 inherent difference between being a full-time attorney
18 dedicated to criminal law as a prosecutor and the needs
19 of a part-time attorney.

20 Several years, ago I believe it was 1999 or
21 2,000 the State Legislature gave 32 upstate counties
22 that did not previously have any, aid to prosecution,
23 \$50,000 per year to each of 32 counties, \$1.6 million.

24 It took five minutes.

25 Compare that to the extraordinary 18-B fight
26 that has gone on for the past ten years.

1 Greg D. Lubow Esq.

2 And what did we get out of the 18-B fight?

3 \$75 an hour, when courts were saying, "Gee \$90 an hour
4 should be the right number."

5 Look how much it took.

6 What did the upstate counties, what did the
7 rest of the state get?

8 We have the indigent defense fund.

9 Don't get me wrong, something is better than
10 nothing.

11 Greene County will get something between
12 \$50,000 and \$75,000 out of this year's indigent defense
13 fund.

14 We all know that next year it will be a
15 smaller percentage because there will be less money.

16 What is necessary is a simple allocation of
17 aid to defense.

18 In Greene County \$200,000 a year from the
19 state would be spectacular. \$200,000 to those 32
20 upstate counties that did not get -- that got the
21 \$50,000, and that's incorporated in the Governor's
22 budgets in every year now.

23 \$200,000 would go an extraordinarily long way
24 to level the playing field.

25 It won't make us equal, but I guarantee you
26 each of those 32 counties would be able to greatly and

1 Greg D. Lubow Esq.

2 vastly improve their services.

3 What would I do with \$200,000?

4 I would hire a full-time felony experienced
5 lawyer, for \$75,000.

6 I would hire a Family Court lawyer for
7 \$55,000. I would hire an investigator for \$30,000.

8 And I would hire a defender-based advocate for
9 \$40,000.

10 What does that get me?

11 That gets me darn close to Robin Steinberg's
12 holistic approach to representation.

13 What will it get the County?

14 Fewer days of pre-trial detention; fewer days
15 of post conviction detention.

16 It will save money. It will bring people
17 boarded out to other counties back into our County.

18 Until the government decides to spend the
19 money nothing will change.

20 What is the reality?

21 What is the real value of a holistic approach
22 where we can monitor and provide better services; drug
23 rehab services; educational services; vocational
24 services through a defender-based advocate.

25 What we can do with that the real value?

26 Quite frankly, if you save one person from

1 Greg D. Lubow Esq.
2 becoming a recidivist; one person from committing a new
3 crime, what have you got?

4 One less crime victim; and Sally didn't get
5 mugged; her purse wasn't stolen; she wasn't knocked to
6 the ground; you have one less crime victim's family and
7 that's invaluable.

8 That's the money aspect.

9 Now for the politics.

10 This is a very personal matter to me.

11 After 27-and-a-half years as the Greene County
12 Public Defender, today is my last working day, I have
13 been fired. There's no nicer way to say it.

14 In a brutal political battle that has gone on
15 since the middle of October, certain members of my
16 legislature have decided that I was not the person to
17 be the public defender.

18 They decided to take the job that I have held
19 for 27-and-a-half years, which was always a part-time
20 job and allowed me to maintain a private practice, and
21 change it into a "full-time position," quote unquote.

22 I cannot, and they knew I could not afford to
23 take that full-time position. I have one son in law
24 school, one daughter in college.

25 They funded the full-time public defender's
26 job at \$72,000.

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2 The person that they appointed has no
3 administrative experience; virtually no trial
4 experience, felony or otherwise.

5 This was a brutal political battle.

6 They undertook this decision at the spur of
7 the moment, following what I call a Star Chamber where
8 I was called to an executive session of the legislature
9 to explain my so-called criticism of the legislature.

10 My criticism was that I had put into an
11 affirmation asking to be relieved of an Appellate case;
12 "We don't have the manpower."

13 They haven't given us the manpower.

14 For eight years I've asked them for a
15 full-time help so we can get current on our appeals.
16 They didn't like that.

17 That was, quote, unquote criticism of the
18 legislature.

19 They undertook no studies; no cost-benefit
20 analysis; held no public hearings; conducted no public
21 meetings and took no public votes.

22 They simply appointed a task force, stacked of
23 people who were opposed to me personally, and they
24 decided this past -- just the last week, to do that.

25 As of February 14th I will be out of a job.

26 You have to understand what goes on in a small

1 Greg D. Lubow Esq.

2 county.

3 My job as public defender was pretty benign
4 for about 15 or 17 years.

5 Ten years ago a man was elected to the
6 Legislature and he decided that his constituents, who
7 were the correctional officers that work at Coxsackie
8 and Greene County correctional facilities were tired of
9 the best defense that we could provide, so he launched
10 into a campaign, and he complained publicly and
11 repeatedly that my office and Gregg Lubow we were
12 provided so-called "Cadillac defenses" to the inmates
13 of the Coxsackie Correctional Facilities.

14 That was the battle cry letters-to-the-editor;
15 "Mr. Lubow provides Cadillac defenses."

16 Fortunately, he was in the great minority.
17 Most legislators simply understood he was trying to get
18 rid of me for doing my job, in their words, "too well."

19 His personal attacks were that I was trying to
20 enhance my status in the criminal defense community by
21 doing my job.

22 Whatever my reputation is or was, was earned
23 over 27 years of representation.

24 He's been elected out.

25 Now the new majority leader was one of his
26 cohorts, and this woman has decided that I should not

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2 be the Public Defender, and she was the person who led
3 the criticism of me and led the votes against me; she
4 recruited the person who is going to replace me.

5 What is the lesson that must be learned from
6 this nine-to-five vote at the Greene County
7 Legislature?

8 Politicians must stay out of making decisions
9 on funding, on how we do our job.

10 During the search committee's interviews, it
11 has been reported to me, and I have verified it with
12 two people, that one legislator actually asked a
13 potential candidate if they would continue to provide
14 "Cadillac defenses."

15 Talk about your attempt at political
16 intimidation.

17 The truly sad part of all of this is that the
18 person, the majority leader of our legislature is
19 someone who should know better; someone who should be
20 dedicated to the provision of high-quality defense
21 services everywhere because this person is an employee
22 of OCA; this person is the Chief Clerk of the Court,
23 the Supreme and County Courts in my neighboring county.

24 OCA has to keep its house in order.

25 You have to speak with one voice and that
26 voice has to be an unequivocal commitment to the proper

1 Greg D. Lubow Esq.
2 funding of indigent defense services.

3 That's the end of my prepared statements.

4 Just if I may have a moment, I can briefly
5 address some of the questions that you've raised to
6 some of the earlier speakers.

7 Holistic representation can work, will work,
8 on scale, at cost, in small counties.

9 What it will do is it will provide jobs in our
10 counties, and it will provide people who will not be
11 drug addicts, people who will not be breaking into
12 houses, people who will not be committing small street
13 crimes and it will work.

14 There was a question about discovery.

15 Discovery is a tooth-and-nail fight for every
16 bit that you can get in upstate New York.

17 I just finished a murder case.

18 On the morning we were picking the jury. The
19 District Attorney gave me notice, Brady notice, that a
20 star witness for both prosecution and defense, the man
21 who drove my client from the train station to the place
22 where the homicide occurred, had a deal.

23 Now, Greene County only has six prosecutors.
24 It's a very small office.

25 I don't know how the District Attorney can say
26 to me, "I just learned that he had a deal."

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2 We spent half a day questioning his lawyer
3 before we got to the police and that's when we finally
4 were able to resolve the case.

5 Discovery should be the way it is in
6 Massachusetts.

7 In Massachusetts when you get to arraignment
8 the prosecutor walks up to the clerk and hands the
9 clerk a package.

10 And the clerk says, "Is that everything?"

11 And the prosecutor puts his or her hand to God
12 and says, "Yes, I swear it."

13 The clerk takes the package; goes to the back;
14 copies it; and puts the two packages out on the table
15 and says to the defense lawyer, "Pick one."

16 At arraignment, that's when the case should be
17 done.

18 Discovery reform is essential.

19 Judge Roberts, you asked about regional public
20 defenders.

21 Between my public defender and private
22 practice, I drive about 35,000 to 40,000-miles a year.

23 The courts that I regularly practice in are
24 about an hour -- are within an hour's drive of where I
25 live, and that's a lot of miles because we're in
26 upstate New York.

1 Greg D. Lubow Esq.

2 I recently had a case down in Orange County,
3 an hour-and-a-half drive from where I live. That was a
4 private matter.

5 Regional public defenders will not provide the
6 economy of scale that you may think they do.

7 What's necessary is to have adequately funded
8 local public defenders in each of the 62 counties.

9 A PANEL MEMBER: Judge Roberts.

10 Mr. Lubow, how many cases does the Public
11 Defender's Office in Greene County represent?

12 MR. LUBOW: My office represents approximately
13 1200 people a year.

14 My total case load is about 1200.

15 That's about 80 to 85 percent of what the
16 District Attorney's case load is.

17 A PANEL MEMBER: Do you have Family Court
18 cases, criminal cases?

19 MR. LUBOW: A thousand criminal court cases

20 A PANEL MEMBER: Barry Kamins.

21 Did you hear Mr. Gradess?

22 He had enumerated a number of problems with
23 indigent defense services upstate.

24 One of them is the fact that many defendants
25 appear before judges at arraignment without attorneys;
26 many of them are remanded without attorneys; some of

1 Greg D. Lubow Esq.
2 them sitting in jail without seeing attorneys for a
3 number of days.

4 In your experience of over 27 years has that
5 been a problem, at least in your County?

6 MR. LUBOW: Absolutely. Absolutely.

7 Here's how arraignments work:

8 If you get arrested at 3:00 o'clock in the
9 morning, they call the judge up, the state police
10 usually or the local police agency, they call the judge
11 up.

12 They say, "Judge, we have an arraignment."

13 The person is taken to the judge, either at
14 her house or his house; taken to the Town House, which
15 is more often than not where the police station is; and
16 an arraignment occurs.

17 If it's a felony the officer has to call the
18 District Attorney and he makes a phone call, and they
19 make a bail recommendation over the phone without any
20 criminal history.

21 And the next morning, if it happens to be a
22 weekday and the person happens to be in jail, my office
23 as the Public Defender, we will find out about it
24 because we have an investigator who goes to the jail;
25 calls and say, "We got two new ones tonight."

26 I have asked, and most of the judges have

1 Greg D. Lubow Esq.
2 acceded to my request, that when they arraign somebody
3 at 3:00 o'clock in the morning, at least by 10:00
4 o'clock in the morning, fax me the papers at least; I
5 will have an investigator look for them.

6 If they're still in jail, it's easy, it could
7 be a day or two or three before an attorney actually
8 gets involved in the case because that person is not
9 scheduled to go back to court for at least six days if
10 it's a felony, you know, perhaps 20 days if it's a
11 misdemeanor.

12 CHAIRMAN HALLERSTEIN: Miss Schair.

13 A PANEL MEMBER: Penelope Schair.

14 Thank you for sharing with us your personal
15 difficult situations you alluded to us earlier.

16 Whether or not, rural areas or areas you are
17 aware of encounter the kind of immigration and language
18 barriers and complexity of those issues that some
19 people don't feel happen outside of New York City.

20 MR. LUBOW: For 25 years there really was not
21 a problem in terms of language problems.

22 Greene County is a County of immigrants. It's
23 a resort county, we have a place that advertises itself
24 as the Emerald Isle of New York State. We have huge,
25 huge, huge immigrant populations. We have Ukrainian
26 people, we have a large Polish population, we have a

1 Greg D. Lubow Esq.
2 German population; we did not have a large Hispanic
3 population up to now. It's changing. The Hispanic
4 population is growing in Greene County.

5 The reality is that when we need a person to
6 speak a different language, OCA generally provides
7 that. We have always had our resources; we have used
8 the Spanish teacher at the high school, who has come
9 over to help over the years; he's learned some of the
10 words like f-e-l-o-n-y -- I don't speak Spanish --
11 unfortunately my wife is fluent, but I was told I
12 wasn't allowed to use her as an interpreter; it doesn't
13 look right -- those are some of the issues.

14 A PANEL MEMBER: Phyllis Bamberger, Bronx
15 County.

16 Mr. Lubow, Miss Steinberg has nothing on you.

17 I want to ask whether the number of lawyers
18 who practice in the area have something to do with the
19 difficulty. If there were more lawyers, if there were
20 more lawyers present in the rural and non-urban
21 counties, would that make a difference in how you could
22 perform the functions?

23 MR. LUBOW: If I had, for the last eight years
24 I've asked for two full-time attorneys to be assistant
25 public defenders. If I had those assistant public
26 defenders, the policy I would set up is the first

1 Greg D. Lubow Esq.
2 person to go see the individual would be my
3 investigator, and they would see that person at 8:00
4 or 9:00 or 10:00 o'clock in the morning, and that
5 afternoon the attorney would go visit them in the
6 County jail, they would see a lawyer within hours of
7 our getting involved in the case, and then that lawyer
8 would be calling the District Attorney, and we would
9 have -- I can guarantee you, we would have much, much
10 more information than the prosecutor has.

11 Prosecutors, they get their paper in a
12 pipeline -- unless it's a terribly notorious or
13 horrible felony, they won't know anything about it --
14 the prosecutor who handles that file -- the Court would
15 not know anything about it at all.

16 A PANEL MEMBER: Is it liveable salaries that
17 would draw more lawyers to the communities in which you
18 serve or are the lawyers already there and just not
19 involved in the defender system?

20 MR. LUBOW: The Legislature has not authorized
21 the positions, so therefore we haven't been able to
22 hire the lawyers that are there and willing to do it.

23 When I say I can hire an experienced felony
24 level trial lawyer, there's a man who worked for me;
25 tried many felony cases for me; cut his teeth working
26 for legal services, an extraordinary attorney, he

1 Greg D. Lubow Esq.
2 worked as an Assistant Public Defender on a part-time
3 basis; tried many felony cases; he couldn't keep up.

4 When PLS went out of business, he said, "I
5 can't work at a part-time services." He now works for
6 the State of New York in the Professional Medical
7 Office, prosecuting doctors.

8 A PANEL MEMBER: Burton Roberts.
9 Is there no assigned counsel plan in Greene
10 County or other rural county?

11 MR. LUBOW: There is an assigned counsel,
12 quote unquote "plan".

13 There is no plan. In fact the Legislature
14 directed me several years ago to rewrite it.

15 However, a new lawyer will come into the
16 community and send a letter to a judge and say, "Hello,
17 judge, I'm a lawyer. I'd like to take assignments,"
18 and the lawyer will get assignments; no training; no
19 ability, no -- I shouldn't say no ability -- no
20 experience, that's the way.

21 A PANEL MEMBER: Barry Kamins.
22 There is no one doing the oversight of that
23 lawyer to take those cases?

24 MR. LUBOW: Only the judge, and I don't think
25 the judges are looking at it from an oversight
26 perspective.

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2 They have somebody willing to take the case,
3 that person will appear.

4 A PANEL MEMBER: Burt Roberts.

5 Again, in multiple-defendant cases, in a case
6 where there's a complex defense, there has to be some
7 other lawyer other than the Public Defender's Office to
8 represent the co-defendants.

9 MR. LUBOW: That's correct.

10 A PANEL MEMBER: Where do they get that other
11 attorney?

12 MR. LUBOW: In Greene County -- there are
13 approximately 60, 65 counties, maybe 50.

14 In Albany, in Columbia and Ulster counties,
15 there are a number of criminal defense lawyers that
16 practice in Greene County, those attorneys have made
17 themselves known to the judge on the County Court
18 level, for instance, that they are available for
19 assignment, just as I have made myself available in
20 Columbia, Albany and Ulster, and Schoharie counties
21 I've made myself available to judges to let them know,
22 as in, if there is a conflict I am willing to come over
23 and do cases.

24 Several years ago we had a four-defendant
25 Latin Kings homicide. I represented one person. Three
26 attorneys were assigned to represent the other persons.

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2 The way those assignments come about is that
3 when there are four people in the jail, and my
4 investigator says, "We have four people," I go to the
5 County Court Judge, our Senior County Court Judge, I
6 say, "We have a homicide. We have four defendants.
7 Give me one, before we even do anything, give me one;
8 call up three other lawyers and go get them."

9 And then the County Court Judge who doesn't
10 have jurisdiction over the case will call the Town
11 Court Judge and say, "Look, this is a homicide; it's a
12 serious matter; let me pick the judges; let me suggest
13 the judges. And that's how it works.

14 A PANEL MEMBER: Christopher Chan.

15 The judges or the attorneys?

16 MR. LUBOW: The judge makes the selection.

17 The County Court Judge will call the Town
18 Court Judge, the local Criminal Court Judge and say,
19 "You have a case that's pending in your court; it's
20 obviously coming up; the public defender will take this
21 defendant; perhaps let's talk about these other
22 people."

23 And the Town Court Judges, who are
24 wonderful -- I mean we have two lawyers in our
25 County -- we have 18 judges, two of them are lawyers;
26 they do their jobs, but they don't want to be selecting

1 Greg D. Lubow Esq.

2 an attorney off their, "Gee somebody wrote in --"

3 A PANEL MEMBER: Burton Roberts.

4 There is a pool of 50 attorneys?

5 MR. LUBOW: There is a pool of 50 attorneys of
6 which five maybe ten practice any level of criminal
7 defense.

8 A PANEL MEMBER: Lawrence Goldsmith.

9 I know you pretty well and your firing is a
10 great loss to Greene County.

11 MR. LUBOW: Thank you.

12 A PANEL MEMBER: Putting you aside, isn't
13 there a problem with the fact, as a general systemic
14 possibility, with part-time public defenders?

15 Isn't there always the danger that that
16 defender, just as every other human being, might pay
17 less attention to his or her work than his or her
18 private practice, and shouldn't we, in an ideal system,
19 have full-time public defenders throughout the state?

20 MR. LUBOW: I believe so, in an ideal system,
21 sure.

22 As long as you pay them not \$72,000, which, by
23 the way is \$3,000 less than the Chief Assistant
24 District Attorney in our County gets -- this this is a
25 department level, this is the head of a department --
26 is paid less than the Chief Assistant in the DA's

1 Greg D. Lubow Esq.
2 Office; as long as you pay them what they're worth, as
3 long as you put enough lawyers in there, to do the job,
4 and as long as there are enough lawyers available to do
5 the job.

6 You have to remember if you're going to pay a
7 person \$55,000 to be a full-time public defender in
8 Greene County that's -- you're not going to get a lot
9 of people taking that job.

10 \$75,000, well then you're getting up to talk
11 about assistance.

12 If you want to be a Chief Public Defender, you
13 shouldn't get paid anything less than, if we go to the
14 federal system you get \$119,800 same thing as our DA
15 gets.

16 If you want to say we only do 80 percent of
17 the work, okay give; me 80 percent of his salary or
18 85 percent of his salary.

19 Given a full-time public defender, that amount
20 of money, and you'll find people willing to take the
21 job.

22 Until the dollars reach that value you're not
23 going to see it, and you're going to have to supplement
24 your income with that.

25 Plus the nature of upstate lawyering is that
26 there's something that you have night court here; and

1 Greg D. Lubow Esq.
2 we have all seen it on television, but there are nights
3 that I can get three or four courts in an evening going
4 from client to client from court to court, and that's
5 after putting in my hours of from 8:00 o'clock in the
6 morning until 9:00 o'clock to 10:00 o'clock at night --
7 I'm not saying cry for Greg Lubow for putting in those
8 hours, because the reality is there are places you have
9 to be, and full-time means nine to five, then you have
10 to have somebody do the night courts.

11 The answer is, yes, full-time would be the
12 ideal system.

13 Until the ideal system comes along, we're
14 doing the best we can.

15 CHAIRMAN HALLERSTEIN: Judge Bamberger.

16 A PANEL MEMBER: I have a question I would
17 request you answer in writing, since there isn't enough
18 time to answer it.

19 MR. LUBOW: Am I as wordy as Mr. Gradess?

20 A PANEL MEMBER: Phyllis Bamberger.

21 We just have a lot of people to deal with the
22 issue of discovery.

23 Number one, do you need to go to the police
24 yourself to get the material? Do you -- do you use
25 subpoenas? Are judges willing to so, to order
26 subpoenas for records from police, other government

1 Greg D. Lubow Esq.

2 agencies, hospitals?

3 My interest is in knowing how this works
4 because I think discovery is a critical issue in
5 defense services, and I really don't know how it works
6 out of New York City, if you could help us out by
7 giving us that.

8 MR. LUBOW: I'll give you a 60-second response
9 if the Chair will allow that.

10 A PANEL MEMBER: That's up to the chair.

11 CHAIRMAN HALLERSTEIN: Can you make it 30?

12 MR. LUBOW: The police give us zero. If we
13 ask the police for anything, they say, "Talk to the
14 prosecutor." The Prosecutor gives us zero -- when our
15 client comes into our office and we know they made a
16 statement I call the office they say, no.

17 A PANEL MEMBER: What about subpoenas?

18 MR. LUBOW: Subpoenas will be issues at trial
19 level. I can get medical records, there's no issue
20 about getting medical records when they have to be
21 subpoenaed, but the reality is that discovery is by
22 240.20 -- I have an extraordinary multi-page discovery
23 demand --

24 A PANEL MEMBER: I think you've taken more
25 than was allowed.

26 MR. LUBOW: The answer is, I'll be happy to

1 Greg D. Lubow Esq.

2 provide it.

3 CHAIRMAN HALLERSTEIN: You did it in 35
4 seconds.

5 MR. LUBOW: Professor, thank you very much.

6 (Whereupon Sara Stanley was relieved by Lester
7 Isaacs, as Official Court Reporter.)

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3 PROFESSOR HELLERSTEIN: Miss Wilson.

4 CAROLYN WILSON: Good morning.

5 PROFESSOR HELLERSTEIN: Good morning.

6 CAROLYN WILSON: I'm a co-director of the
7 New York County Defender Service in Manhattan. New
8 York County Defender Service is a 36 lawyer public
9 defender office. We have been in existence since 1997.

10 We currently have a contract in New York City
11 to handle 16,000 cases a year. In the previous year,
12 2004 we actually handled 17,000.

13 In many ways ours is the perfect world. Our
14 staff averages about 11 years of experience and they
15 are dedicated public defenders.

16 Our model is that all attorneys handle all
17 types of cases. We are committed to vertical
18 representation, not merely as an abstract concept, but
19 as a reality.

20 Our attorneys pickup cases in arraignments,
21 they stay with those cases until the final resolution.
22 Other than arraignment assignments, our attorneys do
23 not staff parts, they represent clients.

24 The fact that cases are not reassigned inside
25 of our office and that attorneys cover their cases on
26 each appearance leads to efficiency. If a case is

1 Carolyn Wilson, Esq.
2 going to be disposed of by a plea, that plea will take
3 place sooner if the attorney who actually represents
4 the client is present to interact with the client at
5 all appearances.

6 If a case is going to be tried, a trial will
7 take place sooner if it has been handled by one single
8 attorney who has the experience and the confidence to
9 proceed to trial when appropriate.

10 May I just say on the subject of discovery.
11 Discovery in New York County is far difference then
12 that which was described by Judge Miller earlier this
13 morning. We do not have discovery by stipulation. We
14 have discovery as you walk down the hall to the part to
15 which you have been sent for hearing and trial.

16 I am fond of saying and have said it at some
17 Committee meetings, in New York County, it is the birth
18 place of discovery in the criminal court complaint. I
19 think that is a terrific situation.

20 I would urge this Commission to consider
21 addressing itself to. That is a local practice in New
22 York County. In any event, the small size of our
23 organization allows for supervision. Our supervisors
24 are able to stay current on the details of cases
25 handled by their attorneys and to be aware of the case
26 loads of those attorneys. Because of the high level of

1 Carolyn Wilson, Esq.
2 experience of our attorneys, there is no need for a
3 moment to moment supervision, which allows our
4 supervises to carry case loads of our own.

5 The fact that our supervisors are practicing
6 trial attorneys inures to their ability to give current
7 and appropriate strategy, advise, legal advise and
8 advise on plea negotiations to the attorneys that they
9 supervise. It enhances their value as a resource to
10 the attorneys they supervise and it enhances moral,
11 because the person that is supervising the attorneys is
12 doing the same work that you, as a staff attorney, are
13 doing.

14 Another benefit of our small size is our
15 ability to be responsive to the need of our seasoned
16 staff, the needs of our clients and the needs of the
17 Court. We do not have a multi level bureaucratic
18 structure. When a problem arises we are able to
19 address it promptly.

20 I would just give a couple of examples of our
21 ability to be responsive to the Court. That assigning
22 an attorney to an extra arraignment shift, that was
23 called on or to the Grand Jury when we are assigned to,
24 by the Grand Jury judge, representing individuals who
25 are yet to be charged, but are being called upon to
26 stand in lineups in police stations.

1 Carolyn Wilson, Esq.

2 PROFESSOR HELLERSTEIN: Can I just ask you,
3 how many supervisors to you have?

4 CAROLYN WILSON: We have four case
5 supervisors and forty-two attorneys, 32 attorneys.

6 Our attorneys are experienced litigators who
7 are skilled at evaluating cases and who enjoy the
8 respect of judges and prosecutors.

9 The fact that we cover our own cases and have
10 a vertical system of representation leads to proper
11 dispositions and timely litigation when appropriate.
12 Efficient handling of cases benefits the system as a
13 whole. It leads to fewer court appearances, less
14 correction costs for production of defendants and less
15 pretrial detention time.

16 If I can just quote a comment from a report
17 written by the Indigent Defense Oversight Committee in
18 discussing these issues with regard to our office. An
19 experienced staff combined with a management case load
20 is well a recipe for success.

21 All of that being said, I am sorry to report
22 that NYCDS, the other groups have similar contracts
23 with the City of New York, are in a financial crisis
24 during the past several years. There has been growing
25 disparity between the type of criminal justice found in
26 to City of whom our contracts were written. It was in

1 Carolyn Wilson, Esq.
2 envisioned by all parties that our budgets would be
3 renegotiated every two years. Unfortunately this has
4 not occurred and we are currently functioning with a
5 frozen budget.

6 Historically we have had an extremely low
7 attrition rate. This has inured to the benefit of our
8 clients and they are represented by the same attorney
9 throughout the pendency of their case. It has inured
10 to high moral in our office, and it has attributed to
11 our ability to handle cases effectively and
12 efficiently.

13 PROFESSOR HELLERSTEIN: If I may interrupt.
14 Why is there a change in the relationship with the
15 City?

16 CAROLYN WILSON: The well publicized
17 troubles of the Legal Aid Society lead to certain
18 amount of money being restored onto them by City
19 counsel and our budgets became frozen because there is
20 quite frankly, only so much money in the criminal
21 justice pie.

22 PROFESSOR LAURIE SHANKS: Can you tell me
23 what the career trial lawyers make in your
24 organization, is that higher then the pay of Legal Aid
25 or is that the over all pie?

26 CAROLYN WILSON: Our attorneys have not had

1 Carolyn Wilson, Esq.
2 a meaningful raise in four years, they had in 2002,
3 they had a \$1,000 raise.

4 I don't have our budget in front of me, but
5 we have our probably less experienced attorneys,
6 probably make, do make in the neighborhood of \$55,000 a
7 year. I believe our highest paid attorney makes
8 probably in the neighborhood of \$85,000.

9 PROFESSOR LAURIE SHANKS: They are all full
10 time?

11 CAROLYN WILSON: They are all full time. We
12 don't have part time that are in private practice.
13 They are full time employees in our office.

14 PROFESSOR LAURIE SHANKS: You will submit
15 your budget?

16 CAROLYN WILSON: Yes, absolutely.
17 Our attrition rate has been threatened by our
18 physical woes. When our contract was written, I would
19 just add to the question, that we were specifically
20 prohibited from writing increases for our staff
21 attorneys, as the Legal Aid Society is.

22 Our ability to give raises to our attorneys
23 is completely dependant on our ability to renegotiate
24 our contract with our budget with the City. So there
25 are attorneys in our office, the worst case scenario,
26 who did at one time work at the Legal Aid Society and

1 Carolyn Wilson, Esq.
2 if they had stayed at the Legal Aid Society, taking
3 into account various raises and restorations of monies,
4 they would be making about \$13,000 a year more than
5 they are making now. And as you can imagine we are now
6 in a position of feeling it. We are going to lose some
7 of our talented and productive staff members. And
8 further, we are now feeling that we cannot recruit
9 attorneys of the caliber that we want. So this is a
10 problem.

11 And in closing, I would just thing, I would
12 ask this Committee to recognize the overall value of
13 the Public Defender Organization, a small office needs
14 no city wide policy or procedure.

15 A small office doesn't need many lawyers of
16 bureaucratic structure. We have the freedom to be
17 responsive to the culture and the practice of the
18 Courts in our jurisdiction, which have the freedom to
19 try innovative approaches that suited to the
20 jurisdiction where we exist. We have the ability to
21 tailor our practice to the local policies of the Courts
22 in which we practice and to the prosecutors offices
23 that we oppose. Most of all, we can be responsive to
24 the needs of our clients.

25 PROFESSOR HELLERSTEIN: Are you offering as
26 the Bronx Defenders, what Ms. Steinberg called a

1 Carolyn Wilson, Esq.
2 holistic approach. Do you have any civil lawyers? The
3 social workers and the immigration specialists that
4 they have in the Bronx?

5 CAROLYN WILSON: Not to the extent that the
6 Bronx defender has. We have our own attorney who we
7 send to continued CLE seminars on immigration issues
8 and who is our in house, if you will, immigration
9 specialist and resource.

10 We, of course, have social workers. We have
11 two full time staffed social workers. Social work in
12 terms that we contract out some of our presentence
13 reports to a private social work agency. So, of
14 course, we approach the social work aspect of our
15 practice.

16 PROFESSOR HELLERSTEIN: We appreciate there
17 is a difference by county, different in respect to
18 county to county.

19 CAROLYN WILSON: I think there are a variety
20 of reasons people organize, you no, reasonable minds
21 can differ. People can organize offices in different
22 ways. But in addition the Bronx is far more than a
23 residential County in terms of their clients. Many of
24 their clients live in that County, whereas many of our
25 clients are visitors from other counties. I don't know
26 that there is any one simple answer I can give you in

1 Carolyn Wilson, Esq.
2 the time allowed. But essentially, we do a lot of the
3 same things, calling it a different name.

4 HON. BURTON ROBERTS: How many cases do you
5 have?

6 CAROLYN WILSON: I believe it's 20 percent
7 of the cases in New York County. We handled 17,000
8 cases in the previous year 2004, we are on track to do
9 17,000 cases this year.

10 HON. BURTON ROBERTS: What about the funds
11 to obtain an expert, is that adequate?

12 CAROLYN WILSON: Adequate at the moment. In
13 our institution in the first year, we gave a
14 substantial amount of money, that's back to the City,
15 that was not spent. Each year we have to be more
16 creative about borrowing from our budget lines to pay
17 experts. And there is always the feeling that a DNA
18 case or a case with serious forensic issues of any
19 nature, could potentially causes problem. So that is a
20 huge anxiety and not only is our budget part of it, our
21 ability to give our attorney raises is not our only
22 budgetary concern. Our budget is frozen in every
23 respect and, of course, the price of experts as well.
24 The price of minutes is going up all the time. So at
25 the moment it's adequate. We have never had to base a
26 judgment as to whether to hire an expert or whether to

1 Carolyn Wilson, Esq.
2 consult with an expert in any field on money. But
3 there is always the worry that day may come.

4 CHRISTOPHER CHAN: To follow up on the last
5 question. What about your budget for translators and
6 how has your composition of your clients held, that
7 there are more language requirements?

8 CAROLYN WILSON: There always has been a
9 vast number of different languages spoken by clients in
10 Manhattan. We have two attorneys who are bilingual in
11 Spanish and English from birth, and two other attorneys
12 who are proficient in Spanish. We have three support
13 staff members who are bilingual in the Spanish
14 language. If we require an expert either of another
15 language, for trial preparation or an extensive in
16 office interview, we hire that person and again we have
17 always been able to do so when needed. For our Court
18 appearance in a brief discussion prior to or
19 immediately following a court appearance, we use the
20 interpreters that are in the court house.

21 HON. JOSEPH ZAYAS: You say your attorneys
22 don't staff parts. They represent clients. Are you
23 trying to draw a distinction between what your office
24 does and what the Legal Aid Society does? Why don't
25 you expand upon what you mean by that.

26 CAROLYN WILSON: Yes. Essentially, the

1 Carolyn Wilson, Esq.
2 culture of our office is that people handle their own
3 cases. When we originally made our proposal to the
4 City we actually asked to get tracking, that we would
5 be willing to go to certain parts, but that did not
6 happen and in hindsight, I was just as happy as it
7 didn't. But the culture of up front parts and Supreme
8 Court arraignment parts and all purpose parts being in
9 Criminal Court, being covered by one person who is
10 handling cases for every lawyer in the office, I think
11 inures, leads to a sort of meld, less shepherding of
12 case to case.

13 Let's go on to the next step where if the
14 attorney that has an actual relationship with the
15 client shows up and its more time consuming for the
16 attorney, but if that client and that attorney are able
17 to interact, I think it's important to the confidence
18 of the client. I think it's more beneficial here so
19 you can think for yourself. But I think a judge would
20 rather have a person who knows what is going on with
21 the case than who has no identification with the client
22 just prior to court appearance rather than someone just
23 reading in a note. I think that does lead to the case
24 proceeding down whatever path it's going to take in a
25 more efficient manner.

26 PROFESSOR HELLERSTEIN: Thank you, Ms.

1 Carolyn Wilson, Esq.

2 Wilson, we appreciate your coming.

3 Anybody else?

4 We would like you to send us that, it would

5 be very helpful.

6 THE WITNESS: I will send you our budget.

7 Thank you.

8 PROFESSOR HELLERSTEIN: Thank you.

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2 CHAIRMAN HELLERSTEIN: Miss Kearney,

3 Mr. Scherer.

4 MS. KEARNEY: Good morning.

5 MR. SCHERER: Good morning.

6 CHAIRMAN HELLERSTEIN: Welcome.

7 MR. SCHERER: I am Andrew Scherer. I am the

8 executive director of Legal Services for New York City.

9 This is Caroline Kearney. Caroline is our family law

10 coordinator for the organization.

11 We are here this morning to talk about parent

12 representation in Family Court. We don't do any criminal

13 defense. We are, however, the largest civil legal

14 services provider in the United States. We provide legal

15 assistance in a full range of civil matters to low income

16 people throughout New York City. We have 19 offices,

17 about 400 employees. And we help people with staying in

18 their homes and preventing evictions, with securing income

19 to be able to keep food on the table and keep their

20 families together. And we do a substantial amount of

21 family law as well. We have been in the practice of

22 representing parents in Family Court for the last 35 years

23 or so, although we only have done a modest amount of that

24 representation over those years.

25 We are here today to talk about our approach to

26 representation, why we believe it is important to have

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2 some institutional representation for parents in the
3 Family Court practice where there is none, at this point,
4 and to urge you to suggest that we, and organizations like
5 us, be able to actually be certified and collect the same
6 fees that the 18-B attorneys do so that we can supplement
7 our practice and do more of the work --

8 CHAIRMAN HELLERSTEIN: Mr. Scherer, I hate to
9 rain on the parade, but the charge of our commission, the
10 Family Court is not within it. Our charge is criminal
11 indigent defense system. And I don't know that -- I know
12 that it is not within our mandate --

13 MR. SCHERER: Then my deepest apologies. But my
14 understanding was that you were looking at all of the
15 state funded indigent defense, including the Family Court
16 representation that's paid for. All of the areas in which
17 there is a right to counsel.

18 CHAIRMAN HELLERSTEIN: No, that's beyond our
19 charge. Ours is an indigent criminal defense practice,
20 which is a large enough concern.

21 MR. SCHERER: Yeah.

22 CHAIRMAN HELLERSTEIN: If you have any
23 information or relevant material that pertains to family
24 problems that emanate in terms of criminal defense, we
25 would love to hear them. I know you have got much to say,
26 but I don't think we are the commission that can operate

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2 on your concern.

3 MR. SCHERER: I am very embarrassed by this. I
4 won't take any more of the commission's time. I was -- we
5 were really under a misunderstanding that you were looking
6 into all of the indigent defense services and that was
7 your portfolio. It is our fault. I apologize. Hopefully
8 there will be a second commission to address the Family
9 Court concerns as well.

10 CHAIRMAN HELLERSTEIN: Don't apologize to me.

11 MS. KEARNEY: Nice to see you.

12 CHAIRMAN HELLERSTEIN: Mr. Moston.

13 MR. MOSTON: Thank you.

14 CHAIRMAN HELLERSTEIN: Hello, Mr. Moston.

15 MR. MOSTON: I am Kent Moston. I am the
16 attorney in chief of the Legal Aid Society of Nassau
17 County. I have come to talk about a few of our problems.

18 I think that there is a general perception that
19 coming from a place like Nassau County, which is conceived
20 of and believed to be a wealthy county, that we don't have
21 too many problems. That's not the case. We do.

22 We have been around for the past 54 years. We
23 have been the primary provider of legal services to
24 criminal and indigent defendants in the county since
25 Gideon against Wayneright. We are handling about 35 to
26 40% of the criminal docket in Nassau county. There is an

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2 18-B panel in Nassau County. I know Patrick McCloskey
3 from the 18-B panel is here and will be speaking right
4 after me. At this time we have 44 lawyers; 42 of them are
5 full time, 2 are part time.

6 I wanted to talk to you about problems which,
7 not surprisingly, are going to be related to funding and
8 caseload.

9 Obviously, in an ideal system we would be here
10 pitching very heavy for parity with the district
11 attorney's office. To give you an idea, up until last
12 year the starting salary for a Legal Aid attorney in
13 Nassau County was \$34,000 a year.

14 COMMISSIONER KAMINS: Can I ask one question?
15 You have a contract with the county?

16 MR. MOSTON: Yes, we do.

17 COMMISSIONER KAMINS: The contracting agency of
18 the county is the legislature?

19 MR. MOSTON: Well, it is with the county
20 executive's office through the legislature. There is a
21 whole funding process through the county legislature which
22 then has to be approved by the executive.

23 COMMISSIONER KAMINS: Thank you.

24 MR. MOSTON: Our salary up until last year was
25 \$34,000 a year to start. Second year salaries were
26 \$36,000 a year. Third year salaries from \$39,000 a year.

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2 Our counterparts in the district attorney's office were
3 starting somewhere around \$50,000 and up. Right now we
4 are starting at \$42,000.

5 I am happy to say the reason we were able to
6 increase the starting salary was because the county
7 increased our funding last year by \$600,000. Now, the
8 reason why the county increased our financing by \$600,000
9 last year was not because they were looking really to
10 increase the quality of defense services in Nassau County,
11 but they were looking to offset some of the additional
12 costs that the increase in the 18-B rates would occasion
13 and fall to the county. So as a result of the increase in
14 funding from the county, we were able to add four lawyers
15 and we were able to increase our starting salary to
16 \$42,000 dollars, which is still approximately \$10,000 less
17 than that of our counterparts in the district attorney's
18 office.

19 We, in order to operate efficiently in our
20 system in Nassau county, have a part system. In our
21 district court bureau, which is the local criminal court,
22 we appear in three I.A.S. Legal Aid parts. We are able to
23 dispose of the large number of cases that we handle and
24 are able to handle the cases that we handle because we are
25 able to send a lot of lawyers to a limited number of
26 places every day, day in and day out. Last year we

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2 disposed of approximately \$14,000 cases.

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4 One of the principal problems that we are facing
5 is the growth of the boutique or problem-solving courts in
6 the state. At the present time, along with the Felony
7 De-Tap court that exists in our county court, we have a
8 misdemeanor treatment court. We have a community court.
9 We have a misdemeanor domestic violence court which is
10 handling a docket of 500 cases. We have a felony domestic
11 violence court. We are soon to have an integrated
12 domestic violence court. There is talk of a mental health
13 court and a sex offender court. These problem-solving
14 courts from our perspective cause us lots of problems.

15 What is required of us to properly staff these parts would
16 be an increase in our -- in the number of attorneys that
17 we have. We don't have the budget to hire the additional
18 attorneys to staff those parts. So what we do in order to
19 get these parts covered is to strip away lawyers from
20 other parts and send them on an ad hoc basis to handle
21 cases in those parts, which is not an ideal way of
22 providing representation to our clients.

23 One of the principal problems that we face is
24 the fact that we are in Nassau County and there isn't a
25 lot of affordable housing in Nassau County for young
26 lawyers. As a consequence, many of our lawyers, if not
most of our lawyers, are living either in New York City or

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2 Suffolk County. \$42,000 dollars a year just doesn't
3 stretch very far when you are trying to find housing in
4 Nassau County.

5 Another principal problem, and I am sure this
6 will be echoed by a number of people, is what's going on
7 in the law schools. I interview people almost on a daily
8 basis for positions in my office. One person will come in
9 after another with students loans of \$100,000, \$120,000,
10 \$140,000. The record thus far is \$200,000. Now, I don't
11 know how anybody could reasonably consider taking a
12 position in the Legal Aid Society for \$42,000 dollars a
13 year when they are covering those kinds of student loans
14 which look more like mortgages than student loans. As a
15 consequence, what has happened in my office, and I believe
16 it has happened in other offices throughout the state, is
17 that we have a very bottom heavy staff. We have a staff
18 of -- I would say that more than half of our staff has
19 been with us less than 3 years. And we have a number of
20 lawyers who have been with us for 30 years or more. And
21 then we have a very, very small middle class in the
22 office. We are constantly churning staff at the bottom.
23 We are constantly cannibalizing staff at the bottom in
24 order to try to meet the other costs of the society. And
25 this has been something of a downward spiral for us that I
26 think the commission should take a look at.

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2 We can't hold onto people. We get these people
3 trained. It takes six months or a year to get somebody up
4 and running so that we are reasonably confident in their
5 ability to handle cases. At that point we start getting
6 rumors. We start hearing noises that they are going to
7 leave because they just can't afford to stay with the
8 student loans that they have.

9 COMMISSIONER KAMINS: Mr. Moston, I would like
10 to interrupt for a second. On the subject of enforcement
11 of standards, we have been talking about uniform
12 standards. We heard from Greene County that there is no
13 entity that enforces standards or is concerned about the
14 quality of representation. We have heard from New York
15 City that there are entities that deal with that. What
16 about Long Island?

17 MR. MOSTON: I can speak to Nassau County. The
18 entity is us.

19 COMMISSIONER KAMINS: "Us" being?

20 MR. MOSTON: The Legal Aid Society of Nassau
21 County. We are a CLE provider. We take our training very
22 seriously. But because we have such a young staff, we
23 spend a whole lot of time doing initial training and
24 trying to make sure that people are up and running and
25 they are performing their jobs appropriately. But there
26 is no outside group that's looking at the way we are

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2 performing our job.

3 COMMISSIONER KAMINS: Thank you.

4 COMMISSIONER ZAYAS: But is there a group

5 looking at the way that -- you said earlier that you do

6 45% of the cases.

7 MR. MOSTON: Somewhere between 35 and 40%.

8 COMMISSIONER ZAYAS: Is there another

9 institutional provider? Or the other folks who are

10 eligible for free counsel, are they 18-B?

11 MR. MOSTON: Yes.

12 COMMISSIONER ZAYAS: Is there anyone overseeing

13 the other folks?

14 MR. MOSTON: The 18-B administrator,

15 Mr. McCloskey, who will be speaking in a couple of

16 minutes.

17 COMMISSIONER GOLDMAN: With respect to all these

18 young lawyers with these huge student loans, there have

19 been proposals for legislation which would allow

20 forgiveness of both prosecutor's loans, after a certain

21 period of service, as well as public defense attorneys'.

22 Do you know the status of those?

23 MR. MOSTON: I don't know. Every year I look at

24 the Law Journal and I see that it has been proposed and

25 everyone is talking about it and then nothing ever seems

26 to happen.

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2 COMMISSIONER GOLDMAN: I assume such a bill
3 would be a considerable help to you.

4 MR. MOSTON: Absolutely.

5 COMMISSIONER STACK: Good morning.

6 Would you tell us about discovery practices in
7 Nassau County?

8 MR. MOSTON: The district attorney's office in
9 Nassau County presents us with a voluntary disclosure
10 form, usually at the first, second, third, fifth or tenth
11 conference in the district court, a little earlier than in
12 the county court.

13 The VDF, voluntary disclosure form, basically
14 gives us little or no information about the case. We
15 don't get anything that isn't provided for by Article 240
16 of the CPL. We will get a copy of our client's confession
17 with the VDF. That's pretty much it.

18 CHAIRMAN HELLERSTEIN: Mr. Goldman.

19 COMMISSIONER GOLDMAN: If you were to get
20 immediate discovery by stipulation, or real voluntary
21 discovery, say open book, how much savings overall can you
22 say it would be for the lawyers in your office? 2%? 10%?
23 5%?

24 MR. MOSTON: I am not sure if I could put a
25 number of it. I know it would significantly move cases.
26 Because one of the big drags on the system right now is

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2 that it takes many, many adjourned dates to find out what
3 you need to know about the case before you can make an
4 intelligent judgment on how to handle it.

5 I know that OCA now is putting on a full court
6 press on standards and goals, and one of the things that
7 is under consideration in Nassau County by our
8 administrative judges is trying to take another look at
9 the discovery practices, speed them up so that we can get
10 to our clients with good information early on.

11 COMMISSIONER STACK: I have another question for
12 you.

13 You heard about the Bronx Defender Office and
14 the holistic approach to the public defender services. If
15 you had the money, and we always talk about money, if
16 there was money to fund such a program, do you think it
17 would be of value in Nassau County or is it something
18 that's limited to other areas?

19 MR. MOSTON: I think it is something which could
20 work in Nassau County, and I would die for such a system.
21 I think it is the way to progressively and intelligently
22 approach the problem.

23 COMMISSIONER KHASHU: I am just curious about
24 how you are handling the special needs of immigrant
25 clients, especially given what I have been reading about
26 is the rapidly changing demographics of Nassau County,

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2 collateral consequences, language and cultural barriers.

3 MR. MOSTON: As far as immigration as a general

4 rule?

5 COMMISSIONER KHASHU: Yeah.

6 MR. MOSTON: We have two lawyers who have been

7 specially trained to deal with collateral consequences of

8 immigration, and we are regularly in contact with the New

9 York State Defenders Association who provide a tremendous

10 service as far as immigration is concerned. That is how

11 we are handling it.

12 COMMISSIONER KHASHU: The language barriers and

13 cultural barriers.

14 MR. MOSTON: Court interpreters. We don't have

15 staff members -- we have staff members who speak Spanish.

16 We have support staff who speak Spanish, that's it.

17 COMMISSIONER ELMORE: Mr. Moston, John Elmore,

18 criminal defense attorney out of Buffalo, New York.

19 How do your values compare to those of the

20 Nassau County Sheriff's Department?

21 MR. MOSTON: Newsday, which is our local

22 newspaper, our attorneys -- the first thing they say to me

23 is, "How come I am not making as much as the assistant

24 district attorney in the part that I am appearing with?"

25 And then the next question is, "Why am I not making as

26 much is as the sheriff's assistant who is transporting my

1

2 client to the courthouse from the jail." I think that we

3 -- I know that the county executive is taking steps now to

4 try to get control of the costs of the sheriff's

5 department and the jail. They haven't had much luck with

6 it. But anecdotally, our people are way, way behind.

7 COMMISSIONER KAMINS: To go back to experts, do

8 you have adequate budget? Can you do what you think is

9 necessary to defend your client?

10 MR. MOSTON: We have an expert budget. We find

11 a way each year to live within it. We get creative with

12 moving lines around. There are institutional problems.

13 When do you do a drug test? Do you do it every time you

14 get a drug case in? Do you wait until a client says,

15 "well, I don't think it's really a controlled substance"?

16 Do you do testing before Grand Jury, after Grand Jury. We

17 obviously -- there is a cost consideration that we have to

18 weigh before we make those kinds of expenditures.

19 COMMISSIONER KAMINS: What about having your

20 clients examined for psychiatric problems, learning

21 disabilities? Do you have enough money to do that?

22 MR. MOSTON: We do that as our chief social

23 worker indicates that it is advisable. Our social work

24 department is headed by a CSWJD. She is an attorney as

25 well. And she is a very, very valuable resource.

26 COMMISSIONER ZEIDMAN: Thank you.

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2 Mr. Moston, you talked some about your office's
3 ability pre-problem solving courts to dispose of cases.
4 And I assume some percentage of those are disposed of at,
5 say, the initial appearance or the arraignment.

6 MR. MOSTON: No. In Nassau County there are no
7 dispositions taken in arraignment court. The dispositions
8 occur on -- on adjourned dates in the I.A.S. parts
9 thereafter.

10 COMMISSIONER ZEIDMAN: Is there a ,sense from
11 your perspective as the attorney in ,charge about what is
12 -- and I know it is a very vague and hard question. Just
13 to try to get my arms around it, what is an acceptable
14 disposition rate? By disposition rate I am talking about
15 a plea rate. As you are training new lawyers do you have
16 a sense that the lawyer's caseload should result in 60%,
17 70%, 80% pleas?

18 MR. MOSTON: Well, our supervisors review each
19 of the attorney's caseloads on a regular basis and get an
20 idea of where they are at as far as disposing of the
21 cases. 60, 70, 80% I think is way low. I think more
22 realistically we are disposing by guilty pleas in the
23 neighborhood of 92, 93, 95%.

24 COMMISSIONER ROBERTS: What is your percentage
25 of trials?

26 MR. MOSTON: Cases going to trial? I don't know

1

2 the percentage.

3 COMMISSIONER ROBERTS: So it would be less than

4 5%.

5 MR. MOSTON: Yes.

6 CHAIRMAN HELLERSTEIN: Thank you, Mr. Moston.

7 MR. MOSTON: Thank you.

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1 Patrick McClosky, Esq.

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3 CHAIRMAN HALLERSTEIN: Mr. McCloskey.

4 MR. McCLOSKEY: Thank you.

5 CHAIRMAN HALLERSTEIN: Welcome, and thank you

6 for appearing, of course.

7 MR. McCLOSKEY: I did give Paul a brief

8 handout.

9 It's not a speech but it's a handout that I

10 will be following.

11 I feel different, somehow not better,

12 certainly but privileged because some of the stories

13 I've heard this morning make me feel spoiled.

14 We have fewer problems in Nassau County than

15 some of those I've heard, and perhaps some of the few

16 items I want to discuss this morning might be mundane

17 by comparison, and yet I believe easily remedied, and

18 two of them, at least I believe, would save money and

19 could be incorporated across the State.

20 First -- my name is Pat McCloskey.

21 I am with the Assigned Counsel Defender Plan

22 in Nassau County, and I've been there since 2,000.

23 We're now in our fortieth year in Nassau

24 County, in the 18-B program, we have 261 private

25 attorneys who have qualified for our panel.

26 We do have qualifications, and they are

1 Patrick McClosky, Esq.
2 divided into Misdemeanor panelists, Felony panelists,
3 major felony panelists, and Appellate so on.
4 One of the problems that I face currently
5 and -- which appears on, I guess, the third page of the
6 handout, is this -- before 2002 in Nassau County we had
7 a defense counsel screening panel; there were six --
8 three full-time employees, three part-time employees,
9 and two interns, a total of eight. The total cost to
10 Nassau County to employ these people in the Family
11 Court, District Attorney, and County Court, was between
12 \$200,000 and \$250,000, that includes fringe benefits.
13 That was the cost they would screen indigent people or
14 persons who claimed they were indigent to see if they
15 were truly indigent that program was defunded by the
16 current County executive in 2002 if you look at the
17 sheet here you see the numbers of vouchers submitted by
18 my attorneys. Indicate that up to 2002 we had between
19 3500 and 4,000 vouchers submitted every year that
20 includes attorneys and that includes experts we usually
21 have about 500 or so expert vouchers a year so we were
22 hovering around 3800. In 2002 the program was defunded
23 the program that cost by my calculations 210,000. In
24 2002 the year it was defunded there was no change but
25 in my judgement when it kicked in you see in 2003 we
26 had 5197 vouchers they went up by over 1300 vouchers

1 Patrick McClosky, Esq.
2 and last year we had just under 5,000 vouchers so we
3 looked at the last two years of an increase of over a
4 thousand vouchers for the last two years.

5 At an average cost of \$585 a voucher that's
6 costing Nassau County 585 up to somewhere about
7 750,000, that's a cost that could be better spent
8 elsewhere and that is -- not only does it do damage
9 financially that way but if there are truly a thousand
10 people being represented by my attorneys who are not
11 indigent then that does damage to the criminal justice
12 system and it takes time away from somebody like Kent
13 Moston's Legal Aid attorneys who I presume are also
14 representing persons who may not be indigent and with
15 their finite staff they could do a better job if the
16 pool of defendants who were truly indigent were
17 lessened and so I've discussed this with my County, and
18 had meetings and people love to have meetings but
19 nothing ever came of it so I suggest that might be
20 something for this committee to consider in the future.

21 Another matter that came to my attention
22 actually it should have come to my attention long
23 before was brought to my attention by one of the judges
24 in the fall of 2004 and last month I had occasion to
25 write to our supervising judge, and I think this
26 problem or situation has already begun to resolve

1 Patrick McClosky, Esq.

2 itself in Nassau County.

3 What has happened is that a lot of the
4 defendants the 18-B defendants represented by 18-B
5 counsel would have a falling out or they would not be a
6 perfect simpatico relationship between the defendant
7 and the attorney and so our attorneys were saying well
8 get yourself another one and the judges were freely
9 granting a second 18-B attorney or a third one or a
10 fourth one and tie finally wrote to my panel list and I
11 wrote this letter to Judge DiNino indicating that a
12 defendant who is indigent has indeed a right to counsel
13 but not a right to Johnny Cochran or Barry Scheck, et
14 cetera not the attorney with whom he is most pleased or
15 she, and so we had an incident in Nassau County in
16 December of 2004 where one of the defendants who was on
17 his third or fourth 18-B attorney said in open court I
18 want so and so, who happens to be a pretty good
19 successful defense attorney in Nassau.

20 Now I confess I am advised, wasn't there that
21 the judge called that defense attorney to check on his
22 availability and to me this is putting the system
23 upside down.

24 So, the financial damage it does to me is that
25 I get vouchers I might get six vouchers with no
26 disposition, and a seventh with a disposition I have to

1 Patrick McClosky, Esq.

2 pay seven lawyers instead of one.

3 A PANEL MEMBER: Laura Shanks, what training
4 do you do to the lawyers so they can establish a
5 relationship with their client such that they would be
6 satisfied with their clients and they would have a good
7 relationship.

8 THE WITNESS: I never learned about how to get
9 along with people in law school we don't give that
10 training, I don't know that any law school gives that
11 or any CLE program.

12 A PANEL MEMBER: Thank you. I'm a professor
13 of a law school and I do give that kind of training.

14 THE WITNESS: We do give six free CLE credits
15 a year to our attorneys having to do with criminal
16 trial and/or family law and perhaps your suggestion is
17 one that I will indeed take seriously but I think the
18 problem is not so much that there was a personality
19 conflict I think lots of times some of my attorneys
20 were using this procedural avenue to get out from a
21 case where they weren't happy with the client and I
22 don't think that that should be permitted unless
23 there's damage to the attorney client relationship that
24 prohibits meaningful representation I think it should
25 continue and that's really all I'm saying.

26 A PANEL MEMBER: Elaine Stack.

1 Patrick McClosky, Esq.

2 Mr. McCloskey, good morning.

3 MR. McCLOSKEY: Good morning.

4 A PANEL MEMBER: Would you tell us what has
5 happened when you say that there's a thousand more
6 vouchers, we have heard here from others that of course
7 the judge is the ultimate person who decides who gets
8 representation can you tell us how to the best of your
9 knowledge the situation was accomplished when defense
10 counsel screening bureau went out of business.

11 THE WITNESS: When the Defense Counsel
12 Screening Bureau went out of business there was no
13 panel or no series of persons to question any alleged
14 indigent defendants so therefore the judges began to do
15 it from the bench that is what is happening now.

16 A PANEL MEMBER: So in open court they
17 attempted to establish whether a defendant had assets.

18 MR. McCLOSKEY: Yes.

19 A PANEL MEMBER: Ultimately the judge could
20 say, yea or nay.

21 MR. McCLOSKEY: Correct. The judges aren't
22 crazy about it, for obvious reasons. They have enough
23 to do without that. Their investigation or
24 interrogation is at times more often than not
25 superficial of necessity.

26 A PANEL MEMBER: Barry Kamins.

1 Patrick McClosky, Esq.

2 Judge Miller said in testifying earlier it is
3 the responsibility of the judge to assess eligibility.

4 A PANEL MEMBER: Elaine Stack.

5 Not to assess, to determine who gets the
6 lawyer.

7 MR. McCLOSKEY: Ultimately the Court would
8 decide. In the past they would have meaningful factual
9 data pursuant to which to make that choice.

10 CHAIRMAN HALLERSTEIN: Mr. Goldman.

11 A PANEL MEMBER: What's your view of a system
12 that would give each eligible defendant a voucher and
13 say, "Here, go out; get Johnny Cochran if you can, or
14 Barry Scheck, and go hire the attorney of your
15 choice," understanding that that attorney would have to
16 abide by the payment schedule pursuant to 18-B?

17 MR. McCLOSKEY: I think you would find -- in
18 other words the State would or the County would provide
19 the defendant with one \$1000 or \$2,500 and then they
20 would go out into the field?

21 A PANEL MEMBER: Lawrence Goldman.

22 That attorney would have to apply for an
23 hourly rate as he or she would otherwise?

24 MR. McCLOSKEY: Well, I don't know if it would
25 induce those who are not presently on the 18-B panel to
26 take such fees.

1 Patrick McClosky, Esq.

2 I don't know if you would have any different
3 panel problem, other than the one I just discussed with
4 their ultimately falling out, and their attorney asking
5 to be relieved after accepting a certain percentage of
6 the voucher.

7 A PANEL MEMBER: Is there anything wrong with
8 giving a defendant the freedom of choice to pick his or
9 her own attorney?

10 MR. McCLOSKEY: No. In a perfect World it's a
11 perfect solution. I don't think it would work.

12 It sounds like there are a lot of pitfalls in
13 such a system.

14 A PANEL MEMBER: Elaine Stack.

15 If you had plenty of money, what would you do
16 to enhance Nassau's assigned counsel system?

17 MR. McCLOSKEY: If I had plenty of money, the
18 first thing I would do is hire this professor to
19 address my attorneys.

20 A PANEL MEMBER: Laura Sharks.

21 I'll do it for free.

22 MR. McCLOSKEY: You're making a note of that,
23 correct? I'll need those minutes.

24 I would like to see on a state-wide level,
25 something like the following.

26 If there were a possibility of having a

1 Patrick McClosky, Esq.
2 state-wide committee person, whomever, to collect data
3 such as the procedures that the 62 different 18-B
4 programs follow in the 62 different counties, assuming
5 there are 18-B programs in those counties.

6 If I were able to access either a data base,
7 or make a phone call, look at a website, and determine
8 how they handle a particular problem in Chemung County
9 or Erie County, that might turn the light on in my head
10 and say that, "Well, I'm going to try that in Nassau."

11 If there were a brief bank where somebody in
12 Onondaga who had just done a brief on a wiretap issue
13 and an attorney called me up who was on my panel and
14 said, "Do you have anything on a wiretap issue?" I
15 would be able to direct him to that data bank, that
16 brief bank motion.

17 If we had things like that, I think it would
18 be wonderful across the State.

19 And presumably if there were a brief on a
20 particular topic, of course they could always call
21 Mr. Kamins and get all the answers, presumably, if
22 there were.

23 I say that with the highest degree of respect
24 by the way.

25 A PANEL MEMBER: Barry Kamins.

26 Write it down on the record.

1 Patrick McClosky, Esq.

2 MR. McCLOSKEY: One of the biggest thrills I'm
3 having here I actually see Barry Kamins sitting up
4 there.

5 I think that would save money, if you had an
6 appellate attorney who didn't have to start from ground
7 zero, then the voucher presumably might be less.

8 Those are the types of things I would like to
9 see.

10 I know my time is up or thereabouts.

11 The last page that I included was something
12 that's dated 1992 in February, signed by judge Crossen,
13 which I got from Albany.

14 Went to Albany, called Albany to try to find
15 out what are the latest guidelines for experts' fees,
16 hourly rates. That's the last one; 13 years ago.

17 And if there were a way that that could be
18 updated by consensus, that would be helpful.

19 And finally, you'll note that 13 years ago
20 certified social workers were being paid more per hour
21 than attorneys at that time.

22 And I recall reading, before the rates went
23 up, that there was supposed to be a panel to review the
24 18-B rates every year, and I think that's essential and
25 should be done because this \$75 and \$60 an hour, God
26 bless them for cutting out the distinction between

1 Patrick McClosky, Esq.
2 out-of-court time and in-court time, but those rates
3 are going to get stale very fast, and I would love to
4 see a committee look at those rates every year.

5 CHAIRMAN HALLERSTEIN: Thank you
6 Mr. McCloskey. Thank you very much.

7 (Whereupon Sara Stanley was relieved by Lester
8 Isaacs, as Official Court Reporter.)

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1 Stephen Pittari, Esq.

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3 STEPHEN PITTARI: Professor Hellerstein,
4 Judge Roberts, member of the Committee, my name is
5 Stephen Pittari, I'm a career public defense attorney.
6 I have been doing this work since 1969.

7 I am currently the Chief Attorney and
8 Executive Director of the Legal Aid Society of
9 Westchester County.

10 I am also the administrator of the
11 Westchester County, Assigned Counsel. I'll try to
12 describe how both of those things work in our County
13 and what my role is in each.

14 I will also, I will attempt to address some
15 of the other questions today that I may have heard
16 during the course of this. I'm going to try very
17 briefly to also put you in a room with a budget
18 director and some county officials and tell you some of
19 the things that I have heard over the course of years,
20 which I think is important for you to know. Because I
21 was a litigator, I did trial work, I did appeals. I
22 was an adjunct professor for ten years. But, it's one
23 thing to be, to have all of that background, and it's a
24 totally different thing to be responsible for the
25 delivery of service for an area such as a County and to
26 deal with the political problems you have, and with

1 Stephen Pittari, Esq.
2 some of the lack of knowledge you have, and some of the
3 attitudes that you have. So I will try briefly to give
4 you a little bit of flavor for that.

5 As I said before, I wore several hats. The
6 Legal Aid Society of Westchester County, according to
7 the Westchester plan, provides for the representation
8 of felony cases. The Legal Aid Society in Westchester
9 County does not do misdemeanors or nonfelony. The
10 Legal Aid Society in Westchester County does not do
11 Family Court.

12 Misdemeanors and nonfelony and Family Court
13 matters, that are not encompassed by the law guardian
14 panel, are done by the 18 B Panel.

15 Westchester chose back in the mid '60s to do
16 that split type of system. Westchester is a
17 jurisdiction that has 42 local Courts, City, Town and
18 Village. And those have to be covered both by felony
19 and by the attorneys in is the Legal Aid Society and
20 our nonfelony matters by all of the other attorneys.

21 Westchester has currently approximately at
22 any particular time, about ten Superior Court Judges,
23 either County Court Judges or Supreme Court Judges
24 doing criminal cases. We obviously, the Legal Aid
25 Society also covers in addition to covering the
26 Appellate Courts on that basis, there are three Family

1 Stephen Pittari, Esq.
2 Courts in Westchester County. They are covered by the
3 18 B attorneys.

4 In recent years, the Legal Aid Society on the
5 felony end we will take in more than 4,000 clients a
6 year. And based on a lot of things, including as I
7 mentioned, some of the problem solving courts, and
8 certain other specialization with the District
9 Attorneys Office, that has caused dispositions to take
10 longer then they used to take. We will have over 2,000
11 cases a year pending, when every year starts. So
12 during the course of a year, we will be representing
13 over 6,000 individuals a year.

14 When we were fully staffed we had 42
15 attorneys including myself. We were funded mostly by
16 the County and also by the State under the Aid Defense
17 Program. At one time we used to get over a million
18 dollars from the State. Nowadays we get less than
19 \$600,000 from the State. So the State funding has
20 dropped. It dropped under two different governors.
21 Not a political thing, it's a fact of life type thing,
22 in budget times it gets tough.

23 One of the first areas to be cut is defender
24 services. On the 18 B end of things there are both
25 Criminal and Family Courts together, approximately
26 19,000 assignments made per year.

1 Stephen Pittari, Esq.

2 In terms of 18 B, the way the plan for
3 Westchester works, the screening for attorneys to be on
4 the panel is done by the Westchester County Bar
5 Association. The administrator has no power to add
6 attorneys to the panel nor to take attorneys off the
7 panel. The plan provided only the Bar Association or
8 the Appellate Division. The Society functions mainly
9 as a statistical and record keeping arm of the
10 assignment and at varied times has functioned as a
11 statistical or record keeping arm for the vouchering.

12 Up until 1999 all the vouchers were reviewed
13 for correctness, mathematical correctness,
14 appropriateness was the term really on the panel.

15 We have the obligation of compiling the list
16 of who is on the panel, who has been approved by the
17 Bar Association, et cetera.

18 In 1999 the County decided that they were
19 going to do the vouchering function internally. It was
20 done by the County Attorneys Office, the Law Department
21 of the County. The real reason for that quite frankly
22 was that the County had decided they were going to
23 attempt to chop the vouchers, cut the vouchers and then
24 cut costs that way.

25 The bottom line is after several years of
26 trying to do that and after several years of horrible

1 Stephen Pittari, Esq.
2 record keeping with regard to that and being unable to
3 provide statistics to DCJS, et cetera, they asked us in
4 2004 to take back the vouchering system, which we have
5 done.

6 So, I do have information available on
7 methods of assignments, but not so much on the
8 vouchering function in the last four or five years
9 until the year 2004, and that material is being
10 reviewed now. We set up a whole new -- we, the Society
11 have setup a whole computerized program to deal with
12 the vouchering in a way that it has never been done
13 before. But anyway, that's just a break down of how
14 things happen.

15 In terms of how to get on the panel. Prior
16 to 1991, you got on the panel, it was a sign up sheet
17 at the Bar Association, a one page sheet. It said, I
18 would like to do -- there was a blank for misdemeanors,
19 felonies, homicides, and the attorneys checked off
20 whatever he wanted to do, appeals, et cetera.

21 Although not the official role of the
22 administrators who intrude upon that selection process,
23 we felt that it was awful for a variety of reasons and
24 it has been a lot of work with the then presiding judge
25 of the Appellate Division, et cetera, to try to force
26 the Bar Association to have some, a much more

1 Stephen Pittari, Esq.
2 comprehensive application procedure. We actually made
3 up to application procedure, borrowed it from the
4 Federal Court and New York City, et cetera. And their
5 is now and has been since the early '90s a much
6 stricter screening. The Bar Association has a panel of
7 veteran attorneys who screen people on the panel, et
8 cetera.

9 There is also mandatory training now for the
10 attorneys when they join the panel. The panel at its
11 height in the sign up days had over 500 attorneys on
12 it, but probably no more than about 200 were active
13 criminal practitioners, who took a handful of cases a
14 year. Many of those attorneys dropped off the panel
15 during that course of the continuing battle of the low
16 18 B rates. I have not noticed an appreciable increase
17 in panel membership since the rise of the rates.

18 For many of the skilled veteran attorneys
19 that dropped off a long time ago, the \$75 is still not
20 enough, as many, many of us in the community predicted.

21 There are some younger attorneys who joined
22 the panel now and usually are only certified as
23 qualified to do misdemeanors when they start. They
24 have to do mandatory training, nowadays there are
25 probably 250 attorneys on the panel and probably about
26 90, 95 who are very active. The assignments are made

1 Stephen Pittari, Esq.
2 by the local Court Judges on the cases and they notify
3 us that the assignment has been made.

4 The administrator, by virtue of the plan has
5 the responsibility of seeing that the judges follow
6 rotational procedure. That's what the nice language in
7 the plan says, and in the contract says. There is
8 absolutely no enforcement power given to the
9 administrator to do that. So, with some judges it's
10 very good, with some judges it's not. I imagine that a
11 similar problem arises in many parts of the State.

12 PROFESSOR HELLERSTEIN: How many cases that
13 go to the panel are conflict cases?

14 STEPHEN PITTARI: Conflict cases we will do
15 about, as I said we will take over 4,000 new cases a
16 year, but on felony conflicts there will be 1,100 a
17 year. By conflicts I'm including multiple defendants,
18 we will only take one defendant in a multiple defendant
19 case.

20 BARRY KAMINS: You say Legal Aid doesn't
21 handle misdemeanor cases. What happens with the two or
22 three defendants?

23 STEPHEN PITTARI: The judge is supposed to
24 assign two or three attorneys for that. I mean, every
25 once in a while there might be, you know, an assault
26 third degree type of thing, but you don't have nearly

1 Stephen Pittari, Esq.
2 the number of codefendant misdemeanors that you do in
3 felony cases. You don't have five people conspiring to
4 go in and shoplift. It doesn't happen. Ultimately
5 there is one defendant with a misdemeanor, but the
6 judges do know that they have to assign individual
7 counsel on misdemeanors and if by chance we got an
8 assignment slip from the court, because they have to
9 notify us right away, and it had two individuals
10 charged with the same thing, and assigned to one
11 attorney, I would contact the judge and advise him or
12 her that another attorney would have to be, a be
13 assigned to that second case, even though it might be
14 more complicated, et cetera, but that is something that
15 had to be done.

16 PROFESSOR HELLERSTEIN: You have been in the
17 defense business a long time.

18 STEPHEN PITTARI: Yes.

19 PROFESSOR HELLERSTEIN: If you had a blank
20 check, apart from the money, apart from adequate
21 financing.

22 STEPHEN PITTARI: Yes.

23 PROFESSOR HELLERSTEIN: What kind of system
24 would you recommend to the State of New York?

25 STEPHEN PITTARI: I like the idea that I
26 heard about of the Commission System and I had read

1 Stephen Pittari, Esq.
2 about it over the years. The independent, now public
3 benefit type system. That is gives stable, it gives an
4 independence, and some standards and sufficient
5 funding.

6 I don't know if it would be, it should be on
7 a State wide basis or an Appellate Department basis or
8 even a New York City or the State basis, which also is
9 a possibility. That should be considered. That's the
10 kind of thing, you might have to figure out as members
11 of the Committee. If you think that's a good idea
12 because there are varied, there are a lot of variances
13 throughout the State and I don't know that one size
14 will fit all in this type of situation.

15 I think there should be one set of standards
16 for everybody and the setoff standards that I would
17 recommend and I was not here at the very beginning, but
18 I know Jonathan Grades spoke on it. I'm sure he must
19 have made mention of the standard for providing
20 constitutionally and statutorily mandated legal
21 representation in New York State, which were standards
22 that were adopted in 2004, after many years of study.
23 All of the Bar Associations standards, et cetera,
24 adopted by the New York State Defender Associations by
25 the Chief Defenders of New York. I would urge that
26 this is the right stuff in here.

1 Stephen Pittari, Esq.

2 PROFESSOR HELLERSTEIN: How would you
3 enforce those standards, to insure that the defender
4 offices are operating correctly?

5 STEPHEN PITTARI: That's what you need the
6 Commission for or you need some sort of oversight for.

7 I would not like it to be obviously, between
8 the three branches of government. The judicial, the
9 one that you would have the oversight over, I'm not
10 comfortable with that either.

11 I would like that there is some sort of
12 independence oversight. Perhaps it could be something
13 like what occurs in the First Department. Although, I
14 know the reports I have read about that, but I don't
15 know how it actually works in operation. So I'm always
16 loathed to recommend something.

17 I have not had some hands on or experience
18 with, but certainly oversight of some sort and
19 oversight, there has to be guaranteed stability,
20 stability of the office, independence of the office.
21 There has to be standards and taking care of the
22 funding. When I say stability, I think that's very
23 important. Because one of the things that all of us,
24 as institutional defenders face is the kind of things
25 that you heard from Greg Lubow, the fact that
26 Westchester has a long, long standing Legal Aid

1 Stephen Pittari, Esq.
2 Society. And we have been doing our work and doing it
3 well and getting awards for it from State Bar
4 Associations, et cetera, for years, means little or
5 nothing when you're in a budget session with local
6 officials.

7 The fact that there are ABA Standards and
8 standards by President Commissions and things like that
9 mean little or nothing when you're at that level.

10 I have had on more than one occasion been
11 threatened with the languages, "if you don't do what we
12 want, if you don't accept the budget terms, we will
13 find another provider to replace you." Okay, so even
14 though we have been doing this, we have been in
15 existence since 1936. We have had a contract with the
16 County since 1964 to do this. I have heard that at
17 least three times in the last six years. And you are
18 always, you never have the security or the stability.
19 This makes it very hard. In many ways it's terrible
20 for staff moral. It makes it very hard when you're
21 taking on new attorneys. So this is something that's
22 very important.

23 With regard to that, I know that one of the
24 things that Robin Steinberg mentioned was the word
25 "advocacy." I always thought that -- excuse me --
26 "adequacy" the word "adequate" is something that's in

1 Stephen Pittari, Esq.
2 the preface to our plan. It's in the preface to most
3 of the plans.
4 They talk about providing adequate counsel.
5 I always thought that adequate meant satisfactory in
6 quantity or quality, for the need. But that was the
7 normal definition. It might even be good, but would
8 you believe it doesn't mean that. It merely means what
9 ever low level is necessary to pass minimum legal
10 standards and avoid reversal on the grounds of
11 incompetence of counsel. At least that was the
12 definition told to me a few years ago by a former high
13 ranking member of the executive branch of our county
14 government, whose job it was, was, to give legal advice
15 to the County Executive and the Board of Directors.
16 That was his interpretation of adequate counsel.
17 Now what I would have loved to have, but
18 didn't have anywhere aside from the plan itself, aside
19 from some case law or something. I would love to have
20 a statement from the Chief Judge of the Court of
21 Appeals or the head of the office of Court
22 Administration, saying that's not what adequate counsel
23 means. I would have loved to be able to say, here is
24 something, here are some standards, some standards
25 adopted and promulgated in this State that say what
26 adequate counsel is, and that's not adequate counsel.

1 Stephen Pittari, Esq.

2 But that's what I meant by saying I am trying to put
3 you in the room, when you have that sort of negotiation
4 sometimes. A couple of years ago, also I was asked --

5 PROFESSOR HELLERSTEIN: The statement you
6 have.

7 STEPHEN PITTARI: Excuse me?

8 PROFESSOR HELLERSTEIN: The statement you
9 have when the chief judge establishes a Commission, she
10 issued a statement that does not match that definition
11 of "adequate."

12 STEPHEN PITTARI: I'm sorry, the Commission,
13 yes.

14 PROFESSOR HELLERSTEIN: We operate, our
15 charge is not to resolve what is minimal or adequate,
16 but we have the message.

17 STEPHEN PITTARI: Let's say you set up a
18 commission, a commission would say something like, like
19 that. You see the assumption. I have to give one, one
20 other example. I have to, because it's very important
21 then I'll get to my assumption, okay.

22 A few years ago I was at contract time. I
23 was asked to sign a contract that had some new
24 additional paragraphs in it. One of the paragraphs
25 said, you will be required, your attorneys will be
26 required to advise you're clients to waive certain of

1 Stephen Pittari, Esq.
2 their statutory rights. Now, naturally I refused. I
3 suggested that this was unconstitutional of government
4 to ask that of me. It is unethical for me to agree to
5 that or to ask my attorneys to agree to it. It maybe
6 even illegal and we wouldn't do it. It would be a deal
7 breaker. Now, we thought about that for a few weeks.
8 Ultimately the County capitulated and we won. A couple
9 of weeks after that I was notified that my budget
10 submission for that year was reduced by \$300,000. Of
11 course, this has no connection with that fight we just
12 had, but okay. Now this is what happens. And this is
13 why there is a need for some kind of an independent
14 body, to insulate us from that type of thing.

15 PROFESSOR HELLERSTEIN: Mr. Goldman.

16 LAWRENCE GOLDMAN: With respect to assigned
17 counsel, who actually directs the particulars in each
18 case, the judge or you?

19 STEPHEN PITTARI: The judge. The way it
20 works is, it's the responsibility of the administrator
21 to divide the attorneys up to see that each or all of
22 those courts are covered and have sufficient qualified
23 attorneys. So we will have lists, five different panel
24 lists, six different panel lists, two from Family
25 Court, who are in tier one and two, two cases. The two
26 different degrees. Five for the local courts. And

1 Stephen Pittari, Esq.
2 then for the Superior Court and to appeals. So the
3 judges in five different local jurisdictions and the
4 judges in Superior Courts will have a list before them
5 of qualified attorneys and they are supposed to go by
6 rotation, the judge takes the next name on the list.
7 That's the way it supposed to happen.

8 LAWRENCE GOLDMAN: Is there anything like,
9 are there selected favorites or selected people?

10 THE WITNESS: Yes, that happens. Some
11 judges are excellent some are not. There is one
12 particular large local court in our County that has
13 about -- it's about number seven in terms of the number
14 of felony cases it takes in. And the number of
15 misdemeanor cases it takes in. Where I will get at
16 least one request a month from an attorney who has been
17 on that panel that covers that Court and several other
18 local Courts. That he or she has been taken off that
19 court list, and substituted in another court in a
20 different area because they stood up and demanded a
21 trial. And the judge told them that was the last
22 assignment they are ever going to get. And their way
23 of combating that is to say please, I have to make a
24 living, can you get me into another court that has an
25 equivalent amount of work so I can get some
26 assignments, but that does happen.

1 Stephen Pittari, Esq.

2 There was a judge, in one of your City Courts
3 a number of years back, who is not on the bench, not on
4 that bench any more. Who used to bring attorneys into
5 chambers, when they first got on the panel and signed
6 up. He used to bring them into chambers and he use to
7 tell them what their role was. And he use to tell them
8 what their role was, to move cases, and demanding
9 trials was not going to move cases. This happens and
10 on the other hand, there are some judges who would
11 never do that, and some judges do it for different
12 reasons. Some of this depends on personality. I can
13 think of two particular A type personality judges, who
14 if they have got to make a sudden assignment, they have
15 got to do it now and they can't wait. So it's going to
16 go to who ever is sitting there that day. And the same
17 attorney keeps sitting there everyday and he gets all
18 the assignments.

19 I had one situation where I was trying to get
20 the judge to send some court officers into another
21 part, where another judge was presiding, there were
22 three attorneys there, who were all qualified. They
23 were there to cover the cases they had. The Court
24 Officer said to the attorneys, I know that from both
25 the Court Officers and from the attorneys. Judge X
26 wants you right away. They said, well, I can't leave

1 Stephen Pittari, Esq.
2 right away, I'm about to do a sentence in front of the
3 judge I'm in front of. I will be there in 15 minutes.
4 Message comes back, judge says, I can't wait 15
5 minutes. They assigned the guy who was sitting there
6 to do that. But that's a matter of the personality of
7 that judge.

8 All I can do about it is try to talk to the
9 judge about it. But there is not much that the
10 administrator can do to prevent that from happening,
11 other than saying I'm not going to process this guy's
12 vouchers any more. I don't know how far I will get
13 with that.

14 PROFESSOR HELLERSTEIN: Mr. Pittari, you
15 have an unusual role, in that you are both on the Legal
16 Aid Society and the administrator of the panel.

17 STEPHEN PITTARI: It is pretty unusual.

18 PROFESSOR HELLERSTEIN: Does that cause
19 problems, do you run up against any kind of conflict
20 situations?

21 STEPHEN PITTARI: The way it's written in
22 the plan, the way it's done, first of all I don't have
23 supervision over the attorneys handling a case. The
24 vouchers in which there is a real conflict of interest,
25 I won't do those vouchers either, they will be sent to
26 the Law Department of County Government. And we had

1 Stephen Pittari, Esq.

2 that, that was written in the '70s, into the plan as an
3 amendment.

4 PROFESSOR HELLERSTEIN: Are you happy with
5 wearing both hats?

6 STEPHEN PITTARI: Well, I love what I do.
7 Wearing the hat as Chief Attorney of the Legal Aid
8 Society, I have a staff of fabulous, fabulous veteran
9 attorneys.

10 I would add what was said before about those
11 problems with the student loans, school loans. I'm
12 heavy in the top, in the sense that I have a huge
13 portion of attorneys who have been in our office more
14 than 20 years. But I have got a big gap in the lower
15 levels, because of the disparity now between our
16 salaries and the District Attorney salaries are so
17 huge, it's ridiculous. And it gets worse every year.
18 I'm frustrated with the level in my role as
19 administrator of the panel, because their is so much
20 more I would like to do in terms of mandatory training,
21 even for more allegedly experienced people. I'm
22 frustrated when I see things like attorneys who have
23 been on the panel for years and who you know, because
24 we have told them when they joined the panel all about
25 '72, getting expert service, et cetera, and have never
26 once applied for such service in many, many appropriate

1 Stephen Pittari, Esq.
2 cases. So there was a lot of frustration on my part in
3 that end.

4 PROFESSOR HELLERSTEIN: Do you have a well
5 defined training program at the Westchester Society,
6 for felony trials?

7 STEPHEN PITTARI: Very much so, yes. I have
8 the office broken up into small groups and there are
9 senior attorneys who do the training.

10 PROFESSOR HELLERSTEIN: Do you follow the 18
11 B panel lawyers into that training?

12 STEPHEN PITTARI: I do try, but there is no
13 way to force them to do it. I mean I would have to
14 convince the Bar Association. The Bar Association by
15 the way does a good training job. I participate in it
16 also and some of our lawyers do it for the attorneys
17 who are joining the panel.

18 The Bar Association has talked for many years
19 about having further formal training for panel
20 attorneys, beside the CLE training they do at later
21 levels, but that's for more veteran attorneys. But
22 that has not been instituted yet. I could not mandate
23 that. I would have to convince the Bar Association to
24 make it part of the requirement for being on the panel
25 later on. I would say one other thing, if I could just
26 with regard to CLE. One of the things, I don't quite

1 Stephen Pittari, Esq.
2 understand, I attend a lot of CLE classes. And I have
3 something in my budget to send all of our attorneys to
4 classes, et cetera. But, you know, I know I would like
5 it if 18 B attorneys -- let's say if an attorney, 50
6 percent of an attorney's practice was doing 18 B work,
7 it would seem to me that that attorney should take at
8 least 50 percent of his or her CLE courses in criminal
9 law. I don't think anything is mandated in that regard
10 with regard to CLE. An attorney could take a hundred
11 percent of the courses, in real estate or insurance,
12 and that's not helping the fifty percent of his
13 clientele that are in criminal practice.

14 JOHN ELMORE: John Elmore.

15 STEPHEN PITTARI: Yes.

16 JOHN ELMORE: You said you couldn't force 18
17 B attorneys, to force them to go take CLE. If you
18 offered low cost for the CLE, they would be breaking
19 the doors down, they would do that in Federal Public
20 Defenders Office in Buffalo.

21 THE WITNESS: Say that again?

22 THE CLERK: If you lower the cost of the
23 CLE, they would come.

24 STEPHEN PITTARI: The Bar Association does
25 it at a low cost. If we were doing it for a panel of
26 attorneys, we would do it for free. I have a lot of

1 Stephen Pittari, Esq.
2 attorneys who would like to do it. Some of our senior
3 people, they have a teaching need. Plus all the other
4 things they do. Especially in the days when you just
5 did it by sign up sheet. We would have a felony case
6 and sometimes we would have a co-counsel, somebody who
7 is actually inexperienced. You have to worry about
8 what your counsel is doing, then what the prosecutor
9 was doing in the prosecution of the case.

10 PROFESSOR HELLERSTEIN: Thank you Mr.
11 Pittari for coming.

12 Thank you so much.

13 X X X X

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2 CHAIRMAN HELLERSTEIN: Mr. Steinglass.

3 MR. STEINGLASS: Thank you. And thank you very

4 much for the opportunity to join you today. I would like

5 to emphasize that whatever I say is at best my personal

6 views. I am not speaking today for the New York Criminal

7 Bar Association. Indeed, I am not sure I am even speaking

8 for myself, because I am not perhaps all that

9 knowledgeable. I would rather raise some questions with

10 you, and I am more accustomed to actually asking questions

11 than I am to answering them. So if you could just think

12 that there is a question mark after all of the statements

13 that I am about to make I would appreciate it.

14 CHAIRMAN HELLERSTEIN: We will try to work that

15 in, but our task is to find out information from you.

16 Let's see if we can accommodate each other.

17 MR. STEINGLASS: Obviously I admire the

18 dedication of those who are full time working in the

19 indigent defense field, largely for organizations.

20 I am well aware that there have been problems

21 with 18-B lawyers. But one of the principal things I

22 would like to stress, maybe it is not necessary, but I

23 think I ought to stress it, is the importance of

24 maintaining and indeed increasing the role of 18-B lawyers

25 as part of the mix of the delivery of services.

26 Now, I listened a little earlier to the

1
2 interesting discussion about adequacy and its definition
3 and the Chief Judge's charge to this commission. Before I
4 came here today I asked what material was available about
5 the commission and, frankly, I was not aware of what that
6 charge is. I will look for it after I speak. But I
7 certainly agree with what I gather is the thrust of it,
8 which is that the commission obviously wants to, as I
9 would put it, aim high in terms of quality legal services
10 being delivered. Because if you aim high, and we have a
11 system which misses occasionally, we are still doing all
12 right. Whereas, obviously, if you aim at the bottom and
13 you miss occasionally, you can have a disaster.

14 CHAIRMAN HELLERSTEIN: I think it is fair to say
15 we are aiming extremely high, and if we finish very high
16 it might be an accomplishment.

17 MR. STEINGLASS: So there are several points I
18 wanted to touch on in the short amount of time that I have
19 with you today. That aiming high was the first one. I
20 mentioned the second one about the 18-B lawyer role in the
21 mix.

22 I would like to talk about the idea of what you
23 might call back-up centers, which I think has been touched
24 on. That is, some sort of coordinated training, either in
25 regions or across the state or between 18-B and
26 organizations. I would like to touch on screening, which

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2 I touched on earlier, and say something very briefly about
3 the need for an increase in 18-B rates.

4 Let me just throw out a couple of ideas that
5 perhaps have not been mentioned today. When you think
6 about cost, which is obviously an overwhelming
7 consideration, as we heard so dramatically illustrated by
8 Mr. Pittari, in Manhattan, for example, which I am most
9 familiar with, could you inquire whether the 18-B lawyers
10 who are in the arraignment parts are being fully utilized?
11 Or are they sitting there for a good part of the time when
12 there are no assignments and only picking up, for example,
13 three or four felonies a night, which may not even be
14 indicted, so these cases may not be very much of a case
15 load. Or is it the case in Manhattan, where you have not
16 only the Legal Aid Society and the New York County
17 Defenders Services, you also have Neighborhood Defender
18 Services. Is it the case in Manhattan that at arraignment
19 the 18-B lawyer is not being fully utilized and if you
20 permitted the 18-B lawyer to pick up additional cases
21 beyond the bare bones conflict situation perhaps the
22 organization that's staffing the part that day wouldn't
23 need whatever the number of people they have there. Maybe
24 they might only need one person less, some savings of
25 cost. And I think if you looked at it that way you would
26 see there were certain insufficiencies in the system that

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2 perhaps could be -- where more use could be made of the
3 private lawyers.

4 I know this is not the place to deal with the
5 problems of the criminal justice system and what it does
6 to people sometimes. Sometimes justice is done but
7 sometimes there are problems. But when one thinks about
8 the cost, and I am sure that will be a factor, quality
9 legal services can overall reduce costs. That is because
10 a high quality system will not only deal with the question
11 of guilt or innocence, but it will also deal with the
12 question of mitigation for those who are being sentenced.
13 And in this day and age where we are getting more into
14 treatment courts and where we have severe collateral
15 consequences like eviction from public housing, driver
16 license suspension, which can lead to loss of job and
17 therefore loss of tax money that comes from a job, family
18 disruptions, the impact on children and their ability to
19 learn, not to mention recidivism -- while I can't give you
20 any numbers because I don't have them, and maybe they
21 can't be quantified, I suggest that an inquiry in that
22 area would indicate that high quality of legal services is
23 actually cost effective in the long run.

24 Now let me turn to what I regard as the central
25 thing that I wanted to share with you today, which is my
26 submission or question about increasing the role of 18-B

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2 lawyers in the mix of delivery. Because I think it is so,
3 at least in the New York City area, and I believe also
4 across the state, the use of 18-B lawyers has dropped
5 dramatically with the increase in rates. Why is it that
6 it is important to have more 18-B lawyers in the mix of
7 delivery? Well, there are several reasons I would like to
8 suggest. They are not exhaustive.

9 One, on a simple economic type of basis 18-B
10 lawyers provide a fluctuating standby capacity which
11 doesn't get paid for. So you can call on those lawyers
12 when you have an increase in the case load, when you have
13 a spike, when you have mass arrests, when there is a
14 problem with the organizational defenders, such as the
15 organizational defender Legal Aid has a strike or has a
16 near bankruptcy. And so you need to have, I suggest, a
17 density of 18-B lawyers who are ready, willing, able to
18 handle that situation when they are needed.

19 Second reason. Practicing as a private lawyer
20 in doing 18-B work is a path to retain the experience of
21 defense lawyers when they leave the organizational
22 defender, and, I submit even more importantly, for
23 prosecutors to serve as defense lawyers after they leave
24 the district attorney's offices. We should not lose that
25 quality and that experience. The reason I single out the
26 prosecution side of it is because for a prosecutor to

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2 serve as a defense lawyer after leaving the prosecutor's
3 office, I think is it an extremely important experience;
4 invaluable. If that prosecutor becomes a judge, he or she
5 will have been on both sides. If that prosecutor serves
6 on this type of commission or any other kind of bar
7 association or leadership role they will have that
8 experience, which they are not going to have if you have a
9 system which is organized almost entirely towards the
10 organizational defender.

11 Similarly, it is key to improving the criminal
12 justice system and the delivery of indigent defenses
13 services that you have private lawyers who are heavily
14 involved, along with the organizations, so that when bar
15 associations are interested in issues you have a group
16 people who are knowledgeable, familiar with the way the
17 system works.

18 For example, when there are attacks on judges
19 for their bail decisions at arraignment, you want
20 knowledgeable lawyers not only from the organizational
21 defenders, but private lawyers, with their activities and
22 their leadership roles in bar associations, to be able to
23 evaluate those attacks, and in some cases, when
24 appropriate, to take appropriate action on behalf of the
25 bar associations and make recommendations.

26 Lastly, which I think is a more subtle point

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2 which I think is there, perhaps it is not so subtle after

3 the previous speaker's role, 18-B lawyers are more

4 independent in some ways than organizational defenders.

5 And I think that's been so dramatically demonstrated this

6 morning. Obviously you can have a public defender who is

7 replaced. You can have a legal society whose contract is

8 either threatened to be terminated or reduced. Those

9 considerations are there every waking moment for the

10 management of those organizations, even if those things

11 aren't happening at the moment. Even if the contract

12 isn't up for renewal. And while the idea of some sort of

13 insulation may well be something to be pursued, I am not

14 sure you are going to get enough insulation through a

15 public defender type corporation, perhaps like the Legal

16 Services Corporation. There is always going to be

17 pressures. The private lawyer who takes 18-B cases is not

18 immune from pressure, but he or she is not subject to

19 pressure in the same kind of way. It is a different

20 dynamic. And it is another reason to have a sizable

21 component in the mix.

22 And by the way, I am not talking about the

23 economic benefit to the lawyers. That's got nothing to do

24 with what I am here for today.

25 Let me turn to a question that was raised

26 earlier, discussed earlier while I was here, about sharing

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2 of training, for example, and materials, like motions,
3 brief banks. One of the problems perceived about 18-B
4 lawyers is that each lawyer acts by himself or herself.
5 Of course one might -- there are many lawyers who are
6 retained who act by himself or herself, but let's put that
7 to one side. Why can't we have more sharing of brief
8 banks between training, trial training, moot court type
9 training, where there are briefs and appeals about to be
10 argued? Or a key motion? Mock trials? Why can't we have
11 that done with 18-B lawyers and the organizational
12 defenders so that -- now, of course, who is going to pay
13 for it? The organization is not going to want to train
14 people outside their budget. But I am sure that
15 impediment could be overcome if we were to work together.

16 COMMISSIONER ROBERTS: Burton Roberts.

17 Let me ask you a question.

18 MR. STEINGLASS: Yes, Judge, of course. No
19 introduction is, of course, necessary, except for the
20 record.

21 COMMISSIONER ROBERTS: Let me state there is a
22 question of expense. Now, the contract between Legal Aid
23 Society and the City of New York enters with respect to
24 the bar, with respect to the criminal -- Legal Aid
25 Society, is they have to handle a certain percentage of
26 the cases, as I recall something in the neighborhood of 86

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2 -- I think they handled 90% of the cases. And they get
3 some dough from the City of New York, a grant, now, if the
4 assigned counsel plan originally is supposed to be there
5 when there is a conflict of interest. Now they are
6 getting \$75 an hour, \$75, you know, for out of court work.
7 Don't you think it will be that might result in a great
8 deal more expense than just taking care of Legal Aid, not
9 worrying about putting the assigned counsel plan in as the
10 alternative? I am asking you. You are getting now \$75 an
11 hour. \$75 for out of court work. What I am afraid of is
12 you are going to develop a bar that are all insomniacs
13 that only asleep a half hour a night and spend 23 1/2
14 hours working on a case. How do you check on this? How
15 do you really ascertain what amount of work went into
16 this?

17 MR. STEINGLASS: Well, your Honor, I understand,
18 of course, that in Manhattan, in the First Department
19 there is a screening panel; recertification of lawyers is
20 required. And I think that goes a long way towards
21 ensuring that -- and also these days vouchers are
22 computerized, so that the idea that somebody is going to
23 be working 23 1/2 hours a day, and there have been abuses
24 in that regard that I have read about in the press in the
25 past --

26 COMMISSIONER ROBERTS: All those lawyers were

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2 working. They will work. If there is a conflict of
3 interest they are assigned one of the defendants.

4 MR. STEINGLASS: But one of the problems is that
5 these days, as I get it, and I am not expert, is that the
6 assignments are way down, at least in Manhattan, because
7 there are far fewer felonies, fortunately. There are
8 fewer conflicts in misdemeanors, as was mentioned earlier.
9 And there isn't on a given arraignment night for an 18-B
10 lawyer enough work. Enough density of work. So basically
11 while the rates have gone up, you still have a problem
12 with losing people and not keeping enough people. And I
13 think that problem could be dealt with by an adjustment.

14 And let me say as far as cost. Why is the
15 organizational defenders such as the Legal Aid Society
16 disposing of so many of these cases at arraignment? And
17 is the Legal Aid Society and some of the other
18 organizational societies handling people at arraignment
19 that are not eligible?

20 The answer to that question is yes. Because as
21 recently as Super Bowl Sunday night --

22 COMMISSIONER ROBERTS: If they are not eligible
23 for Legal Aid they are not eligible for the assigned
24 counsel plan either.

25 MR. STEINGLASS: That's true. And one of my --
26 that's -- yes, but one of the differences -- all right.

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2 Part of one of the things I wanted to say is
3 there ought to be more of an effort on eligibility
4 screening so that taxpayer money isn't inappropriately
5 spent. And as I was saying, on Super Bowl Sunday night I
6 am there in night court and the judge asks "is your client
7 eligible", to the legal aid person who is standing there.
8 And it was a law graduate, actually. And he hadn't -- he
9 had to turn to his client and discuss it. Obviously the
10 question had never -- wasn't on his checklist.

11 For example, we have signs in the courthouse now
12 at 100 Centre Street about legal referral service being
13 available. Why can't we put those signs also in the pens
14 where there are telephones so that somebody can call? We
15 no longer have the lobster shift and so on where so many
16 arraignments are done when lawyers aren't around. There
17 are a lot of lawyers in the vicinity of the courthouse on
18 any given day who would be available, even to respond to
19 arraignments. I think a fresh --

20 COMMISSIONER ROBERTS: They are around, but the
21 money isn't around. It costs more money to put an
22 approved counsel or assigned counsel in the role of
23 defense counsel than it is on working out a deal with the
24 organizational Legal Aid Society and entering the deal,
25 which they have to do for 90% of the cases.

26 MR. STEINGLASS: That may be true.

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2 COMMISSIONER ROBERTS: The tax dollars, you can
3 just get so much.

4 MR. STEINGLASS: That may be true, but I don't
5 know that. I am raising that question.

6 When Legal Aid counts their cases, if they are
7 counting those cases where they stand up on arraignment
8 and they dispose of it at arraignment, and that's a case,
9 and it is whatever time that is, all right, I am not sure
10 that's an accurate per case measure.

11 Also, if they are standing up on cases that they
12 shouldn't be standing up on and that's part of their case
13 load because they are just counting those cases, again, I
14 am not sure that should be considered part of their --

15 COMMISSIONER ROBERTS: It somehow does not allow
16 us to question people as extensively as we should to ask
17 them if they are eligible for legal aid. We don't do it.
18 It is not done.

19 MR. STEINGLASS: It is right on the CGA sheet.

20 COMMISSIONER ROBERTS: It should be done with
21 greater vigor.

22 COMMISSIONER KAMINS: We have to move forward.
23 We appreciate your coming in and thank you for your
24 comments.

25 MR. STEINGLASS: Thank you.

26 COMMISSIONER KAMINS: If there is anything

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2 further you would like to submit we would be glad to take

3 it in writing.

4 MR. STEINGLASS: Thank you very much.

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1 Sally Wasserman, Esq.

2 PROFESSOR HALLERSTEIN: Is Miss Wasserman
3 here?

4 Welcome. Thank you for coming.

5 MS. WASSERMAN: Thank you for having me.

6 I'm an 18-B appellate attorney.

7 I don't belong to any major defender
8 organization. I did come from a prosecutor's office.

9 I wanted to speak to several issues and you
10 may have some questions for me, perhaps.

11 What you need to know is that I stopped doing
12 exclusively 18-B work about a decade ago.

13 I found that. I could not adequately support
14 my family and adequately give my clients representation
15 at what was then the 18-B rates.

16 The rates have come up, and I'm happy about
17 that.

18 I don't know yet because I haven't submitted a
19 voucher in a while whether, what had happened in the
20 Second Department for years still happens where
21 vouchers were cut.

22 There has been questioning about how do you
23 stop the lawyer from billing 23 hours out of 24?

24 From my experience, it's been harder to
25 explain, in my experience, how somebody working six
26 hours at a stretch in one day on an appeal can bill.

1 Sally Wasserman, Esq.

2 In fact, those of you who have done appellate
3 work, appeals, are often like that, you spend six hours
4 at a time reading something, writing something,
5 digesting something, researching something.

6 I stuck with the work because I believe in the
7 work.

8 I have a wonderful relationship with both
9 Legal Aid and appellate defenders here in the City.

10 I'm always delighted when they have co-counsel
11 because then I have a colleague to bounce ideas off of.

12 I think we need stronger administrators; we
13 need an 18-B administrator who is engaged and active
14 and knows the attorneys well enough to call somebody on
15 the carpet and be aware of the abuses.

16 The suggestion that CLE should be not only
17 mandatory generally, but in the criminal law it should
18 be mandatory, I fully agree with.

19 If we're spending 24 hours every week, and we
20 wish to work to in this field, I believe half of those
21 should be criminal CLE, free CLEs.

22 When I speak to prosecutors, they don't have
23 to leave their offices or pay for CLEs, they are given
24 salary days to attend CLE classes.

25 18-B attorneys do not have that luxury.

26 The Bar Association here offers CLE classes.

1 Sally Wasserman, Esq.

2 There are other offerings and it would be a wonderful
3 thing to have CLE be free.

4 PROFESSOR KAMINS: Barry Kamins.

5 I've had some of these programs that are free.

6 MS. WASSERMAN: There are low-cost or free
7 programs on Tuesday nights. I think I've attended a
8 couple of those as well.

9 Another idea I have which nobody seems to have
10 mentioned is that area law schools, in my experience,
11 are now charging for admissions for law library
12 research. The most important one that switched over
13 was Brooklyn.

14 I used to do research at Brooklyn. It was a
15 wonderful law library.

16 Pace does the same, they do it on an annual
17 basis, but they break it down to \$35 a day.

18 At this point, to my knowledge, Brooklyn does
19 not have a per diem.

20 If we can recommend to the panel that they
21 speak to area law schools and get them to give some
22 kind of collegial welcome to people who are doing
23 assigned counsel work, that would be helpful.

24 I think the whole point is to remove hurdles;
25 let them read the books; let them do the research.

26 I fully support a brief bank.

1 Sally Wasserman, Esq.

2 If there is a problem of plagiarization, and
3 if we have a brief bank, and law school doors open,
4 then maybe we get around that problem.

5 Nothing makes me happier than when I get a
6 call from a colleague who is on a deadline, that they
7 need an answer to an issue, than to say, "I have
8 something on that. Let me pull it up; Shepardize these
9 cases." Maybe something has changed.

10 I think we should have a brief bank.

11 I think we should have the ability to walk
12 into law schools all over the state and pull cases and
13 do research.

14 I think we should have better supervision.

15 I think that that may be a problem in the
16 system, I will be the first to tell you I don't do
17 enough of the work any more to really need to worry
18 about the supervision -- I probably take five 18-B
19 appeals a year, if I take that many, and I do some in
20 the CJA system as well, and because I've been in the
21 field now close to 20 years I have my colleagues from
22 both sides of the fence that I consult with.

23 But there should be a network, someone you can
24 consult when an issue arises.

25 When I started as a 18-B attorney there were
26 attorneys I called to say, "Okay I'm a former

1 Sally Wasserman, Esq.
2 prosecutor. How do you handle this? What do you do on
3 this side of the fence? And I had a panel
4 administrator at the time that I also called who gave
5 me the name of some other attorneys to call.

6 That's very necessary.

7 Finally, I wanted to speak to just somebody
8 who handles CJA appeals.

9 And the sad thing is, if we don't get it right
10 it doesn't get fixed in Federal Court.

11 PROFESSOR KAMINS: Barry Kamins.

12 We have enough trouble trying to figure out
13 the State system, we're not addressing the Federal
14 system.

15 MS. WASSERMAN: We have just got to get it
16 right because there's no refuge we can count on for.
17 review once we get beyond this system, and you guys
18 know better than I do, I know that 98 percent and
19 upwards of all criminal leave applications are denied.

20 If it doesn't start right at the trial level,
21 it's hard to fix it at the Appellate level; if we don't
22 fix it at the Appellate level, it's hard to get to get
23 it fixed at the federal level.

24 If you have any questions to me.

25 A PANEL MEMBER: Klaus Eppler.

26 I don't know if you were suggesting there were

1 Sally Wasserman, Esq.
2 impediments to assigning of appeals counsel.

3 Do you have any comments on that subject?

4 I think their point was, there is a lot of
5 bureaucratic work in getting a new assignment to an
6 appeal counsel; that the assignment of the counsel at
7 the outset doesn't carry through to the appeal process.

8 MS. WASSERMAN: From my experience in the
9 Second Department -- I only do appeals work -- and I
10 get cases after verdict. I don't know if any of the
11 lawyers carry through their appeals from conviction
12 straight up through the system.

13 I always come in after conviction and I would
14 make the argument --

15 A PANEL MEMBER: You only come in after all
16 that paperwork has been done?

17 MS. WASSERMAN: Yes.

18 I would make the argument that if you need to
19 raise the issue of ineffective assistance of counsel,
20 and if you're the lawyer who tried the case, you may
21 not be best suited to handle the appeal.

22 But that may cost the system some money.

23 But presumably the trial attorney who tried
24 the case, there will be a period between when the
25 defendant was sentenced when they're working on appeal,
26 you're going to have to refresh your recollection and

1 Sally Wasserman, Esq.
2 you're going to have to read the transcript and bring a
3 statement of facts, and on top of that I'm looking at
4 it with a new set of eyes and judge whether counsel was
5 effective or not.

6 JUDGE BAMBERGER: Phyllis Bamberger.

7 Is there any way, between the time of
8 imposition of sentence and perfection of the appeal,
9 that that time can be reduced?

10 In your opinion it takes a very long time, and
11 it's generally not the fault of the individual lawyer
12 who is responsible for filing the brief, but just the
13 way the system works, is there anything we can suggest
14 to shorten that period?

15 MS. WASSERMAN: It's a problem for me to
16 answer for several reasons.

17 I've had cases that came along the system very
18 slowly because there was the thankless job of having to
19 bring a 440 motion, before you did the direct appeal
20 that would slow things up.

21 JUDGE BAMBERGER: I'm really not talking about
22 that.

23 I'm talking about sometimes it takes two years
24 or more for the appeal to be filed by the Appellate
25 Division, but sometimes it even takes that long for the
26 appellant to affect the appeal, it's generally because

1 Sally Wasserman, Esq.
2 it's because of the process of selecting the appeal
3 counsel; delay in getting the transcript, that costs
4 money, indigents have to get state money for
5 transcripts; getting a lawyer on the case; the lawyer
6 asks for adjournment for the filing date; what can we
7 do in terms of the indigent defendant in getting that
8 appeal affected more promptly?

9 MS. WASSERMAN: Certainly getting the record
10 more quickly.

11 I don't do the work in Westchester any more on
12 the 18-B panel. One time I practically had to get a
13 court writ to get a Reporter to turn out the
14 transcript. The pay scale just wasn't good enough to
15 get this particular Reporter to care very much.

16 I seem to have had that problem more on
17 appeals in the suburban counties. I must say in Kings
18 County where I do most of my work I get my transcripts
19 pretty speedily. But in the two places I stopped
20 taking assignments was Nassau and Westchester because
21 the rigmarole wasn't worth it.

22 JUDGE BAMBERGER: Getting the transcript?

23 MS. WASSERMAN: Getting the transcript; it
24 could be a year. In the meantime, you're getting
25 letters, 180 letters, the 270 letters, although not
26 accusatory, certainly need to make you defend why you

1 Sally Wasserman, Esq.
2 haven't done this, and by the time you actually start
3 work on the transcript now you're getting letters from
4 the Court demanding you CC your response to your client
5 as well, as if you somehow have been putting your feet
6 up on an ottoman through that period of time, somehow
7 not working on the appeal.

8 In my experience that's less of a problem in
9 Brooklyn.

10 It was a huge problem for me and it is one of
11 the main reasons I stopped worrying about an office
12 presence, and taking any sort of cases out of the
13 suburban counties on the 18-B panel.

14 PROFESSOR HALLERSTEIN: Thank you, Miss
15 Wasserman.

16 (Whereupon Sara Stanley was relieved by Lester
17 Isaacs, as Official Court Reporter.)

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3 PROFESSOR HELLERSTEIN: Mr. Quinlan.

4 Good afternoon, Mr. Quinlan.

5 ROBERT QUINLAN: I'm Robert Quinlan, on the

6 Assigned Counselor Administrator in Suffolk County. I

7 have been holding that position for the last 20 years,

8 additionally I'm president elect of the Suffolk County

9 Bar.

10 I speak to you not as an administrator, but I

11 speak to you on behalf of the Suffolk County Bar

12 Association.

13 We are a conflict panel, you're going to hear

14 later from the representative of the Legal Aid Society,

15 Suffolk County, who will be speaking. So we are

16 strictly a conflict panel, except in murder cases in

17 which all murder counsel come to us as the assigned

18 counsel plan. A plan which is managed by the Suffolk

19 County Bar Association and the Criminal Suffolk County

20 Bar Association, which I'm a past president.

21 It's a different sort of office though then

22 you might have heard or might have expected after

23 hearing Mr. McCloskey's statement earlier in our sister

24 County of Nassau. He has a full time staff. He is a

25 full time administrator. He provides training and CLE

26 for his members of his plan. I'm a part time

1 Robert Quinlan, Esq.
2 administrator. My office basically does this pro bono.
3 My office gets paid \$25,000 a year to administer a plan
4 which is on the same level basically as the Nassau
5 plan. So my office, and my private practice recognizes
6 this and we see this as a service to the Bar
7 Association and the Bar.

8 We have approximately the same number of
9 panel members as Nassau County, 475. Although we are a
10 larger county, we don't have as many assigned counsel
11 cases as Mr. McCloskey indicated.

12 Although I do have to indicate that we have
13 seen over the last two years a dramatic at least
14 increase in the number of assignments in 2002. I
15 processed through my office, 1,982 vouchers last year.
16 We processed though 3,522 vouchers. We don't see this
17 for the same reason Mr. McCloskey seems to see it, some
18 sort of lessening over the standard of eligibility.

19 We see this basically as a dramatic increase,
20 which has been coming on for the last decade. In our
21 Family Court location most of the increases in 2002 and
22 2004 are over a thousand cases we have gotten in Family
23 Court, which has become the predominant burden for the
24 assigned counsel plan where we represent all adults
25 charged with domestic offenses, abuse and neglect.
26 Legal Aid basically represents in general the law

1 Robert Quinlan, Esq.

2 guardian issue there.

3 We, as I said, we have a requirement of four
4 hours of CLE every year for continuing legal education.
5 If you are on the panel, you must have four hours of
6 CLE in the area of Family Law.

7 If you're on the Family Panel, you must have
8 four hours of CLE in the areas of Criminal Law. We do
9 not substitute and I have no funding in my County to
10 substitute CLE, which is something as I said we should
11 have.

12 We are different than Nassau and in other
13 ways. We had a bifurcated County Court System, by that
14 I mean throughout the County unlike Nassau where you
15 have one centralized District Court where all local
16 criminal cases are initiated, we have that for our five
17 western towns, which is the largest part of our
18 population. The five eastern towns though Easthampton,
19 South Hampton, River Head and Shelter Island have their
20 own Justice Court system similar to the Justice Court
21 system that you see in most upstate jurisdictions. So
22 we have two different sets of problems in my County.

23 I think that there are some common problems.
24 One common problem is the lack of Hispanic or Spanish
25 speaking counsel available in the assigned counsel plan
26 to represent people who are of Hispanic origin who

1 Robert Quinlan, Esq.
2 speak Spanish only, with English as a secondary
3 language. That is more acute probably in our East End
4 townships, Easthampton and South Hampton actually.
5 They have budget fees for their interpreters. I wish
6 we could have done it. To try to get interpreters in
7 court, there was no authority for the town to do that.
8 I think that is something that should be addressed.
9 And one way, of course, obviously is to encourage
10 Hispanic lawyers to become involved in the practice.
11 The only on way is to provide through the Bar
12 Association some bilingual training. I have found like
13 some other counties, that I know and have testified
14 here today, are familiar with who the chief defenders
15 associations are. My County does not have a problem in
16 the sense of an attorney obtaining an expert witness
17 service or the service of an interpreter to go out to
18 the county jail to speak with the defendant, if the
19 defendant is in jail.

20 That's fortunately is an easy process. It
21 gets harder when the person is out of custody to
22 effectively speak to their client. This is becoming
23 more and more of a problem. I have no more than six
24 attorneys out of my 475 attorneys who are actively
25 fluent in Spanish. I think that one of the things that
26 this Commission can do and actually one of the three

1 Robert Quinlan, Esq.
2 things I think this Commission can do if it finally
3 issues its report, is to provide state wide standards,
4 state wide resources and an independent Commission to
5 over see those resources and standards by standards.

6 I mean standards of quality of representation
7 as well as qualification of the attorneys by resources.

8 I mean not just 18 B funding for the
9 attorneys to be paid, but funding to establish training
10 for these attorneys.

11 Funding to establish quality control for
12 these attorneys. Funding to establish expert banks or
13 interpreters, even as I have indicated now in Suffolk.

14 There is a problem for these attorneys state
15 wide. I think the need for an independent Commission
16 to over see these problems state wide is essential. I
17 have been doing this for 20 years. I think I have some
18 experience in the area.

19 I believe though that this Committee, if they
20 do make such a recommendation, of such a Commission
21 have that commission only for oversight and not
22 control. Each jurisdiction has its own interests, its
23 own problems, its own way of dealing with the problems.

24 I think if we had one centralized governing
25 authority telling me and Suffolk County what to do,
26 telling some one in Oswego what to do, some one in

1 Robert Quinlan, Esq.
2 Queens what to do directly and how to handle the cases,
3 it would be inappropriate, it would be counter
4 productive. But the oversight to make sure that there
5 are quality, general quality standards. To make sure
6 there are the necessary resources. To make sure that
7 they are being used adequately throughout the State
8 essentially. I think there is one thing that this
9 Committee can address.

10 There are many other issues. I don't want to
11 be repetitive. You heard it and what you're going to
12 hear today, I think in my County you're going to hear
13 problems from my Legal Aid representative that is here.
14 In general, my County has not had a problem in paying
15 vouchers. I know in other counties, I heard Mr.
16 Pittari speak at one point Westchester sets up a
17 screening to cut down the arraignments.

18 Quite frankly, my County has been fair in
19 looking at vouchers, paying vouchers. I don't have a
20 problem for my County Attorneys Office viewing the
21 vouchers and paying the vouchers. It doesn't mean
22 there was a problem in paying the vouchers. It doesn't
23 mean there is not a problem in reviewing vouchers.

24 I found over the last year there seems to be
25 more of a tendency for people to put in the 23 hours
26 that Judge Burton Roberts made in reference to assigned

1 Robert Quinlan, Esq.
2 counsel cases. Usually in my experience due to lack of
3 record keeping on the part of the attorneys and these
4 matters have been addressed by my office and I'm sure
5 they were addressed by every administrator throughout
6 the State.

7 I think that one of the things that can come
8 out of this sort of Commission is a sense for the
9 assigned counsel attorneys that there is a -- there is
10 going to be an agency they can go to with their
11 problem, beyond me. There is an area that I, as an
12 administrator, that I can go to if I have a problem. I
13 know some of the other counties have a similar problem
14 to mine with my assignments. My assignments in general
15 are rotational out of my office. We have setup over
16 the last few years a rotational system of an attorney
17 of the day in our local criminal court, our District
18 Court in Central Islip for felony cases. Even an
19 attorney for the day, for our misdemeanor cases in our
20 domestic violence part, who generally serves as a
21 misdemeanor attorney of the day in our District Courts
22 also. We have an attorney of the day just starting in
23 Riverhead over the last month and I have worked out
24 finally with the Family Court Judge, Administrative
25 Judge in my County an agreement to have an attorney of
26 the day for abuse and neglect cases in the Family

1 Robert Quinlan, Esq.
2 Court. This way we can try to evenly spread the
3 responsibility of representing indigent defendants in
4 Suffolk County as well as fending off the appearances
5 of impropriety, which I believe is often shown when a
6 judge just sua sponte assigned someone from the bench.
7 I'm not going to say here -- as I sit here and say I
8 have known on occasion a problem with judges perhaps on
9 the East End of my County, assigning people outside of
10 rotation, but it's something that we have been putting
11 a stop to over the last few years. The reason for it
12 is not necessarily that Mr. or Ms. Smith gets assigned
13 to a case, is not doing a great job as an 18 B
14 attorney. It does give the appearance to people
15 outside the system, to people even when I say the
16 system, meaning the assigned counsel system, and also
17 people inside the assigned counsel system that there is
18 some favoritism being shown to assignments. Whether
19 that impression then leads them to a conclusion that
20 maybe this attorney is rolling over for the judge, is a
21 political friend of the judge. It's inappropriate for
22 any reason. We are doing a lot to try to change that.
23 We have been successful in changing that and will
24 continue.

25 There are problems in our Family Court for
26 the immediacy of the need for an attorney in abuse or

1 Robert Quinlan, Esq.
2 neglect cases or a determination case to be right
3 there.

4 I have heard other attorneys appear today
5 talk about how some people -- I shouldn't say hang
6 around, but happen to be in the court house and get
7 more assignments than other attorneys. We are trying
8 to do what we can to avoid this. But it's not a
9 perfect system. I will be happy to answer any
10 questions you have, if any of the member of your
11 Commission concern my County or assigned counsel in
12 general.

13 HON. ELAINE JACKSON: We don't have a
14 requirement with 18 B attorneys to take a certain
15 amount of the criminal law courses?

16 ROBERT QUINLAN: Yes, Judge, four hours of
17 continuing education in Criminal Law and four hours for
18 a number of people who are in the Family Law parts and
19 the Criminal Law panel. Four hours in the area of
20 Family Law. Do I believe that's enough? Probably not.
21 I would like to see more Judge. If we have an agency
22 as you, when you were administrator in Nassau,
23 financing through the County, so I could send my people
24 to the programs, I would be much happier. But that's
25 the best I can get at this point.

26 HON. ELAINE JACKSON: Do you find these

1 Robert Quinlan, Esq.
2 expenditures are a problem to you as an administrator
3 in staffing, do you have drug courts?

4 ROBERT QUINLAN: We have drug courts,
5 domestic violence, we have other mental hygiene courts
6 coming in shortly.

7 Yes, there are problems in staffing. There
8 are problems for the private practitioner staffing.
9 It's a very hard thing to deal with putting aside the
10 fact that sometimes you feel like your acting as an
11 attorney there. But I feel like a secondary social
12 worker. It's a problem, but one that I have been able
13 to deal with. That's why I set up a misdemeanor
14 program for the domestic violence part in our District
15 Court.

16 HON. ELAINE JACKSON: Thank you.

17 PROFESSOR HELLERSTEIN: Thank you.

18 ROBERT QUINLAN: Thank you, very much.

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2 CHAIRMAN HELLERSTEIN: Mr. Neufeld.

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Good afternoon, welcome.

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MR. NEUFELD: Thank you.

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I have submitted a written copy of testimony. I

6

will try to just briefly summarize some of the points I

7

wanted to make.

8

CHAIRMAN HELLERSTEIN: Could you move the mic a

9

little closer?

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MR. NEUFELD: I have been working in the

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criminal justice system for 34 years, most recently and

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until this last October as the attorney in charge of the

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criminal defense division in the criminal practice,

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including the capital division and the criminal appeals

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bureau at the Legal Aid Society of New York City.

16

COMMISSIONER ROBERTS: Can you speak a little

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louder?

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MR. NEUFELD: I am currently in private practice

19

in New York City.

20

I wanted to talk about some things that may be a

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little different than some of the things that some other

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people have talked about. I wanted to talk about the

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context that indigent defense exists in this day and just

24

make a few quick points about them.

25

One thing that's changed in the last dozen or so

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years is the ratio of felonies to misdemeanors. 12 years

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2 ago we had 2/3 felonies and 1/3 misdemeanors coming
3 through the criminal courts. Today that's exactly
4 reversed. Serious crime is way, way down in New York
5 State and in New York City, but, remarkably, the number of
6 arrests have stayed basically constant. Which means that
7 the courts are at this point flooded with much less
8 serious cases. And there are now huge numbers of young
9 people, disproportionately people of color, people from
10 the rapidly growing immigrant communities that are charged
11 with a huge number of marijuana charges; sometimes you see
12 6 kids charged on one joint. Thousands of open container
13 charges. Round-ups of the homeless periodically arrested
14 for loitering, trespassing and fair beats. And this has
15 helped dramatically increase the number of mentally ill
16 people within the jails, specifically within the city
17 jails and county jails in this state.

18 So one point I think that needs making is that
19 if nature hates a vacuum the entrenched law enforcement
20 bureaucracy must truly abhor a vacuum, and in the absence
21 of real crime the criminal justice system has sustained
22 itself by devouring whatever else it can. And this has
23 led to systemic resentment towards the police and the
24 system from a whole new generation of kids coming up;
25 again, disproportionately immigrants and people of color.
26 Which is also leads to tremendous social alienation.

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The second point that I think has changed in the last 12 years is that unable to stem this flow the courts have nevertheless very admirably recognized that many if not most of the people coming through this system are more in need of treatment than punishment, and that's led to this huge increase we have in treatment court to problem solving courts. Again, which I think is admirable. But one of the main problems is that to get the district attorneys to buy into those courts what was given away was that you have to plead guilty in order to get any help. So it has created a situation wherein the power of a D.A. to get a plea in a case, in addition to all the traditional inducements, now if you want to get drug or alcohol counseling, if you want to get mental health treatment, if you want to get alternative to violence counseling you have to plead guilty in order to get help. And that has seriously eroded, I think, the whole adversary nature of the criminal justice system because these courts are just growing and growing and growing.

It has also created a situation socially, a situation in our state where the social services institutions that traditionally treated these people have less and less responsibility, less and less budgets to do that, and more and more of the responsibility is being put on the criminal justice system to deal with problems that

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we were never created to deal with. It is crazy that there are many, many more times mentally ill people in our jails and prisons right now than are being served by the State Office of Mental Health. That makes no sense.

One of the things it means is that instead of front loading the system so that people get services when they first need them, we wait until they do some harm and then we treat them.

I have been doing capital defense work for ten years now in New York and I have been stunned a number of times about how many clients we had who now when they are finally getting some good resources, we have these good well-funded capital defense teams with social workers and mental health experts and lawyers who can put time into the cases. You see people turning their lives around. But it is after they killed three people. If just a fraction of those resources had gone into some of these people early on there would be a whole lot of people who never would have gotten killed.

A third area that needs to be looked at in terms of the context that we function in; the huge increase in collateral consequences. When we had 2/3 felonies and 1/3 misdemeanors the main thing you had to worry about was how much time your client was going to get. That was overwhelmingly your main concern. Now you have this huge

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2 number of misdemeanors and violations and collateral
3 consequences have grown exponentially. So the penalty,
4 such as deportation, an entire family's loss of public
5 housing, expulsion from school, ineligibility for student
6 loans, and now the disclosure to prospective employers of
7 even violation convictions means that to be a public
8 defender, now your responsibility is to be looking at
9 things that you never had to so much focus on before
10 because the values of what the client can most lose have
11 radically transformed.

12 The training that needs to be done, the
13 specialization that needs to be done to be able to deal
14 with the specialty courts, to be able to deal with all
15 these other issues that effect the client and whether or
16 not you should take a plea and whether you should go to
17 trial, need for specialization and the increased need for
18 training are huge. Yet there hasn't been funding
19 commensurate with that increased need at all.

20 The final major point that I want to address is
21 the difference between the city and the state in terms of
22 resources. It is something that if this commission is
23 considering trying to look at a state takeover of indigent
24 defense, a real state takeover, something that really has
25 to be looked at is that we have got 52% of the criminal
26 charges exist in the city but 70% of the money that's

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2 spent on indigent defense is spent in the city. And
3 that's a result of political strength of the minority
4 communities in the city, political balances, the party
5 political balances, of the strength of the institutional
6 providers. It is due to a lot of historical reasons. But
7 one of the things it means is that this is a danger when
8 you look at state takeover of undermining the quality of
9 representation within the city. And that's something that
10 I would hope that you all would take very seriously when
11 you think about how to improve things state wide.

12 Now, obviously the state system of indigent
13 defense needs standards for all its practitioners. A
14 number of people have talked about that. The Chief
15 Defenders and the State Defenders Association passed an
16 excellent set of standards last year. The ABA has had
17 standards for a long time. The National Legal Aid
18 Defenders Association has had standards. There is no
19 problem with having standards. The problem is having
20 enforcement of those standards.

21 When the 18-B rates were raised two years ago
22 one of the really, I think, important things that happened
23 in that change was for the first time connecting quality
24 of representation to getting some more state money. That
25 has to be reinforced. It is not clear in the statute now.
26 And it has to be improved so that there really has to be a

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2 carrot for localities to put more of their own money in in
3 order to get more state money. And to make that work
4 really well I think two things have to happen. One is
5 that whether there is a state commission or we take the
6 First Department Oversight Committee and actually use that
7 as a model for the state and give it some real staff,
8 there has to be a connection between the oversight body
9 and the ability of that body to control -- to make the
10 determination on improved quality which would result in
11 the localities getting more funds. So there has to be a
12 direct connection between whatever the independent body
13 is, or bodies, that have control over making sure that the
14 standards are implemented to the purse strings. And then
15 the state has to put enough money into that carrot so that
16 there is a real incentive for the localities to improve
17 quality.

18 Thanks.

19 COMMISSIONER ROBERTS: May I?

20 CHAIRMAN HELLERSTEIN: Go ahead.

21 COMMISSIONER ROBERTS: Mr. Neufeld, you were the
22 head of the criminal division of the Legal Aid; is that
23 correct?

24 MR. NEUFELD: Yes.

25 COMMISSIONER ROBERTS: Could you tell us how
26 many individuals, how many lawyers worked for Legal Aid?

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2 Or now?

3 MR. NEUFELD: I have been gone for 4 1/2 months.

4 COMMISSIONER ROBERTS: Approximately.

5 MR. NEUFELD: The entire Legal Aid Society or

6 doing criminal work or --

7 COMMISSIONER ROBERTS: Doing criminal work.

8 MR. NEUFELD: When I was there it was between

9 550 and 600.

10 COMMISSIONER ROBERTS: Now, you talked about

11 standards. Does Legal Aid have such standards that deal

12 with, for example, when an individual who is a lawyer in

13 Legal Aid can try felony cases, try capital cases and so

14 on?

15 MR. NEUFELD: Yes.

16 COMMISSIONER ROBERTS: What is that -- what was

17 that standard?

18 MR. NEUFELD: Well, there is a process of

19 observation by supervisors and training that goes on so

20 that over the course -- usually between 8 months and 14

21 months, people, if they are progressing well, become

22 what's called felony certified and then they are allowed

23 to pick up felonies.

24 COMMISSIONER ROBERTS: Not before then.

25 MR. NEUFELD: Not before then. The hope is that

26 they do certain misdemeanors trials, hearings, mock

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trials.

COMMISSIONER ROBERTS: You were in charge of the capital cases in Legal Aid, correct?

MR. NEUFELD: Yes.

COMMISSIONER ROBERTS: Was there some standard by which you determined when a person would be eligible to be part of that particular division or group?

MR. NEUFELD: Just to apply you had to have five years of criminal trial practice.

COMMISSIONER ROBERTS: And when the person who tries his first case in Legal Aid, is there a second seat by a supervisor or by senior assistant?

MR. NEUFELD: There was when I was there.

COMMISSIONER ROBERTS: And he in turn second seats the supervisor so he understands how it is done, how it should be?

MR. NEUFELD: Or a senior attorney on a complicated case.

COMMISSIONER ROBERTS: Now, just so it is clear, you feel, for example, that there is a different problem in the state than the city, and that the city, if it became part of an overall statewide system, it would be losing out on funds. For example, it gets 52% of the funds now, you indicate.

MR. NEUFELD: 70% of the money spent on indigent

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defense in the state is spent in the city even though there is just 52% of the cases in the city. So I am concerned that whatever happen not diminish that. I mean, I think the challenge is to raise the rest of the state without undermining the quality of representation in the city.

CHAIRMAN HELLERSTEIN: Mr. Neufeld, some people

with respect to the points you made earlier would argue, I think, that the big decline in felony cases and increase in misdemeanor cases is indicative of what some call the broken windows theory, when you prosecute the smaller crimes you nip in the bud the more serious crimes, and that that's not a bad way to go. Your opening statement is that that's not the case. Really the misdemeanor cases reflect some other type of consequence. Any thoughts on that?

MR. NEUFELD: I think there is two separate

things. If somebody who has a gun gets stopped for jumping a turnstile and then that gun gets used, that obviously was using an arrest for something less important in order to stop maybe a more serious crime from happening and being able to charge the person. To the extent that those things happen, that is the broken window theory and that has -- that makes sense.

But when you arrest half a dozen kids who are

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2 standing in front of the local pizza parlor for loitering,
3 that's not -- the negative -- the negative effect of that
4 in terms of resentment and alienation and criminalizing
5 kids who are not carrying guns and are not intending to do
6 something more serious has a more negative effect. The
7 huge number of increases in misdemeanors and violations
8 over the last 12 years has both of those within that. The
9 ones I am concerned about are the latter group and not the
10 first group.

11 COMMISSIONER ROBERTS: Do you think it is
12 possible that the explanation for the misdemeanors going
13 up so high and the felonies dropping is due in part to a
14 feeling that we all have, and those in law enforcement,
15 that what deters crime is the speed and certainty of
16 adjudication? The fact that you don't have to wait a year
17 or two years before a case is tried, and as a result you
18 take more pleas than you did before on cases that you
19 would possibly not have taken a plea on before and you
20 concentrate on the disposition of those felonies cases.
21 Like, for example, taking Criminal Court judges and making
22 them acting Supreme Court judges so they are trying
23 felonies rather than misdemeanors. Don't you think that
24 possibly is a explanation for the 2/3 and 1/3?

25 MR. NEUFELD: I think it is a piece of
26 explanation.

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CHAIRMAN HELLERSTEIN: Mr. Eppler?

COMMISSIONER EPPLER: We have heard -- first of all, your comment that you think treatment not punishment seems to speak towards doing a more holistic approach to providing services. How would you -- do you have any comments on how you would organize that in the context of a large organization such as the one you ran?

MR. NEUFELD: Well, the Legal Aid Society has already within it civil division a juvenile rights division that already provides other services. It is a little easier and maybe a little more cost effective than it is if you just have an indigent defense provider that then has to try to add those other functions.

COMMISSIONER EPPLER: It is my perception, and maybe I am wrong, that the Legal Aid Society today is set up to provide the kind of services that the Bronx defender organization provides. Can you do that?

MR. NEUFELD: That it is or is not?

COMMISSIONER EPPLER: Is not. The model of providing broader services, essentially with the -- if you have an assigned lawyer on the staff, being able to bring in all the other people and do all the other things.

MR. NEUFELD: I think efforts were made at Legal Aid over the last three, four years to try to do that. I am no longer at the Legal Aid Society. I can't speak for

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the Legal Aid Society. And I really don't know what's happened with those efforts since I have left and since their financial problems.

COMMISSIONER EPPLER: When you were there. Are there other ways that that would have to be instituted? Again, my perception is that it has not been run as holistic. Am I wrong about that?

MR. NEUFELD: I think efforts were made -- there is a certain level of that that was accomplished and a certain amount that wasn't.

COMMISSIONER EPPLER: You have no other suggestions of how it would be organized, the team approach?

MR. NEUFELD: The organization problem isn't the problem. The resource problem is the problem. And again, I am not speaking for the Legal Aid Society. But you had a client, a criminal client, the family had a housing problem or there was a housing problem that was part of that, and then you were asking the civil division lawyers to deal with housing to help this criminal client. And they have got a huge caseload themselves. So it would tax those resources.

The idea is that if you can attract enough money to help facilitate something like that then you have the expertise in that organization to do it. And all I was

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saying was that if you already have the expertise these within the organization, it may be more efficient than in a situation where you have to bring in a whole new person for each area of housing, immigration, et cetera, et cetera.

CHAIRMAN HELLERSTEIN: Mr. Kamins.

COMMISSIONER KAMINS: Mr. Neufeld, you mentioned earlier that the First Department evaluation entity, committee, could be used state wide. Is there anything in that model, though, that would perhaps not fit in with the rural areas upstate?

MR. NEUFELD: Not that I know of. I think that what needs to help if something like that were to happen would be for each departmental Oversight Committee to set themselves up in a way that would deal with the reality of that department.

COMMISSIONER KAMINS: You are suggesting each department then have its own evaluation, oversight?

MR. NEUFELD: I am suggesting that that's one model. You would have four oversight committees.

COMMISSIONER KAMINS: Not a state wide oversight.

MR. NEUFELD: That's another model.
But they would have to have enough resources to be able to do site visits, to be able to do court watching

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2 and court monitoring. The First Department committee,
3 which I think has done an excellent job with almost no
4 resources, aside from the work of the people who volunteer
5 to -- the attorneys who volunteer to work on it, has had
6 to rely a lot on reporting from the organized defender
7 organizations, and hasn't, I think, had enough staff to be
8 able to go out and sit in the courtrooms and do court
9 monitoring and visit, do site visits to the office,
10 interview clients. There is a lot of things that you
11 would want an Oversight Committee to be able to do, and
12 they could do if the OCA budget gave them the wherewithal
13 to do it.

14 COMMISSIONER KAMINS: Of the two models, the
15 First Department model or one statewide model, which do
16 you think would be more effective?

17 MR. NEUFELD: Well, I have been very impressed
18 with the First Department Oversight Committee and the work
19 they have done with very limited resources. So that's
20 something that's a known to me and that I have worked
21 with. The other is unknown. I have thought it might be
22 easier because we have this model that has worked to be
23 able to replicate it in the other departments. I have
24 thought it might be politically easier and it might go
25 down easier locally than a statewide entity. But either
26 of those could do the functions that I have been talking

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about.

COMMISSIONER KAMINS: Thank you.

COMMISSIONER ROBERTS: We do need, however, some operational committees, some Oversight Committee to look at the situation in upstate New York.

MR. NEUFELD: Absolutely.

CHAIRMAN HELLERSTEIN: You have 34 years of Legal Aid. If you add that to my 21, that's 55 years of Legal Aid experience. What would be the one or two things look can back on in your role there that you would have liked to accomplished or like to have seen the criminal defense division structurally accomplish that may not have been accomplished?

MR. NEUFELD: I was only at Legal Aid for 22 years.

COMMISSIONER KAMINS: Take off a few years.

CHAIRMAN HELLERSTEIN: I was good enough to give you a head start.

COMMISSIONER ROBERTS: That gives you some knowledge.

MR. NEUFELD: Some of what Mr. Eppler was talking about was greater integration of, particularly the civil division, with the criminal defense division to do a more holistic practice. Another was to do more team representation on serious cases so that new lawyers would

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2 have more of an experience working with senior attorneys
3 on cases. We did some of that. I would have liked to
4 have seen a lot more of it. But that is a function of
5 caseloads and pressures on lawyers to handle their own
6 cases. When you put two or three attorneys on a case you
7 are using up resources that we didn't have.

8 I would have liked to have seen a lot more of
9 that. More continuing training, putting more resources
10 into continuing training than we were able to do. We did
11 some of that. I was happy with what we did. I would have
12 liked to have done a lot more. And then supervision over
13 -- the number of supervisors per staff attorneys has gone
14 up and down. The Oversight Committee hammered in its
15 reports on the need for supervision. I think it is
16 tremendously important. We were never able to totally
17 maintain the supervisor to staff attorney ratio that I
18 would have liked. I think that would be something that I
19 would have liked to have seen stay at a higher level for
20 that time.

21 COMMISSIONER ROBERTS: Let me ask you, if I may,
22 about when you entered into a contract with the city to
23 take care of certain percentage of cases that came into
24 the courts in New York City, what was that percentage?

25 MR. NEUFELD: Under the first contract it was
26 86%. Under the present contract it is 88%. That's a

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minimum. That's a floor.

COMMISSIONER ROBERTS: What percent of the cases did you dispose of? You met the 86% and then some. What was the final figure that you came up with?

MR. NEUFELD: The Society represented about 90% of the people overall. Maybe between 89 and 90%.

COMMISSIONER ROBERTS: So you exceeded the goal that was set for you to make the contract valid; is that correct?

MR. NEUFELD: Yes.

CHAIRMAN HELLERSTEIN: Thank you, Mr. Neufeld.

MR. NEUFELD: Thank you.

1 Jim Rogers, Esq.

2 PROFESSOR HALLERSTEIN: Mr. Rogers.

3 Welcome, Mr. Rogers. Thank you for coming.

4 MR. ROGERS: Thank you very much.

5 Nice to meet, you finally.

6 Thanks for this opportunity.

7 I'll be as brief as possible.

8 Before I start my comments, I did want to
9 bootstrap onto one thing Russell Neufeld had to say
10 about the collateral consequences for criminalizing the
11 youth on petty matters.

12 Right now kids get arrested for stealing a
13 subway ride by bending their Metro card, whereas a few
14 years ago before Metro cards, they would figure out a
15 way to gum up the works and steal a token.

16 But because that Metro card can be viewed as
17 an instrument, they're getting charged with felonies
18 for stealing a single subway ride.

19 And if you take that kind of an attitude and
20 you build on it, and build on it, you begin to see, as
21 I witnessed in ten years of trying cases in Bronx
22 County for Legal Aid, you begin to see the social
23 fabric tear.

24 How many panels of citizens do you have to go
25 through in the Bronx before you can seat a jury?

26 Where do they go to get a panel, because every

1 Jim Rogers, Esq.

2 single panel has people with a negative experience.

3 Is it just because sociologically they have a
4 negative experience of police?

5 I don't think so.

6 It is that there are consequences to the
7 broken-windows theory; there are benefits and there are
8 consequences.

9 And one of the consequences is you can't get
10 guilty verdicts on real cases that need them because of
11 the profound mistrust of police officers caused by the
12 rounding up of youth.

13 When these kids go home at night and they sit
14 around the dinner table, as we all do with our
15 families, what they're talking about is either
16 themselves or which one of their friends just got
17 arrested.

18 For what? Jay walking?

19 Or in Family Court, riding your bike on the
20 sidewalk?

21 How many people in the public know that kids
22 who get caught riding their bikes on the sidewalk can
23 get sent to Family Court and go into detention because
24 of it?

25 Not many people know it but it happens every
26 single day.

1 Jim Rogers, Esq.

2 And I know that because when you're in
3 Juvenile Rights Division, members of UAW represent
4 them.

5 So there are consequences.

6 If you want to increase the conviction rate in
7 Bronx County above the 50 percent it's currently at --
8 I mean our lawyers there are darn good, and I'm
9 obviously proud to work with them -- but they're not
10 that good.

11 If you want to increase it, you have to look
12 at some of these factors.

13 Thank you for having me.

14 My name is Jim Rogers.

15 I am the President of Legal Aid attorneys. We
16 are United Auto Workers Local 2325. We represent the
17 750, 800 lawyers now employed at the Legal Aid Society.

18 The vast majority are in criminal law, either
19 capital trials, criminal appeals, or delinquency at the
20 Family Court level.

21 I know that you've heard a lot of testimony
22 about standards.

23 Obviously what's on every one's mind, what
24 we're all doing here, is trying to determine how can we
25 provide the best service possible and afford it. That
26 is what everyone is so concerned with.

1 Jim Rogers, Esq.

2 And I know you've heard about standards for
3 workloads and caseloads and training and supervision
4 and support staff and investigators and social workers
5 and office space.

6 All the things that you can possibly think of
7 our collective bargaining agreement with the Legal Aid
8 Society covers all these issues.

9 Over many years we have had to pay attention
10 to standards because what Legal Aid Society lawyers
11 were concerned about in the first instance were
12 standards of representation.

13 The reason they came together in the first
14 place is because they didn't have the resources they
15 needed from the City to represent clients.

16 When the union was first formed, they didn't
17 have office space; they didn't have a private place to
18 interview clients in the pens; and so the strikes that
19 happened through the '70's were about that and then a
20 single strike in the '80's, way before my time was
21 about workload.

22 So, in any case we have -- we have talked
23 about it and we have, over the years, put these
24 standards that you're discussing into our contract
25 because we're as concerned as you are with it.

26 And we have mechanisms in our contract to deal

1 Jim Rogers, Esq.
2 with problems such as workload; we have an expedited
3 grievance procedure if workload gets to be a real
4 problem.

5 And in the Juvenile Rights Division, in
6 delinquency cases, that's most often where it appears.

7 You have delinquency attorneys handling an
8 average case load of in the 90's, which in delinquency
9 cases is so high that it's probably not consistent with
10 ethics, it just isn't. But what do you do?

11 We filed a grievance and we get to
12 arbitration.

13 But what are we really talking about?

14 Legal Aid and the Union obviously completely
15 agree on what we need to do; what the caseload should
16 be; what the workload should be.

17 My fight was never with Russell Neufeld. Our
18 fight was with John Feinblatt.

19 The issue is, when you get to the answer is,
20 we have attorneys right now in our counties, in the
21 Criminal Defense Division with mixed case loads of 135.

22 Is there anybody here that would say that
23 that's all right?

24 Is there anyone here that would say we're
25 approaching the level that per se there's a problem?

26 Nobody would argue against the fact that

1 Jim Rogers, Esq.

2 that's a problem.

3 But what do we do?

4 You know we get down to the City cutting us
5 another \$2 million this year, and I'll spend the next
6 several months in Albany and at the City Council,
7 begging for restorations from the executive budgets in
8 both those cases just to stay at the status quo.

9 We are rapidly now trying to replace attritted
10 attorneys.

11 Why do they leave? Because of case load.

12 We are quickly trying to replace those
13 attritted attorneys.

14 It's not just in Legal Aid, it's in every
15 office, it's everywhere.

16 So when you look at these standards, I would
17 like to make a few very quick points.

18 I think that whatever body you decide should
19 enforce standards, numeric case caps are important.

20 They should be tied to localities.

21 Even the counties in New York City are
22 different in the Bronx. We have more liberal discovery
23 rules than we have in New York County, where you have
24 to motion and motion and move and move to get basic
25 discovery to get Rosario material, so -- but numeric
26 case caps would help because when you approach the

1 Jim Rogers, Esq.
2 number you can begin to bring in the remedial
3 procedures as opposed to a provider, an institutional
4 provider having to prove each time that they have a
5 problem.

6 So the case caps would kind of be a trigger, a
7 signal, an alarm.

8 I believe a numeric case cap, a range that
9 makes sense.

10 A PANEL MEMBER: Laurie Sharks.

11 Are the case loads that you said, are they an
12 average of 135?

13 MR. ROGERS: It's not an average, that's the
14 top.

15 A PANEL MEMBER: That's the top.

16 Would that be a more experienced lawyer or
17 would that be a lawyer who had more misdemeanors?

18 So would a less experienced lawyer in your
19 office have a smaller case load than a more experienced
20 lawyer?

21 So what I'd like to know is, what the least is
22 and what the highest is, and then also ask other people
23 for their budgets -- if you could just tell me the
24 salary range starting and capping out, and if those
25 have anything to do with caseloads.

26 THE WITNESS: As far as the caseload range,

1 Jim Rogers, Esq.
2 the only reason that new attorneys aren't in the higher
3 numbers is because they just haven't had the chance to
4 build up their case loads yet.

5 There's nothing institutionally that prevents
6 their case loads from going up, although I would say
7 Legal Aid managers are very good at making sure, if
8 they have the resources, in terms of spreading the pain
9 as I'd like to say, to make sure for the younger
10 attorneys, the case loads are more manageable.

11 But in a class that recently started a few
12 months ago, they're in the 50's and that's a lot for
13 them.

14 In New York County it's especially difficult
15 because you can't do as much triage there because you
16 need motion practice for everything that you do.

17 As far as the salary ranges go -- I should
18 know this cold -- but around \$42,000 for law graduates,
19 a little bit more after you pass the bar, on up to the
20 high 90's, you know if you've been here 25 years or
21 more.

22 A PANEL MEMBER: And is that like capital case
23 lawyers or it's just by how long they have been there?

24 THE WITNESS: Just by how long they have been
25 there. The Capital Division lawyers make the same as,
26 you know, anyone else, except for the Federal

1 Jim Rogers, Esq.
2 Defenders, they're on the Federal scale. They make
3 something different.

4 I also believe that for whatever standards you
5 have, it should have a point-in-time measurement rather
6 than a yearly-caseload measurement, because I can tell
7 you what the problems are right now with a given lawyer
8 at a given point in time, but with a yearly measure
9 it's really hard to figure out where we have been and
10 then figure out whatever remediation we need on a
11 yearly basis.

12 I come to you and say I have 135 cases.

13 You say, what would it take to bring it down
14 to what -- 65, 75, 85, what would it take?

15 I would say ten more lawyers at Manhattan CVD,
16 if he we can get that process in place I have some
17 ideas how to do the that. The point in time
18 measurements would be important.

19 A PANEL MEMBER: Steven Zeidman.

20 You talked about case load tasks.

21 How do you weigh various cases?

22 Someone might say, "I have 50 of cases, out of
23 those, some of those, ten, are not that complex." The
24 manager may say, "Our case load cap is 75 cases. Since
25 most of the cases you pick up, most of them you get at
26 the arraignment, I wonder if you have some thought

1 Jim Rogers, Esq.
2 about an arraignment cap? In other words, you work an
3 institutional time; you can't pick up more than five
4 six cases at a time.

5 MR. ROGERS: Each office has a different kind
6 of weighting procedure.

7 The majority, three out of the four offices do
8 it much more informally, where the attorneys are
9 working in close proximity with their supervisor and
10 the supervisor can look at a case, out of the 80, and
11 realize 70 of them are misdemeanors, and even of those
12 many are disposable misdemeanors.

13 In Manhattan they have a point system; two
14 points for a felony, one point for a misdemeanors.

15 Even in that situation, obviously we try to
16 encourage attorneys and their supervisors to take close
17 looks at actually what the work loads are.

18 I think a more precise system of weighting
19 would be good for everybody's sake.

20 If you're going to have numeric case caps, the
21 weighting process would make a lot of sense, especially
22 for the governing body however you would decide that
23 should take place.

24 Arraignment caps are an excellent way to do
25 it. I know you heard about vertical representation.
26 We have absolute vertical representation. That's a

1 Jim Rogers, Esq.
2 mandatory part of our contract. We believe in that.

3 Arrestment caps would definitely be the way
4 to govern this.

5 But you know the City drove a very hard
6 bargain; 88 percent of all cases that were in
7 arrestments, you know if we fall below that by a
8 single percentage point the financial penalties are so
9 significant that we would have to fire a bunch of
10 people and obviously just compound the problem so
11 88 percent of what, really is the question.

12 A PANEL MEMBER: Take that into consideration.
13 This moves from the sheer numbers to the actual
14 practice, one can imagine a body like this looking at
15 that pressure and saying, here's our concern; people
16 feel compelled to take a lot of cases; we have heard
17 from a lot of people cases can be misdemeanors; there's
18 a real concern too many cases might be disposed of at
19 arrestments because that's the only way; what is your
20 feeling about some sort of limitation or guideline for
21 the number or percentage of pleas that any attorney
22 should take at arrestments?

23 MR. ROGERS: I'm not sure that a formula can
24 be brought to that because that really deals with the,
25 you know, the attorney's ethical groundings when you
26 really get down to it.

1 Jim Rogers, Esq.

2 A PANEL MEMBER: Sort of a guideline.

3 MR. ROGERS: I really don't know of a single
4 case where, after ten years in the Bronx, where I
5 witnessed any colleagues really driving for pleas
6 because of their case loads; it's just not my
7 experience.

8 It's not part of how a criminal defense
9 attorney is wired. We hate pleas -- getting up to we
10 like them because you want to move the calendar -- but
11 that feeling is overwhelmed by the other feeling which
12 is, you know, the righteous indignation that every
13 criminal defense attorney has, kind of the fire in the
14 belly that really dominates people's attitudes that I
15 have witnessed on the job.

16 If somebody was to point out something
17 different, I'd like to see it, but I have never
18 witnessed that, so that's less of a concern to me.

19 If your cases are up that high anyway, you
20 know a bad plea when you see it; I've never even met a
21 criminal defense attorney that would take it anyway.

22 So if I may, as you continue to look at
23 standards, and I know that you've considered a
24 state-wide office, and I understand that that would be
25 not only cumbersome but maybe not as tied to the
26 locality as it could be, and to the peculiarities and

1 Jim Rogers, Esq.
2 uniqueness of that; but if there was an oversight body
3 or a statute or a regulation, then each either
4 institutional provider panel locality, however indigent
5 defenses are being provided in a given area, could
6 submit their plan for standards in terms of work load;
7 institutional assignments; and case caps to that body.

8 And if that body had statutory authority that
9 standards for that locality could then become the law.

10 That would prevent our problem, which is that
11 we have our standards, we all agree on what the
12 standards should be, but we pay the price for trying to
13 enforce those standards because the funder and the
14 people that have promulgated the standards are
15 completely different people.

16 So if you've all got the authority, statutory
17 or otherwise, to enforce standards, you could, in
18 effect, prevent the City funder from penalizing us from
19 for complying with those standards in that way, then
20 each locality could work with the governing body to
21 work on that plan that would be unique to that
22 locality; could specifically work for that locality;
23 and could help that provider fight the fight on the
24 local level that they have to fight.

25 Because a few years ago when we signed the
26 contract with the City of New York to become the

1 Jim Rogers, Esq.
2 primary defender again, you know, I guess, I was just
3 in one of the offices at the time, but Legal Aid was
4 anxious to become the primary defender again and the
5 City drove a very hard bargain and they are continuing
6 to drive the hard bargain despite all the evidence that
7 we provide the best service, by their own admission, at
8 the lowest cost in the City.

9 A PANEL MEMBER: Judge Roberts.

10 Two things that the public worries about.

11 One is the calling of a possible strike by
12 your union.

13 You talked to me about it. I'd like you to
14 talk now at this public hearing.

15 What is your attitude with respect to that?

16 MR. ROGERS: I'll never say never, but I will
17 say --

18 A PANEL MEMBER: You said "never" when you
19 spoke to me.

20 MR. ROGERS: That is true.

21 I meant "never" -- I just wanted to say that
22 "never" to me really means, from a strategic
23 standpoint, just in the first instance as a labor
24 leader, we get nothing by striking; we have been
25 through some very difficult times with Legal Aid over
26 the last two years; most of you know about that.

1 Jim Rogers, Esq.

2 Never in my mind, did it enter my mind to
3 think about a strike, to have to call a strike to get
4 together just because strategically it doesn't make
5 sense.

6 Moreover, to most attorneys, to the
7 overwhelming attorneys in Legal Aid, and this has
8 shifted quite a bit in recent years, their obligations
9 to their clients and their feelings about those
10 obligations in this day and age seem to trump the kind
11 of radical remedy that a strike is.

12 A PANEL MEMBER: May I say you're against a
13 strike?

14 MR. ROGERS: I am against strikes. I mean it
15 won't happen on my watch.

16 A PANEL MEMBER: It will not happen on your
17 watch?

18 MR. ROGERS: That's correct.

19 A PANEL MEMBER: With respect to the deficit,
20 has the Board of Directors -- I believe one of the
21 Commission members asked that question -- has the Board
22 of Directors provided some oversight to examine the
23 books of Legal Aid so what transpired before doesn't
24 happen again?

25 MR. ROGERS: Legal Aid may run into a lot of
26 problems in the near future. A lack of fiscal

1 Jim Rogers, Esq.

2 oversight won't be one of them.

3 And the board has taken a number of steps.

4 First of all, they have a Finance Committee on
5 the Board which is very active.

6 In fact, heads of certain divisions that
7 actually get separate funding lines and certain travel
8 is in those funding funds, have to apply to those
9 boards for the money to be released.

10 They have also constructed new reporting
11 procedures so the Chief Financial Officer reports to
12 the Board.

13 That is obviously just good corporate
14 governance, and Legal Aid has found out that makes
15 sense for them.

16 For what it's worth, they also give us their
17 monthly reports and we have a personal financial
18 interest in that kind of oversight.

19 A PANEL MEMBER: How often does that oversight
20 take? How often do they inspect the books of Legal
21 Aid?

22 MR. ROGERS: They do so monthly.

23 A PANEL MEMBER: Monthly?

24 MR. ROGERS: They do a monthly complete
25 financial report monthly, which includes cash flow;
26 money in and money out.

1 Jim Rogers, Esq.

2 PROFESSOR HALLERSTEIN: Mr. Rogers, all you
3 hear, the testimony we have heard all day really comes
4 down to, in public defense, in great public defense, is
5 the need for a responsive political body. We have made
6 a couple of suggestions.

7 With respect to the City of New York and
8 coordinated counsel, do you have any thoughts as to how
9 to get away from this bottom line; we carry "X" amount
10 of bodies for as little as we give you; as to how a
11 state-wide mandate can deal with that?

12 MR. ROGERS: All of the institutional
13 providers and obviously people on the 18-B panel are
14 interested in the rush to the bottom that you've
15 described, and I think what I mentioned is what
16 occurred to me as the best way, is if the oversight
17 committee or panel or state governing body had the
18 authority to agree upon standards with the
19 institutional provider, even the panel providers
20 whoever the provider was, and that agreed-upon
21 standard, when submitted and accepted, had the force of
22 law, there would be legal remedies for the State
23 oversight body as against the City funder and there
24 would be legal remedies for the provider even as
25 against the funder.

26 Now, you could say, "Well, if there's no money

1 Jim Rogers, Esq.
2 there's no money, so what are we supposed to do?"

3 But in New York City that's not the case.

4 The City has saved an incredible amount of
5 money in the last few years alone on 18-B rates by
6 hiring more institutional providers in parole
7 revocation alone, for instance, Legal Aid has taken
8 over from 18-B all the parole ref. at Riker's Island
9 and for \$2.7 million on a yearly basis we do all the
10 parole ref. work; that's one third of what they were
11 paid.

12 So the money is there.

13 It's just there is a need for a State
14 oversight body that could agree on a standard with the
15 locality, that achieved the force of law, would help
16 both the oversight body and the provider enforce that
17 standard as against the funder who has other concerns.

18 A PANEL MEMBER: Barry Kamins.

19 You're saying the standards provided by the
20 State entity would impact on the contract you signed
21 with the City? In other words, the City could not
22 impose certain restrictions on you if these standards
23 were in place? That's your view?

24 MR. ROGERS: Exactly, that is my view.

25 That's really the only way to avoid that kind
26 of a budget battle.

1 Jim Rogers, Esq.

2 I can't think of any other way to do it.

3 There is no other way.

4 In the last budget, in the last contract with
5 the City, the Criminal Justice Coordinator wouldn't
6 commit to a number that he thought was a good number of
7 cases per attorney but the number 65 was kind of a
8 rough estimate of mixed cases, assuming not an
9 overwhelming amount of misdemeanors.

10 I've told you what the actual numbers are, and
11 the contract says, "Come back to us if you get in
12 trouble," so obviously we have been back several times
13 and there hasn't been any remedy so without the force
14 of law oversight, we and all the providers are at the
15 mercy of the funder.

16 A PANEL MEMBER: Michele Zuflacht.

17 I hear you talking about standards for payment
18 of Legal Aid employment.

19 How would the standards affect the quality of
20 representation?

21 We're looking at the quality of representation
22 for each of the defendants, not just the financial woes
23 of Legal Aid.

24 MR. ROGERS: I'm actually only talking -- if I
25 misspoke, I apologize, I'm only talking about the
26 standards of representations.

1 Jim Rogers, Esq.

2 Case loads play into that in a most

3 significant way.

4 The only reasons that standards are below what

5 they should be hypothetically, is because of the amount

6 of work, it's not from the lack of desire or the lack

7 of skill of the attorney.

8 Legal Aid, you know, with it's supervisory

9 structure and training programs and it's ongoing

10 training programs and supervision can meet the quality

11 challenges from a practice perspective like you are

12 mentioning. We cannot meet practice challenges that

13 are produced, that are solely resource problems which

14 is what they are right now.

15 PROFESSOR HALLERSTEIN: Thank you, Mr. Rogers.

16 MR. ROGERS: Thank you very much.

17 (Whereupon Sara Stanley was relieved by Lester

18 Isaacs, as Official Court Reporter.)

19

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26

1 Michael Marinaccio, Esq.

2

3 PROFESSOR HELLERSTEIN: Mr. Marinaccio.

4 MICHAEL MARINACCIO: Yes.

5 Good morning. My name is Michael

6 Marinaccio, I am a member of the Board of Directors of

7 the Bronx County, Bar Association. I am also in the

8 private practice of law. I have been engaged in the

9 practice, private practice of law with heavy

10 concentration in criminal law since 1985. Prior to

11 that I spent eight years in the Bronx District

12 Attorney's Office. I am on the Assigned Counsel Plan,

13 on misdemeanor, felon and homicide panels in Bronx

14 County.

15 I'm also on the CJA panel on the Eastern

16 District and I have in the past, been on the panel in

17 the Southern District.

18 I'm here today to speak on behalf of the

19 private attorneys who are qualified to represent

20 indigent defendants, pursuant to Article 18 B of the

21 County Law. Many of those attorneys, quite frankly,

22 feel they are under siege, with cost factors, quality

23 factors. And it is my experience in Bronx County that

24 each day scores of private attorneys in Bronx County

25 and I'm sure in other counties in New York and

26 throughout the State, provide quality legal service for

1 Michael Marinaccio, Esq.

2 the indigent.

3 By and large these attorneys who are screened
4 prior to their admission to the panel, periodically are
5 recertified, represent the most experienced attorneys
6 practicing criminal law on a regular basis and that's
7 particularly true in Bronx County.

8 There are approximately, I'm told about 200
9 attorneys who are on the assigned counsel panel in
10 Bronx County. Regularly about 140, 125 to 140 submit
11 their names to a card system that's actually
12 administered by the Bronx County, Bar Association,
13 Criminal Courts Committee, for assignments. And I
14 think there is about 90 different slots including
15 arraignment slots, Part A, Part B, Part N and the
16 Summons Part.

17 We have heard that some of the institutional
18 providers are suffering from great case loads. While
19 that's going on at the same time the number of slots
20 available to the assigned counsel attorneys in Bronx
21 County have actually been diminished. There was a time
22 when there were two attorneys from the assigned counsel
23 plan assigned to each arraignment shift. That's been
24 down to one. And that's been the case for the last
25 couple of years. I think that quite frankly the
26 attorneys that are on the assigned counsel plan, these

1 Michael Marinaccio, Esq.
2 are attorneys who have received their training while
3 young attorneys through the Bronx District Attorney's
4 Office and other District Attorney's Offices and
5 institutional providers such as Legal Aid.

6 It has been my experience that indigent
7 defendants that are assigned a private attorney get not
8 only the benefit of that experience, but also the
9 personalized representation that's essential to
10 safeguard their Sixth Amendment Rights.

11 I have heard some discussion about the
12 independence of the assigned counsel attorneys, the 18
13 B attorneys. I think that over all that's a good
14 thing. When I'm assigned a case I have to answer to my
15 client and to my client alone. And I think that that
16 is generally the view held by other individuals on the
17 panel.

18 Prior to my coming here to speak this
19 afternoon, I did speak with members of the Board of
20 Directors, the Bronx County Bar Association, there was
21 also a committee meeting of the Criminal Courts
22 Committee, that is by and large the attitude of the
23 attorneys that are accepting these assignments.

24 All one has to do is sit in the Bronx County
25 Bar Association over lunch break, I listen to attorneys
26 talk quiet seriously about the cases and the clients

1 Michael Marinaccio, Esq.
2 that they are representing. And it is quite frankly my
3 opinion -- well, I am personally proud to be a member
4 of the panel and to work with these attorneys in Bronx
5 County who I believe truly have their clients best
6 interest at heart.

7 Now, of course, independence can be a bad
8 thing as well. We have talked about some support
9 service and things of that nature.

10 Training, CLE. The Bronx County Bar
11 Association does endeavor to have a CLE course at least
12 one on criminal law every year. The Criminal Courts
13 Committee meets every month to discuss issues that
14 pertain to the practice of criminal law in Bronx
15 County, and that's not a meeting that's closed to
16 institutional providers as well. They can come, Legal
17 Aid Attorneys, Bronx Defenders, they are always
18 welcome. Where we discuss issues that I think are
19 pertinent to the representation of defendants,
20 including indigent defendants, especially indigent
21 defendants.

22 PROFESSOR HELLERSTEIN: There has been a
23 reference to infrequent visits to Rikers Island by
24 their attorneys. What percentage of the 18 B attorneys
25 in your dally work that you say visit on a regular
26 basis with their clients, that might have a problem.

1 Michael Marinaccio, Esq.

2 MICHAEL MARINACCIO: I think that's a
3 problem. I don't think many go out to Rikers Island.
4 There should have been efforts to make it easier to
5 have clients produced at the court house for
6 conferences, also to have video conferences.

7 The problem that I experienced in the past
8 with going out to Rikers Island is that it would just
9 take so long to get onto the Island and then so long
10 for the guards to produce a client to a visiting room.
11 Often times I was told and quite frankly in my
12 experience, I have had a number of occasions where I
13 have actually gotten to the Island where I only would
14 turn and leave. I left because I was told there was
15 not an officer available to monitor the visiting room.
16 But I am told that although I have not experienced it
17 first hand, that that situation is getting better.
18 That the Department of Corrections is trying to be more
19 accommodating to visits at the jail.

20 I think that quite frankly that is something
21 that should be done more frequently. It is certainly
22 done more frequently on the Federal level where
23 attorneys regularly go to the NBC or the MCC or even up
24 to other facilities to speak to clients.

25

26 PROFESSOR ZEIDMAN: It may be a general

1 Michael Marinaccio, Esq.
2 question. How would you characterize the difference
3 between representing a paying client and an 18-B
4 client.

5 MICHAEL MARINACCIO: In my personal
6 experience.

7 PROFESSOR ZEIDMAN: Or as a representative
8 of the 18-B attorneys that you're speaking for.

9 MICHAEL MARINACCIO: Well, I'm not going to
10 be naive and suggest there is no difference. I try to
11 minimize that difference and I think the attorneys also
12 try to minimize that difference.

13 When I represent a client, I try not to make
14 any differentiation between whether or not I'm being
15 paid pursuant to the 18-B law or whether the client is
16 paying me. And that goes from certainly as far as the
17 quality of the legal representation. I think that goes
18 without saying.

19 I think on some of the other aspects of
20 representing a client, for example to keep the family
21 informed of what is going on, making yourself available
22 for telephone conferences or even conferences in the
23 office. I think that the attorneys on the panel by and
24 large do try to extend that courtesy and quite frankly,
25 I think that one of the complaints, fair or not, that I
26 have gotten when I have taken over a case from an

1 Michael Marinaccio, Esq.
2 institutional provider, is that there is greater
3 difficulty if the client or the family are getting in
4 touch with the attorney that's assigned, then what is
5 the case with the private attorney. And I think that's
6 generally true as well. One can understand an attorney
7 is carrying 135 cases. He is probably very rarely in
8 his office, if at all. And it would certainly be much
9 more difficult -- I have had difficulty when I have
10 taken over cases in getting files, conferencing the
11 case with the prior attorney, getting their input and I
12 think that's a subject or a result rather of the
13 increased case load.

14 BARRY KAMINS: There has been discussion
15 today about the proper model for an Oversight
16 Committee, whether that is State wide or by
17 jurisdictional wide, local jurisdiction. The lawyers
18 on the Assigned Counsel Plan in the Bronx are under the
19 Oversight Committee of the First Department.

20 MICHAEL MARINACCIO: That's correct.

21 BARRY KAMINS: Do you think that's the
22 correct model? Should it be a department by department
23 model, should it be a State wide model?

24 MICHAEL MARINACCIO: I think it should be a
25 department by department model. I think the model in
26 the First Department worked very well. We, as I said,

1 Michael Marinaccio, Esq.
2 we monitor or rather we administer the method of
3 assignments with the oversight, of course, of the
4 Assigned Counsel Plan in the First Department. That
5 seems to be working well. Although there has been some
6 talk about computerizing that system along with the
7 computerizing of the voucher system to bring it, to
8 have both the Bronx and Manhattan operate on the same
9 system. But, it's a postcard system and the attorneys
10 put down on the postcard those shifts that they are
11 looking to work. They put the card in a box and once a
12 month the attorneys go through that and they do an
13 assignment on a random basis for the assignments for
14 two months in the future.

15 So the process that they are going to go
16 through is a, for example, on Tuesday, February 14th
17 would be for April arrangement slots. An assignment
18 slot. I think that still has worked very well. I
19 think it's also more responsive to the needs of the
20 Committee that we are serving.

21 BARRY KAMINS: Would you advocate that for a
22 department.

23 PROFESSOR SHANKS: If somebody signed a card
24 and says they want to do felonies two months from now
25 and the felony that comes up two months from now
26 happens to be some higher risk case, some very complex

1 Michael Marinaccio, Esq.
2 case. How is it that the client is assured of having
3 competent attorneys? Is there anything other than the
4 check off box? I would like to do an arraignment or I
5 would like to do a felony. I'm much more concerned
6 about the quality of representation to the client than
7 the convenience of what shift the lawyer wants to work.

8 MICHAEL MARINACCIO: Well, that screening
9 process presumably has already taken place before the
10 attorney has been qualified to take an arraignment
11 shift.

12 PROFESSOR SHANKS: Who does that screening?

13 THE WITNESS: By the Screening Committee of
14 the First Department. I was screened before I got on
15 the panel. I had to give writing samples, I had to
16 indicate what my background was, what my trial
17 experience was. Then I was recertified several years
18 ago after being on the panel for over ten years.

19 PROFESSOR SHANKS: Let's say not you, but
20 someone else who was certified ten years ago. They
21 have been offered a CLE once a year on Criminal Law,
22 they have chosen not to go to that. Is there anyway to
23 get them off, or are they just given the multiple
24 homicide cases because it was the shift they wanted.

25 MICHAEL MARINACCIO: I don't know the answer
26 to that. I can just say as a practical matter in Bronx

1 Michael Marinaccio, Esq.
2 County, those attorneys that are qualified for the
3 homicide panel, if a homicide comes in and the person
4 that's working the shift for example is on the felony
5 panel, but not the homicide panel, then a homicide
6 panel attorney would be assigned to that case at the
7 next session on the 180/80 days.

8 Similarly, I think they do differentiate
9 between those attorneys that are on just the
10 misdemeanor panels, as far as what cases they may be
11 able to take at arraignments. I think the misdemeanor
12 attorneys, those that are just qualified for the
13 misdemeanor panels, are generally restricted to the
14 Summons Part where most of the misdemeanors come in and
15 also work some of the other shifts Part N, Part A, Part
16 B, where a case may then have been reduced to a
17 misdemeanor.

18 PROFESSOR HELLERSTEIN: Thank you.

19 MICHAEL MARINACCIO: Any other questions?

20 PROFESSOR HELLERSTEIN: No, I think you have
21 given us plenty to think about.

22 MICHAEL MARINACCIO: Thank you very much.

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Stephen Singer, Esq. : Queens County Bar Association 252

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2 CHAIRMAN HELLERSTEIN: Mr. Singer.

3 MR. SINGER: Thank you.

4 CHAIRMAN HELLERSTEIN: Welcome, Mr. Singer.

5 MR. SINGER: Good afternoon. Thank you for

6 having me.

7 I am here as a representative of the Queens

8 County Bar Association. I am the co-chair of the Criminal

9 Courts Committee there. I also serve on the Oversight

10 Committee for the Second Department and I can answer maybe

11 some of your questions -- I will do that right away --

12 along with Mr. Kamins, by the way, who is on the committee

13 with me. And Pat Marcus, who was in the audience before,

14 is also on the committee as a lay person. It works quite

15 well, in my opinion.

16 Let me just get to that in a moment.

17 Just so you know, I have been practicing

18 criminal defense law for 38 years. I am a past president

19 of the criminal courts committee in my county and of the

20 county bar and I had the honor of being on two Appellate

21 Division studies in the 90s, one feasibility of screening

22 for eligibility in New York City and one for quality

23 controls. And I have brought with me for your benefit,

24 for your people to copy for you, a report of the Oversight

25 Committee for criminal defense organizations from our

26 department that was completed in the 90s. Mr. Kamins and

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2 I were both part of that committee. I will show you the
3 way we did this, how we conducted our study and some of
4 our conclusions. We did study Legal Aid, assigned counsel
5 plan lawyers and the alternate providers. I will leave
6 that for you folks as well as my report.

7 I came here today to speak really on two areas;
8 quality control and budget considerations. But let me
9 just answer some of your questions first because I think
10 they are good questions and they should be answered.

11 First of all, I believe very strongly that you
12 have to have oversight on a department by department basis
13 because there is such tremendous divergent factors and
14 interests that the population, both of your offices, of
15 your lawyers, of your jurists and these other areas are
16 completely different. Even on our committee, which is the
17 2nd and 11th Judicial Districts, but covers Queens,
18 Brooklyn and Staten Island, there is often tremendous
19 philosophical conflict between Queens, Staten Island and
20 Brooklyn. The difference of approach conceptually is
21 very, very distinct. And I can only imagine that if you
22 try to get us together with people from Rochester or
23 Buffalo it would be like talking to martians. So I think
24 that you really have to do it on a localized basis for
25 those reasons.

26 The way we do what you are asking is the county

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2 bar association does the initial screening of applicants
3 who wish to join the assigned counsel plan. And there are
4 very definite and quite stringent requirements to be on
5 either the misdemeanor, the felony, or in our jurisdiction
6 the A felony panel, dealing with homicides and serious
7 drug cases.

8 The committee from the bar association reports
9 out that somebody is qualified. They are normally
10 screened by the assigned counsel plan administrator. If
11 that person seems to meet the criteria, they are placed on
12 the various panels they have applied for. And in the past
13 we used to also do parole revocation. Family Court we
14 still do. And of course there is an appeals group as
15 well.

16 We take on disciplinary work that comes to our
17 attention when matters are referred over not for
18 grievance, but either from the 18-B administrator or
19 jurist or a member of the court. The clerk of the court,
20 for example, may call us and say we have been getting
21 complaints that 18-B lawyers, who were anchors in the
22 arraignment part, are strong arming people to hire them as
23 private counsel. To cure that, the P.J. in our department
24 decided to go along with the P.J. in the First Department
25 and made a rule as recently as three months ago that says
26 that anybody who is acting in the capacity as an assigned

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2 counsel cannot undertake to change that level of
3 assignment into or convert it into a privately retained
4 client.

5 Does that stop them from forwarding it out to a
6 third party or partner who is not present? I don't know
7 the answer to that. We cannot be all things to all
8 people. But we have tried to counter it by doing just
9 that.

10 COMMISSIONER ROBERTS: Excuse me.

11 The assigned counsel --

12 MR. SINGER: How are you, Judge. Good to see
13 you again.

14 COMMISSIONER ROBERTS: Good to see you.

15 The assigned counsel plan --

16 MR. SINGER: Sir.

17 COMMISSIONER ROBERTS: --was instituted to take
18 care of the conflict of cases; is that correct.

19 MR. SINGER: Absolutely.

20 COMMISSIONER ROBERTS: Legal Aid Society had the
21 case. If there were two defendants we give the second to
22 the assigned counsel. Legal Aid costs less money than it
23 costs the city and state less money than the assigned
24 counsel plan. Is that so?

25 MR. SINGER: I believe that's true.

26 COMMISSIONER ROBERTS: Well, please tell me then

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2 why -- why does the assigned counsel plan want to move
3 into the area which belongs to Legal Aid Society?

4 MR. SINGER: Judge, I am not here to represent
5 assigned counsel attorneys. I am on the Oversight
6 Committee, if anything. I don't know that there is any
7 organized attitude about moving in. I will grant you that
8 in the Bronx and in Brooklyn there seems to be a grouping
9 or organization of 18-B attorneys who want to get together
10 as if they were a labor group. I frankly find myself very
11 much against that as a professional. And I remember the
12 days when Judge Malkin in the Second Department used to
13 say 18-B is for poor defendants, not for poor lawyers.

14 And that was the philosophy. We were there to do this as
15 a pro bono or quasi pro bono opportunity. And I believe
16 strongly in that. I think you and I are in agreement.

17 COMMISSIONER ROBERTS: You do agree with me when
18 I say that the Legal Aid, or Public Defenders upstate --
19 let's take the city alone. Legal Aid costs less, and
20 certainly they have more resources and more training.

21 MR. SINGER: I would say that that's true as a
22 general proposition. In the A felony panel we have superb
23 people, I would suggest. You have some really experienced
24 people. You probably know most of them, Judge. They are
25 old-timers like me. And you know most of them. They are
26 good lawyers. And they are better, in many respects, in

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2 terms of experience and savvy, than assigned lawyers,
3 maybe, from the organizational providers. Do I say or
4 suggest to you that there isn't a difference between some
5 of the people who work the mid-level and the alternate
6 provider groups who will get the steady training and have
7 investigators on staff to be used as opposed to 18-B
8 lawyers who have to make an application to a court to get
9 an investigator to get a forensic person appointed, et
10 cetera? No. It is a lot easier for them to make use of
11 those resources. Because judges very often deny us -- I
12 am not on the 18-B panel, by the way. I think it is a
13 conflict, so I chose to get off of that to be on the
14 Oversight Committee. Sure it is harder for us to get
15 those resources and allow them. I think there is no
16 question about that. But you are right.

17 I was going to come here today to tell you that
18 I don't know that you are aware of it, but there have been
19 three efforts at screening for eligibility in the past
20 that were organized and went quite well, actually.

21 Mr. McCloskey was here this morning. He and I
22 are friends. He is from Nassau County. He probably told
23 you all about that plan, the Defense Counsel Screening
24 Bureau that was in existence from 1972 to 2001.

25 We had a Queens experiment that you may not be
26 aware of that was in existence in the early 90s for two

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2 years and it really went quite well, actually, I would
3 like to tell you.

4 Then, of course, there is the experiment that
5 happened in the Brooklyn Supreme Court and Judge Pesce's
6 administration where he had a J.H.O. assigned to do
7 screening. And some of the 750 cases that that J.H.O.
8 screened, 51% percent of those felony eligible cases were
9 found to be ineligible for free legal services. A full
10 40% of them went out and did hire their own lawyers. And
11 on that basis he saved a fifth, or 20%, of the case that
12 were sent over to him, which is a pretty sizable amount.

13 The Nassau County plan, I can tell from you
14 having dealt with that in the past, was extremely
15 successful. It was taken away by the new administration
16 for budgetary considerations. Terrible mistake. All that
17 obligation is now foisted upon the Legal Aid Society and
18 the 18-B lawyers who staff as anchors in the arraignment
19 part. And it is a conflict immediately to go in to meet
20 your new client and say, "By the way, part of my job is to
21 find out if I can represent you. Are you the owner of
22 that restaurant or are you a waiter at that restaurant"?
23 without telling that you are asking then for the right
24 answer if you want to get the case or keep the case
25 because it is exciting, because you need the 18-B case or
26 whatever. There are conflicts of that kind in their

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2 relationship, obviously, too. Or the judges have to do
3 it. And they hate doing it, quite frankly.

4 In Queens, I will tell you that many of the
5 judges in the criminal court do ask the right questions
6 about eligibility, and many people are told to come back
7 with a lawyer the next time and they do. Of course, it is
8 a county with a lot of private homes and home ownership
9 and people can afford it. I will grant you that as well.

10 The Queens experiment, which you may not have
11 heard of, came about as a result of a committee that met
12 in the 90s under the auspices of the Appellate Division,
13 and they decided that the easiest way to do screening was
14 to use the CJA people who were already contracted to
15 interview every single defendant who comes through the
16 system in any event. We are paying for it anyway. All we
17 had to do was add a second piece of paper to their
18 interview. It cost the city nothing but the printing of
19 that second form and a few moments of time to ask an
20 additional six or seven questions. And those people were
21 able to come up with a recommendation for the judge at
22 arraignment as to whether or not those folks were
23 eligible, at least apparently eligible, for free legal
24 services.

25 Unfortunately, the CJA people, under Vera, were
26 very unhappy with it. I suggest to you that it was

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2 sabotaged from within. I would go and spot check and find
3 that I would have a 16 year-old defendant who was found
4 eligible for free services and I would find that he had
5 parents who owned a home in Cambria Heights and both of
6 them worked for the government and they had combined
7 income of \$165,000. And I would say, "Why did you
8 recommend?" They said, "Well, that 16 year-old has no
9 income." I said, "But he is a 16 year-old living at home
10 with these two parents and they are responsible." And
11 there was no answer. They didn't want to do it. They
12 were one of the only two dissenting votes on the committee
13 that organized this structure, the other being the Legal
14 Aid Society. Unfortunately, it fell by the wayside. Not
15 because it wasn't good, not because it wasn't a good
16 concept, but from disuse.

17 It is easy to do. The structure is in place. I
18 suggest that the government has an obligation to do it.
19 These are public funds that we are giving out. I suggest
20 it would free up funds that you could use for much better
21 purposes if you simply took out those folks who aren't
22 eligible. And I suggest to you that it would gain a sense
23 of responsibility on the part of the parents of many of
24 the young people between 16 and 25 who make up our
25 greatest population of offenders, as we all know, if they
26 had to reach into their pockets and pay for a lawyer,

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2 assuming that they were ineligible for free services,
3 because it would certainly impact on them in the most
4 realistic way you could imagine.

5 And just as I tell defendants in my office in
6 front of their parents, that I expect their parents to
7 hold them accountable and to get a part-time job and go
8 back and repay some of those expenses, because that's the
9 best way to rub it home to these kids, to make them work
10 and have to kick into the home to pay back for those legal
11 services that they cost that family. To the same extent,
12 it would impact on those families if they had to pay for
13 their kid's legal expenses, for those who can do it,
14 instead of getting a free ride with Legal Aid.

15 It also means that people aren't going through
16 the system and their parents are not aware that they are
17 there. There are plenty of cases where youngsters come
18 into the system and their cases are literally handled at a
19 arraignment or in one or two appearances and their parents
20 are not notified. They are not even aware they were there
21 because they got free legal services. They came in by
22 cutting school and that was the end of the situation. So
23 there are many reasons why I think the eligibility
24 screening is important.

25 As far as quality control is concerned, we did
26 this study that I am going to leave with you. We found

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2 that for the non-A felony cases particularly, the run of
3 the mill felonies and misdemeanors, the best services at
4 that time, in the 90s, and I am not saying that the study
5 would hold the same today, because we haven't done one in
6 10 years, were provided at that time by the alternate
7 providers. Second was Legal Aid. Third was the assigned
8 counsel plan attorneys. And the basis for that study came
9 from the opinions of the jurists who we queried, from
10 sitting in court and watching, as was suggested earlier,
11 from doing a study of the results of the cases, and from
12 doing interviews on site, as somebody else had mentioned,
13 by going to the sites, studying the resources that were
14 available, the Judge, the fact that both Legal Aid and the
15 alternate providers did have a steady source of supply for
16 investigation. They had no problem ordering minutes when
17 they wanted to do so. They had no question about getting
18 forensic people to assist them if they needed it. And
19 that was a big impact on the level and quality of the
20 services provided.

21 I hope that some of this information has been
22 helpful. Thank you for having me.

23 CHAIRMAN HELLERSTEIN: Thank you, Mr. Singer.

24 MR. SINGER: Thank you, sir.

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1 Louis Mazzola, Esq.

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3 CHAIRMAN HALLERSTEIN: Mr. Louis Mazzola and
4 Mr. Robert Mitchell.

5 Good afternoon.

6 MR. MAZZOLA: Good afternoon.

7 My name is Louis Mazzola.

8 I'm going to be doing the presentation.

9 We drew straws and I got the short one.

10 I'm with the Suffolk County Legal Aid Society.

11 This has been a very instructive morning.

12 Listening to all the people who testified, I
13 had prepared some remarks but I think, in the interest
14 of not boring you with stuff you have heard already,
15 I'd just like to comment on some of the things I heard
16 this morning.

17 First I'll give you a little background of how
18 we operate in Suffolk County.

19 As Mr. Quinlan told you, Suffolk County is a
20 very big County. It's very long. And our
21 responsibility in the Legal Aid Society runs from the
22 tip of Montauk point, to the western end, to the border
23 between Nassau and Suffolk County.

24 We have some special problems that that
25 creates in our County, and one of them is the distance
26 between, of course, our office and the jails, and just

1 Louis Mazzola, Esq.
2 the problem of assigning people in places where they
3 should be.

4 Now, I thought one of the interesting
5 exchanges this morning was with Professor Laurie Shanks
6 and the fellow from the --

7 A PANEL MEMBER: Patrick McCloskey.

8 MR. MAZZOLA: Patrick McCloskey from the
9 assigned counsel plan, some of the things Mr. McCloskey
10 said about the number of times attorneys are assigned
11 over and over again. The thing that strikes me with
12 this meeting here, I think you need to speak to the
13 client community, the people who are the consumers of
14 what we do. I think you will get quite a different
15 perspective.

16 I've had some opportunity to do that because
17 in my career at Legal Aid, I did appeals and I'll just
18 tell you one quick story about which -- which I hope is
19 not boring to you, but I think it may be instructive in
20 the way that clients react to attorneys.

21 I did an appeal. When I read the transcript I
22 said to myself, "The first time this defense attorney
23 heard this story from his client -- because he
24 testified at the trial -- was at the trial."

25 So I wrote to the client, just out of my own
26 curiosity I said to him, "By the way, how many

1 Louis Mazzola, Esq.
2 times --" he was in custody, by the way, the whole
3 time, from the time he was arraigned to the time he was
4 on trial -- and I said, "How many times did your
5 attorney come to speak to you in the jail?"

6 Now, our jail is a good distance away, it's in
7 Riverhead, so if your practice is in Wantagh, you've
8 got an hour to get there -- this was under the old
9 rates. This attorney happened to be an assigned
10 counsel and he said he was there three times, and he
11 spoke to me for about a half hour each time, and most
12 of the conversation, was, "Why don't you take this
13 plea?"

14 Well, needless to say, one of the points I
15 raised on appeal was ineffective assistance of counsel
16 because quite frankly the client was more articulate
17 than his attorney. In fact all of the points I raised
18 on appeal were done by the client.

19 He had a complaint about the jury instruction.
20 He was a little off, but he was pretty close to what he
21 should be complaining about.

22 At one point he turned to the Court, rather
23 his attorney said, "My client has something to say."

24 And the client turned to him on the record and
25 said, "What do you mean me? I want -- you're my
26 attorney, you tell the Court what I want to say."

1 Louis Mazzola, Esq.

2 Well, he was totally frustrated.

3 But, you know, when you think about it, and
4 you look at it, it's done under the old rates so I
5 figured that probably that attorney made about thirty
6 seven fifty visiting his client in jail.

7 Now, that's not an excuse but it's a reality.
8 When you're underpaid like that you feel you don't need
9 to do as much.

10 Now, again, not to repeat stuff you've heard
11 but I'll tell you one of the problems we have in
12 Suffolk County, I think pretty much our senior
13 attorneys, they're all out on the east end where the
14 County Court is and where the felony cases are tried,
15 so we have a good staff of senior attorneys who are
16 experienced, but they're an hour away from the bulk of
17 our junior attorneys who handle the misdemeanor cases
18 who are in Central Islip, and I think one of the
19 biggest problems we have had over at The Legal Aid
20 Society over the last couple of years is attrition.

21 And I've heard at a over and over again and,
22 one of the comments I was going to make too was when
23 they come to us for jobs, they have these enormous
24 school loans they have to pay off; they're full of piss
25 and vinegar; they want to try cases -- we don't hire
26 them unless they try cases; "You want to get

1 Louis Mazzola, Esq.
2 dispositions, you need to try cases. That's how you
3 get good dispositions, you're always ready to go to
4 trial."

5 But having said that, there's this case load
6 problem and there's the problem of just getting a
7 trial.

8 You know, some attorneys are trial hogs, some
9 attorneys are not.

10 I think the ones that are trial hogs are the
11 ones that are unfortunately going to leave us. They're
12 very ambitious they want to learn, and they're not
13 afraid to jump in there and do it.

14 And you know, I don't want to skip around here
15 but some of the other things I heard here today dealt
16 with -- I lost my train of thought here now.

17 A PANEL MEMBER: Phyllis Bamberger.

18 I'm going to ask you a question while you're
19 thinking.

20 First of all, let's start with discovery.

21 What kind of discovery do you have?

22 MR. MAZZOLA: I think discovery is not a big
23 problem in Suffolk County. We have pretty good success
24 with discovery.

25 A PANEL MEMBER: All your materials turns up?

26 MR. MAZZOLA: Yes, by and large I would say

1 Louis Mazzola, Esq.

2 that's the case.

3 A PANEL MEMBER: It's early enough in the
4 process so you can conduct whatever investigation is
5 needed?

6 MR. MAZZOLA: I would say most of the time it
7 is.

8 We have a Feds part; a felony early
9 disposition part.

10 That's the other problem we have because the
11 County is split up like that, you know, the
12 pre-indictment cases are handled in Central Islip.

13 A PANEL MEMBER: The felony complaints?

14 MR. MAZZOLA: The felony complaints
15 pre-indictment, they're handled in Central Islip, so we
16 have a group of attorneys that covers that part.

17 And of course, if a defendant is indicted, it
18 goes out to Riverhead.

19 Even though we have a system of vertical
20 representation, which you've heard about here, because
21 of the geography involved, it's very difficult for us
22 to say, "Okay, you follow that case to Riverhead." We
23 just can't do that. It doesn't work out practically.

24 A PANEL MEMBER: So at that point there would
25 be a new attorney, the Riverhead attorney would come
26 into play?

1 Louis Mazzola, Esq.

2 MR. MAZZOLA: Yes.

3 A PANEL MEMBER: On your budget line you have
4 a budget lines for experts and medical?

5 THE WITNESS: We don't have a specific budget
6 line for that. We will make application to the Court;
7 in a case where we think it's appropriate, we'll find
8 the money in our budget.

9 A PANEL MEMBER: Have you ever had a situation
10 where you have to give up one expert because you needed
11 another or where you had to miss something because you
12 needed an expert?

13 THE WITNESS: No, I haven't experienced that.

14 A PANEL MEMBER: Has there ever been a judge
15 that's turned down a request?

16 MR. MAZZOLA: Yes sometimes we haven't made it
17 properly, sometimes it's -- and it's usually with the
18 junior attorneys, by the way. Supervision and training
19 are something that we engage in constantly.

20 A PANEL MEMBER: Have you made reapplication
21 when it was based on improper form?

22 MR. MAZZOLA: Yes. Unfortunately, in this
23 particular case that I'm thinking of, and it may not be
24 typical of what happens, the attorney made the
25 application too close to trial.

26 A PANEL MEMBER: And it was denied?

1 Louis Mazzola, Esq.

2 MR. MAZZOLA: It was denied. I don't think he
3 made it properly.

4 A PANEL MEMBER: What I'm trying to get at is
5 a picture of whether or not your requests are, in your
6 view, denied without --

7 THE WITNESS: I think for the most part
8 they're not.

9 A PANEL MEMBER: Okay. Thank you.

10 MR. MAZZOLA: If they're done properly,
11 they're not denied.

12 THE WITNESS: Barry Kamins.
13 I've heard over the years, perhaps you can put
14 on the record, I heard Suffolk County suffers from the
15 same problem that many rural upstate areas suffer from,
16 and that is the problem of defendants appearing before
17 village courts, small courts, without attorneys at
18 arraignment, being held on bail without counsel.

19 MR. MAZZOLA: That is a problem, and it's a
20 problem basically because, again, go back to the
21 geography, we just don't have the people to cover all
22 of those courts.

23 A PANEL MEMBER: This is going on today in
24 Suffolk County?

25 MR. MAZZOLA: We've tried to ameliorate that
26 problem by, first of all, advising the offices that our

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2 office is a phone call away, "If you have somebody who
3 needs to be arraigned, call us," and this is on the
4 days they don't normally work -- some of those courts
5 meet every day, some of them meet once a week, some of
6 them meet less often than that; twice a week. Again,
7 we have tried to solve that problem by having one of
8 our East end attorneys wear a beeper on weekends, wear
9 a other beeper so that we're on call; we have let the
10 courts know we're available, to call us.

11 Now, whether they do call or not, again, we
12 can't have somebody sitting in six different justice
13 courts every day, it's just not feasible.

14 The thought I was going to -- that escaped me
15 before is, I heard this question about how much work a
16 District Attorney does as opposed to a defense attorney
17 and I -- one of the things I tell people when they come
18 for an interview, new attorneys, is, "You may walk into
19 a courtroom with less cases than the District Attorney,
20 but you need to speak to every one of your clients and
21 their families, and you need to send investigators out,
22 and you need to pay attention to them. Those District
23 Attorneys don't necessarily have to do that. They sit
24 there with a pile of files and they come up with a
25 rote; 'here's the offer. Take it or leave it.'"

26 The question I am really intrigued by is the

1 Louis Mazzola, Esq.
2 question of why somebody would put in voucher after
3 voucher because they want to change attorneys.

4 This is anecdotal but I think sometimes what
5 happens, attorneys get frustrated with their clients
6 because either they're incompetent themselves; they
7 don't want to put in the work and they don't want to
8 talk to these people, they regard them as less than
9 they are, I mean quite frankly I don't think they treat
10 them like people, that's a problem -- you know, I don't
11 care who you are, you want to be treated with some
12 respect -- one of the things we tell new people who"
13 come to our office is, "If you don't think you can
14 treat your client like a private client paying you,
15 don't work here. We don't want you. We just don't
16 want you here."

17 CHAIRMAN HALLERSTEIN: Do you have full-time
18 investigators on your staff?

19 MR. MAZZOLA: Yes.

20 CHAIRMAN HALLERSTEIN: How many?

21 MR. MAZZOLA: We have four.

22 CHAIRMAN HALLERSTEIN: Even as an
23 institutional provider, do you sometimes provide
24 forensic experts through the court?

25 MR. MAZZOLA: That's just the way it's
26 evolved. When the need arises and we feel it's

1 Louis Mazzola, Esq.
2 absolutely necessary, we'll dig into our budget, and if
3 the justification can be found we'll get the expert.

4 CHAIRMAN HALLERSTEIN: Within your budget,
5 without an order of the Court?

6 MR. MAZZOLA: Yes, because, you know,
7 sometimes there are places in the budget where you want
8 to spend places where you might have turnover savings,
9 you know, there are other places --

10 THE COURT: You have that flexibility?

11 MR. MAZZOLA: Yes.

12 Now, you know, as far as the County is
13 concerned we don't have kind of an adversarial
14 relationship with our County we try to -- we try to
15 work on a collaborative basis.

16 When Mr. Mitchell took over the Legal Aid
17 Society ten years ago, we got very involved with the
18 criminal justice coordinating counsel, it's a very
19 active coordinating counsel in our County.

20 As a result, we're in on the planning for some
21 of these new courts that are coming up.

22 The Mental Health Court is something that they
23 have been talking about. We at least know about it,
24 you know. It's not like it's something they spring on
25 us overnight.

26 So it gives us an opportunity to go to the

1 Louis Mazzola, Esq.
2 funders and strictly on a, you know, fairness basis
3 say, "Look, you know," I usually use a metaphor when I
4 talk to them and I say, "You know, I sometimes think of
5 the criminal justice system as an automobile with four
6 tires, three of them are full-sized tires, and one is
7 the doughnut. There's the judiciary, there's the
8 prosecutor, and then there's the police, and then
9 there's us, you know the doughnut. You know, it's
10 enough to get you to the next gas station, but if you
11 run on it too long it gets dangerous."

12 A PANEL MEMBER: Barry Kamins.
13 Somebody referred to the Cadillac defense.

14 MR. MAZZOLA: Cadillac defense?

15 CHAIRMAN HALLERSTEIN: Given the extent,
16 geographically, of your County, if you could design the
17 optimum system for providing services, for that
18 geographic type of situation, would you alter it, and
19 if you would, in what way; the structure of your
20 office.

21 MR. MAZZOLA: You shouldn't ask me. I'm a big
22 spender. I would say probably we need more attorneys
23 and we need to -- we need to train the younger ones.

24 One of the things that concerns me is that we
25 have a pretty good senior staff, but we keep losing
26 these young people. We lose -- we seem to lose the

1 Louis Mazzola, Esq.

2 ones that are really good.

3 CHAIRMAN HALLERSTEIN: Assuming you have a
4 full staff, would that take care of your geographic
5 distance problems and logistics between Islip and
6 Riverhead for the length of the Island, or would it
7 make sense to divide the office into two?

8 THE WITNESS: I don't think it makes sense to
9 divide the office into two. That would make it worse.
10 You mean two different providers?

11 CHAIRMAN HALLERSTEIN: Well, one provider but
12 with really two almost independent structures within
13 that provider? I don't know about the costs.

14 MR. MAZZOLA: I don't think so.
15 I think after, least there is a lot of
16 communication between the attorneys that handle the
17 pre-indictment cases, and the ones that are
18 representing the clients after that. There's a lot of
19 communication between them. A lot of it is on the
20 phone, by fax, so it's not -- you know it's something
21 we have worked with over the years; it seems to work.
22 I'm sure there are instances where it falters, but for
23 the most part I think it works.

24 A PANEL MEMBER: Phyllis Bamberger.

25 Do you have electronic equipment that allows
26 you to do video conferencing?

1 Louis Mazzola, Esq.

2 MR. MAZZOLA: No.

3 A PANEL MEMBER: Would that help?

4 MR. MAZZOLA: It might.

5 A PANEL MEMBER: How about communicating with
6 your clients at the various facilities?

7 MR. MAZZOLA: Easier in Riverhead because our
8 office is right next door to the jail, but much more
9 difficult for the people who are stationed in Central
10 Islip, most of the communication --

11 A PANEL MEMBER: Go ahead.

12 MR. MAZZOLA: -- most of the communication
13 with those complaints occurs when they're brought in in
14 custody.

15 A PANEL MEMBER: If you have video
16 conferencing facilities which could preserve
17 confidentiality so the lawyers could talk to their
18 client through this video system which was
19 confidential, would that be helpful?

20 MR. MAZZOLA: Yes, I think it would, yes.

21 A PANEL MEMBER: Burton Roberts.

22 The legislation that would a prevent town
23 justice from setting bail in the absence of an
24 attorney, do you think that would help on the
25 individual cases?

26 MR. MAZZOLA: I'm sorry, legislation which

1 Louis Mazzola, Esq.
2 would prevent them from setting bail?

3 A PANEL MEMBER: Prevent them from setting
4 bail without counsel present?

5 MR. MAZZOLA: It certainly would help, yes.
6 You know that really plays into a little bit of this
7 eligibility issue, because the issue of eligibility is
8 sort of a knotty one, and we in Suffolk, as a Legal Aid
9 Society, like to be out of that business as much as
10 possible because we feel that that's a responsibility
11 of the judge.

12 The Court, in fact, I think if you read the
13 Statute and I've heard, you know, this committee is
14 called The Indigent Defense Committee, et cetera, the
15 actual -- the yardstick, if you will, or test in the
16 law is, "Unable to afford counsel."

17 And we have, for many years the courts
18 followed an income guideline, and I think that's okay
19 to start with but you know certainly, "Unable to afford
20 counsel" means one thing, if you're charged with a
21 serious felony and you're in custody. It means
22 something else if you're charged with an open bottle of
23 beer in your car, you know or some kind of a
24 misdemeanor or a violation.

25 So I think it's got to be something that a
26 judge needs to make a decision on.

1 Louis Mazzola, Esq.

2 And I think by and large in our County, I
3 haven't seen -- I've heard people speak about all these
4 people who are not eligible -- there is sort of a built
5 in defense to that, if you will, in other words,
6 probably better.

7 But most defendants, I think if they had their
8 choice, you know, we suffer from a bad reputation -- I
9 think it's unjustified, quite frankly, but you know
10 they will say, "I want a lawyer, I don't want Legal
11 Aid. I want a lawyer."

12 You know, when I first started, you know, I
13 was a little bit insulted by that. I don't really care
14 now. I know, I think we do as good a job as any
15 private attorney, sometimes better.

16 We're there all the time. I mean I tell
17 people, "You really have to be an idiot if you don't
18 pick this stuff up after a few years and learn what
19 you're supposed to do."

20 Now, I think, again, a big part of this
21 problem of shopping around for attorneys is you really
22 have to -- I don't care whether it's taking a plea, or
23 going to trial -- you need to know how to speak to
24 people.

25 You know, that's not something I'm sure, I
26 don't care whether they teach you that in law school or

1 Louis Mazzola, Esq.
2 they don't, but if you call somebody an idiot and then
3 you tell them they have to take a plea, look it's like
4 going to a doctor, you know with a tumor or something,
5 he tells you, "You're a real jerk. I don't know how
6 you got this tumor. You know it's 50 percent maybe
7 you'll die on the table." You know, it's that kind of
8 thing.

9 You've got to speak to people like they're
10 people.

11 So I just want to end off with one thing. I
12 think that the nexus between the funding and the
13 standards if -- I didn't waste too much time talking
14 about standards because I think that's pretty self
15 evident, there needs to be standards and there needs to
16 be a way to enforce those standards -- but I think also
17 there needs to be a connection between the funding and
18 the standards.

19 One of the things, again, that was interesting
20 to me when I started doing budgets with the County is
21 when I looked at 18-B, there's no requirement for those
22 attorneys at all, it's not even mentioned, not even
23 addressed.

24 What I found hopeful in this Legal Aid Society
25 round of increases in the rates, there was at least
26 some attention paid to standards in the finance law,

1 Louis Mazzola, Esq.
2 but quite frankly when I read it, I don't see how you
3 can -- I don't see the connection -- I don't see how
4 you can enforce those in connection with the funding.
5 I know that's the aim, but I think there needs to be
6 some agency that's been mentioned here, an indigent
7 defense commission, independent, to do that.

8 Having said that I think, and I've listened to
9 discussions about the case load and work load and
10 everything, and it's one of the things that's
11 fascinated me for years because when I took over doing
12 the budget there was always a line in our budget for
13 case load and all it did was give numbers.

14 I said, "This is moronic. Obviously if you're
15 doing an appeal you're going to have to spend a couple
16 of weeks on that, maybe six if it's a long appeal; if
17 you're doing a felony case, it's going to take you a
18 little longer."

19 This number doesn't mean the same as this
20 number.

21 So I think when you look at case loads you
22 absolutely have to look at what it is that is behind
23 the number, because the number alone doesn't mean
24 anything.

25 Again, you know, one of the advantages of
26 sitting on this Criminal Justice Coordinating Council,

1 Louis Mazzola, Esq.
2 and I'll tell you this is the level of cooperation we
3 have in the County, they're designing a new jail and
4 they're trying to decide whether to make it a 600-bed
5 jail or a 1200-bed jail.

6 And the issue of why the jail is crowded now
7 and still has overcrowding problems when crime is down,
8 well, they, you know sentences are longer.

9 For one thing, if you look at it, the Sheriff
10 said in 1995 there were 500 -- I'm using a number, I
11 don't know if it really is accurate -- 500 people
12 sentenced to jail; now there are only 550. But you
13 know the important thing is to look at how many days of
14 jail time did that represent; the penalties for driving
15 while intoxicated, driving without -- with revoked or
16 suspended license; and those traffic charges, I mean
17 they just clog up the District Court; they are probably
18 40 percent of the calendar there.

19 CHAIRMAN HALLERSTEIN: I hate to interrupt,
20 you but we are running late. It's Friday.

21 MR. MAZZOLA: Thank you. I appreciate your
22 time.

23 CHAIRMAN HALLERSTEIN: I appreciate your
24 coming here to testify.

25 (Whereupon Sara Stanley was relieved by Lester
26 Isaacs, as Official Court Reporter.)

1 Dino G. Amoroso, ADA Kings County

2

3 PROFESSOR HELLERSTEIN: Mr. Amoroso, of the
4 Kings County District Attorney's Office, welcome.

5 DINO AMOROSO: Justice Roberts, Mr. Kamins,
6 Members of the Panel, thank you for having us here this
7 afternoon.

8 PROFESSOR HELLERSTEIN: You are here for
9 something different?

10 DINO AMOROSO: I don't know, what is that?

11 PROFESSOR HELLERSTEIN: You're the first
12 witness from a prosecutor's office.

13 DINO AMOROSO: Are you suggesting I'm the
14 first prosecutor appearing before the panel?

15 PROFESSOR HELLERSTEIN: Yes.

16 DINO AMOROSO: I came here first and
17 foremost, I'm here to represent District Attorney Hynes
18 in the District Attorney's Office, who is unable to be
19 here today. I will tell you, however, he did appear
20 before the New York State Indigent Committee in White
21 Plains in 2003, where he did speak in length in support
22 of the application to increase the rates of the
23 Indigent Defense Bar. As a note, your Honor, I
24 suggested to him at that time, that if this was
25 successful, he could possibly parade that in our
26 attempt to get addition funding for prosecutors, low

1 Dino G. Amoroso, ADA Kings County
2 and behold, that didn't work out which is possibly why
3 I'm here.

4 I'm going to try to convince you folks that
5 I'm dismayed. I came here with a prepared text, but
6 having only listened to five representatives before
7 you, I'm actually dismayed. You have been at this
8 since nine o'clock.

9 I don't know, as an attorney, I'm upset and I
10 think I evince the same sense from my boss. He was a
11 defense attorney for Legal Aid, I have not been. I
12 have been a prosecutor, been an attorney, for 20 years.
13 I look at this panel. I look at you folks, I recognize
14 a number of faces. I see former judges. I see members
15 of the judiciary, very distinguished people from the
16 defense bar. I see academia. I say to you, how did
17 our profession get here?

18 How is it that we strive to kill ourselves to
19 get into law schools? We listen to our professors, who
20 instill in us a sense of honor and decency in becoming
21 attorneys.

22 We appear before Judges, who remind us
23 constantly in the defense and prosecution, that we are
24 supposed to be doing the right thing. And here we are
25 discussing money and our profession and we are asking,
26 how did we get here?

1 Dino G. Amoroso, ADA Kings County
2 As a member of the National District
3 Attorneys Association and the American Bar Association,
4 I will suggest to you the following. I have been a
5 member of that association with my boss since 2000.

6 I will tell that you the issue of the
7 Indigent Defense Bar is an issue that has not gone
8 away. As a matter of fact, it's only on the increase
9 in the last several years.

10 Many of my concerns in the NDAA have actually
11 turned the corner and have joined with the Indigent
12 Defense Bar. They see what is occurring in our
13 profession. They see what are drastic budget cuts
14 occurring upon the defense side, as well as the
15 prosecution side.

16 I know I'm preaching to a jury here, but
17 folks, this is not the way. At least the way I was
18 taught that our profession should be. We should not be
19 scrambling for our defense counsel, our brothers and
20 sisters on the other side of the well.

21 We are trying to get \$40 an hour, to
22 represent the most vulnerable in our society? Nor
23 should prosecutor's be put to the same position, having
24 to scramble and begging for money to insure that the
25 criminal justice system works. I don't think that's
26 the way it should work. It should not operate that

1 Dino G. Amoroso, ADA Kings County
2 way. We should not be in a position of being
3 defensive, both defense and prosecution, of having to
4 beg on behalf of our system of justice, that this is
5 not right.

6 In 1992 President Clinton started a program,
7 which is in place today. It's a program that was to
8 help build democracies in the former dictatorships in
9 Europe. Attorney general Reno approached my boss and
10 asked if in fact we would lend support to that program.
11 And we did, and we have. We have now sent several
12 prosecutors to countries as Albania, Macedonia and
13 Bosnia. The purpose of which is to act as senior
14 counsel to ambassadors of the United States, to these
15 countries for the purpose of establishing a system of
16 criminal justice in those countries.

17 Those folks have come to us repeatedly over
18 the years, and its ironic, at least the attorney
19 general of Albania, when he came to us, he was
20 fascinated.

21 HON. PHYLIS BAMBERGER: Can I ask a
22 question? We heard a lot of people advise us this
23 morning about the difficulties they have in providing
24 adequate and competent representation to people who
25 have assigned counsel. They have gone into categories
26 of issues that are of importance. Do you think that

1 Dino G. Amoroso, ADA Kings County
2 there is any particular issue of New York law that we
3 should be aware of, in order to determine if the trial
4 process in New York State and counsel being able to
5 provide more competent representation to indigent
6 defendants, with its discovery, with its jury
7 selection? Is it talking to clients? Is it increasing
8 the budget for lawyers? Paying the loan forgiveness
9 from college and law school loans? How is it, thinking
10 along those lines?

11 DINO AMOROSO: Judge, I can give you facts
12 along those lines. I am listening to your question
13 specifically in terms of my colleagues across the aisle
14 in the defense bar.

15 The overwhelming sense, again from the
16 American Bar Association from the National District
17 Attorney Association, the ever increasing case loads
18 and dwindling budgets, compounded with their inability
19 to attract talent to become attorneys in the defense
20 bar or prosecutors. When you have gone to law school,
21 when you have gone to undergraduate school, when you
22 get pay upward of \$30,000 a year on your first job out
23 of school, or you are earning the precious sum of
24 \$45,000, and you have crushing debt of approximately
25 \$130,000 where you have to pay approximately \$1,400 a
26 month just for your school debt, much less where to

1 Dino G. Amoroso, ADA Kings County
2 live, you're left with why would they come and practice
3 criminal law? Why would they go to the Indigent
4 Defense Bar? Why would they go to Legal Aid? Were
5 would they go to get prosecutors, judges, why go there
6 at all?

7 PROFESSOR HELLERSTEIN: Are you saying that
8 the office of the prosecutor is having difficulty at
9 times in sustaining its numbers?

10 DINO AMOROSO: I am saying, I cannot
11 distinguish to you the difficulties between the both.

12 PROFESSOR HELLERSTEIN: All morning we heard
13 about the prosecutors and the budget, there is no
14 parity, there is no parity and resources. There is no
15 parity. Particularly, I was told your office, the
16 District Attorney's Office perceives, from across the
17 aisle about inadequacies of the defense bar in Kings
18 County.

19 DINO AMOROSO: Professor, they need help.

20 PROFESSOR HELLERSTEIN: What kind of help?

21 DINO AMOROSO: When you consider in the last
22 three years we have seen an increase in appeals,
23 ineffective assigned counsel across the board, you must
24 conclude, one is lead to believe anyway that work loads
25 have gone up. They don't have the time and the
26 patience or maybe even the abilities to attend to the

1 Dino G. Amoroso, ADA Kings County
2 work they have at hand. Because of the rates they were
3 being paid, they are overwhelmed, that doesn't help us
4 on our side. Because by any objective standard the
5 ideas of justice are waylaid if you are having a fight
6 with someone across the aisle, and you're not prepared.
7 What is the system there? Where's the fairness?

8 District Attorney Hynes would voice
9 strenuously, as he has in the past, they need more
10 help. They need budgets, the defense and the
11 prosecutors, you cannot run the system as it is now.

12 PROFESSOR HELLERSTEIN: Judge Miller
13 testified, and a number of people said this, your
14 office is run in terms of the discovery aspect, they
15 are very progressive. Does your office parlay that
16 price for reforms, even at the cost, where the open
17 discovery process is less progressive, is that kind of
18 a discretion?

19 DINO AMOROSO: Professor, there is
20 unfortunately, the reaction that we approach very
21 often. They approach us, they refer us to as being
22 defense oriented. The District Attorney has been on
23 record for many years, but for the efficient use of the
24 system that there are ways to advance cases, without
25 parallel or danger to the prosecution's side. I wish I
26 could suggest to you that that's fallen on ears that

1 Dino G. Amoroso, ADA Kings County
2 are not received, that are receptive to it, but they
3 are not, for whatever reason. We found it very
4 beneficial in Kings County to have discovery at an
5 earlier phase. We found it beneficial to review cases
6 because the defense attorney and our office then is
7 able to assess the worth of a case.

8 We are able to come at an earlier decision,
9 an earlier stage, as to what in fact we have before us.
10 We don't want to engage in unnecessary motion practice.
11 We don't want to pile up the court system. We want to
12 take a realistic view of what we have before us, and we
13 administer through the system of justice.

14 HON. PHYLIS BAMBERGER: Is there something
15 you can suggest to us that we should consider, that
16 will take your position to the prosecutors that don't
17 take that position, and convince them that it is
18 correct, that there is something that they need to do.

19 DINO AMOROSO: Judge, I guess the best way I
20 can answer that is, its sort of the carrot stick
21 approach. Prosecutors, I found in conjunction with my
22 boss, that goes to the resources that I suggested. I
23 think to experiment in and using these other resources
24 available to us. If you attach a carrot to it, which
25 is money. We have been somewhat successful down in
26 Congress to ask them for additional funds for, what's

1 Dino G. Amoroso, ADA Kings County
2 known as drug treatment to alternative to prison
3 program. We asked them to put money into the program,
4 for offenders who voluntarily agree to do it. That
5 program is to remove otherwise non-violent drug
6 offenders from the criminal justice system and put them
7 into treatment. We found in fact resources for it.
8 They are more likely to listen, if they are getting
9 support to undertake these programs. I will suggest to
10 you, they don't have the time or inclination or the
11 wherewithal to undertake these things. Because its not
12 cost effective to them. Judge, they don't have enough
13 people themselves. Their case loads are burgeoning,
14 they are having a problem attracting talent. That's
15 just not me saying that. I say that from all our
16 colleagues. I have a difficult time convincing someone
17 to do that, doing case after case, then go to battle
18 with someone on Legal Aid's side. The indigent bar has
19 an equal amount of problems. It's just not fair. It's
20 not fair to your system of justice. It shouldn't be
21 fair to the way we conduct ourselves as attorneys.

22 BARRY KAMINS: Just a matter of curiosity.

23 Do the prosecutors in your office see a
24 difference, is there a difference in Assigned Counsel,
25 Legal Aid or the Defendant Group, is that discussed?

26 DINO AMOROSO: Professor, I can only talk to

1 Dino G. Amoroso, ADA Kings County
2 this, this is only anecdotal in the last three years.
3 We have seen a number of criminal cases of ineffective
4 counsel claims, more are coming from 18 B. We don't
5 see an increase coming in Legal Aid. We don't see it
6 coming from outside assigned counsel. We see more from
7 18 B. I don't want to address the veracity of those
8 claims. I have not been able to discern if in fact
9 they prevailed to that claim. But obviously something
10 is going on in the defense where they raise it to that
11 level, where competent counsel is concerned. There are
12 some issues out there. Whether that's a mechanism
13 because their overwhelmed, maybe they have not been
14 scrutinized, I don't know. But we have seen that
15 trend. We are concerned about it. We are looking at
16 it. I don't know that we are in a position to do
17 anything about it, other than suggest that it has to be
18 reviewed and reviewed constantly.

19 HON. PHYLIS BAMBERGER: With the Police
20 Department's use of computers, were you able to get
21 documents more readily? Are they sending the material
22 over to you?

23 DINO AMOROSO: Judge, I will suggest to you
24 that the Police Department has supported programs that
25 have helped us provide information to defense counsel
26 on a more timely basis.

1 Dino G. Amoroso, ADA Kings County

2 I will suggest to you they have been
3 receptive to programs, pilot programs, that were
4 actually suggested to them. It's more efficient to get
5 their print out more quickly, it reduces their
6 overtime.

7 Can I suggest that's even done on a city
8 bases? You know, I cannot. I can only tell you we
9 plead with them often, with ideas of reducing cost and
10 inefficiencies.

11 I will suggest to you that the Police
12 Commissioner has been receptive to this. My boss has
13 been very proactive to getting them to understand it's
14 more efficient. I don't know what the reaction has
15 been in other Counties.

16 PROFESSOR HELLERSTEIN: Thank you.

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2 CHAIRMAN HELLERSTEIN: Mr. Noisette, good
3 afternoon.

4 MR. NOISETTE: Good afternoon, Professor
5 Hellerstein, members of the commission. How are you?

6 CHAIRMAN HELLERSTEIN: It is good to see you.

7 MR. NOISETTE: It has been a long time.

8 Good afternoon. My name is Leonard Noisette. I
9 am the executive director of the Neighborhood Defender
10 Services of Harlem. I am pleased to have the opportunity
11 to speak with you this afternoon about this most important
12 issue.

13 The Neighborhood Defender Services is a
14 community based public defender that since 1990 has been
15 exploring new and different ways of providing criminal
16 defenses services. We represent people who live in
17 northern Manhattan, where our service area is based on
18 geographic limitations. We currently represent over 3,300
19 clients each year.

20 We are proud to have been a leader in rethinking
21 how defense services have been provided both on local and
22 national level, and we continually strive to improve those
23 services. Our real goal is to provide services for people
24 who are unable to hire counsel, services that are similar
25 to those that would be provided were they able to afford
26 an attorney.

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2 There are a number of components of our model
3 that I think make us a bit different. Our community base
4 is one of those models. As I said, we are based in
5 Harlem, not near the courthouse. We are based where our
6 clients and families live and have access to those
7 clients, to the family members, to other organizations
8 with whom they have contact, information that's critical
9 to our providing better representation.

10 We have a team approach to service where a group
11 of lawyers, social workers, investigative paralegals are
12 collectively responsible for providing services to a
13 certain number of clients.

14 We have a civil component in our office that
15 works with our clients on collateral consequences,
16 ancillary civil matters that result from the criminal
17 charges. Most recently we created a new project called
18 the Reentry Advocacy Project that helps clients with
19 overcoming hurdles to reentering into society after they
20 come back from prison. That project is funded with
21 private dollars, fellowships and some foundation grants.

22 We also put a premium on providing pretty
23 comprehensive social services. Certainly our social
24 service intervention is related to disposition, but in
25 many instances it goes beyond disposition, working with
26 clients and their families to address underlying issues.

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2 We believe that that's really an important
3 component to representing our clients, that we are not
4 focused simply on the case of the moment, but looking at
5 more substantial issues as well.

6 As I thought about coming here today I thought
7 that it really is important to talk with this commission
8 about what really do you mean by quality representation.
9 And I think that I would really encourage you when you
10 think about coming up with a standard of quality
11 representation, look at a little bit more holistic method.

12 I am sure Robin Steinberg was here this morning
13 and I am sure she talked with you about that. She and I
14 worked with each other before she went to Bronx Defender.
15 I really think that ought to be the standard. I think
16 there is some critical components that you might consider.

17 COMMISSIONER KAMINS: Can I ask you just two
18 questions?

19 Are your -- your clients come to you on
20 assignment by the court and the Manhattan courts that make
21 these assignments to you?

22 MR. NOISETTE: Our clients come to us in two
23 different ways. We take court assignments, and the
24 Manhattan courts work with us to make sure the assigned
25 cases are only of people who live in our geographic
26 service area. We also have an intake unit where clients

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2 can request our services upon request. And we actually
3 encourage them to do so. The initial design of the office
4 hoped that over time our entire caseload would be based on
5 request for services. Right now about 30% of our cases
6 are based on clients coming and requesting our services.

7 COMMISSIONER KAMINS: That's after they have
8 been in court and they are released and they come to you.

9 MR. NOISETTE: Of those requests for services,
10 50% of those requests are prior to having ever been in
11 court. A fair number of those are even prior to arrest.
12 And then the other auto 50% are people who have had one
13 court appearance. And we have essentially an intake
14 policy right now where we will take cases between first
15 and second court appearance as people sometimes don't get
16 to us in time or have not been aware of our services.

17 COMMISSIONER KAMINS: You take both felonies and
18 misdemeanors?

19 MR. NOISETTE: Yes, we take both felonies and
20 misdemeanors.

21 COMMISSIONER KAMINS: Thank you.

22 MR. NOISETTE: But that's a pertinent question,
23 I think, because we really put a premium on early case
24 entry. We do encourage people to call us as soon as
25 possible. Early case entry is critically important.
26 Certainly counsel at the investigative stage of a case is

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2 a real component of providing real quality representation.

3 Certainly people with means have the ability to get

4 counsel to come in at that stage of the case. The ability

5 to participate in identification proceedings is important.

6 The ability to prepare more meaningfully for the first

7 court appearance I think is critically important. So I

8 would encourage the commission to think about structures

9 that really provide for meaningful early case entry. A

10 system to tell someone they have the right to an attorney

11 but then doesn't provide them with that attorney should

12 they ask for one really does not make that right any way

13 near meaningful. That's one thing I would encourage.

14 COMMISSIONER MURPHY: Martin Murphy from

15 Manhattan.

16 I remember when NDS started the original model.

17 This is the first time early case entry has come

18 up. We have been hearing from people, especially out of

19 the city and, sometimes, I guess, in the city, not getting

20 attorneys right away. The early model neighborhood

21 defender, which was quite amazing, started in the

22 precinct. And I remember when the first cases, when NDS

23 first started, the NDS lawyer would come to arraignment

24 and would know more about the case than the cops, the D.A.

25 and the judge. It was an amazing process to see that

26 because you had already done investigation prior to the

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2 arraignment. And the arraignments, of course, back then
3 were a little longer than they are now. I think the time
4 was way past 48 hours as an average. So there was two
5 days at least to gather your information.

6 MR. NOISETTE: Right.

7 COMMISSIONER MURPHY: I don't see that anymore.

8 NDS now gets into the case either after the arraignment or
9 with the help of the court they are assigned cases very
10 much like Legal Aid. I don't see that entry coming in
11 where the Neighborhood Defender has the information prior
12 to the arraignment, which I thought was an amazing
13 process. It is the only time I have ever seen it in all
14 the years I have been involved.

15 MR. NOISETTE: Certainly not in as many cases as
16 in the past.

17 As I said, about -- we do an average of 20
18 requests for services a week, and of those 20 about 10 are
19 prior to arraignment. And, you know, on any particular
20 given week we have three or four requests that are even
21 prior to arrest. And we sometimes work with -- arrange
22 voluntary surrenders, working with law enforcement to
23 attempt to arrange voluntary surrenders, and will
24 facilitate a more efficient processing of the case if
25 that's in the client's interest to do so.

26 So what you are referring to is in the beginning

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2 of the project we actually had an arrangement with the
3 police department. It was when the police department was
4 first beginning to do precinct-based booking. There were
5 two precincts, the 32nd Precinct and 25th Precinct, that
6 had holding facilities. We actually had arrangements
7 where since CJA was interviewing clients in the precinct
8 they would notify us. We had attorneys who went to the
9 precinct, did the interviews at the precinct. So those
10 were court assignments, technically. The court was
11 assigning us except the court was assigning us at the
12 precinct. So combined with court assignments at the
13 precinct and then requests for services we were getting
14 into a far larger number of cases much in advance of the
15 arraignment process. That precinct assignment mechanism
16 ... went away, I should say. There was some concern about
17 the appropriate nature of it. So that went away.

18 The decline in our request-for-service work
19 really has been a combination of some pressure from the
20 city to increase the number of cases that we handle. As a
21 result we worked out a mechanism of where we got court
22 assignments. That was one reason it went away. And we
23 also, in terms of some of our budget problems, lost the
24 ability to do as much community outreach as we had done.
25 And without constant community outreach the ability to
26 notify the community of our services, to stress the

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2 importance of the services, the importance of calling us
3 early, we lost the ability to do that community education
4 at the same levels that we were doing it. So overall the
5 number of requests for services that we get today is less
6 than we got in the early days.

7 COMMISSIONER ZAYAS: There was some discussion
8 during this hearing about the importance of developing a
9 strong relationship between the assigned attorney and the
10 defendants. I understand from all accounts that your
11 office has been done a particularly well job in terms of
12 developing trust and a strong relationship. Can you share
13 with this committee some of the things that your office --
14 what accounts for that?

15 MR. NOISETTE: I think there are a couple of
16 things. One, I think it is being based in the community.
17 I think being based in the community and making a
18 commitment by our physical location and a statement by our
19 physical location I think is part of it. I think we get
20 somewhat more of a benefit of a doubt than the appearance
21 of a lawyer that appears to be more closely associated
22 with the courthouse, right or wrong that assumption may
23 be. I think our physical location in the community is
24 part of it.

25 I think that part of being physically located in
26 the community is we not only have relationships with our

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2 clients, but we have relationships with our client's
3 families. I think very often people neglect to understand
4 that the relationship is not simply with the client.

5 There are a number of people in a client's life who they
6 trust, who they look to for guidance and judgment, and I
7 think that our physical proximity and accessibility to
8 family members as well as to our clients is part of it.

9 I think structurally the last piece of it is we
10 have a team approach to services, as I said earlier. What
11 that means is that a lawyer -- usually on any individual
12 case a lawyer, a social worker, an investigator and a
13 paralegal all have some responsibility on that case and
14 all have some working knowledge of the case. So if a
15 client calls our office and the lawyer is not there, there
16 is someone else in my office who is knowledgeable about
17 the case who can speak with that client or that client's
18 family member who is knowledgeable about the case. I
19 think that's another piece of it.

20 And then in response to a question about visits
21 to Riker's Island, I think both our proximity to Riker's
22 Island and our team approach allows my office to make many
23 more visits to Rikers Island than I think many other
24 providers do. I think that those four things combined
25 allows us to have better relationships with our clients
26 and their families.

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2 COMMISSIONER EPPLER: The standards that IDOC
3 put in place and which have been updated I think were
4 written more generally with a view to the range of
5 institutional providers. If you had your druthers what
6 would you add to those standards along the lines of the
7 things that you find are advantages in the way you
8 operate?

9 MR. NOISETTE: I think I would --

10 COMMISSIONER EPPLER: Let me say one other
11 thing. I am aware that you started with a lot of private
12 funding, or funding not from the state or the city, and
13 that you now are, am I right, relying more on contracts
14 with the city?

15 MR. NOISETTE: No. We started primarily with
16 city dollars, just more of them. So that -- so we had a
17 larger staff and smaller case loads. So we now have fewer
18 city dollars are requirements that we handle a larger
19 number of cases. We actually have more private dollars
20 than we had in the beginning because our civil practice
21 unit is supported partially with private dollars, and some
22 of our other programs not so much related to direct
23 services.

24 COMMISSIONER EPPLER: The question I am really
25 asking is if we were to start from scratch what standards
26 would you have in place.

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2 MR. NOISETTE: I would like to see offices have
3 the obligation to have some capacity for some earlier case
4 entry. I think that would be critically important. I
5 think that I would be somewhat more demanding in terms of
6 the office's ability to address non-criminal legal
7 problems that their clients face. So some more scrutiny
8 regarding the office's ability to deal with collateral
9 consequences I think would be a good idea. Some
10 expectation that the office be prepared to do that.

11 I think that I would have more stringent
12 standards in terms of ratios of non-lawyers to lawyers in
13 the offices. I think that an office could have an
14 investigative staff or social services staff. But how
15 many investigators do you have working with any particular
16 lawyers? How many social workers do you have to support
17 the work of a particular lawyer? Those are three things
18 that come to mind immediately.

19 COMMISSIONER EPPLER: Any numerical standards
20 that you could pass along to us in those, because I don't
21 know of any.

22 MR. NOISETTE: I was looking actually this
23 morning at some standards that I thought were too high as
24 an example. I saw standards of one social worker for 400
25 felony cases. Or one investigator. I think those numbers
26 are too high. In my office we have thirteen criminal

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2 defense lawyers and we have three social workers that work
3 with those thirteen lawyers. We have three investigators
4 working with those thirteen lawyers. And those people
5 constantly complain to me, particularly the investigators,
6 about being overworked. I think the pressure is more on
7 the investigative side related to some of the questions
8 about discovery.

9 In New York County, as you know, discovery is
10 very, very limited. One of the things we therefore turn
11 to in an effort to compensate against that is we really
12 encourage our investigators to hit the street very
13 aggressively in many cases. So I think that those ratios
14 may differ depending on discovery practices in a
15 particular jurisdiction, or things of that sort, so I
16 don't know whether I could come up with any hard numbers.
17 I will think about it and maybe write to the committee
18 with some thoughts that I have. But I think those are
19 three areas that I would focus on.

20 COMMISSIONER ZEIDMAN: If I could ask on other
21 numbers.

22 We heard a lot today about more misdemeanors
23 than felonies, problem solving courts, collateral
24 consequences. Yet as we have seen, numbers over the last
25 20 years have remarkably constant plea rates. It almost
26 doesn't matter what the criminal court context and what

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2 sorts of cases we have, the plea rates seem to be so
3 constant. I am wondering if from your perspective as the
4 head of an office you have any feelings as you look at
5 your staff at the end of the year, what percentage of
6 cases go to trial as opposed to plea, what percentage of
7 cases have suppression hearings. If you have a sense of
8 what is more toward the ideal.

9 MR. NOISETTE: You know, I don't know if I have
10 a sense of what's more towards the ideal. I do think that
11 -- this is only speculation. I have only practiced in
12 Manhattan. But I wonder to what extent greater discovery
13 might effect some of that. I think having a better sense
14 of what you're up against or not may or may not effect
15 plea rates. I think that in misdemeanors, particularly
16 with people who have records, the pressure about the pros
17 and cons of pleas versus staying incarcerated versus going
18 home, I think there are some systemic pressures that
19 result in a large number of pleas that I don't know that
20 any office in and of itself can address.

21 I do think that -- someone mentioned the summit
22 that occurred, I guess in October of 2003. One the things
23 that we talked about at that summit was some of the
24 practices in our courts that might militate against pleas.
25 I am not talking necessarily pleas at arrangements, but I
26 also think that calendaring practices that require people

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2 to all appear at 9:30, many of whom sit around all day,
3 the way that the system and the process wears on people, I
4 think, increases the percentage of pleas. There are times
5 in my office where I know where my lawyers think that
6 maybe a person shouldn't take a plea. They counseled them
7 as they should about what the offer is. And I think
8 sometimes people get worn out on whether or not if
9 appearances were excused more liberally in cases that
10 really were on a trial track or if calendaring was such
11 that people had 9:30 appearances and 2:30 appearances so
12 that everyone is not required to be there at 9:30, despite
13 the fact you may end up being in court until 4:00, I think
14 there may be ways to make the system work more
15 intelligently from the client's perspective that may also
16 impact on the extent to which pleas are taken.

17 I don't know if that completely addresses your
18 question. I think that why so many cases result in pleas
19 is a very complicated question. But I do think that the
20 practice itself contributes to that somewhat.

21 COMMISSIONER KHASHU: Do you see any difference
22 between the attorney/client relationship in the cases that
23 you get through intake and the cases you get through
24 assignment?

25 CHAIRMAN HELLERSTEIN: Talk into the speaker.

26 COMMISSIONER KHASHU: Sorry.

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2 Do you see an impact of the client choosing
3 through intake versus the cases that you get through
4 assignment in court, if there are a difference in trust in
5 the attorney/client relationship?

6 MR. NOISETTE: I think there is a substantial
7 difference. I sort of thought lots about why that is. I
8 don't know whether it is that the client or family member
9 -- very often the person who chooses us is not the client.
10 It is a concerned family member. You know, a client
11 exercises a call while they are incarcerated and they call
12 the brother or mother, sister, and those people very often
13 are the people who call us. It wasn't what we expected,
14 but I think probably in 60-70% of the cases the call is
15 from someone. But I don't know whether it is the fact
16 that someone who is more proactive is going to be more
17 involved in the case and so that makes a relationship
18 different, or whether it is simply the fact that you have
19 had some say in who your lawyer is makes so much
20 difference. But client choice does make difference in
21 terms of the formation of the attorney/client
22 relationship.

23 I think that there is -- it is a two-sided
24 sword. There is maybe more presumption of trust, I think,
25 that exists. I also think very often those clients are
26 more demanding, whether they are more demanding because

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2 they would normally be that way or maybe because they
3 hired you even though they haven't given you any money to
4 hire you. And to the extent that the old expression "the
5 squeaky wheel gets the oil" is true. I think that effects
6 a relationship as well.

7 COMMISSIONER ELMORE: Do you sometimes see
8 lawyers because of their heavy caseloads encouraging their
9 clients to waive the right to a jury trial and try cases
10 before a judge?

11 MR. NOISETTE: Not in my office. It doesn't
12 happen in my office.

13 COMMISSIONER ZEIDMAN: It depends on the judge
14 though, right?

15 I'm just kidding.

16 MR. NOISETTE: When I first practiced people
17 always used to tell me about this wink. I have never
18 gotten one, though.

19 COMMISSIONER MARKS: I just wanted to ask if you
20 have any report or statistical data indicating pleas,
21 trials.

22 MR. NOISETTE: Do we gather.

23 COMMISSIONER MARKS: Any actual report you would
24 be willing to file with us.

25 MR. NOISETTE: We are required to file quarterly
26 reports with the city, and we also have some state funds

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2 and we file reports with them as well. I would be happy
3 to provide the committee. It does report disposition
4 data, intake data, things of that sort. I can provide the
5 final report for the fiscal year that ended in June 2004.

6 COMMISSIONER MARKS: That would be great.

7 COMMISSIONER KAMINS: Mr. Noisette, just a short
8 question.

9 You talked about scheduling, which is something
10 that judges try to do to the convenience of the parties.
11 Try as we may, the client comes in at a time set for the
12 client's or lawyer's convenience. Very frequently the
13 lawyer doesn't appear. There is nothing very much we can
14 do unless it is a very simple adjournment. We tell the
15 client to come back for the next day. What can we do with
16 lawyers? Are lawyers willing to make telephone
17 appearances? Are they available? I take telephone
18 appearances all the time if it is just an adjournment so
19 that the lawyer doesn't have to come from wherever the
20 lawyer is. But we have an enormous difficulty getting
21 lawyers in court for any substantive discussion unless the
22 case is actually on for trial. So you have to help us.
23 Tell us what the lawyers, what we can do for the lawyers
24 to help them get in on time.

25 MR. NOISETTE: I would say that if telephone
26 appearances were used more liberally it would certainly be

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2 something that our office would try to take advantage of.

3 You know the challenge in Manhattan, at least, and I would

4 imagine it is similar in other places, is that there are

5 lots of parts to get to. We have thirteen lawyers, you

6 know? Thirteen lawyers with all the parts that we have to

7 get to. The criminal court in particular has been very

8 cooperative with us. Some of my lawyers, now we have

9 designed a system where my lawyers are trying to appear in

10 certain parts on certain days, and for the most part when

11 they are requesting those days the judges have been

12 accommodating us. So we have been trying to work our

13 staff to be better at calendar management to address some

14 of those issues.

15 I think it is a work in progress. I think if

16 the court were interested in those discussions certainly

17 my office, and I am sure other offices, would be

18 interested in having those discussions and work with the

19 court to make it more sensible.

20 COMMISSIONER KAMINS: Thank you.

21 COMMISSIONER ZEIDMAN: Just a very factual

22 question. There are thirteen lawyers now. At the height

23 of your funding how many people were in the office?

24 MR. NOISETTE: At the height of our funding we

25 had about 56 people, 23 of whom were lawyers. Probably a

26 slightly better ratio of investigators and social workers

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2 in those days. I don't remember the exact numbers. I
3 think we really struggled to maintain that non-lawyer to
4 lawyer ratio, which in some respects has impacted on our
5 caseload rise. We had the choice of spending most of
6 these dollars and reduce the amount of money we spent on
7 non-lawyer professional staff, but we thought it was
8 important to keep a certain level of balance.

9 CHAIRMAN HELLERSTEIN: Thank you, Mr. Noisette.

10 Thank you.

11 MR. NOISETTE: I have written testimony I can
12 provide. I have some other recommendations, many of which
13 have already been made before the committee.

14 I thank you very much for your time.

15 COMMISSIONER MARKS: We will take anything you
16 want to send to us.

17 MR. NOISETTE: Thank you.

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1 Richard Greenberg, Esq.

2 CHAIRMAN HALLERSTEIN: Mr. Greenberg.

3 MR. GREENBERG: Good afternoon.

4 My name is Richard Greenberg. I am the
5 attorney in charge of the Office of the Appellate
6 Defender.

7 We are a not-for-profit private office of 18-B
8 attorneys located one block from here, that handles
9 appeals and other post-conviction litigation in felony
10 cases arising in the First Department.

11 We were formed in 1988 by a resolution of the
12 Administrative Board of the Courts, and as such, we are
13 the oldest indigent defendant organization other than
14 the Legal Aid Society.

15 It feels like deja vu coming up right after
16 Lenny Noisette, because Lenny and I always appear to
17 appear back to back in numerous counsels as we lobby
18 for funding NDS and the indigent, the Mayor cuts out
19 totally and we have to go to the City Council to have
20 our funding restored.

21 It's a tremendous drain on our resources doing
22 this kind of lobbying.

23 It starts out in February or March and runs
24 right through until the budget is passed in June.
25 During that time, we spend so much time meeting with
26 various council members appearing before committees and

1 Richard Greenberg, Esq.

2 lobbying.

3 I know this committee has a broad mandate and
4 numerous issues to consider.

5 I'd like to focus on two issues, if I may.

6 One is this notion envisioning creating and
7 fostering a model for client-centered representation.

8 I don't know if you've heard about that at the
9 appellate level yet, and also fostering a model for
10 training new attorneys in the practice, in particular,
11 of appellate defense work.

12 As the courts are turning to problem solving
13 courts and specializing and looking into all the myriad
14 problems that individuals coming into the system have,
15 so too we have done that at the appellate level in our
16 office.

17 I know sometimes people think that
18 client-centered advocacy or holistic representation is
19 sort of a cliché. We don't think so.

20 We think it represents an ideal that looks
21 beyond the immediate legal problems an individual has
22 and looks to other problems that are related, either
23 problems that have contributed to the individual being
24 incarcerated, problems which have a significant impact
25 on that person's life, health issues, for example, and
26 problems which will impact on that individual's

1 Richard Greenberg, Esq.
2 ability, ultimately, to come out of prison and lead a
3 law-abiding life and contribute to society.

4 Now, AOAD, we of course handle the appeals.
5 We take in approximately 160 appeals a year from the
6 First Department; we do a great number of 440 motions;
7 related litigation; a small number of Federal habeas
8 proceedings.

9 In addition to that work, we also handle
10 immigration proceedings for our clients; we do parole
11 advocacy; we handle all kinds of prison issues that
12 arise such as prison disciplinary problems; temporary
13 release issues; medical problems for our clients in
14 prison; brutality complaints; all sorts of issues.

15 And in helping us to deal with some of those
16 issues, particularly the parole situation, we created,
17 four years ago, a social work reentry unit which was,
18 as far as we know, the first of its kind in an
19 appellate office to work with the lawyers and
20 particularly the clients who are: A, getting ready to
21 appear before the Parole Board and who are coming out
22 on parole.

23 Now, reentry is becoming a hotter topic these
24 days, and I know that some of the trial offices, Lenny
25 just spoke about it, I believe Robin Steinberg may have
26 spoken about it before, at the trial level most of

1 Richard Greenberg, Esq.
2 these offices, as far as I know, are dealing with
3 reentry of clients mostly who are coming from local
4 prisons.

5 At the appellate level we are dealing with
6 clients who are dealing with State prison sentences.

7 As you know, the sentences are becoming longer
8 and longer, so we are dealing with clients who are
9 coming out of State prison, they are coming out after
10 four, five, six, eight years, maybe more. So they face
11 particular problems, different than some of the other
12 offices.

13 We created the social work unit that is
14 completely not funded by the City.

15 We have each are one-year interns from the
16 Columbia University social work school, second-year
17 graduates. They help our clients. They are the people
18 finding housing, making substance-abuse referrals,
19 giving employment counseling, they help them in just
20 doing simple things like getting documentation.

21 I mean, the outgrowth of this program was that
22 if you're a lawyer representing a client on his appeal
23 and he's coming out on parole and he comes into your
24 office when getting released with \$40 in his pocket
25 from State prison, with no clothing, perhaps nothing,
26 no place to live, you can say, "I'm sorry. That's not

1 Richard Greenberg, Esq.
2 my job. I'll get your brief ready."

3 On the other hand, you can take that client;
4 go down to the Health Department and try to get a birth
5 certificate so they can go to the Social Services
6 Department, get health benefits, or get into a shelter
7 system.

8 We found lawyers devoting too much time,
9 without expertise, handling these kind of issues.

10 As a result of that, we created the social
11 services unit which has been very very successful.

12 We're seeking private funding but not been
13 successful.

14 Because of that broad representation we
15 provide, we can achieve greater results for clients
16 than you can doing an appeal.

17 Realistically, we are not going to win most of
18 our appeals; the Appellate Division is not in the
19 business of reversing decisions. Realistically, 80 to
20 90 percent of your clients are going to have their
21 convictions affirmed.

22 The question is, during that period of
23 representations and beyond, are there other ways that
24 we can help that client.

25 So for example, I had a case recently where we
26 lost the appeal; the client was denied parole; and he

1 Richard Greenberg, Esq.
2 was a model prisoner he should have been paroled. We
3 wound up doing the case. We did the parole; I filed an
4 Article 78 proceeding an Oneida Court the judge handled
5 that proceeding. He was released as a result of that
6 advocacy. That client saved approximately two years.
7 Before that he next saw the Parole Board.

8 We have clients who are diagnosed in State
9 prisons with cancer; we have to advocate with the
10 Department of Social Services to obtain chemotherapy
11 and other medical care because the institution doesn't
12 always give it. In that situation you might save
13 someone's life.

14 We had a female client in Bedford who was
15 raped by a prison guard. We worked with her; we got
16 her into counseling and treatment. She's now out on
17 parole.

18 But I can tell you story after story like this
19 of people who we have been helped through our special
20 work and reentry, just basic client-centered
21 comprehensive practice.

22 CHAIRMAN HALLERSTEIN: Do you have
23 investigators currently on staff?

24 MR. GREENBERG: We do not have a paid
25 investigator on staff.

26 We work with several investigators that we

1 Richard Greenberg, Esq.
2 have used on a regular basis who we pay, and who are
3 willing to accept 18-B rates. We pay them on a hourly
4 basis to investigate cases for us.

5 We are also very big on using interns.

6 We have, right now, two law school interns and
7 two college interns. We often employ these interns to
8 help out with these investigations.

9 I also find out, where you're reinvestigating
10 a case, where the person has been convicted and you're
11 looking to file a 440 motions, often times the lawyer
12 himself should be actively involved in the
13 investigation, but we do employ outside investigators
14 as well.

15 The title of this commission is The Future of
16 Indigent Defense Services, and there really cannot be
17 any future without some systemic way for training new
18 lawyers.

19 Let me be clear, I'm not suggesting for a
20 moment that every defense office has to have some kind
21 of very comprehensive training program. Many defense
22 offices hire lawyers who already have sufficient
23 experience and don't need to have that kind of
24 training.

25 OAD was created in 1988 as a unique office
26 with a particular mission to train lawyers, and we have

1 Richard Greenberg, Esq.
2 been doing this now for 16 years where we have a model
3 which we get staff attorneys who stay for a
4 two-to-three-year period and then leave the office, for
5 the most part. On occasion, we have kept people on as
6 senior attorneys for that two-to-three-year period.

7 Let me just back up and say, each year we
8 bring in about three, four, five new lawyers.

9 We have over 400 applications every year we
10 get from all over the Country, from the top law schools
11 from prestigious clerkships, from people who are doing
12 fellowships.

13 People want to come here. There is no
14 shortage. I can tell you this, there is no shortage of
15 highly committed, qualified young new lawyers who want
16 to do this very, you know, difficult but rewarding
17 work, even at the very low salaries that we can offer
18 these are people; many of whom could go to the big law
19 firms and make multiples of the money that they're
20 making from us, and they do have crippling law school
21 debt, but they are committed to this work and it's
22 exciting to see the numbers, and it's actually sad the
23 number of wonderfully committed individuals who are
24 highly qualified that we have to turn away each year.

25 But the attorneys that we do take in come for
26 a two-to-three-year period, and they're double teamed

1 Richard Greenberg, Esq.
2 on every case that they handle. So they are teamed up
3 with an experienced supervisor who also reads the
4 entire appellate record; who conferences the case with
5 that attorney; strategizes it; goes up to State prison
6 visiting the client; edits drafts of all submissions;
7 and moots every single argument.

8 We think that this is a great thing to have,
9 and again, not for every other office, but to have this
10 within the system so that you can create and train
11 committed appellate defenders who then leave after two
12 or three years from OAD and then go to work at Bronx
13 Defenders, Legal Aid, other appellate offices.

14 Unless you have some mechanism for
15 replenishing the pool every year, you're going to
16 diminish the ultimate quality of representation.

17 Now, it all sounds great; client centered
18 advocacy; the training mission.

19 The problem, of course, is we're not funded
20 for that.

21 We have been around for 16 years. No one has
22 complained about the quality of our representation. We
23 have a reputation for training people.

24 Every single year the Mayor says, "Zero
25 dollars for OAD," and we have to go to the City Council
26 to get funded.

1 Richard Greenberg, Esq.

2 I don't think it makes sense.

3 We are fortunate, at the appellate level, to
4 have high quality, whether it's Legal Aid or the other
5 appellate advocates you hear from.

6 A diverse system, I think, there is a place in
7 the New York City defense system for an office like
8 ours that does these extra things; that does train
9 lawyers to replenish the pool for the benefit of the
10 entire system.

11 I certainly would urge all of you, in whatever
12 recommendations you're going to make, to look at those
13 things; to look at the training issue; and look at the
14 notion of client-centered advocacy social work at the
15 appellate level, because each year, as far as I know
16 now, especially because of the long prison sentences
17 that have been imposed ten to fifteen years ago in this
18 State, which swelled our prisons, now many of those
19 people are sort of nearing their release dates. People
20 who have been incarcerated for eight, ten, twelve years
21 are going to be coming home, and unless we have a good
22 system for working with people who are coming home
23 after so many years in a very brutal system in upstate
24 prisons, it's going to make matters worse.

25 I read a statistic that 20,000 inmates are
26 being released by New York State to New York City.

1 Richard Greenberg, Esq.

2 That's a huge number.

3 I can tell you when I appear at the City
4 Council for funding, it's a tremendous concern to
5 Council members whose communities are affected by these
6 great numbers of former inmates coming home to their
7 communities.

8 So I'd be happy to answer any questions, but
9 my message to you today really is that the
10 client-centered approach, a broader approach to
11 representation, is a positive thing and serves so many
12 benefits and will help reduce recidivism in the long
13 run.

14 Also, there has to be some system-wide method
15 for training new lawyers in the system.

16 I can tell you when lawyers leave OAD and they
17 go to trial offices with their appellate background and
18 they go to NDS or Bronx Defenders or Legal Aid I know
19 those offices find that our lawyers have been really
20 well trained and contribute greatly to those offices.

21 A PANEL MEMBER: Barry Kamins.

22 Over the Legal Aid Society 16 years, your
23 lawyers have read a tremendous number of records,
24 trials. Have you found a difference in the quality of
25 lawyering from reading those records between the
26 defender groups, Legal Aid, and the assigned counsel?

1 Richard Greenberg, Esq.

2 MR. GREENBERG: Well, I can tell you that the
3 vast majority of the cases that we handle are cases
4 that employed 18-B lawyers at the trial level.

5 And to be frank with you, I find that the
6 quality of representation is fairly abysmal most of the
7 time.

8 A PANEL MEMBER: Fairly abysmal, or is it just
9 abysmal?

10 MR. GREENBERG: As opposed to completely
11 abysmal?

12 I can say -- and I say this not in a way that
13 these cases rise to the level of being able to
14 challenge them on ineffective assistance of counsel
15 grounds, I'm sure you all know that's a very high
16 standard to prove in court -- we bring several 440
17 motions a year in that regard, but I'm talking about
18 lawyers who are ill prepared to try the case; who don't
19 have a concept of the defense that they're trying; who
20 ask questions on cross examination that actually nail
21 the final nails in the coffin of the prosecution case;
22 who show up for sentencing after someone has been
23 convicted of a serious felony, facing many years in
24 prison, with a wide range of sentences that can be
25 imposed, and show up for sentencing not having done any
26 preparation; not submitting pre-sentence memoranda;

1 Richard Greenberg, Esq.
2 basically getting up there and speaking off the cuff
3 for maybe half a page of transcript, "Oh, Judge, why
4 don't you give him something closer to the minimum?"

5 I can go on and on.

6 I think the quality of the representation from
7 the defender offices, Legal Aid, Bronx Defender Office
8 in the First Department is much better than assigned
9 counsel.

10 That's not to say there aren't some good 18-B
11 lawyers.

12 When you call an 18-B lawyer as a lawyer --
13 I'm looking into these issues -- you have these
14 documents and the person says, "That client, he was
15 really a jerk. I don't have the file any more. I
16 threw it out." You can get a sense of what these lawyers
17 have; they don't respect their clients; they're just
18 ill prepared.

19 A PANEL MEMBER: Joseph Zayas.

20 What's the benefit, if you mention the other
21 defender offices -- Lynn Fahey, are here -- what's the
22 benefit of having four appellate offices? Legal Aid
23 does some appellate work, your office does some --

24 MR. GREENBERG: In the First Department, there
25 are three appellate advocates. Lynn's office does the
26 Second -- in the First Department, Legal Aid, OED, and

1 Richard Greenberg, Esq.

2 the other.

3 There is a benefit. The benefit is, A: There
4 are many cases, so the cases get spread around. I
5 suppose one could say, "Let's put all the cases in one
6 basket."

7 One of the reasons why we were formed
8 initially is because Legal Aid couldn't handle many of
9 the cases because they had -- they couldn't handle many
10 of the cases due to conflict of interest, and there
11 weren't sufficient 18-B lawyers at that time.

12 Due to conflict alone, we often get cases from
13 other appellate providers, because they can't handle
14 those cases because of a conflict of interest.

15 I know we work collaboratively with appellate
16 providers, including Legal Aid, to handle cases with
17 multiple defendants.

18 I also think, as I said before, diversity is a
19 good thing and each office may develop a particular
20 area in addition, or expertise, that another office
21 does not have.

22 To the extent that OAD is a training office;
23 to the extent other offices don't have that training
24 focus; we can provide something to the system that
25 maybe the other office doesn't.

26 As a result of the kind of work we do and the

1 Richard Greenberg, Esq.
2 double teaming we do for the training purposes, we are
3 not going to be able to be as cost effective, perhaps
4 we can't cost per case number as it's always said by
5 the City, and the Criminal Justice Coordinator's Office
6 may indicate that our costs per case is going to be
7 somewhat higher, perhaps, than an office that only
8 employs highly experienced lawyers and can handle cases
9 maybe in a little bit more expeditious manner because
10 they're not double teaming, they're not training,
11 holding somebody by the hand and teaching them along
12 the way.

13 A PANEL MEMBER: Phyllis Bamberger.

14 There has been a lot of criticism over the
15 length of time it takes to complete an appeal.

16 What can you recommend?

17 I assume appeals occur, lengths of appeals
18 occur more frequently with indigent defendants or
19 assigned counsel. What can we do to help that
20 situation?

21 MR. GREENBERG: The thing you hit upon, Judge,
22 the delay between the assignment of counsel and the
23 granting of poor person relief by, appellate relief, by
24 the Appellate Division, and the time the record is
25 provided to counsel. That number has actually come
26 down.

1 Richard Greenberg, Esq.

2 In the Legal Aid Society two years, it's still
3 a very long period of time.

4 I would say on average it takes well over a
5 year from the time the poor person relief is granted
6 until the trial record and other records are provided,
7 sometimes as long as two years.

8 We will sometimes get an incomplete record and
9 we will have to try to track down voir dire minutes or
10 other portions of the record.

11 I have said this before at various other
12 commissions I appeared at, that is, there is something
13 wrong with a court system, with stenographers -- with
14 all due respect to the excellent stenographers here --
15 seem to have their own fiefdom and therefore are not
16 really controlled by the court system.

17 If we need -- for example if we're handling an
18 appeal in which there are speedy trial issues and we
19 need to order a number of calendar call transcripts,
20 very short transcripts, a couple of pages, maybe 5, 6
21 pages, that can take well over a year to get ten,
22 fifteen, twenty calendar call transcripts because you
23 have to deal with each court reporter individually,
24 some of whom don't return your calls; some of them who
25 will take months and months because they don't care,
26 they're getting two bucks a page, and for the \$6 or \$8

1 Richard Greenberg, Esq.
2 they're going to get, they really don't want to be
3 bothered.

4 Sometimes you need a bigger chunk of
5 transcript, a voir dire that may be a couple of days,
6 it's going to be 700 pages maybe, they don't have the
7 time to get to that.

8 A PANEL MEMBER: From the time you get the
9 record until you file the appeal, what is, on the
10 average, the period of time?

11 MR. GREENBERG: I would say it's probably in
12 the six-month range. On average, it often takes much
13 longer than that because we have to be very careful.
14 We know that the chances are the conviction is going to
15 be affirmed, so if there is an investigation to see
16 whether there are certain 440 issues, we're going to
17 take the time to do that; if the client has certain
18 other issues we need to explore with him or her, we are
19 going to take the time to do that. It can sometimes
20 take The Legal Aid Society up to a couple of years
21 before the brief is filed.

22 That's the exception. If we're thinking in
23 terms of a 440 motion, we're not going to file a direct
24 appeal, we're going to hold that off and then file the
25 440 first, because strategically it makes much more
26 sense to do it that way, and economically also.

1 Richard Greenberg, Esq.

2 A PANEL MEMBER: And you also have to do it?

3 MR. GREENBERG: Exactly.

4 CHAIRMAN HALLERSTEIN: Thank you,
5 Mr. Greenberg.

6 I just want to say to the remaining witnesses
7 in the audience, we intend to hear all of you, stay as
8 late as we need to, to accomplish that, but I would ask
9 of you as well as my colleagues and myself, if we can
10 keep the time of day in focus and perhaps shorten some
11 of the things that each of us would like to do.

12 In that regard, I would ask our next two
13 witnesses whether they wouldn't mind testifying as a
14 panelist. If that is a problem you let me know.

15 (Whereupon Sara Stanley was relieved by Lester
16 Isaacs, as Official Court Reporter.)

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3 PROFESSOR HELLERSTEIN: Our next witness
4 will be.

5 LYNN FAHEY: I am Lynn Fahey, head of the
6 Appellate Advocates, we represent indigent criminal
7 defendants on appeal in the Second Department, that's
8 the cases from Brooklyn, Queens and Staten Island. We
9 do about 350 cases a year in the Appellate Division,
10 five or ten cases or so in the Court of Appeals. We do
11 Federal habeas petitions when appropriate, 440's when
12 appropriate. We go to the trial support for
13 resentencing hearings, when they go out of the
14 appellate process.

15 Let me try to cut right to the chase here and
16 first address a couple of the questions that were asked
17 of Rick Greenberg.

18 First, I would say I completely support what
19 Rick said about having a variety of groups available to
20 represent indigent defendants within the same
21 jurisdiction and on appeal in the Second Department.

22 There are two groups that represent
23 defendants, Appellate Advocates, my group and the Legal
24 Aid Society, of the Criminal Appeals Bureau. This is,
25 I think, an ideal system of the two groups and I will
26 tell you why. We have had a lot of cases in recent

1 Lynn Fahey, Esq.
2 years that started out as capital cases. The records
3 can be 12,000 pages long, 8,000 pages long, 15,000
4 pages. They can require reinvestigation. They can be
5 extraordinarily complex proceedings. An 18-B attorney
6 just can't do that.

7 We had with Legal Aid an occasion a couple of
8 years ago, Sue Wycoff was the head of the Criminal
9 Appeals Bureau then. Said we have a conflict, can you
10 take this case. You just can't go to an 18-B attorney.
11 We had been assigned a previous capital case in which
12 we had a conflict, we swapped cases. That was the way
13 to handle those cases. Actually, the one that we sent
14 to Legal Aid they then later discovered a conflict and
15 went to Sally Wasserman, who I know you talked to
16 earlier and thank goodness is one of the 18-B appellate
17 attorneys who have taken the time to do a 440 Motion,
18 not ever knowing if they are going to get paid for it.
19 So having two providers is a great idea.

20 I think and having an innovation of different
21 appellate providers who have somewhat different models
22 and can benefit from the definite experiences of each
23 other, I think is a real plus.

24 Now, we see records from cases tried by 18-B
25 attorneys, from a few retained attorneys, the Legal Aid
26 society, and Queens Law Associates, Brooklyn Defenders

1 Lynn Fahey, Esq.
2 Service, all of these providers in the Second
3 Department, that counsel previously covered. There is
4 a dramatic difference in quality between the organized
5 providers and the 18-B panel. That's not to say that
6 there aren't some terrific 18-B attorneys. There are
7 some who are great. There are some who are absolutely
8 abysmal, it's like night and day. When you get a
9 record and you look, the first thing you look at, other
10 then maybe the name of the Judge, you look at who was
11 the defense attorney. And you know if it was someone
12 from one of the organized providers. The issues are
13 going to make sense. What they say on the record is
14 going to make sense. The issues are going to be
15 preserved. If they are not preserved, it's the kiss of
16 death on appeal. That's probably the most important
17 factor on appeal, is an issue preserved or another not
18 preserved. You would think that if you were going the
19 trial with a defendant who had confessed to the police,
20 you would at least spend the time to figure out ahead
21 of time that there has to be corroboration of his
22 confession. So that when there is no corroboration of
23 his confession, you can stand up and say, Judge, I move
24 to dismiss because the identified is insufficient.
25 There is no corroboration of the confession under the
26 CPL, there has to be and there isn't.

1 Lynn Fahey, Esq.

2 I had a case and the attorney, he had no idea
3 there was such a statutory requirement, that's all
4 unbelievable. I had another case, and these are cases
5 that I happened to end up with myself out of the 26
6 lawyers in my office. Just to give you two prime
7 examples, both within the last year or so. They knew,
8 the lawyer knew that the main peoples witness was a
9 reluctant witness. The district attorney was having a
10 lot of trouble getting the witness to come to court.
11 You would think that the lawyer would have figured out
12 that maybe if this witness didn't want to come to
13 court, he would want to know what the D A could do or
14 not do. The lawyer had absolutely no concept. But the
15 district attorney wasn't just free to impeach his
16 witness with prior Grand Jury testimony, it didn't
17 occur to him. The Court tried to explain it, the
18 attorney still didn't get it.

19 A few months later, I briefed this case. A
20 few months later another attorney in my office is
21 telling me about a case she had and how the lawyer
22 hadn't realized this rule existed, and it was the same
23 thing. It was the girlfriend, the defendant's
24 girlfriend was the reluctant witness. They brought her
25 in, she didn't remember having conversations with the
26 defendant about anything. Didn't remember anything,

1 Lynn Fahey, Esq.
2 neutral testimony. Instead of arguing, hey, you can't
3 impeach her, it's neutral testimony. The defense
4 attorney acted that the Court should recognize a
5 boyfriend girlfriend privilege. Unbelievable. So I
6 said, how many attorneys can there be in Queens that
7 are unaware of the statutes? It turns out it was the
8 same attorney. He had not learned between the one case
9 and the next.

10 Now, as I said there are some wonderful 18-B
11 attorneys. But there is a terrible, terrible pattern
12 that I think has been fostered by many years of paying
13 differently for in court time and out of court time. I
14 think it has encouraged the idea that what you should
15 do is seek advice, if you can get it. You can ask
16 something, get something into evidence. You get it
17 out, but with the notice that's adequate. If you are
18 representing a poor person -- and the time that you
19 should be putting in ahead of time to check gee, if I
20 have a confession, is there any special rules I ought
21 to know about? Investigate, talk to witnesses, what
22 ever it takes to get ready for trial. Just a basic
23 familiarity of the applicable law. That's something,
24 that is not worth it?

25 That's only a few dollars an hour, that's not
26 worth it? It's not where you put your effort. You put

1 Lynn Fahey, Esq.
2 your effort on what you do at the moment in Court. I
3 think that has created this whole tradition that I
4 think we are going to be stuck with amongst 18-B
5 attorneys for many, many years to come, very
6 unfortunately.

7 PROFESSOR HELLERSTEIN: I'm glad you said
8 that. Are there occasions, do you have any estimate, a
9 proportion of how many?

10 LYNN FAHEY: Percentage of great 18-B
11 lawyers?

12 PROFESSOR HELLERSTEIN: Percentage of
13 adequate 18-B defense counsel, that you looked at, as
14 compared to the ones that you register as abysmal?

15 LYNN FAHEY: It depends on what you call
16 adequate. Really good 18-B attorneys, 20 percent
17 maybe. Really abysmal 18-B attorneys, at least
18 20 percent. Mediocre, that's the run of the mill,
19 someone who can ask a question, put something into
20 evidence, stand up and make a summation, that would
21 more or less make sense. But that's basically it,
22 that's kind of the typical 18-B attorney I think, and
23 it's a very sad state of affairs. We are trying to
24 represent these guys on appeal, on issue after issue.
25 It is just not developed, not preserved and it's a real
26 problem. I think it's not getting better with time.

1 Lynn Fahey, Esq.
2 If anything, it might be getting worse. I would have
3 hoped mandatory CLE would cure this. But I will tell
4 you that the CLE that's available for criminal
5 practitioners is, I think, wholly inadequate. The
6 programs that are available are -- certainly for
7 appellate lawyers it's very inadequate. The programs
8 available are geared for trial attorneys.

9 PROFESSOR HELLERSTEIN: Do you have any
10 thoughts on the quality of 18-B attorneys, that would
11 work for 18-B, attorneys that represent co-defendants
12 in a case, what is your thought?

13 LYNN FAHEY: Basically my thoughts of 18-B
14 attorneys at trial, occasionally there is one and I
15 encourage Sally Wasserman to come talk to you. I think
16 she is one, she is good. But by an large, we may do a
17 50 page brief with three complicated issues and the
18 co-defendant 18-B attorney may turn in a brief with two
19 of those issues or maybe six issues all briefed in a
20 page and a half each, two pages each. In general what
21 we see is not good. I would say it mirrors on the
22 appellate level what it is at the trial level. I would
23 say 18-B is a little problem.

24 I think one of the things, I think New York
25 City has a very good approach to things in that they
26 rely very, very largely on organized providers,

1 Lynn Fahey, Esq.
2 institutional providers. And they have many of them,
3 which means there is room for innovation. There is
4 room to learn from each other. I think that's a very
5 good thing.

6 The one thing I would say should be changed
7 in the system is traditionally the most difficult
8 cases, the ones where the client has the most to lose,
9 homicide cases, A-1 drug cases, those have
10 traditionally been the area of 18-B attorneys.
11 Everything B Felonies below, have to be completely
12 looked at, to have the organized providers from the
13 quality of lawyering. I would say it ought to be just
14 the opposite, because the organized providers all have
15 some very, very experienced, very, very talented
16 lawyers who, I think, can handle just about anything.
17 An 18-B they can triage, we can triage in my office.
18 We have by and large experienced people. Our staff has
19 an average of 16 years experience, it ranges from four
20 years to 30 something years. If a case comes in where
21 a guy is doing 25 to life for murder, that's not going
22 to go to the less experienced end of our spectrum.
23 That's going to go to the more experienced. If we know
24 the client is difficult, he went pro se, he has mental
25 health issues, he is difficult to deal with, that's
26 going to go to someone who I know, because I assign all

1 Lynn Fahey, Esq.
2 the cases in the office. I know who is going to be
3 able to handle that client. That client won't drive
4 him crazy and do an objective triage that way. I don't
5 know that an 18-B panel can ever really triage that
6 way. At least can't do it without being accused of
7 favoritism between one lawyer or another. I don't know
8 how the panel can make those judgment calls.

9 I would say New York City is really to be
10 praised for the stage it has. I think that if you
11 think about going to a State wide defender system, I
12 would urge you very strongly, no, New York City has a
13 plan that works. And to start messing around with a
14 plan that works is a recipe for disaster.

15 The trouble with Rick Greenberg's statements
16 to you with having to go to the City Counsel begging
17 for money, not knowing if it's going to be there from
18 one year or the next. Every single provider in New
19 York City would face that problem with the State
20 Legislature and which is a horrendous problem for all
21 of us.

22 PROFESSOR HELLERSTEIN: The way the system
23 is, that we have right now, if we have a State wide
24 system, the public defender would not have to negotiate
25 its own contracts. That would be coming out. It would
26 be spaced out. One shot, right from the top, to every

1 Lynn Fahey, Esq.

2 defender in the State, what is your thought.

3 LYNN FAHEY: The vast majority of indigent
4 defenders in New York City, New York City has a plan by
5 and large that works very, very well. I think to
6 tinker with it in the interest of, you know, of having
7 uniformity throughout the State, I don't think it's
8 going to help. It may help some of the counties that
9 need a hand up. But since most of the defendants are
10 in New York City and anything that levels New York City
11 with other places, I think works to the detriment of
12 the majority of defendants which, after all, the bottom
13 line is the concern for the defendant has to be what we
14 are all about. So I would think that leave New York
15 City alone.

16 I would say any idea that New York City makes
17 a decision for the bottom line money wise, is simply
18 not true. When we have proposed originally, when we
19 proposed originally there was another group that put in
20 a proposal a million dollars less than ours. We got
21 the contract. Because our proposal was far superior,
22 they have sued the City over giving us the contract
23 instead of them, and we got it because the bottom line
24 wasn't looking for the lowest salary bids, the City's
25 policy has not been looking for the lowest dollar bids.
26 Times have been tough since September 11, no question

1 Lynn Fahey, Esq.
2 about it. But unlike the District Attorney's Offices,
3 the defendants have -- the District Attorneys have not
4 had their funds cut. We are hoping we get an increase.
5 We are getting to the point where we desperately,
6 desperately need it. But everything is relative and in
7 the greater scheme of things, New York City has done
8 right by its indigent defendants too, as the State has.

9 BARRY KAMINS: You started to explain the
10 CLE Programs.

11 LYNN FAHEY: There are not many, many of
12 them. A lot of programs are geared towards people who
13 are kind of beginners and so are lost on the
14 sophisticated. They are very expensive. The Bar
15 Association here runs some very good CLE Programs.
16 It's still expensive and the attorneys can't afford to
17 spend hundreds of dollars every month, every month. We
18 have a CLE program, and we run a program that's geared
19 to experienced appellate criminal practitioners. What
20 they need to do. What is going to be useful to them
21 and not anything extraneous so they can kind of sit
22 through it. Some of my attorneys went recently to a
23 program. They said it was excellent, run I think, I
24 think by the First Department, 18-B panel, I think.
25 They said it was wonderful, the experts were absolutely
26 wonderful. But 80 or 90 percent of the time was

1 Lynn Fahey, Esq.
2 devoted to what do you do with clients money. And
3 that's just, you know, is interesting. It was well
4 done. But it wasn't particularly helpful to them.
5 They would have been better off with an ethics program
6 that would be in our office.

7 What do you do when a client pleads not
8 guilty? You know, he fesses up and he raised this
9 issue. Can he raise that issue? That kind of thing is
10 directly helpful. And I think there is not much really
11 out there that is directly helpful to the criminal
12 defense attorneys, unfortunately.

13 PROFESSOR HELLERSTEIN: Thank you.

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2 CHAIRMAN HELLERSTEIN: Mr. Dean?

3 MR. DEAN: As usual, a tough act to follow.

4 COMMISSIONER KAMINS: You don't have to follow.

5 MR. DEAN: I am Bob Dean. I am the attorney in
6 charge of the Center for Appellate Litigation. With me is
7 Karl Zelson, my assistant attorney in charge.

8 I have given written testimony which you can
9 read at your leisure which fully describes us and gives
10 some suggestions. But what I would like to do is
11 basically take three minutes to describe what our office
12 does and then answer any questions that the panel has,
13 including some of the questions that were asked of
14 Mr. Greenberg and Miss Fahey.

15 We are a private not for profit corporation. We
16 contract with New York City to do criminal appeals and
17 post conviction work. We currently take in approximately
18 330 appeals each year from the First Department. We have
19 twenty-two attorneys and five support staff. We have an
20 office with a lot of experience. Our management attorneys
21 have decades of experience in running an organization.
22 Our staff attorneys or non-management attorneys have an
23 average of 13 years of criminal appellate experience. Our
24 youngest newest attorney has five years of criminal
25 appellate experience.

26 We are committed to quality representation. Our

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2 staff to supervisor ratio is about 3 1/2 to 1. We have
3 training. We are a CLE provider of that, and each brief
4 and motion that goes to the court is extensively
5 supervised.

6 Our representation does not stop with the direct
7 appeal. We have our own internal innocence project which
8 is called the Justice First Project where we look at cases
9 where there is some indicia of innocence or wrongful
10 conviction and we reinvestigate those. If possible, or in
11 certain circumstances, we will do a 440 motion. We have a
12 very active 440 practice. If we lose in state -- in the
13 Appellate Division, we try to get the case into the Court
14 of Appeals. We have a very active Court of Appeals
15 practice. If we lose in state court we will take the case
16 into federal court on habeas corpus, if it is reasonable
17 to do so. And we are currently handling all the
18 Rockefeller Drug Law reform resentencing for our clients
19 and our former clients.

20 The four provider system for appellate advocacy
21 in New York City works extremely well, as Rick was saying
22 before. In the First Department there are three
23 providers. It works extremely well. It eliminates any
24 difficulty that the First Department has in finding an
25 excellent institutional appellate provider to do the work.
26 Very little of it is done by 18-B appellate attorneys.

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2 And, in a way, I would say it is almost a golden age in
3 terms of there being no or very little backlog in terms of
4 getting appeals into court.

5 I could address some of the prior questions that
6 were asked about trial representation.

7 COMMISSIONER KAMINS: Can I interrupt one
8 second?

9 MR. DEAN: Sure.

10 COMMISSIONER KAMINS: Your innocence program.
11 To what do you attribute the reason for finding
12 indications of innocence in as many cases as you find
13 them? Is it hidden documents? Is it prosecutorial
14 misconduct? Is it failure of counsel to investigate? Is
15 it late discovery which prevented such an investigation?
16 We are not talking about counsel trial errors here. We
17 are talking about the information that you see in the
18 record or that has been revealed to you by your client in
19 some form or other that would lead you to believe that
20 there was a question of innocence.

21 MR. DEAN: Actually, what we do is of course we
22 screen all the cases when they come in, but we have a
23 separate screening process that goes side by side with
24 that. If we see there are certain indicia that we look
25 for --

26 COMMISSIONER KAMINS: In the record.

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2 MR. DEAN: No, no. Not just in the record but
3 sometimes in the record. The client, you know, writes us,
4 has been writing us once a week since we have been
5 assigned, asserting innocence, and there seems to be some
6 gravitas to it; if it is a one witness I.D. case, if it is
7 a case that relies on a confession and very little else;
8 if it is a case involving jailhouse snitches. In other
9 words, we look for certain indicia of there being a
10 problem, including relatives coming to us and saying they
11 were never contacted about their alibi testimony and so
12 forth. When those things pop up sort of as a red flag, at
13 that point the case goes through more thorough screening
14 process and may be reinvestigated.

15 COMMISSIONER KAMINS: But I think it is slightly
16 off my question. My question was, ultimately, what in
17 your investigation leads you to conclude as to the cause
18 of the unraised issue?

19 MR. DEAN: There are two principal things. One
20 is ineffective assistance of counsel and the other is
21 prosecutorial misconduct, usually Brady violations. Those
22 are the two principal approaches.

23 COMMISSIONER KAMINS: Now, this commission can
24 really do work with getting counsel to be competent.
25 That's one of our charges, to figure out what we can do if
26 counsel isn't competent to make counsel competent. Brady

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2 violations, we really can't do too much about that because
3 the law is pretty set as to that. But discovery
4 violations and early entry of counsel into the case to do
5 investigation, that is something we can make suggestions
6 with respect to. So how do you think we should focus our
7 attentions with respect to not having to rely on this,
8 doing it right the first time?

9 MR. DEAN: With respect to Brady violations, I
10 don't think what there is to say.

11 COMMISSIONER KAMINS: There is nothing we can do
12 about that. There is really nothing to say.

13 MR. DEAN: In terms of effective assistance of
14 counsel, I think it is a question of adequate funding is
15 the bottom line. Funding -- if you don't have the money,
16 no matter what system you make up and no matter what
17 standards you have, if the money isn't there you are not
18 going to have competent counsel. Unless you come up with
19 a system that guarantees adequate funding from year to
20 year then it is just going to end up in the same place it
21 was before.

22 COMMISSIONER KAMINS: Is there any indication
23 from your examining the records in a case where there is a
24 possibility that the police have failed to conduct proper
25 investigation -- there is a theory that floats that says
26 once the police leave, they have got a guy, they stop

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2 looking and nothing else is investigated? Now, I don't
3 know what we can do about that except to say that a
4 lawyer's responsibility in preparing for trial and
5 investigating the case is to go back to those records of
6 the Police Department, get them unredacted, where they
7 have been redacted, and look at them, but it leads back to
8 the question of early entry and discovery. So are we back
9 to two issues that this commission can deal with; early
10 entry and discovery and counsel training and caseload?

11 MR. DEAN: I think they are two different
12 issues.

13 COMMISSIONER KAMINS: They are two different
14 issues. Can we do something about -- can this commission
15 do something about both of those?

16 MR. DEAN: Honestly? I think you can do
17 something about one of them. But it would be very
18 difficult for you to do something about the other, about
19 the police and prosecutors. I am open here, but I don't
20 really have anything.

21 COMMISSIONER KAMINS: Theoretically it seems to
22 me the lawyers could do something about the prosecutors
23 and the police if there is early entry and early
24 discovery. Is that a misanalysis?

25 MR. DEAN: A lot of our Brady claims concern
26 cases where the documents are not turned over by the

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2 police and even the district attorneys weren't aware. And
3 yet under the law they are responsible.

4 COMMISSIONER KAMINS: We can make a
5 recommendation that the subpoena statute be changed and
6 that the discovery statute be changed. With those two
7 vehicles doesn't indigent defense counsel have a fairer
8 chance of getting the information earlier at a time when
9 there can be the first look the first time to make sure
10 that all the evidence is obtained?

11 MR. DEAN: Yes.

12 COMMISSIONER KAMINS: Okay. Thank you.

13 MR. DEAN: I think that Rick Greenberg was asked
14 about what is the biggest problem in terms of providing
15 indigent representation that we face, and I think he was
16 right on the money when he said getting adequate records
17 from the stenographers. We get records where a day of
18 trial is missing. You know, maybe it was the jury
19 selection and it is gone. It has just disappeared. One
20 witness's testimony is somehow left out for no reason.
21 This is really a constant problem for us, because if
22 portions of the record are missing we have to reconstruct
23 it. It is a huge amount of effort that we have to put
24 into reconstructing something that --

25 CHAIRMAN HELLERSTEIN: What percentage of your
26 cases would you say that you have encountered that?

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2 MR. DEAN: In terms of --

3 CHAIRMAN HELLERSTEIN: Missing records that you
4 had to reconstruct.

5 MR. DEAN: Probably 1 in 5 cases has some sort
6 of problem.

7 CHAIRMAN HELLERSTEIN: Really?

8 MR. DEAN: Not necessarily a problem where the
9 minutes are completely lost, but where when we initially
10 get the record it is missing some actual portion of the
11 record? Yeah, at least 1 in 5.

12 CHAIRMAN HELLERSTEIN: There is a Court of
13 Appeals decision in Antommarchi that contributed to the
14 delay of the production of the record because of the
15 non-availability or availability of the jury voir dire.

16 MR. DEAN: I don't think so. That was a great
17 boon. Now we get the voir dire as a matter of course. We
18 didn't used to get the voir dire. A lot of issues come up
19 in the voir dire. It is amazing that we were stuck prior
20 to 1992 with doing an appeal without having the jury
21 selection transcript available to us. There are a lot of
22 issues that arise not just related to jury selection but
23 often the Ventimiglia and Sandoval and other issues.
24 Motions in limine are discussed during the voir dire.

25 CHAIRMAN HELLERSTEIN: This physical production,
26 the delay in stenographic transcription is because a voir

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2 dire can go for several days.

3 MR. DEAN: I don't think that's it. I think --

4 I really don't think that has anything to do with it.

5 Because a lot of times it is not the voir dire, it is just

6 the third day of testimony or, you know, we get the

7 sentence minutes but we don't get the predicate felony

8 adjudication that occurred the previous time and now we

9 have to wait another three months for that to arrive. It

10 is a very big problem.

11 COMMISSIONER MARKS: I think there could be

12 better record keeping. I mean, sometimes the endorsements

13 and court file papers don't accurately reflect what

14 happened or that there was a change in court reporters and

15 you somehow have to piece that out after you get the

16 record realizing that another court reporter came in and

17 took over. And those minutes weren't ordered by the court

18 in the first place because nobody realized that there was

19 somebody else involved. So if there were clearer way of

20 keeping a record of every proceeding that occurred it

21 would help in the initial order.

22 COMMISSIONER KAMINS: Theoretically there is a

23 way. On the folder the court clerk is, at least in felony

24 cases, the felony court clerk is supposed to list the

25 reporters of the day and sometimes either that doesn't

26 happen or the handwriting is illegible. I share your

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2 frustrations.

3 MR. DEAN: In terms of relying on state funding,
4 I just would like -- there was something stated by the
5 previous witness, which is that we see what happens in
6 Albany every year with the budget and how every year, for
7 example, the Neighborhood Defender Services is eliminated
8 from the executive budget. And for me, anyway, I think I
9 speak for other people that the prospect of our funding
10 funneling through that, you know, funneling through Albany
11 is a prospect that we are not really looking as forward to
12 as the city funding sometimes is. The prospect of
13 financing flowing through the state isn't really exciting
14 us.

15 COMMISSIONER KAMINS: Do you mean getting the
16 funding or waiting for funding?

17 MR. DEAN: Both. I mean, it is bone chilling
18 how -- I mean, I remember 10 years ago when Governor
19 Pataki came in into office and I read the Law Journal and
20 I saw he was eliminating \$10 million from Legal Aid. That
21 was it. He took it right out of the budget.

22 Then there was another year -- this was a city
23 counsel thing, but there was some fight over Yankee
24 Stadium and they didn't adopt the budget. It was six
25 months later, whatever, in New York City, and a lot of --
26 fortunately that didn't effect us directly -- but I think

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2 it really affected Legal Aid and some of the other
3 providers. So delays in funding, lack of predictability
4 in funding, these are just as bad sometimes as inadequate
5 funding. Funding is a big problem.

6 CHAIRMAN HELLERSTEIN: Does your assessment of
7 the quality of 18-B trial counsel in the First Department
8 match the proportion or is it similar to Miss Fahey in the
9 Second Department or is it different?

10 MR. DEAN: No, it is not different. We see
11 transcripts from 18-B and Legal Aid and Bronx Defenders
12 and New York County Defender Services. And really it is
13 true that the organized defenders by and large do a much
14 better job than the 18-B providers. Usually with 18-B
15 there is a definitely a range, but a lot of it is
16 mediocre.

17 I just want to emphasize one additional thing,
18 which is that your success on appeal is very often
19 dependent upon the level of preservation of the record.
20 And preservation of the record requires skill. It is a
21 skill that's different from just the ability to make a
22 good summation. You really have to know how to preserve
23 the record and you have to know what the rules are. And
24 the better lawyers know how to preserve the record better
25 than the poorer lawyers. So what that means is if the
26 defendant has mediocre or inadequate representation at the

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trial level, what you have got is the diminished chance of success on appeal. So that the inequity or the hurt sort of goes beyond what happened at the trial level, which was a conviction, since we have the case. It effects the appeal also because you are stuck with a record where most of the stuff is either unpreserved or barely preserved. It is very, very frustrating for the appellate lawyer.

CHAIRMAN HELLERSTEIN: Thank you. Good to see you.

COMMISSIONER MARKS: Nice to see you.

1 Paul Battiste, Esq.

2 CHAIRMAN HALLERSTEIN: Welcome Mr. Battiste,
3 and thank you for coming.

4 MR. BATTISTE: Thank you, Professor Kamins,
5 members of the Committee.

6 Again, I thank you for the opportunity to
7 appear here today.

8 I've been here for a while and I've listened
9 to a lot of things that have been said, and it's
10 interesting how some of these problems recur no matter
11 where you are.

12 And it's also interesting that there are
13 problems that are unique to each individual locale.

14 I'm going to digress for a moment, in
15 reference to something Lynn Fahey said.

16 The bulk of my career has been spent in
17 Brooklyn, and a good portion of that was on the 18-B
18 panel in Kings County.

19 And while I haven't been in Kings County for
20 approximately seven years, I do recollect that at that
21 time, at least as far as the homicide panel was
22 concerned, I think it had one of the finest homicide
23 18-B panels, and I have two partners who were with me
24 and they have tried hundreds of homicide cases. You
25 had people like Al Brackley, you had people who were
26 just legends.

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2 I also recognize that some of the people who
3 were doing 18-B work were not adequate and I think
4 something has to be done about that.

5 And the fact of the matter is that sometimes
6 judges who are taking part in these trials are the
7 first to see inadequate attorneys.

8 And I know judges do not like to, you know,
9 say anything bad about people, they don't want to
10 affect their livelihoods, but there is a lot at stake
11 here. It's important that judges recognize when people
12 are inadequate that they should not be trying cases and
13 that should be reported to the appropriate screening
14 panels.

15 Now, I remember sitting with Barry Kamins on
16 the screening committee, and often times people who we
17 thought were marginal would come in with letters from
18 highly respected judges indicating that they were
19 qualified to sit on the homicide panel, so I think
20 that's something -- maybe this committee should look
21 into that, maybe there should be some discussions with
22 the judges and maybe there has to be more of an
23 emphasis on quality legal representation and how
24 important it is to have quality legal representation.

25 The other thing, as I was going over some of
26 the material, and this applies to everybody, I think

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2 any of the providers, and I think you have some people
3 who are tremendously, dedicated; you have people in the
4 Legal Aid Society, all the providers they have a
5 tremendous amount of knowledge and experience and
6 training and what they should be doing and what I think
7 we should be doing is, in every contract that is
8 submitted to the City by indigent defense, there should
9 be a portion of it requiring that entity to provide
10 legal training to every other entity within the system,
11 and it should be done on a travelling basis where they
12 go from County to County. But that should be part of
13 it.

14 And again, it is something that would enhance
15 the quality of representation and it would include
16 people from the 18-B panel.

17 Now, in Staten Island we are authorized
18 providers of CLE's.

19 And what we do is we hold meetings and we
20 invite members of the private bar and the 18-B panel to
21 those meetings.

22 And the idea is that quality representation to
23 the indigent is extremely important; it is the
24 responsibility of government to do that.

25 In fact, I just think the fact that this
26 committee has been organized is a credit and is a

1 Paul Battiste, Esq.
2 recognition that quality legal representation to the
3 poor is a responsibility of government.

4 Our laws are meaningless if the people who
5 don't have the means to do so, are unable to assert the
6 rights that we tout.

7 So I think that that is something that can be
8 directly done, that could have a positive impact, and
9 the training that these institutions provide should be
10 done free of charge.

11 CHAIRMAN HALLERSTEIN: Could you briefly
12 describe the Staten Island Legal Defense Association?

13 MR. BATTISTE: Yes, Professor.

14 Professor, we were started in 1997, as a
15 result of a proposal. We have 15 lawyers working for
16 us at the present time, on Monday it will be 16.

17 We provide coverage to the arraignment part in
18 the Criminal Court; to the AP-2 Part in the Criminal
19 Court, and we also provide coverage in the Supreme
20 Court.

21 One of the big problems we have in Staten
22 Island, and I don't mean to be provincial, is the court
23 facility.

24 We take in approximately 9,000 cases per year.
25 The vast majority of our cases come in through the
26 arraignment part.

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2 The building is on Targee Street, and it
3 consists of two basic courtrooms, one is the AP-1
4 courtroom which serves as an arraignment part, and also
5 serves as a calendar part and a felony-waiver part.

6 AP-2 does non-jury trials, jury trials,
7 calendars, domestic violence, and anything else that
8 comes in the door.

9 There is also almost a closet-sized space on
10 the second floor and it's used for hearings. And often
11 times it's used for the integrated domestic -- I'm
12 sorry -- for the treatment court.

13 We provide staffing to the treatment court; to
14 the integrated domestic violence part; and we also
15 handle most of the violations of probation in Supreme
16 Court, as well as the sex offender registry cases.

17 But the real problem is in that Criminal
18 Court, there is no interview space; there is no place
19 where you can sit down with your client and have a
20 confidential conversation with them.

21 Some of the people here today talked about
22 representing indigent people, and there was a question
23 about whether or not it's easier to represent the
24 private client or an indigent client.

25 Well, I'm of the opinion that it's more
26 difficult to represent an indigent client. Many of our

1 Paul Battiste, Esq.
2 clients who are poor, have been kicked around pretty
3 bad. Some of them have psychological issues, some of
4 them are very mistrustful of anybody who speaks to
5 them. Some of them have really had a bad time of it
6 and it takes a very special person in many instances to
7 be able to communicate with these individuals.

8 It's sometimes easy to turn around and get
9 angry and to fire back at them, but if you take a step
10 back, you realize that they need an awful lot of
11 understanding.

12 Well, in the Criminal Court, since there's no
13 interview space to speak to clients at this arraignment
14 process, what happens is they are packed into a ten by
15 ten and the interview process consists of standing in
16 front of that pen, and speaking to the client.

17 But you're not only speaking to the client,
18 you're speaking to the rest of the people in that pen.

19 There's no privacy.

20 And if you think of an individual who has been
21 arrested for the first time coming up through this
22 process, he's scared he's brought up the stairs into
23 this pen and he meets an individual he never met before
24 and he's asked to talk about private things and he's --
25 yet you have to speak to him about felony waivers and
26 180-80, and things like that, it's an impossible task.

1 Paul Battiste, Esq.

2 The situation doesn't meet Constitutional
3 muster, it really doesn't.

4 And the one thing we would ask this commission
5 to do or any members of this commission is to come out
6 to Staten Island and see what is actually going on
7 there in terms of that facility, because there has to
8 be a change there.

9 Now, we have spoken to the City, to the Office
10 of Court Administration.

11 We have been told there's going to be a new
12 court house, and I suspect somewhere along the line
13 there will be. I don't know if it will be in my
14 lifetime, but there will be.

15 The long and the short of it, is we need a
16 short term solution and the short term solution is
17 somebody to take the bull by the horns and get us some
18 interview space in the Criminal Court.

19 I'll tell you, in the Supreme Court it's no
20 better. There's no interview space in the Supreme
21 Court. We're able to operate to some degree because
22 you get the Court Officers or the Corrections Officer
23 to separate the client, and it's extremely difficult
24 especially when you're on trial.

25 CHAIRMAN HALLERSTEIN: Is it your view that
26 one or both of those courthouses, with the architect

1 Paul Battiste, Esq.
2 who is adequate to the task, there is space that could
3 be redesigned to accommodate that?

4 MR. BATTISTE: What we have suggested, and I
5 know it won't be easy as far as the Criminal Court is
6 concerned, is that portables be brought in and some of
7 the more ministerial things be taken out of the
8 courthouse and put into those portables.

9 There's a wide-open space in back of the
10 courthouse, and whatever room would be freed up, it
11 could be used to make interview space.

12 It's essential. It has to be done.

13 Even AP-2 has no interview space.

14 We do not have a space in that court.

15 You know what we have as a space? A
16 four-by-four desk.

17 They did try to make some sort of arrangement;
18 they brought in a little box that they put in the
19 middle of the courtroom.

20 But the effect of that was to make our
21 eight-by-four desk a four-by-four desk because they
22 took the space away from us and it's totally unusable,
23 especially when things are moving very rapidly. It's
24 not connected to the holding pen so it's rarely used.

25 So that is basically a problem we have in
26 Staten Island.

1 Paul Battiste, Esq.

2 Now, a lot of the other things that have been
3 discussed here we're in agreement that -- yes.

4 A PANEL MEMBER: Lawrence Goldman.

5 I think your program functions a little bit
6 different than the other projects. You're a group of
7 private attorneys. Is that correct?

8 MR. BATTISTE: No, we're not private
9 attorneys. We're a not for profit corporation, and we
10 have a staff of, as I said, 16 lawyers.

11 We have a social worker on staff, an
12 investigator, we also have a courtroom advocate who we
13 utilize in the court.

14 A PANEL MEMBER: Are these attorneys
15 full-time?

16 MR. BATTISTE: Yes.

17 A PANEL MEMBER: Okay.

18 MR. BATTISTE: As far as some of the other
19 things we are in agreement.

20 The funding; there should be some mechanism to
21 adjust funding as needed.

22 I know you've heard about the various
23 specialty courts.

24 We were instrumental or we were very much a
25 part of the treatment court. We were in it from the
26 start, and I think that's very positive.

1 Paul Battiste, Esq.

2 I think that's something that should always be
3 done.

4 The defense should be included whenever these
5 specialty courts arise.

6 Even though I recognize we don't have the
7 right to say, "No" to them, by the same token we should
8 have input.

9 The integrated domestic violence part in our
10 borough, we were at least consulted on that; there were
11 meetings and we were able to indicate some of the
12 problems that we had encountered.

13 I think we have had a positive impact in
14 Staten Island.

15 When we first came to the Island -- and this
16 goes along with the idea that sometimes you need an
17 oversight committee or a group that looks into the
18 individual needs of a particular community -- in Staten
19 Island up until the time we got there, weekend
20 arraignments were conducted in Kings County.

21 As a result of that, what happened is you had
22 many clients who would stay in jail 48, 72, hours at a
23 time.

24 We approached a number of elected officials;
25 we spoke to the DA Bill Murphy; we also approached
26 Judge Kluger and the City. That changed. They

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2 realized there was a need, a need to have weekend
3 arraignments on Staten Island and that did occur.

4 The point is, if you think about it from an
5 economic standpoint, it may well have been that it was
6 cheaper to do arraignments in Kings County, but the
7 fact of the matter is, it's not right, it's wrong; it's
8 wrong for the people to spend that much time awaiting
9 arraignment.

10 So bottom line is; justice sometimes requires
11 an outlay of money.

12 If there are any other questions?

13 CHAIRMAN HALLERSTEIN: Thank you.

14 A PANEL MEMBER: My name is Christopher Chan.

15 Listening to your presentation there, I just
16 can't help thinking maybe we're approaching this all
17 wrong.

18 It appears to me that your 16 attorneys have
19 to interview each of the clients individually; explain
20 what the criminal process is from being arrested; to
21 what an arraignment is; to what a Grand Jury
22 presentation is; what a 180.80 is.

23 Would it be totally off the wall if, I can get
24 your opinion, say if we had a videotape in English,
25 Spanish, other languages, you had a video machine at
26 lockup so every time somebody got arrested they would

1 Paul Battiste, Esq.
2 be able to see this videotape?

3 MR. BATTISTE: I think that probably would be
4 helpful.

5 We have put together a couple of memoranda
6 that we intend to hand to the clients in misdemeanor
7 and felony cases explaining the process.

8 I think that might be of some help, but again,
9 the important thing in dealing with indigent clients is
10 developing a relationship.

11 I don't know that a tape is going to develop
12 that kind of relationship.

13 A PANEL MEMBER: Or it's different from basic
14 information, the things you need for bail, you should
15 know the family, the family should gather when the
16 arraignment does come up, when an arraignment
17 application comes up to prepare, I think it would be
18 more efficient.

19 MR. BATTISTE: I certainly think that would be
20 helpful.

21 Thank you.

22 (Whereupon Sara Stanley was relieved by Lester
23 Isaacs, as Official Court Reporter.)

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3 PROFESSOR HELLERSTEIN: Dr. Blakely, thank
4 you for appearing. Can you describe your function in
5 your orientation.

6 DR. DELOIS BLAKELY: Thank you, I will.

7 Thank you, Mr. Chairman.

8 In the spirit of our ancestors, I just ask
9 for a minute or just a reflection on one of our
10 ancestors that joined the ancestors of our people,
11 Ozzie Davis. If he was here, you would know he would
12 be currently moved about many of the concerns that I
13 bring forward in this hearing of our ancestors, as
14 Queen Mother, more to the spirit of our ancestors in
15 African Burial Grounds that come before you.

16 I, Queen Mother, Dr. Delois Blakely,
17 Community Mayor of Harlem. First I would like to thank
18 the New York State Commission on the Future of Indigent
19 Defense Services. I am testifying on a case that I
20 participated in court on December 1st, 2004, for the
21 sentencing in the case The State of Maryland versus
22 Mark Dobbins and Levi Woods, case number 3C 224354.
23 Mr. Levi Woods was sentenced to 18 months in jail
24 suspending all but one month of this term. The Judge
25 also directed Woods to pay \$155 in fines and fees.
26 Incarceration began on December the 8th 2004, for

1 Dr. Delois Blakely
2 obstruction and hindering the police and from carrying
3 a concealed deadly weapon, a lead pipe. The Judge
4 found him not guilty of failing to obey a police
5 Officer's order. A most inequitable, and unjust
6 sentence -- incarceration over a disputed traffic stop.
7 Considering that blood was not spilled here, we believe
8 that Mr. Woods received punishment that was most harsh
9 in comparison to his crime.

10 I, Queen Mother, Dr. Delois Blakely, ask that
11 this commission review and study such cases that show
12 racial profiling based on race, black male, and driving
13 a Mercedes.

14 In this report, I did bring before you a copy
15 of the Baltimoreson Newspaper that cites Judge convicts
16 two men in dispute of traffic stop. Racial profiling
17 alleged in Baltimore County incident.

18 In our judicial system it seems as though we
19 are operating as a business with double standards in
20 dealing with the law. If there is fairness in our
21 legal system fifty percent of incarcerations are whites
22 and fifty percent are blacks and others. Unfairness of
23 the legal system where it shows that ninety percent are
24 minorities and ten percent are whites. Is there
25 something wrong with this? When the majority of the
26 population is white. Why is it that most of the time

1 Dr. Delois Blakely
2 they punish attorneys with strong characteristics and
3 often times come from non-white communities that
4 represent the overwhelming incarceration of non-whites.
5 I witnessed this based on an unfair and unjust system.

6 I have witnessed in the Courts on many
7 occasions where defendants mostly black and brown are
8 being herded, misguided in understanding simple terms
9 such as "pleading guilty" or "not guilty" without
10 proper qualified counsel. Therefore, most of the
11 defendants plead guilty unnecessarily due to a lack of
12 knowledge and understanding of basic laws and their
13 legal rights.

14 I have been involved in and out of the penal
15 system, which is not cited in this statement here or in
16 the testimony. But I want to go on the record to state
17 over the years of just going to Rikers Island, which is
18 about 12 minutes from 125th Street, where our former
19 President Bill Clinton has an office. And going to
20 Rikers Island it has a staggering effect for me it
21 started since 1958, and then reverting. And now in the
22 90s, it is still staggering what I witness and what I
23 see. When I go to the tombs, which is next to the
24 criminal justice court house and in the vicinity of
25 other court houses, as well as the seat of government,
26 the City Hall, and the daily business of concern for

1 Dr. Delois Blakely
2 human kind. Again, it is staggering to watch. It is
3 devastating for me to see black and brown males and
4 their children brought forward in the prison, in their
5 arms with mothers, and their mothers would be felt or
6 their breasts felt in that penal system.

7 I, Queen Mother Dr. Blakely, am the Community
8 Mayor of Harlem worked in the community for more than
9 40 years. I was a Roman Catholic Nun for ten years
10 and thirty years as a community leader and activist.

11 I completed my first year of graduate studies
12 at MIT and was a Community Fellow. I received a Masters
13 degree in education from Harvard, and then received a
14 Masters degree and doctorate degree in education from
15 Columbia University. I also was a Fulbright scholar
16 and have served on many boards and committees and
17 received numerous awards for my community service.

18 Again, I would like to state for the record,
19 being involved in the United States for 30 years and
20 being in and out of many countries around the world,
21 and then looking at our country. When you talk about
22 the Criminal International Court that has been
23 established, what role we play in the world community
24 to resolve many of the staggering problems that we face
25 today, which I would see as an apartheid system after
26 visiting South Africa many years ago and when Nelson

1 Dr. Delois Blakely

2 Mandela was still in government.

3 In conclusion, I strongly urge this
4 Commission to review the Judicial system and its
5 proceedings in handling the services of the defendants
6 arrest procedures, prosecuting standards and court
7 appointed defense counsel actions, and sentencing
8 procedures.

9 I would like to thank you for allowing me to
10 come before you. I am not a counsel, but I do go in
11 and out of the court from the lowest to the highest in
12 this land and I look at it from a pro se perspective.
13 I'm hearing today and witnessing the skills and the
14 wealth of resources that we have right here in this
15 room. And in terms of knowledge and understanding the
16 legal system, I plead with you, and I beg with you in
17 the spirit of those who are not here to represent
18 themselves this afternoon. Please consider the
19 revision that you must, based on accountability and
20 responsibilities and your wisdom.

21 I thank you for allowing me to appear before
22 you again.

23 I thank you.

24 PROFESSOR HELLERSTEIN: We thank you.

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2 CHAIRMAN HELLERSTEIN: Mr. Warren.

3 MR. WARREN: Good afternoon.

4 CHAIRMAN HELLERSTEIN: Welcome.

5 MR. WARREN: I did have the opportunity to eat
6 lunch, but I am probably only slightly more alert at this
7 point of the day.

8 Thank you very much for agreeing to hear my
9 testimony. My name is Vincent Warren. I am senior staff
10 counsel to the American Civil Liberties Union Foundation.
11 I work in the national office and not in the New York
12 Civil Liberties office. You will be hearing from Donna
13 Lieberman and Dawn Yuster from the New York Civil
14 Liberties office after I am going to speak.

15 I have been a practicing attorney for 11 years,
16 the first five of which I spent with the Legal Aid Society
17 Criminal Defense Division in Brooklyn. I am very pleased
18 to be before you today to discuss the ACLU's recent
19 indigent defense reform work and to put the future of the
20 State of New York indigent defense in the national
21 context. So I think my testimony is going to be slightly
22 different from what you have been hearing otherwise.

23 The ACLU's commitment to insuring adequate
24 defense to the indigent dates back to the 1930s with our
25 involvement in Powell versus Alabama. Since then we have
26 vigorously fought to balance the scales of justice for

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those who don't have the financial means to afford zealous advocates.

In the 1980s the ACLU and other attorneys litigated the case of Lucky versus Harris, which stands today as a landmark decision recognizing the ability of indigent defendants to sue for prospective injunctive relief to remedy systemic deficiencies in indigent defense representation.

Let me just stop here and say a large part of my docket at the ACLU is criminal justice reform, and I sue, along with my colleagues, states, counties and various entities that are responsible for the provision of indigent defense services in order to get better resources and better oversight for those systems.

In the 1990s the ACLU sued the State of Connecticut for failure it adequately fund their statewide public defender system. The ACLU services sued Allegheny County, which encompasses Pittsburgh, for the same reasons. Both of those cases settled on terms that were very favorable to the plaintiff insofar as they resulted in significant additional resources flowing from the state, in the Connecticut case, and from Allegheny County, in the county case, towards the public defender office. It resulted in an increase of approximately a third of the budget for -- I believe it was the Connecticut public

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2 defender office. There was an increased oversight and
3 increased management skills that were then available to
4 the systems that we changed.

5 Within the last year the ACLU has filed class
6 action lawsuits in Grant County, Washington, as well as in
7 Lamden County, Massachusetts. The Washington case is a
8 change to a low bid contract system in a particular
9 county. That case is still pending. The Massachusetts
10 case, on the other hand, there is a recent decision by the
11 Supreme Court of Massachusetts that found that inadequate
12 funding for local public defenders resulted in long
13 delays, excessive delays in appointments, thereby
14 depriving the clients of adequate representation and their
15 constitutional rights.

16 To remedy those violations the court ordered the
17 release of any detained client in the county who was not
18 appointed counsel within seven days of arrest. The court
19 further ordered the dismissal of the charges against
20 clients who were not appointed counsel within 45 days of
21 arrest. That case I look at as an extreme version of what
22 happened here in New York in terms of the New York County
23 lawsuit that was filed here in New York City.

24 Currently I am plaintiff counsel in a class
25 action lawsuit that we filed in 1992 seeking to reform the
26 indigent defense system in the State of Montana. In that

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2 suit the ACLU, along with the firm of Cravath, Swain &
3 Moore here in New York, represent a class of current and
4 future indigent defense clients in 7 counties. You might
5 be wondering what does Montana have to do with the work of
6 the commission that you all will be doing. To a certain
7 extent you are right. Montanans and New Yorkers might not
8 have a great deal in common. For one thing, the bagels
9 taste better here and the bison tastes better there. But
10 there is one thing that both states do have in common.
11 They both contain and have contained for years woefully
12 underfunded, stewardless and neglected indigent defense
13 systems.

14 I don't know if you all had a chance to look at
15 it, but today the American Bar Association issued its
16 report called Gideon's Broken Promise; America's Continued
17 Quest for Equal Justice, based upon hearings that the
18 American Bar Association had around the country starting
19 in 2001 and 2002, I believe. I recommend that report to
20 the commission if you have not had a chance to look at it.
21 I think the report's findings with respect to New York and
22 Montana are strikingly similar in many respects.

23 I want to talk to you a little bit about what
24 I've found in my looking at New York State and the
25 similarities in what has been going on in Montana.

26 Last spring our Montana case was scheduled to go

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2 to trial. The state attorney general who was defending
3 the case approached us with the following offer. If the
4 ACLU agreed to suspended the lawsuit during the current
5 legislative session the attorney general and his clients,
6 which include a large county, 17 judges, the Appellate
7 Defender Commission, the governor and the chief justice of
8 the Montana Supreme Court in her administrative capacity,
9 that all of those entities would advocate for a statewide
10 system that included necessary funding, resources and
11 oversight to ensure that the state complied with the
12 mandates of the Sixth Amendment.

13 Being trained as a public defender and knowing a
14 good deal when I saw one, I took it. Allow me to explain
15 to this commission what it took the state of Montana two
16 years of litigation to understand; that Gideon versus
17 Wainwright and the cases that follow it require that
18 states not simply provide indigent defense legal services
19 but require them to insure that indigent persons are
20 afforded qualified counsel that are capable of providing
21 constitutionally adequate defense. This means that New
22 York must insure that lawyers who represent the poor in a
23 criminal context are knowledgeable of the law, skilled
24 advocates, are provided the necessary tools for adequate
25 defense, and must be ready, willing and able to bring
26 those tools to bear on behalf of each and every client

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2 that they represent.

3 New York State does not comply with this bedrock
4 constitutional mandate, nor does it comply with
5 established national standards governing the provisions of
6 indigent defense services. And I am going to reference in
7 some my remaining remarks the -- I call them the ten
8 commandments, probably because I am with the ACLU, but it
9 is the ten principles of indigent defense, which I am sure
10 you are all aware.

11 Like Montana, New York cannot be really
12 considered an indigent defense system. Rather it is a 35
13 year-old patchwork quilt of uncoordinated delivery
14 programs starved of necessary funds, lacking oversight and
15 geared more towards cost savings than for providing legal
16 services that its clients desperately need.

17 Let me just stop here for a second. I am well
18 aware of the differences in the delivery and in the types
19 of -- perhaps the types of lawyers and the skill of
20 lawyers downstate and upstate. I am going to be
21 addressing my remark in terms of a statewide system not
22 specifically here for New York City, because I think New
23 York City in a lot of ways is different, although it does
24 suffer from many of the same problems that I am going to
25 be talking with you about.

26 Like Montana, New York State has failed to

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2 adequately fund the provision of indigent defense
3 services. It has not assumed full responsibility for
4 indigent defense services in misdemeanor and in felony
5 courts. This responsibility has fallen, like in Montana,
6 to the counties. Montana counties and New York counties
7 are both severely squeezed on funding. They seek to hold
8 down indigent defense costs by severely limiting the
9 public defender budget and looking to lawyers who will low
10 bid their services under flat fee contracts. This notion
11 of underfunding the indigent defense system violates ABA
12 principle number 2.

13 Like Montana, New York's failure to adequately
14 fund indigent defense services has resulted in woefully
15 inadequate resources for indigent defense, particularly as
16 compared to those available to the prosecution. Public
17 defenders in many counties must pay for their own office
18 overhead, computers, software, telephones, photocopying,
19 secretarial and paralegal assistance. Those are items
20 that they couldn't forward to go without.

21 Like Montana, indigent defense services in New
22 York are not sufficiently independent or free from undue
23 political interference. The judiciary, the county
24 commissioners and the assignment panels largely control
25 indigent defense in many counties by appointing counsel,
26 approving attorney compensation, and/or reviewing the use

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2 of experts and investigators. Judges are free to deny
3 public defenders additional compensation or complex cases
4 and subject the use of experts and investigators in some
5 circumstances to limits that are just not applicable to
6 the prosecution. This is in violation of the ABA
7 principle number 1.

8 Like Montana, New York has failed to insure that
9 only qualified counsel represent defendants and that
10 public defenders receive the training necessary to perform
11 competently. I should just point out in the ABA report
12 that was issued today, in a synopsis of Montana and New
13 York the report noted that both of those states were
14 states in which there was no systemic uniform criteria for
15 hiring or for training. Many attorneys are assigned to
16 cases with no regard for their level of experience or area
17 of expertise. Attorneys are often forced to learn on the
18 job or not at all as the state does not provide any
19 orientation program for newly hired public defenders and
20 or any systemic or comprehensive training or technical
21 assistance.

22 Like Montana, in New York there is no uniform
23 system for determining eligibility for indigent defense
24 and appointing public defenders in a timely manner.
25 Screening for indigency varies from county to county,
26 resulting in abuses in the system, resulting in delays in

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2 appointments. And initiation of client contact -- excuse
3 me. And delays in initiation of client contact are
4 ubiquitous throughout the state. In many areas of the
5 state public defenders in New York are not supervised in
6 any meaningful way or monitored for compliance with any
7 uniform standards. There are no uniform standards
8 governing the standards to his other clients, conflicts of
9 interest, use of investigators and experts, right to
10 speedy trial, plea bargaining or requesting of
11 continuances.

12 It is my view because of these and other
13 systemic deficiencies that indigent clients in New York
14 are not receiving the counsel that they are
15 constitutionally and statutorily entitled to.

16 However, there is another difference between
17 Montana and New York. That difference is that Montana is,
18 as we speak, considering and creating a statewide public
19 defender system to remedy the longstanding deficiencies in
20 their state. Its current version of the bill that the
21 ACLU is working with the legislators on includes full
22 state funding, a statewide public defender office, an
23 independent public defender commission, issuance of
24 comprehensive statewide indigent defense standards,
25 uniform caseload and workload data collection and
26 monitoring, statewide indigent training program and

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2 uniform eligibility standards. I set forth those areas
3 because I think those are going to be areas that this
4 commission will be looking at or looking into as you
5 proceed. And I don't presume to tell you sitting here
6 which one or whether any or all of them are going to be
7 appropriate for your recommendations. However, I do
8 suspect that a great many of those proposals would be well
9 considered by this panel.

10 Anyway, it took the ACLU to file a lawsuit in
11 Montana for the state to finally confront and remedy the
12 systemic deficiencies in its indigent defense programs.
13 It is my sincere hope that New York State takes meaningful
14 and immediate steps, assisted by this commission, to
15 remedy these deficiencies here and now to avoid the
16 costliness of further litigation in New York on behalf of
17 indigent clients.

18 Thank you.

19 COMMISSIONER KAMINS: Without violating any
20 principles of confidentiality, can you tell us whether --
21 you mentioned litigation involving New York. Can you tell
22 us whether any is being contemplated by the ACLU or --

23 MR. WARREN: Yes, I can tell you that.

24 One of the things that we do is we litigate.
25 And we litigate where we see problems. And there is no
26 secret that New York is in real trouble. The question,

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2 and I will speak from the national perspective, you will
3 be hearing from the New York Civil Liberties Union, from a
4 national perspective I personally think that New York is
5 ripe for a lawsuit not just focused on New York or
6 downstate, but focused on many of the upstate and rural
7 counties. The facts that have come across my desk are
8 very similar to facts in cases where we have successfully
9 litigated. At this point after all of these years I don't
10 necessarily see a downside to litigation. After all,
11 there was some movement after the New York County Lawyers
12 lawsuit in terms of the 18-B rates. And I think it had a
13 profound effect on the budget, certainly. Perhaps a more
14 limited effect in terms of systemic reform. But it seems
15 to me that litigation is going to be one of the areas that
16 the state has to really be concerned about as it moves
17 forward.

18 CHAIRMAN HELLERSTEIN: It took you 13 years to
19 get where you are in Montana?

20 MR. WARREN: Pretty much.

21 CHAIRMAN HELLERSTEIN: Montana suit was filed in
22 '92?

23 MR. WARREN: No, the Montana suit was filed in
24 2002. It has only been two years. It has only been two
25 years.

26 COMMISSIONER ZEIDMAN: If I might, very briefly.

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2 I heard you make reference to low ball
3 contracts. I am just wondering if as a general
4 proposition, meaning if you were starting with a blank
5 slate, is it your sense that you favor or support public
6 defenders over individually assigned counsel over contract
7 providers or is it more depending on the particular state?

8 MR. WARREN: I think it is not necessarily
9 dependent on the state, but I think it is dependent on the
10 jurisdiction. So, for example, what happens in an urban
11 area will be different than what happens in a rural area.
12 In a rural area you won't have the same volume of
13 attorneys that are either willing or want to do that type
14 of practice. And in some of those areas you can't set up,
15 for example, an institutional provider. There just aren't
16 the people to do it. Contracts are fine. Appointed
17 counsel is fine. What is problematic is when those
18 systems are designed as primarily cost cutting methods.
19 And one of the things, I will just say briefly, that we
20 have proposed and are drafting in Montana is to have a
21 statewide entity be responsible. Not the local, not the
22 judges, not the local government, but a statewide entity
23 be responsible pursuant to objective hiring and
24 contracting standards, responsible for screening lawyers
25 that are eligible for contracts, doing away with flat fee
26 contracts, paying lawyers not just -- because I think when

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2 people think about lawyers and fees, they think how much
3 money is the lawyer getting paid. When in reality the
4 fees that go to the lawyer are also funding that lawyer's
5 practice. So it is not about how much this lawyer put in
6 the pocket, it is how much does that -- how much are you
7 funding the system when you pay the lawyer. So flat fee
8 contracts are, I think, in my view, inherently
9 problematic. But there may very well be circumstances
10 under which contracts are appropriate in some areas of the
11 state.

12 CHAIRMAN HELLERSTEIN: Is the Montana plan that
13 you are contemplating, is it being contemplated -- will
14 that -- since Montana is quite a different state from
15 ours, but it has some large cities, Mizzoula, is that
16 going to include a system of different types of delivery
17 of service according to population density?

18 MR. WARREN: Yes. Like New York, Montana has
19 the three main systems; contracts, public defender offices
20 and appointed counsel.

21 CHAIRMAN HELLERSTEIN: You think that system can
22 be adopted adequately, or better, rather than a single
23 type of defense model?

24 MR. WARREN: I think that because Montana is so
25 rural that they will have to come up with different models
26 to provide services to different areas. There are five

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counties, for example, in which judges ride circuit from county TO County. They have six felony filings in one particular county, so a public defender isn't going to work. But they are setting up regional offices which will then supervise the contracting of individual attorneys in larger jurisdictions, so I think it will work there.

CHAIRMAN HELLERSTEIN: Thank you, Mr. Warren.

1 Donna Lieberman, Esq.

2 CHAIRMAN HALLERSTEIN: Miss Yuster, Miss
3 Lieberman.

4 MS. LIEBERMAN: Thank you.

5 At this late hour it's good to see you and
6 thanks for the opportunity to testify before the
7 Commission.

8 I'm Donna Lieberman.

9 I'm the Executor Director of the New New York
10 Civil Liberties Union, and I have with me, Dawn Yuster,
11 who is the project counsel on this matter.

12 The New York ACLU has a long history of
13 dedication and advocacy in litigation for fundamental
14 rights, and that includes, of course, the right to
15 counsel under the Federal and State Constitutions.

16 But when we talk about the right of indigent
17 defendants to adequate counsel, we're talking not just
18 about basic fairness, we are talking about an issue
19 that has profound racial implications, and it's a
20 matter of racial justice and equality as well.

21 I'd like to commend Judge Kay for creating the
22 Commission and charging it with the top-to-bottom
23 review of the delivery of indigent defense services
24 statewide. It's long overdue as we all know, and we
25 are hopeful that the Commission will come up with what
26 we need, which is a blueprint for systemic reform.

1 Donna Lieberman, Esq.

2 For the past year-and-a-half the New York
3 Civil Liberties Union, has been conducting
4 investigations into complaints that we have received
5 about the delivery of indigent defense services around
6 the State.

7 We have been focused in Albany, Onondaga
8 County, and Schenectady.

9 We will be testifying at hearings in those
10 locations about what we have uncovered in those
11 investigations, so I won't go into that.

12 But what we have learned just in general, is
13 that the defendants are being systematically deprived
14 of their right to adequate effective representation.

15 And we have also concluded, and I can't
16 imagine anyone disagreeing, that without a commitment
17 on the part of the Governor and the Legislature to
18 remedy the shameful state of affairs, the goals for
19 this Commission will be simply aspirational and we
20 won't see any effective change.

21 I was interested to hear your question to my
22 colleague Vince Warren about whether we are
23 contemplating litigation.

24 You don't have to ask me. Yes, we are
25 contemplating litigation, and we're preparing for
26 litigation.

1 Donna Lieberman, Esq.

2 That doesn't mean we're litigating tomorrow.

3 That doesn't mean we're even litigating next month.

4 But the Civil Liberties Union is mindful of
5 the fact that the Commission has been going on for
6 several months now; that the problem has been going on
7 for decades; and by the way it's just so, recounting
8 the horrors that I will repeat, and others have been
9 saying all day, and that are true, it's so reminiscent
10 of the demands of the first Legal Aid strike back --
11 when was it -- in 1973 or thereabouts, where the Legal
12 Aid Lawyers' Union fought so hard for equality of
13 representations, and we felt we had done -- I wasn't in
14 that strike I was in subsequent strikes -- but the
15 Legal Aid lawyers who worked so long, so hard to be
16 able to represent our clients in a professional manner
17 and to respect their right to counsel, accomplished
18 enormous amount here in New York City -- but there
19 isn't the same constituency of lawyers to get together
20 and advocate for their clients around the State; there
21 isn't pockets; and I think this Commission's work is to
22 serve that function.

23 Our investigation has involved a lot of
24 conversations and research involving criminal defense
25 lawyers and defendants and advocates.

26 We have also undertaken a lot of site visits

1 Donna Lieberman, Esq.
2 and observations so that we can see first hand what's
3 going on in the counties where we have been.

4 We have found wherever we have gone that the
5 lawyers who are charged with providing defense for
6 indigent clients are poorly paid; overworked; there are
7 not enough lawyers; there is not enough support staff;
8 they don't have access to the experts or investigators
9 that they need; attorneys are underpaid, and they don't
10 have the uniform or even a modicum of training,
11 supervision, and technical support that they need to
12 provide adequate representation to indigent clients.

13 As a result of the overwhelming and
14 system-wide failures that we have seen wherever we have
15 been, we see lawyers not, in fact, acting as
16 adversaries; we see indigent defendants spending
17 enormous amounts of time that they shouldn't be in jail
18 prior to trial because either their defense lawyers are
19 ill prepared to advocate against pre-trial
20 incarceration, don't make routine bail reduction
21 applications, or seek continuances constantly because
22 they don't have the time to prepare the defense that
23 they have to do; the investigation that they have to
24 do; the research that is necessary to mount a defense.

25 We find that defense lawyers fail to visit
26 their clients for weeks, even months at a time; they

1 Donna Lieberman, Esq.
2 don't accept phone calls which are only collect
3 typically; they don't initiate phone calls; they don't
4 meet with defendants prior to court appearances; and
5 they don't even communicate adequately with non-English
6 speaking clients for lack of translation services or
7 ability to communicate themselves in that language.

8 Indeed, and stunningly, our observers have
9 witnessed court proceedings that have gone on involving
10 indigent defendants who are not English speaking
11 without any court interpreters present, so it's not in
12 just the lawyering part, the preparation part, but even
13 in the actual court proceedings that we have seen a
14 lack of interpreters.

15 We see lawyers who forego, don't bother with
16 or can't pursue meritorious defenses that are available
17 in a particular case for lack of resources.

18 Or we see defendants routinely waiving their
19 right to trial or other due process protections without
20 understanding what's going on, and with inadequate
21 counsel.

22 Whatever we can say about the built-in
23 pressure to take a plea to dispose of a case, that
24 pressure is increased incredibly when counsel is
25 underfunded, underprepared, and underresourced.

26 A PANEL MEMBER: Steven Zeidman.

1 Donna Lieberman, Esq.

2 Is it your sense that what you are describing
3 is more a matter of lack of resources, or you're also
4 talking about burned out, not particularly dedicated
5 lawyers?

6 MS. LIEBERMAN: No, we're not talking about --
7 lack of resources and overwork, you know, is certainly
8 an invitation to burnout.

9 But what we're talking about is a system that
10 is underfunded. That means there aren't enough lawyers
11 to do the work that has to be done. People have case
12 loads that are too high. If you can't get an
13 investigator to check out what went on, right? Then
14 you can't adequately prepare a case.

15 If you can't get a translator, then you can't
16 adequately prepare a case.

17 If you can't get experts, you can't adequately
18 prepare a case.

19 Sure burnout is always a factor.

20 It's a factor at Legal Aid where there's a
21 whole structure in place.

22 But that's not the problem.

23 Here we're talking about a systematic lack, a
24 systemic underfunding and built-in lack of resources
25 that is responsible for the problems.

26 A PANEL MEMBER: Steven Zeidman.

1 Donna Lieberman, Esq.

2 I was not trying to say the problem is more
3 the lawyers.

4 I was just trying to figure out where that
5 fits, because we heard snippets of things which seem to
6 suggest there are some people doing the work who really
7 had the resources; really couldn't care less about
8 their clients.

9 I'm not saying that supersedes the problem;
10 that gets what makes the ideal public defender.

11 So if we got the resources, would we get
12 people so passionate about the work who go out at 5:00
13 in the morning to see their clients?

14 MS. LIEBERMAN: I'm not sure you'll get them
15 to go out at 5:00 in the morning, but they do go out
16 and see their clients is what you'll get when you have
17 standards and training and supervision. Right now you
18 don't have that.

19 A PANEL MEMBER: Klaus Eppler.

20 You said without the help of the Legislature
21 and the Mayor?

22 THE WITNESS: The governor.

23 A PANEL MEMBER: My perception is, some of it
24 from what we heard here today, is the fact that the
25 court system in some instances put in standards,
26 standards in the First Department; my perception is

1 Donna Lieberman, Esq.
2 those did result in the organizations and the
3 individuals who provide indigent defense services being
4 able to, in effect, push the Legislature and executive
5 branch into providing funds to meet those standards.

6 Do you have any comment on that or you stick
7 by your statement that the courts can't do anything?

8 MS. LIEBERMAN: Well, I didn't say that the
9 courts can't do anything.

10 I said that the courts alone can't solve the
11 problem.

12 You're not going to find defense lawyers to
13 handle cases, if they're not getting paid to do it, and
14 if they're not getting paid at a reasonable rate.

15 You're not going to find defense lawyers to be
16 quality defense lawyers across the board if there's no
17 provision no support for training and technical
18 assistance.

19 A PANEL MEMBER: Klaus Eppler.

20 If the court rules require that anyone who
21 appears either in an institutional setting or in an
22 assigned counsel setting is required to have
23 supervision, standards -- standards of supervision,
24 training, et cetera, doesn't that lead to what you're
25 talking about?

26 MS. LIEBERMAN: If you're asking me does that

1 Donna Lieberman, Esq.

2 help?

3 Sure it helps.

4 But it's not the answer.

5 It's not going to be the solution because
6 you're not going to be able to effect those standards
7 unless there are resources provided statewide to make
8 it all possible.

9 It's just -- I mean there's a disconnect
10 there, you know.

11 I mean, you can order it to happen, but if
12 there are no lawyers who -- and there's no money to
13 make it happen, how is it going to happen?

14 MS. YUSTER: Let me remind the folks about the
15 union president who spoke earlier.

16 Even with the First Department oversight, and
17 with the standards in their contract, they're not
18 getting anywhere because they're not being funded high
19 enough.

20 So that they are underresourced and
21 understaffed. So they're in a bind even with the
22 supposed, I guess, First Department standards, which I
23 don't know how well they're implemented in themselves.

24 CHAIRMAN HALLERSTEIN: Can I ask this?

25 Several witnesses testified today about
26 differences in culture from a city like New York

1 Donna Lieberman, Esq.
2 perhaps other urban cities where there's a culture of
3 defense attorneys, kind of Legal Aid lawyers, who have
4 been historically moving forward, et cetera?

5 What do you have to say about a different kind
6 of culture in more rural areas where men and women who
7 choose to be lawyers don't choose to be defense lawyers
8 necessarily. They can be a defense lawyer today; be a
9 prosecutor tomorrow; be a prosecutor today; a defense
10 lawyer tomorrow; it's a job, and how does throwing more
11 money and resources at that type of culture connect to
12 the true improvement of strong defense services?

13 MS. LIEBERMAN: Well, you know, I wouldn't
14 claim to be -- have any expertise, given that my
15 background is in criminal defense, here where there is
16 a strong defense culture but I can -- but I think that
17 it's fair to say that the notion of a culture where
18 people jump back and forth across the aisle and have no
19 investment in criminal defense does raise concerns.

20 I think that a state-wide support network,
21 however, can help build a culture of defense-oriented
22 lawyers, and the implementation of training supports,
23 perhaps requirements for certain training -- to undergo
24 certain training programs helps to pull people together
25 and be with their colleagues so that they can -- to
26 build that.

1 Donna Lieberman, Esq.

2 I mean, I know that lawyering is a very
3 individualized thing, but lawyering in an institutional
4 environment where you're constantly talking to your
5 colleagues, you know, hashing things out, helps people
6 improve their lawyering and so I think that, you know,
7 statewide, you know, programs in fact can help to
8 ameliorate that problem. But just off the top of my
9 head --

10 CHAIRMAN HALLERSTEIN: Yes.

11 A PANEL MEMBER: Lawrence Goldman.

12 I'm going to leave her grievances off, which I
13 suspect the vast majority of us agree with.

14 Besides more money, maybe that's the end of
15 it, what systemic reform do you suggest?

16 MS. LIEBERMAN: Well, I think the State has to
17 take responsibility for the provision of indigent
18 defense.

19 It can't be just a local matter. There has to
20 be state-wide responsibility and state-wide
21 accountability. Okay.

22 That's important.

23 So it's not just more money, it's more money
24 and supervision coming from the state. Okay.

25 And then I think beyond that we're talking
26 about training and supervision and standards and that's

1 Donna Lieberman, Esq.

2 all key.

3 CHAIRMAN HALLERSTEIN: Yes.

4 A PANEL MEMBER: Robert Fahey. You had
5 mentioned in your investigation that you had uncovered
6 instances in which there was lack of interpreter; lack
7 of investigator services; and lack of expert witnesses
8 being provided.

9 And I'm curious to know whether it's because
10 there is a lack of funding? Is it because there is a
11 lack of investigators, interpreters, in particular
12 locales in which you've been at or is it the
13 discretionary decisions on the part of the Court which
14 is discretionary?

15 Is it all of the above?

16 MS. YUSTER: There definitely isn't one answer
17 for that.

18 It depends also on whether the County has a
19 system that's predominantly an institutional provider
20 or also has an assigned counsel panel.

21 But it's definitely that resources are a huge
22 issue.

23 But then also the court plays a role as well,
24 the judges play a role.

25 And I have to say I sat in a courtroom upstate
26 and was shocked and appalled. The attorney was an 18-B

1 Donna Lieberman, Esq.
2 attorney who was fabulous and just kept on and on to
3 try to get funding for an expert and it took him about
4 an hour until the ADA, the prosecutor, sort of opened
5 the door for the judge, the County Court Judge to say,
6 "Okay, you can have funding." But his whole -- the
7 judge was clearly more concerned about moving the case
8 along.

9 He says, "Well, how long is this going to take
10 to get an expert? You know this is just duplicative of
11 what the State is going to be doing. They're getting
12 their own expert, why can't you use their expert?"

13 I mean things like that are really troubling.

14 MS. LIEBERMAN: And you will know as well as I
15 do this is the way it used to be here in New York City.

16 A PANEL MEMBER: Phyllis Bamberger.

17 When the lawyers tell us they have trouble
18 getting voucher signs for experts, is that true.

19 MS. YUSTER: Depends on what counties.

20 We have been on the ground in three counties
21 and we have talked to defense attorneys and clients
22 throughout the State, but I'm sure when you do your
23 on-site work, I believe the Spandenberg group --

24 A PANEL MEMBER: Phyllis Bamberger.

25 How many counties in which you talked to
26 people or you were present, did you learn by any means,

1 Donna Lieberman, Esq.
2 that judges don't sign orders for experts.

3 MS. YUSTER: I don't have that.

4 A PANEL MEMBER: Was it a lot? Was it ten?
5 Was it 20? Was it one?

6 This is very important because this was the
7 issue that everybody complained about today.

8 We talked to five people, and five people
9 said, well, we're able to juggle; we take a little from
10 this line, we take a little from that line; we manage
11 to get what we need."

12 Maybe that's not true, in light of what you're
13 telling us, and we're entitled to know that.

14 MS. LIEBERMAN: Then we will answer that not
15 off the cuff, but with a little bit more research back
16 into our files.

17 A PANEL MEMBER: Okay. Thank you.

18 MS. LIEBERMAN: Just finally, I want to note
19 that Chief Judge Kay, in her state-of-the-judiciary
20 speech earlier this week, stated that the Spandenberg
21 group is going to be conducting a state-wide evaluation
22 of indigent defense programs; that the commission is
23 going to be held in hearings and will issue a report
24 later this year.

25 A PANEL MEMBER: Phyllis Bamberger.

26 They will not issue a report. They will give

1 Donna Lieberman, Esq.

2 us a report and we will issue a report.

3 MS. LIEBERMAN: That's what I said.

4 A PANEL MEMBER: That's not what you said.

5 MS. LIEBERMAN: Whatever, that's what I meant.

6 A PANEL MEMBER: Good. As long as that's what
7 you meant.

8 MS. LIEBERMAN: But we are also mindful and
9 concerned that the fact that the Commission has not
10 been given money to pay this Spandenberg group -- maybe
11 I'm wrong, and I hope so -- to do on-site work, that's
12 a problem and we're concerned about the delays that
13 have already gone on in terms of the Commission getting
14 its work done.

15 We would urge the Commission to reach out to
16 advocates and community groups that are on the ground
17 working with and on behalf of indigent defendants, and
18 to work with us.

19 We're happy to get back to you on your
20 question and happy to work with you on other issues
21 that you're dealing with seriously moving forward.

22 A PANEL MEMBER: Barry Kamins.

23 If you would like to submit anything to us to
24 help us?

25 MS. LIEBERMAN: We have testimony for today
26 and we're going to follow you around the State. We

1 Donna Lieberman, Esq.
2 will be in Rochester, we will be in Albany, I believe.

3 MS. YUSTER: Hopefully.

4 A PANEL MEMBER: Barry Kamins.

5 Don't show up in Albany. That one has been
6 postponed.

7 MS. LIEBERMAN: Then we won't show up there on
8 this schedule, the previously scheduled date.

9 We're delighted that the Commission is,
10 appears to be serious about its business.

11 This is a terrible problem. It's a disgrace
12 what's going on in terms of indigent defense in New
13 York State, and we are looking to partner with you.

14 But we are also pursuing our own agenda
15 because, unfortunately, history tells us that if we
16 don't, we may not get results.

17 So litigation, yes, is on the agenda, and we
18 would rather not.

19 Thank you.

20 CHAIRMAN HALLERSTEIN: Thank you.

21 (Whereupon Sara Stanley was relieved by Lester
22 Isaacs, as Official Court Reporter.)

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26

1 Mirian Gohara, Esq.

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3 PROFESSOR HELLERSTEIN: Ms. Gohara, thank
4 you for your patients.

5 MIRIAM GOHARA: My name is Miriam Gohara. I
6 thank all of you for your patience and accepting my
7 testimony today. And also for taking the time to hold
8 hearings, examining the quality of counsel afforded to
9 the poorest among us here in New York State.

10 I have submitted written testimony which
11 includes some reports that I will be referring to in my
12 remarks today and that will be provided to you at the
13 end, if they have not been already.

14 Racial discrimination in the criminal justice
15 system is one of the areas of expertise of my
16 organization, the NAACP Legal Defense and Education
17 Fund, which is LDF, the nations oldest non-for-profit
18 civil rights law firm.

19 LDF has been representing the rights of the
20 indigent defendants in myriad ways since the
21 organization's founding by former Supreme Court Justice
22 Thurgood Marshall in 1940.

23 In recent years, LDF has focused its efforts
24 on advocating for indigent defense reform in
25 Mississippi, as well as here in New York State.

26 We have published several reports, as I

1 Mirian Gohara, Esq.
2 mentioned, that are attached to my testimony,
3 concerning my testimony. I would really like to
4 present information concerning the particular impact on
5 African American communities of the State's failure to
6 fund adequate services.

7 For thousands of people accused of crimes in
8 New York State, the right to counsel is meaningless
9 because their court appointed attorneys lack the
10 resources to provide them with even basic
11 constitutionally mandated representation.

12 You have heard all day long about that. This
13 imbalance in the criminal justice system particularly
14 affects African Americans because by and large poverty
15 and race go hand in hand in New York State, as they do
16 in the rest of the country.

17 Although African Americans make up only 16
18 percent of New York State's population, 22 percent of
19 New Yorkers who live in poverty are African American;
20 and there are 26 percent who are Latino.

21 Here in New York City, a staggering
22 25 percent of African Americans live below the poverty
23 line.

24 It's therefore not surprising that many
25 African American defendants are indigent. A recent
26 United States Department of Justice survey compared

1 Mirian Gohara, Esq.
2 rates of representation by public and private attorneys
3 in the federal and state court systems. The survey
4 results showed that 77 percent of African Americans
5 incarcerated in state prisons reported that they were
6 represented by assigned counsel or public defender,
7 compared with 69 percent of white inmates and 73
8 percent of Hispanic inmates.

9 The American Bar Association's Section on
10 Criminal Justice recognized that "one conclusion to be
11 drawn from these harsh statistics is that people of
12 color require appointed lawyers disproportionately more
13 than white people. Therefore, when the quality of
14 representation provided by appointed lawyers is
15 diminished by underfunding, the consequences will be
16 disproportionately felt by people of color."

17 A similar conclusion can be drawn with regard
18 to New York State's woefully inadequate funding for
19 indigent defense services.

20 As you are aware and you have heard, many
21 jurisdictions in New York State employ part time,
22 county funded defenders in lieu of full time public
23 defends offices.

24 Mr. Warren referenced the Assistant District
25 Attorney report, which was issued today and that report
26 indicated that in New York State 82 percent of indigent

1 Mirian Gohara, Esq.
2 defender services are found without any contribution of
3 the State.

4 In 2003 investigating indigent defense in
5 Schuyler County, which is one of New York State's
6 poorest counties in one which until last year had a
7 part time public defender, it paid for without any
8 contribution from the State.

9 We produced a report, attached to the
10 Appendix A, documenting some of de deficits in Schuyler
11 County's provision of indigent defense services.

12 Prior to Schuyler County's appointment of the
13 full time public defender system, LDF found among other
14 problems, that both misdemeanor and felony defendants
15 languished in jail, pre-trial, often without ever
16 speaking with a trial lawyer before resolution of their
17 cases in justice courts. Defendants were more likely
18 to negotiate their own pleas with the District Attorney
19 than to have counsel appointed to negotiate for them.
20 Defendants were regularly arraigned and had bail set
21 without appointment of counsel. Obviously a violation
22 of not only Federal statute, but New York State
23 Statute. There were no caseload limits for the
24 assigned counsel and assigned counsel lacked the
25 resources to investigate their clients' cases, and
26 engage in motion practice or try even felony cases.

1 Mirian Gohara, Esq.

2 Our analysis of case files showed terrible
3 low numbers in most files, even in serious cases.

4 In many ways, the shortcomings besetting
5 Schuyler County's part time public defender system
6 resembled the unconstitutional conditions we identified
7 in Mississippi's poorer counties. LDF's research,
8 documented in an economic study of Mississippi's
9 indigent defense system, attached as Appendix B, has
10 shown that full time public defenders with adequate
11 resources provide better advocacy for indigent
12 defendants than part time defenders do. Although New
13 York and Mississippi differ in a great many respects,
14 as I just mentioned, some of New York's poorer counties
15 face the same challenges Mississippi's poorer counties
16 do in meeting the needs of indigent defendants, because
17 of a lack adequate funding, or any contribution from
18 the State. There e actually a startling number of
19 similarities as well LDF therefore believes that some
20 of the results of the Mississippi research may be
21 instructive to the Commission.

22 For example, the LDF economic study showed
23 that poor defendants in Mississippi, who are
24 represented by court appointed counsel working only
25 part time representing indigent clients tend to spend
26 more time in jail waiting for their cases to be

1 Mirian Gohara, Esq.
2 resolved than defendants who are represented by full
3 time public defenders. Specifically, the LDF Study
4 showed that individuals represented by part time
5 assigned counsel were 40 percent less likely to get
6 out of jail before trial and spent an average of 96
7 more days in jail than those represented by full time
8 counsel. Individuals represented by part time counsel
9 were 28 percent less likely to get out of jail than
10 those defendants represented by full time counsel and
11 spent an average of 81 more days in jail prior to
12 release.

13 The study also found that the problems
14 associated with part time counsel disproportionately
15 affect African Americans. Overall, the LDF economic
16 study found that African Americans were 19 percent less
17 likely to be released from jail and spent an average of
18 52 more days in jail than people with other races.
19 Research from individual countries showed that the
20 greater the concentration of African Americans in a
21 particular county, the less likely it was that an
22 accused person would be released prior to trial.

23 Furthermore, the LDF economic study revealed
24 that the disabling effects of representation by part
25 time defense counsel continue after an accused person
26 is convicted. Part time, court appointed counsel

1 Mirian Gohara, Esq.
2 provide their clients with less sentencing advocacy
3 than full time public defenders, which translates into
4 longer prison sentences. This lack of meaningful
5 advocacy in all stages of criminal proceedings results
6 in harsh convictions and sentences for non-violent,
7 minor crimes.

8 The third report that we attached to our, to
9 my testimony today is a narrative report. One based on
10 anecdotal investigation that we did in Mississippi and
11 there is one example of a woman who was held in jail
12 for 14 months waiting for her case to be processed and
13 proceeded without counsel. She plead guilty and all
14 this was for a charge of accusing her of stealing \$72
15 worth of merchandise from a WallMart.

16 We also found in Schuyler County, where
17 people were charged with a crime, who spent time in
18 jail waiting for their case to be resolved, many of
19 them resolved them on their own without counsel.

20 This impact is evident in the of the national
21 and state prison populations. African Americans made
22 up only 12 percent the United States citizens in 1999,
23 and yet they constituted almost 50 percent of all
24 incarcerated people nation wide. The same is true in
25 New York. While African Americans comprise less than
26 16 percent of the State's population, they make up

1 Mirian Gohara, Esq.
2 50 percent in New York's current prison population and
3 52 percent of its parolee population. Collectively,
4 African Americans and Latinos comprise 82 percent, a
5 staggering number of the total current prison
6 population in New York and 82 percent of the parolee
7 population, while comprising only 31 percent of the
8 State's residents. Although many factor contribute to
9 these startling statistics, there can be no doubt that
10 quality of counsel afforded the indigent plays a
11 significant role.

12 Unlike African Americans and Latinos
13 convicted of felonies in New York State, the majority
14 of white felons are sentenced to alternatives to
15 incarceration, such as conditional release or
16 probation.

17 Excessive periods of incarceration caused by
18 an inadequate defense project entire families to serve
19 consequences and deprive African Americans
20 neighborhoods of both the financial and human capital
21 necessary to sustain themselves. For example, national
22 figures show that the black community is
23 disproportionately burdened by the removal of parents
24 from their children due to incarceration. The Bureau
25 of Justice Statistics found that in 1999, nearly one
26 point five million children with a parent in prison

1 Mirian Gohara, Esq.

2 nationwide, and 51.2 percent of those children are
3 black. In all, a full seven percent of black children
4 had a parent in prison, and black children are nine
5 times more likely to have a parent in prison than white
6 children.

7 The voting disenfranchisement resulting from
8 felony convictions, well documented, another collateral
9 and devastating impact on of poor advocacy on behalf of
10 the indigent defendants, has been well documented.

11 In New York, over 70,000 prisoners and 55,000
12 parolees are disqualified from voting. And 87 percent
13 of those that are disqualified are African American or
14 Latino.

15 It's interesting that in New York, none of
16 this frankly, attaches to those who are incarcerated.
17 It is those who benefit from alternative incarceration
18 actually, do not have the right to.

19 As I mentioned previously, white defendants
20 are sentenced to alternative incarceration more than
21 African American and Latinos do. Again, we have this,
22 the reason for the connection between race and poverty.
23 The distinct point, that many more of the white
24 defendants are able to afford to pay their own counsel.
25 The impact on family and the impact of voting rights
26 are only two of the important impacts to all the above.

1 Mirian Gohara, Esq.

2 These facts and those presented today by the
3 distinguished myriad of witnesses establish that New
4 York's failure to provide adequate indigent defense
5 resources has resulted in the practical deprivation to
6 of the right of counsel for thousands of criminal
7 defendants that cannot afford to hire their own
8 lawyers.

9 This problem is borne disproportionately by
10 African Americans and Latinos in New York. Such a
11 profound imbalance in the State's criminal justice
12 system harms its legitimacy in the eyes of the public
13 and should be a great concern to our courts. I urge
14 the Commission to recommend meaningful reforms which
15 will deliver the promise of Gideon to all New York
16 Citizens, regardless of race or poverty.

17 PROFESSOR HELLERSTEIN: Thank you.

18 HON. PATRICIA MARKS: I have a question.
19 Have you been to Schuyler County.

20 MIRIAM GOHARA: We have not. When people
21 point out we issued a report, they will call with
22 complaints that have some concerns about continued
23 failures. But we have not gone in and done any sort of
24 systematic study. We don't really know how well that
25 full time public defender is funded. We are pretty
26 concerned that it is not receiving any State funding.

1 Mirian Gohara, Esq.

2 So it's still because, Schuyler County is so poor. We
3 imagine it's probably still under resourced.

4 PROFESSOR ZEIDMAN: Do you have a sense
5 this might be very hard to quantify? When you stated
6 the quality of counsel plays a role, why it's a
7 disproportion of color, of color in State prison
8 certainly.

9 There was also some reference to an effective
10 State report looking at similarly situated individuals,
11 meaning public defenders representing white defendants
12 versus color and this is in the criminal court. But
13 State wide actually, I don't know, by the Governor's
14 own folks showing that white folks are more likely to
15 get alternative incarceration. This begs the question
16 what the judiciary would do. I don't know if you have
17 a sense of where the weight of the problem lies.

18 MIRIAM GOHARA: As I mentioned, when I site
19 the statistics, I think there are a number of factors
20 that go into this. And a disproportionate number of
21 things, you have things that make a difference. As you
22 heard earlier from Leonard Noisette, a community based
23 office that actually has the capacity to present
24 meaningful sentencing advocacy on behalf of their
25 clients and really humanize their clients who look
26 different from many of the judges before them who come

1 Mirian Gohara, Esq.
2 from many different backgrounds, very different
3 communities, very different context. All together to
4 have some translator breaking that gap between the
5 clients reality and the sentencing reality. Whether in
6 New York State, there is a judge. It is a very
7 critical aspect in that sense.

8 I used to be a staff attorney. I have at
9 many times, you would turn to the social workers to
10 have them do a full work up and these are in cases that
11 we are accustomed to hearing about these things. I
12 should be able to provide it in State capital cases.
13 They are cases that are not just regular felony cases,
14 where someone is looking for a sentencing, they would
15 take the time to develop that full report.

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2 CHAIRMAN HELLERSTEIN: Mr. Gioiella.

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3 MR. GIOIELLA: I think it is about time for good

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4 evening. Cut the good afternoon.

4

5 CHAIRMAN HELLERSTEIN: That is true.

5

6 I guess on behalf of the commission my question

6

7 is, if you have my comments, that if you have heard a lot

7

8 of items already from other witnesses that you had

8

9 intended to cover, if you could sort of bridge your

9

10 testimony along those lines. I don't want to cut you off.

10

11 MR. GIOIELLA: My thoughts exactly.

11

12 CHAIRMAN HELLERSTEIN: Okay.

12

13 MR. LAZARUS: I feel like multi-defendant case

13

14 and I am the last summation on the Friday before Christmas

14

15 break.

15

16 CHAIRMAN HELLERSTEIN: You are getting close to

16

17 the last summation.

17

18 MR. GIOIELLA: Hopefully my colleagues have said

18

19 what I needed to say.

19

20 My name is Russell Gioiella. I have been

20

21 practicing criminal defense for the past 25 years. I am

21

22 the past president of the New York State Association of

22

23 Criminal Defense Attorneys. I have also been on the

23

24 Assigned Counsel Screening Panel for the Appellate

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25 Division First Department for the last six years. I have

25

26 also been the president of the New York Criminal Bar

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2 Association.

3 I am here today for the New York State
4 Association of Criminal Defense Lawyers. We are a group
5 of approximately a thousand criminal defense lawyers in
6 private and public practice throughout New York State. We
7 are one of the largest affiliates of the American
8 Association of Criminal Defense Lawyers.

9 Since our inception we have been very heavily
10 involved and concerned about the quality, or lack thereof,
11 of indigent defense representation.

12 Marvin Schechter, who is sort of our guru on
13 this topic, would love to be here, but he was dragged
14 kicking and screaming to New Orleans for the NACDL
15 conference. But he has written testimony which we will
16 hand out or which has been distributed, so I am not going
17 to repeat any of that. And I am also not going to talk at
18 all about all the terrible things that you have heard
19 occur, and I would say in our system, but I shouldn't say
20 that because we really don't have a system. I think
21 that's probably one of the things you have heard the most.
22 There is no system. But you certainly have gotten a very
23 good sense of what goes on in the field. So I won't say
24 too much about that except to talk about one concept.

25 I am sure everyone here is very familiar with
26 the fact that for many, many years the criminal justice

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2 system, and I mean that to include prosecutors, defense
3 lawyers, responsible members of the public, judges, could
4 not get an increase in 18-B rates no matter what, even
5 though it was universally recognized to be an atrocious
6 situation which was grinding to a halt at about the time
7 that the NYCLA lawsuit brought some fruit to the quest.
8 And really when you think about it, what does that mean
9 other than the fact that the representation of the
10 indigent just simply doesn't have a constituency with any
11 power and does not seem to be able to get anything
12 meaningful done, no matter who is in favor of it, whether
13 it is the chief judge or legislative member or anyone
14 else. It took litigation to produce some change. And
15 perhaps it will take more litigation. But I hope this
16 commission is going to be able to avoid that.

17 But really, what happened when the change
18 occurred? It just got flipped around and sent back in the
19 wrong direction so that when 18-B rates went up, counties
20 found a way not to pay 18-B lawyers but to go out and hire
21 public defenders and pay them, if you think about it,
22 less, far less over the course of a year, than probably an
23 18-B lawyer would have been paid. The old rates which a
24 court found yielded an unconstitutional level of
25 representation. Does that make any sense? It does only
26 if you think about the representation of the indigent in

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2 one way; cost containment. Then it makes sense. But, of
3 course, that's antithetical to our constitutional right.

4 So what do we think is needed to somehow begin
5 on the path to preventing cost containment from being the
6 sole determiner of how defense services should be provided
7 to the indigent? We believe that we need a creation of a
8 statewide independent defense commission. It should be an
9 entity that focuses on the quality and the consistent
10 meaningful delivery of competent indigent defense
11 programs.

12 The most important aspect of this commission
13 should be the promulgation of standards for
14 representation. The standards should obviously supplant
15 the current methodology which is budget. The standards --
16 there are many standards throughout the country, and I am
17 sure the commission could pick amongst them and determine
18 what would be appropriate in this state. But that would
19 be the foremost and/or at least initial task of the
20 commission, develop statewide standards for
21 representation. And these standards would then be
22 promulgated.

23 They should include the independence of the
24 defense function, quality of defense services, reliability
25 and sufficiency of defense funding, continuity of
26 representation, training, caseload/workload limitation

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2 levels, investigative services, social services, expert
3 witnesses, support services and supervision.

4 The commission should be vested with the
5 authority to provide state financial assistance in
6 localities and public defense providers where necessary
7 under the -- however that system is designed.

8 There should be training and continuing legal
9 education. There should be an ongoing program of training
10 for county legislators with the goal of introducing basic
11 concepts and precepts regarding public defense systems in
12 order to sort of bring everyone into the loop so that when
13 the inevitable budget process begins, at least there is
14 some effort to set a pathway for compromise and,
15 hopefully, some adequate funding.

16 We are suggesting that the commission should
17 issue a report every two years. And these are things that
18 we believe are good ideas. Obviously, whether it is 2
19 years or 2 1/2 years is not critical. But we do believe
20 that the commission should issue a report which will
21 assess the progress of indigent defense programs
22 throughout the state, highlight significant problems,
23 underscore significant trends and discuss the impact of
24 legislation upon the public defense providers. And to
25 this end the commission should collect data and maintain a
26 current data base of the public defense delivery systems

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operating in every New York State county.

We have not taken time in this testimony to specify exactly what form the provision of indigent defense throughout the state should be. We believe that much like what would happen in the great majority of program decision making by government, that decision should be made by the commission after it has had a chance to conduct a full and complete study to determine how it believes defense services should be provided. Whether it should be the same in all locales, whether there should be one statewide public defender, whether there should be the current mix that we have with some modifications. But the one thing that we believe should not be debatable is the need for an overall standards of representation that every provider has to comply with, whether it is 18-B, Legal Aid, or, you know, any other type of provider.

We hope that this commission can be brought to fruition, probably it is one of the things, or I think it probably is one of the things that the judiciary can do on its own, and perhaps through that end will develop the kind of mechanism that we need to determine the true reforms that have to be put out statewide in order to change the system. But without it, it is apparent from just what's happened since the 18-B rates increased. When you look at what's happened in all of the various locales

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2 and how the different entities have dealt with the
3 situation, you can see that without an imposition of
4 standards the representation of the indigent is going to
5 decline and it is going to continue to decline.

6 COMMISSIONER ZEIDMAN: As part of that statewide
7 commission, and let's say there are standards, I am just
8 curious as to your feelings as to whether those standards
9 would also encompass the nature of the practice. More
10 specifically, let's say that it is a statewide commission
11 looking throughout New York State, going county to county
12 or office to office, determining whether there has been
13 training, what sort of hiring, whether there are social
14 workers, caseload caps.

15 Do you think it would ever be appropriate for
16 this commission to inquire about things like percentage of
17 cases that that office takes to trial or percentage of
18 cases that that office takes to suppression hearings? And
19 I raise that in the context of hearing from several
20 offices throughout New York City today that plea rates are
21 anywhere from, I think, 92 to 95%. Can you imagine that
22 somehow being a standard of practice?

23 MR. GIOIELLA: Well, I think there is a
24 difference between an inquiry and standard. I am not sure
25 that you would be able to impose some kind of minimum
26 level of trial per -- but as something as to be inquired?

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2 Absolutely it should be inquired. And you can see that
3 anywhere. I mean, if you look at the misdemeanor rates in
4 the city where you see, you know, at one time you saw
5 virtually no trials, the misdemeanor 18-B panel very
6 rarely do any trials. You could argue about whether
7 that's appropriate. But probably. But I certainly
8 believe that an inquiry into whether it is appropriate,
9 what's really causing it and whether it is a reflection of
10 vigorous defense or whether it is a reflection of the
11 quality of the attorneys, that's a bigger issue. I think
12 that would be appropriate.

13 Our idea wasn't to take a position on exactly
14 what the commission should be inquiring into or what the
15 standards should be, but just to highlight the fact that
16 without it there is no chance for indigent defense
17 improving in the state and that it is only going to get
18 worse.

19 All you can see for the last at least 20 years
20 that I have been practicing is that budget constraints
21 control absolutely everything. And I was going to say
22 that the idea that a court can say that at \$40 an hour the
23 indigent are not getting adequate representation, so that
24 an upstate county will go out and pay a public defender
25 \$17 an hour or \$25 an hour, which is about what it shakes
26 out to if you pay somebody \$35,000 a year, and you don't

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give them any staff, or at least they have to come back
and beg for it. It just shows there is really no --
either understanding, but perhaps just no constituency to
fight for an adequate budget that could enable the market
to provide the quality representation. The market system
is never going to provide anything to the indigent in this
environment.

COMMISSIONER KAMINS: Thank you.

CHAIRMAN HELLERSTEIN: I appreciate your
remarks. We thank you for the testimony you left with us.

MR. GIOIELLA: Thank you very much.

1 Racquel Batista and Rafaela Lozano

2 CHAIRMAN HALLERSTEIN: Racquel Batista.
3 Welcome to you. If you could just identify yourself.

4 MS. BATISTA: Good evening.

5 Buenas Noches.

6 My name is Racquel Batista, and I'm the
7 Director of the Northern Manhattan Coalition for
8 Immigrant Rights.

9 I'm here with Rafaela Lozano, who is a
10 Commissioner.

11 I'm going to let her speak first, and I'm
12 going to be translating for her.

13 Welcome.

14 (Whereupon the following proceedings were
15 translated from Spanish to English by Racquel Batista
16 acting as interpreter.)

17 MS. LOZANO: Good evening.

18 My name is Rafaela Lozano.

19 I'm one of the people that benefits from the
20 services of the Northern Manhattan Coalition For
21 Immigrant Rights, and now I'm a volunteer.

22 I want to give you my testimony as to what
23 I've lived with in my family.

24 Three of my family members have been through
25 the criminal justice system.

26 For me, it's been a great experience to see

1 Racquel Batista and Rafaela Lozano
2 how each one of their cases have been treated
3 differently.

4 The issue is communication, translation, and
5 secondly, the lack of communication that attorneys have
6 with defendants as to the consequences of a criminal
7 conviction or their options that they may have in their
8 cases.

9 I understand that we come from different
10 places culturally, and sometimes there may be a
11 translator or someone who I'm speaking with who may not
12 necessarily understand where I'm coming from, or they
13 or I may not understand them.

14 And many times because of a bad translation,
15 people take sentences that we may not deserve.

16 I think that there should be more training of
17 the attorneys as to how to carry on a conversation with
18 the defendant, especially before they go in front of a
19 judge.

20 I have a case now that's my nephew. He's in
21 Riker's Island.

22 He was sentenced on the 24th, but he didn't
23 understand the sentence and neither did I and neither
24 did his mother.

25 Outside of the Court we asked the attorney and
26 he didn't have enough time to speak to us.

1 Racquel Batista and Rafaela Lozano

2 And this was a paid attorney.

3 In our community we don't have sufficient
4 attorneys that are able to represent us in court.

5 And this is one of the big necessities that
6 the community has.

7 We need more time from the attorneys to
8 dedicate to us, to talk to us about what's happening in
9 a case.

10 Many times the family members don't understand
11 what are the accusations or what is the sentence in a
12 case.

13 My nephew Calvin, he had a probation for three
14 years, he still had one more year to finish.

15 It was a misdemeanor.

16 It was his first case, and he's an alcoholic.

17 While he was on probation under the influence
18 he travelled to the Dominican Republic.

19 When he came back he was scared to go to
20 probation.

21 The family came together and we told him to go
22 to probation.

23 But he was also involved in another case on an
24 assault and we didn't know.

25 He went to probation and they left him there.

26 He went to the Bronx Criminal Court. He gave

1 Racquel Batista and Rafaela Lozano

2 a declaration, a written declaration.

3 After he looked at the paperwork he said that
4 he didn't say anything of what was written.

5 And when he was being interrogated he had
6 already said that he was guilty and he was there under
7 the effect of alcohol at the probation office.

8 We had a public attorney, public defender.
9 When he said that he was guilty, we were looking for
10 another attorney and looking for another opinion,
11 because we knew that when he stated that he was guilty
12 that he was under the influence.

13 He has been in Riker's Island for 18 months
14 and finally on the 21st, he was sentenced to eight
15 years.

16 I have a question.

17 If he presented himself to probation, the
18 second case of which he was, the assault had already
19 passed the 30 days, he was at the same address and the
20 same phone number and no one came to get him, he went
21 himself directly to probation, so I'm confused because
22 I don't understand why the investigations aren't more
23 precise and she would have liked a clear explanation as
24 to what she could have done.

25 I wanted to highlight this case because many
26 like these are occurring and Latinos and African

1 Racquel Batista and Rafaela Lozano
2 Americans are carrying out longer sentences than
3 others.

4 And the other reason is, if the person knows
5 that they're guilty, they are leaving the -- waiting 18
6 to 20 months to go through their sentence -- not only
7 the ones who are in prison are suffering, but also the
8 families.

9 And we must pay economically to get an
10 attorney; we are badly treated at the prisons when
11 visiting; we are humiliated; and all of these things
12 are occurring and nobody is giving us an explanation.

13 And we must do something to make these
14 services better.

15 We need a progressive community.

16 We know that people who are in prison have
17 committed a crime, but they need an opportunity to
18 rehabilitate, to integrate into society on a general
19 basis.

20 They are destroying our youth and our
21 families.

22 CHAIRMAN HALLERSTEIN: Thank you.

23 MS. BATISTA: I have some comments.

24 CHAIRMAN HALLERSTEIN: Please.

25 MS. BATISTA: Thank you.

26 I want to thank this Committee.

1 Racquel Batista and Rafaela Lozano

2 My name, again, is Racquel Batista.

3 I'm the Executive Director of Northern

4 Manhattan Coalition for Immigrant Rights.

5 We're nonprofit up in Washington Heights, in

6 Inwood.

7 We work to educate, defend, and protect the

8 rights of immigrants.

9 Our work mostly revolves around immigration.

10 We have been doing a lot of organizing around

11 the issue of detention and deportation.

12 However, around this work we have been

13 basically pushed by our community to begin doing

14 advocacy work around the criminal justice system

15 because there's definitely an intersection between

16 immigration and the criminal justice system.

17 If a person is not a citizen; it could be a

18 legal permanent resident or an undocumented person; and

19 they get a criminal conviction, they will end up in

20 deportation proceedings.

21 And for many of these undocumented

22 noncitizens, immigrants, they're not knowledgeable of

23 the fact that if they say that they're guilty that they

24 will end up in deportation proceedings or they will be

25 unable to apply for citizenship or adjust status to

26 become a permanent resident.

1 Racquel Batista and Rafaela Lozano

2 So one of the things we have seen in both the
3 Assembly and Senate of New York State is a proposal for
4 court advisal to an immigrant person when they're going
5 through a criminal proceeding, of the consequences that
6 can happen in their criminal case.

7 I know several of you have received a copy of
8 my testimony, and I won't go all into it right now, but
9 one of the things that we did go through in the Bronx
10 in particular, we had meetings with several community
11 groups, one of them was Families for Freedom, the
12 Northwest Bronx Community, and Clergy Coalition, and
13 the Bronx Defenders, and we talked about ways that the
14 District Attorney in particular can change their
15 policies in order for a person not to become
16 deportable, looking at alternative ways of punishment
17 so that we can avoid deportation, such as using Family
18 Court and use defender adjudications when there is a
19 young person who is not a citizen going through, who
20 has committed a crime and has the opportunity of going
21 through Family Court instead of going through Criminal
22 Court, and so that would not make them deportable.

23 And also, that is on a case-by-case basis and
24 it depends on the issues coming up, but there are
25 opportunities of making it so that a person does not
26 become deportable.

1 Racquel Batista and Rafaela Lozano

2 We also would like to recommend that all
3 people involved in the criminal justice system,
4 criminal prosecute even defenders, judges, become
5 knowledgeable and are trained on the impact of criminal
6 convictions on the defendant's immigration status, and
7 Legal Aid Society on the issue of language.

8 It is always difficult to communicate your
9 ideas and thoughts through a translator.

10 I mean for me, you know, I do it all of the
11 time I translate back and forth, I translated for you
12 just now, but many times when a translator is present a
13 lot is lost in the translation.

14 For many immigrants facing the criminal
15 justice system in a country which they hardly know is
16 scary and overwhelming. Many rely on the knowledge and
17 the expertise of the translator, the one person who
18 speaks their language.

19 Sometimes defendants are lucky and get a great
20 translator that translates everything that is going on;
21 it's clear, concise, precise.

22 However, many times translators who are
23 overworked do not do an adequate job at translating and
24 much of the conversation may get lost.

25 At other times the translator may be using
26 terminologies that are not truly understood by the

1 Racquel Batista and Rafaela Lozano
2 person, either because there is no real word in that
3 language to explain the idea or concept, or cultural
4 competency, for example just because Mexicans
5 Dominicans and Puerto Ricans all speak Spanish, they
6 may use very different words for the same idea, you
7 know like Ahora means now for me, Ahorita means right
8 now, Ahorita for a Mexican may mean later. Things like
9 that people lose what's going on in a proceeding.

10 So in order to address these issues at
11 establishing Spanish speaking courtrooms where a full
12 case can go through in Spanish, and a person has full
13 knowledge as to what's going on in their case, training
14 on foreign language legal terminologies, training in
15 cultural competency, and hiring more bilingual,
16 bi-cultural staff attorneys and judges in order to
17 improve indigent defense services.

18 Of course, there is a need to increase funding
19 and on other resources to organizations like Legal Aid,
20 Bronx Defenders, all organizations we work very closely
21 with also, increasing the opportunity for young and
22 upcoming attorneys to go into these professions; in
23 creating specific state agencies increases the
24 functions of the New York State Division of Human
25 Rights in looking at these issues and taking a look at
26 how the criminal justice system is treating immigrants

1 Racquel Batista and Rafaela Lozano
2 and people of color and to insure that justice
3 prevails.

4 I understand the scope of this Commission is
5 to look at defendant services.

6 But I also see that it's broader, and that
7 it's looking at how the system is treating indigent
8 people, poor people, immigrants, communities of color,
9 and it's important that we look at what the role that
10 each person in a courtroom plays in the end when a
11 person is going through a criminal conviction that in
12 the end can end up with them being deported, and not
13 being with their family here in the United States.

14 So thank you.

15 CHAIRMAN HALLERSTEIN: Thank you.

16 (Whereupon Sara Stanley was relieved by Lester
17 Isaacs, as Official Court Reporter.)

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2 PROFESSOR HELLERSTEIN: Ray Cusicanqui.

3 RAY CUSICANQUI: Cusicanqui.

4 PROFESSOR HELLERSTEIN: Is that the correct
5 pronunciation.

6 RAY CUSICANQUI: It's Cusicanqui.

7 PROFESSOR HELLERSTEIN: Cusicanqui.

8 RAY CUSICANQUI: First and foremost, I would
9 like to thank the Commission for allowing me to make a
10 presentation here and give testimony based on the
11 indigent defense services that are now valuable. Most
12 importantly, I'm glad to say that I would like to also
13 present some positive information about how defense
14 advocacies or defense service has made some progress
15 here in New York.

16 My office, which is the consulting project
17 which is a private organization which was instituted in
18 1995. I, myself, started and founded the consulting
19 project after leaving the Legal Aid Society.

20 I actually started with the Legal Aid Society
21 in 1989 as a prison legal assistant. Thereafter, I
22 went into special defendant services as a special
23 forensic assistant. While at the Legal Aid Society I
24 was obviously able to compile a lot of information as
25 well as receiving first, I'm sorry, from first
26 perspective as to what the clients, what the indigent

1 Ray Cusicanqui
2 population goes through. I was happy to say though
3 that the Legal Aid Society at that point was providing
4 adequate services for the indigent. However, after a
5 short time I realized that certain professions,
6 specifically those of forensic social workers and the
7 others within these criminal defense firms, were also
8 placed in various positions where they could not expand
9 the provided services.

10 This is one of my main reasons for starting
11 the consulting project. Unfortunately, when I started
12 the consulting project there weren't many
13 availabilities for me to provide services from a
14 private perspective. Therefore, I started with
15 providing service to private treatment providers who
16 are attempting to get into the criminal justice system.

17 My office thereafter was fortunate to be
18 involved in various institutions, I'm sorry,
19 institutions of various services to firms like Queens
20 Law Associates and New York County Defenders, as well
21 as Bronx Defenders, that allowed for my office to
22 expand in services.

23 What we mainly would consider our main focus,
24 which is the indigent population. During that time we
25 have been able to expand on service and giving the
26 attorneys or defense attorneys specific services that I

1 Ray Cusicanqui
2 think are not available in other organizations.
3 Forensic psychologists and myself, like
4 forensic treatment specialist, have been underused in a
5 lot of the past by organizations including the Legal
6 Aid Society.
7 Part of my goal was to expand on that
8 specific role. In doing so the Queens Law Associates,
9 which is one of the main firms that receive contracts
10 in Queens County, gave me that opportunity in doing so.
11 I was able to provide specific advocacy services much
12 of what a lot of the people who have testified here
13 have had problems with.
14 For example, the constant mention of neglect
15 of a specific population, such as those who speak
16 Spanish as well as other specific populations such as
17 those who have mental health problems or have other
18 issues that are directly correlated to the criminal
19 behavior that may lead to their arrest.
20 My office was able to look at every specific
21 population and look as to what is necessary to assist
22 the specific population.
23 I will mention two firms here that I am very
24 slightly related to and do provide service to. I must
25 say that I'm very proud to be associated with these two
26 firms, because they are definite models of what is

1 Ray Cusicanqui
2 entitled. I would say of defense services, that has
3 been, not only been modified to address the movement of
4 the criminal justice system, but most importantly which
5 pays close attention to providing human services within
6 the courts.

7 My office, as I previously mentioned, is a
8 defense advocacy firm. We provide services from post
9 conviction to pretrial service.

10 My office has been able to assist defense
11 attorneys in Queens Law Associates and New York County
12 Defenders in presenting information. Not only for
13 defense counsel to review, but most importantly the
14 advocating for those specific indigent clients.

15 If there is a service that these firms
16 require, my office will specifically go out into the
17 community, not only the court community, but the
18 community at large to establish relationships with the
19 specific needs of populations.

20 In the past my office has been very
21 successful with providing services to the court
22 community though the assistance of the Queens Law
23 Associates and New York County Defenders. For example,
24 in Queens County there was a practice of various judges
25 to remand clients when they became uncooperative or not
26 compliant with specific mandates. These clients,

1 Ray Cusicanqui
2 however, possessed serious mental health problems.
3 Various attorneys were able to bring these issues to a
4 unit which is the forensic social worker unit and
5 request for assistance, rather than bringing up the
6 negative practice of the courts. Queens Law Associates
7 and my office were able to provide informational needs
8 for various judges as well as other professionals that
9 would be making different decisions, once they were
10 enlightened to the complex problems of this population.

11 PROFESSOR HELLERSTEIN: Can I ask, Queens
12 Law Associates, it is a city agency? Did they then
13 contract your office for a specific matter, a specific
14 time period or project?

15 RAY CUSICANQUI: That's correct. What
16 Queens Law Associates does, they use my office as the
17 primary forensic social work provider. New York County
18 Defender Services has there own social workers. They
19 use our services for other specific reasons.

20 For example, New York County Defender
21 Services because they have no Spanish speaking social
22 workers, use the array of services that we have. We
23 have three forensic Social Workers. We speak Spanish.
24 We also have forensic psephologists which is accessible
25 to us, which also speaks Spanish.

26 Most of these firms --

1 Ray Cusicanqui

2 HON. ELAINE JACKSON: We should utilize or
3 recognize the service such as yours, should they become
4 part of the over all picture for indigent clients,
5 would that be stating your position appropriately.

6 RAY CUSICANQUI: Yes, most definitely. I
7 believe most of these firms that I have mentioned, do
8 so appropriately in the sense there is a necessity.
9 While at the Legal Aid Society I was able to see a lot
10 of problems with the communication of indigent clients
11 and based on the testimony that was given here about
12 the conflicts or rather the obstacles of those clients,
13 who have problems with any one of the community, such
14 as language barrier or mental health issues, should be
15 addressed not only by defense counsel, but with the
16 assistance of experts.

17 There was also a brief mention to this
18 Commission about the lack of experts in a lot of these
19 different jurisdictions. My office also works with
20 Assigned Counsel Services which was 18-B, we provide
21 services to them as well. However, they lack the
22 structure in which to formally present a service to,
23 usually an array or rather a large group of attorneys.

24 PROFESSOR HELLERSTEIN: How does an 18 B
25 attorney employ you in the work that you do?

26 RAY CUSICANQUI: Because my office is

1 Ray Cusicanqui
2 constantly visible and available in court parts, a lot
3 of judges in many counties where of my offices are.
4 Many times a judge will direct the 18 B attorney to
5 contact my office. In return my office submits an
6 expert witness voucher to that judge. With the
7 assistance of James Murphy of Assigned Counsel Services
8 we were also able to provide specific training for
9 judges when specific court parts were being formed,
10 such as DV Courts, which deals with domestic violence
11 issues in Queens county. We were able the bring in
12 experts to speak with defense counsel to understand how
13 to deal with specific populations. For example the
14 Latino population which has various different practices
15 in their culture as well as other populations and how
16 those defense attorneys should deal with that
17 population.

18 I would like to go forward and say one of the
19 main reasons I want to make this presentation is not
20 only to provide a positive outlook of what is going on
21 in not only Queens County, but in New York County. But
22 this qualify of service has been highlighted, I would
23 say, by the defense perhaps contracted agencies that I
24 just mentioned. Most importantly, I think that there
25 should be a further accessible financial support of
26 such service. I would be glad to or rather even

1 Ray Cusicanqui
2 recommend that other firms institute themselves in the
3 same manner as my office.

4 The reason that we are a private corporation
5 is because if we were to be a nonprofit corporation we
6 would not be able to survive alone with being able to
7 provide services to the indigent. My office also
8 provided services to private attorneys as well as in
9 other jurisdictions, such as Federal cases and also in
10 capital defense cases.

11 Finally, I would like to also say that the
12 commitment that my office, as well as the other offices
13 that I mentioned, will be ongoing and I can make myself
14 available to present any future training of any staff
15 including judicial, as well as attorneys or defense
16 bars in presenting or rather providing adequate defense
17 advocacy.

18 PROFESSOR HELLERSTEIN: Thank you.

19 RAY CUSICANQUI: Thank you.

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CHAIRMAN HELLERSTEIN: Mr. Vaccarino.

MR. VACCARINO: Thank you Professor Hellerstein.

CHAIRMAN HELLERSTEIN: Thank you for having the
endurance.

MR. VACCARINO: I have to tell you -- I'm Joe
Vaccarino. I am executive director of Queens Law
Associates. I have to tell you, I feel like the last
lawyer to sum up in a 25 defendant case.

This is Laurie Zino, the deputy director of
Queens Law Associates.

MS. ZINO: Hello.

MR. VACCARINO: I have asked her to come here
because my memory is getting kind of shaky as I age and
she will remember things that I won't.

I know some of the commission members here, some
a little better than others, having worked with some of
them. Some of you I don't know. So for those who don't
know me and don't know Queens Law Associates, I would just
like to briefly describe what our organization is.

We represent indigent defendants in Queens
County in the criminal courts. That's basically all we
do. We do that pursuant to a contract with the City of
New York. We intake our cases in the same way as the
Legal Aid Society Criminal Defense Division. We work four
shifts out of the fourteen shifts that take place during

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2 the week. Our contract calls for us to take 15,000 cases
3 per year. When we reach that number we keep going because
4 it would be not very good for the courts were we to just
5 pull out. So in the past two years we have actually done
6 something more like 18,000 cases. And that's possible
7 only because of the shift of the ratio of cases in the
8 past ten years from basically about 1/3 felonies and 2/3
9 misdemeanors to approximately 17-18% felonies and the rest
10 non-felonies.

11 Our attorneys, 25 attorneys we have, all had to
12 be approved by a screening committee appointed by the
13 presiding justice of the Appellate Division Second
14 Department after a review of their credentials. Most of
15 them have a pretty long career with the Legal Aid Society
16 Criminal Defense Division. Others who were not had been
17 on the 18-B felony panel for years. Just about everyone
18 can handle any type of case, although we don't do
19 homicides because of the limitations of our contract. We
20 do have one young man who doesn't do felonies. He started
21 out as our paralegal. He took the bar, got admitted,
22 decided he wanted to stay with us as a paralegal even
23 though he could be a lawyer. After a couple of years we
24 had mercy on him. We put him through the screening
25 committee and got him approved. He handles misdemeanors
26 now under the supervision and tutelage of Michael Gaffey,

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one of our terrific lawyers.

CHAIRMAN HELLERSTEIN: When you say you won't do homicides, is that you don't do cases that come in as Murder 2s but if something comes in as manslaughter as a top count you do that?

MR. VACCARINO: Yes.

We have about five senior attorneys, and one attorney who does nothing but major offense cases. And these senior attorney staff serve in a supervisory capacity to a limited extent. The administrative work is done by Miss Zino and myself and our office manager and non-legal staff. The senior attorneys have a full case load. They are in the arraignment rotation. They also deal with client complaints or issues that may arise. They serve as a resource for other attorneys in the office, and they occasionally conduct the CLE.

Our office does follow the rules of continuity pretty strictly with regard to felonies. Somewhat more flexibly with regard to misdemeanors.

Just my own background. I grew up in an economically lower class neighborhood. My parents never went to see an attorney because they were afraid that they would have to lay out money that they couldn't afford. There were a lot of people in the neighborhood who thought like they did. So when I came out of law school I chose,

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2 as many of the commission members here chose, to commit
3 myself to trying to see that meaningful legal
4 representation was made available to those in our society
5 who are less able to afford it.

6 My first job as a lawyer was with the Legal Aid
7 Society Criminal Defense Division. I stayed there for 25
8 years. I thought it would be short duration but it turned
9 out to be much longer.

10 I was a staff attorney. I served at various
11 levels in a supervisory capacity. I was also the Queens
12 supervisor representative on the Caseload/workloads
13 Committee that was commissioned by the Society in the 80s
14 which was conducted by the Spangenberg Group. I still
15 have a copy of the report of that if anyone wants to see a
16 copy. It's about that big (indicating). And I hope that
17 the findings of this commission lead to some more
18 productive results than the report of that report did.

19 Actually, when I saw the names of the people on
20 this commission I became somewhat intimidated. I wondered
21 whether I really should be coming here trying to talk to
22 you about indigent defense services. I said, "What in
23 heavens name could I possibly tell these people that they
24 don't really know already?" And having listened to
25 everybody who testified here today, that thought keeps
26 echoing in my mind. I am not sure I can tell you anything

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new, but I can hopefully give you some perspective on my thoughts of indigent defense services and what goes into making the ingredients for providing those services in a beneficial manner.

In thinking about it I started thinking about the past and when I first started. In 1970 I walked into the Legal Aid Society's office, criminal defense office, in 100 Centre Street. We had a large room with maybe three offices on each side of that large room. The attorney in chief was in one of those offices. The clerk staff in another office. Supreme court attorneys, who we kind of worshipped, because they were split bureaus then, criminal court attorneys, supreme court attorneys, they took the seats at the desks and tables in the side rooms and the rest of us sat where we could.

I thought back about then, and people like Martin Herbman and Milton Adler, and what a splendid job they did of representing their indigent clients with much more austere resources than we have now. It made me come to the conclusion that the most important thing in the provision of indigent defense services is having attorneys who are committed to the principle that poor people should have as good representation as people who can pay for it. So I think our charge is to try and keep lawyers who go into this field excited about their work and committed to

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2 that principle and have them remain in that capacity
3 without kind of getting worn down by the constant battles
4 that they fight.

5 And salary is one issue, obviously. In a sense,
6 our society recognizes your worth by your salary. That
7 may be unfortunate, but it is a reality. And certainly it
8 is important to those attorneys who want to provide a
9 comfortable living for their families. But that's not the
10 only ingredient. There is also a need for a work
11 environment that instills pride in those attorneys and
12 helps build morale and makes them want to work there.

13 I think the attorneys need a safe haven to come
14 home to when they are finished in court somewhere where
15 they can speak to their colleagues, where they can hash
16 out things that occurred, where they can basically vent,
17 if they have to. Curse the D.A.'s office. Even the
18 judges. Excuse me. But then they get it out of their
19 system and they will feel better.

20 Our offices, I like to think, are comfortable
21 for the attorneys in the sense that people who make the
22 decisions that effect their daily working conditions are
23 right in the office with them. Miss Zino and I are on the
24 same floor in the same office. If they have a problem
25 they come directly to us and they tell us what the problem
26 is. Now, I try to deal with the problems. We both do.

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2 They may not always like the answer they get, but I think
3 as a result sometimes they understand better the
4 rationales of those decisions.

5 I can give you an example concerning internet at
6 each desk, but that would take a little too long to do.
7 If anyone is interested I can tell you later.

8 COMMISSIONER ZAYAS: Can I ask you the question
9 I asked Mr. Greenberg? What is really the benefit of
10 having -- what do we have -- I think four, other than
11 Legal Aid, rather than having them all under one roof?
12 Can you address yourself to that?

13 MR. VACCARINO: Sure.

14 COMMISSIONER ZAYAS: Why do we need all those
15 other providers?

16 MR. VACCARINO: Because I think they project
17 different models of how things should be run. I think our
18 being a local office, working in Queens alone is small,
19 does have contact with the attorneys who do the work, does
20 have an intimate knowledge of the system and the judges.
21 And I think competition is good for everyone. Not just
22 for businesses but also for people who do this type of
23 work. I don't think it would be beneficial to us if we
24 were the only game in town because I think the competition
25 keeps us sharp and makes us want to do well.

26 CHAIRMAN HELLERSTEIN: Can I?

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For many years as Legal Aid improved and got stronger and became more forceful in the system and equal at the table with the district attorneys, whoever, one of the grievances has been that as the years have gone by the establishment, the political establishment doesn't bring the defender organizations to the table. Isn't it easier for the establishment to do that if there are competing agencies not speaking with a single voice to equalize that of the prosecution?

MR. VACCARINO: Well, in Queens, for example, when they were thinking of starting misdemeanor treatment court to compliment the felony treatment court they brought us all in and we all had points of view. Now, representatives from the Legal Aid Society -- and we at the beginning may not have agreed, but eventually everybody came to a consensus. The prosecutor joined in that. And everybody who works in that court seems to have one goal, and that is for the benefit of society that the client succeed and be rehabilitated. I think it is good to have different view points. I am not sure if it is easier for this state. I don't see that they have had any problem bringing in the competing entities, so to speak, and I think that in Queens we have had a very cooperative relationship with the Legal Aid Society Criminal Defense Division.

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I don't know if that answers your question.

CHAIRMAN HELLERSTEIN: It does in a way. I wanted to know how extensive it is. Because we hear, we have heard, you know, that the defense community is not deemed an equal partner to the extent that there were many little partnerships, and if there is a desire not to deem the defense community as an equal partner it can be easier to divide and conquer, so to speak.

MR. VACCARINO: Miss Zino would like to say something.

MS. ZINO: I think with regard to the defense not being an equal partner, that I think is regarding, for instance, the specialty parts. When the district attorney is getting together with the other court parts and they are discussing how to put something -- how to put that part together, and they are discussing the grant, maybe, and how that's going to be divided, then the defense is not invited. And I don't think that that's a matter of whether there is one of us or ten of us. I think that the defense, period, is just not invited. And that presents a problem when that specialty part is up and running because then, you know, we are asked to become a part of that specialty part. We are asked to staff the part. And then, you know, we don't have any funding to be a part of that part. To this extent we are not really equal.

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As far as, you know, when there is policies to be set or problems in the courts and stuff like that that they want to ask, you know, about, and how they can deal with it, or something like that, then it is not a problem for them to be asking both the Legal Aid Society and our office to get together. And then I think it is -- it is a good thing for then because there is two heads instead of one. And if Legal Aid has been coming to the table for 20 years and they are getting the same response from Legal Aid and they know they are going to get the same response this year, there is at least a hope that they will get something different from us and maybe we will be there to change Legal Aid's mind.

MR. VACCARINO: Apart from the funding issue, I think the specialty parts in Queens have been very inclusive of the defense bar, asking them their opinions, asking them to be part of the committees that constantly communicate concerning what's going on in those courts.

I would just like to get back to something that was mentioned by Mr. Cusicanqui from the Consulting Project; we do need adequate funding. Certainly everybody agrees with that and everybody says we should have more funding. I am certainly not going to dispute that. I think also there is a responsibility to use that funding wisely and responsibly.

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How do you do that? One of the ways we chose to do it is to instead of hiring in-house investigators and social work staff we retained the services of investigators and social work staff. How does that work? We have two investigative firms that we deal with. They are both on the 18-B felony panel and on the homicide panel. In fact, by doing that we give our attorneys a choice of investigative staffs to use. We have access to at least eight investigators, including female and Spanish speaking investigators. We have their services available 24 hours a day, 7 days a week. And we are not told that we don't go to a certain location because it is too dangerous or we can't do it because of another reason, because they know if we are not happy with them we can quickly terminate our relationship. We found that to be very beneficial.

Also, with the social work services, Mr. Cusicanqui and their project provide us with all kinds of services on a fee for service basis. And by the way, the investigators in our office are constantly consulting with the attorneys, almost on a daily basis. Mr. Cusicanqui, in fact, was given a seat at a work area in our office. He is there almost every day. That's almost like having someone on staff even though we don't have to pay somebody as though they were on staff. He

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2 does complete investigations, sentence investigations,
3 referral assessments, everything, including escort
4 service. And he is available, again, around the clock,
5 seven days a week. We, by doing this, have available the
6 services that at a fraction of the cost it would take us
7 to provide those services by hiring in-house staff. I am
8 not saying that this model is one that everyone has to
9 use. Of course it depends on the office and the
10 situation. But I am suggesting that those people in
11 charge of spending the money that are given as funds for
12 providing services to the indigent use some imagination
13 and flexibility in determining how they spend those funds.

14 CHAIRMAN HELLERSTEIN: Do you have anything
15 something different than we have heard today at this late
16 hour?

17 MR. VACCARINO: I just wanted to say that I
18 agree that there should be statewide standards. And I
19 don't know if Mr. Gradess referred to this little green
20 booklet.

21 CHAIRMAN HELLERSTEIN: Yes.

22 COMMISSIONER KAMINS: Yes.

23 MR. VACCARINO: I wholeheartedly endorse the
24 services that New York State Defender Association
25 provides, especially to public defenders on their own and
26 in upstate counties. And I would urge this commission to

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2 spread the word, do whatever you can, that they be
3 financed each year without having to hold their breaths
4 when the funding time comes. The New York State
5 Association of Criminal Defense Association also provides
6 a wonderful resource to defense lawyers.

7 I would ask that this committee in looking at
8 the standards and setting forth the standards provides a
9 mechanism for applying those standards and urge
10 legislature to provide the funding that would allow all
11 the public defense organizations to abide by those
12 standards.

13 I have more to say about specialty courts, but
14 in light of the lateness of the hour I will just say I am
15 a fan of the specialty courts, and I hope that in the
16 future when they plan these courts that they will remember
17 that not only the court has to be funded, but there has to
18 be parallel funding for those in the defense organizations
19 that are going to appear in those courts.

20 Thank you very much for your attention.

21 CHAIRMAN HELLERSTEIN: Thank you.

22 MS. ZINO: I know it is late, but I was so
23 grateful to see that there was a commission. I know that
24 this has been brought up before, but if there is anything
25 that you can do by way of helping with the standards,
26 either to meet with the district attorneys in the

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different counties, to use your political power, or your
whatever power you have, to help with the discovery, that
would be huge. And I guess that's the biggest thing. I
mean, that would go a long way towards standards for
indigent defense.

Thank you.

CHAIRMAN HELLERSTEIN: Thank you.

MR. VACCARINO: I just want to provide at
anyone's request -- in Queens somebody asked a question
about visiting clients. We have video conferencing in
Queens. We can the day before put in a slip of paper,
have your client produced the next day at the facility and
video conference in private. So if you would like a copy
of the protocol for that and the slip for that, I would be
happy to provide it to you.

CHAIRMAN HELLERSTEIN: Please supply anything
you think would be helpful.

Thank you again.

I thank all of you for remaining. I would like
to thank my colleagues.

Thank you, sir. Duty beyond the call.

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The above is certified to be a true and accurate transcript of the proceedings.

MICHAEL BARFIELD

SARA STANLEY

LESTER ISAACS