

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON PUBLIC SAFETY
JOINTLY WITH COMMITTEE ON COURTS
AND LEGAL SERVICES

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January 26, 2015
Start: 10:13 a.m.
Recess: 1:53 p.m.

HELD AT: Council Chambers - City Hall

B E F O R E: VANESSA L. GIBSON
Chairperson

RORY L. LANCMAN
Chairperson

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A P P E A R A N C E S (CONTINUED)

Kara Dansky, Special Advisor
Mayor's Office of Criminal Justice

Jennifer Jack, Contract Analyst
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Paula Brown, President-Elect
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[sound check, background conversation]

[gavel]

CHAIRPERSON GIBSON: Good morning and welcome to the New York City Council. My name is Council Member Vanessa Gibson, and I am the Chair of the Committee on Public Safety. And this morning I'm joined by my colleague, my fellow Co-Chair Council Member Rory Lancman, Chair of the Committee on Court and Legal Services. And I'd like to thank my fellow Co-Chair Lancman for conducting this joint oversight hearing with me on examining how the City of New York evaluates the effectiveness of the provision of indigent criminal legal defense in the City of New York.

2015 marks the 50th anniversary of a landmark case in New York State. In 1965, the New York State Court of Appeals ruled in *People v. Witek* that defendants in all criminal cases have a fundamental right to appointed counsel if they cannot afford a lawyer. And that the right to counsel must be made meaningful and effective. Today, we will examine how the City of New York evaluates the effectiveness of the legal defense of indigent people in criminal cases.

And I want to be very clear. This is not an easy task. What may be an effective strategy in one case may not be in another. This is why it is challenging to find appropriate metrics to evaluate the effectiveness of a criminal defense attorney. But I know we all share one common goal, to create a system that ensures appropriate legal service for all. I'm looking forward to discussing what metrics the Mayor's Office of Criminal Justice, also called MOCJ, uses to measure the indigent defense services in New York City. I am also interested in discussion why certain indicators are included or not. How important MOCJ considers each of these indicators, and how new indicators are being developed. I'm looking forward to receiving additional data, and analysis from MOCJ, and to get a better understanding of how the data is compiled, compared, and utilized. The effort to improve how the City evaluates this very important function involves an ongoing collaboration among the Mayor's Office of Criminal Justice, the New York City Council, all of our providers of legal services, our advocates and many other stakeholders.

And I am glad to see many representatives of these entities here this morning. I appreciate the opportunity to work with my Council colleagues, our Speaker, the Administration, MOCJ and all of the stakeholders to ensure that indigent New Yorkers in our city receive the meaningful and effective criminal defense representation that they deserve. And I also want to acknowledge the staff of the Public Safety Committee who have done such an incredible job in not just this hearing, but working with me as the chair. Our Legislative Counsel Brian Crow; Legislative Analyst Beth Golub; our Policy Analyst and new to the Committee Ms. Laurie Wen; our Financial Analyst Ellen Eng. As well as members from the Speaker's staff working with Public Safety Pfiza Alli [sp?]and Thea Moore, and our Finance Division Unit Head Eisha Wright. And I also want to acknowledge the presence of the member of the Committee on Public Safety, my Co-Chair Rory Lancman, Council Members Chaim Deutsch and Steve Matteo. Welcome and thank you for being here. And now, I will turn this hearing over to my fellow co-chair, Chair Lancman.

[background comments]

CHAIRPERSON GIBSON: Thank you. Chair
Lancman.

CHAIRPERSON LANCMAN: Thank you, Vanessa.
It has been over 50 years since Gideon blew his
trumped and the United States Supreme Court
recognized the constitutional obligation to provide
criminal defendants with counsel. It has been
exactly 50 years since New York found the same right
in our own State Constitution. And 50 years since we
began fulfilling our obligation in a systemized way.
A lot has changed in 50 years. The mechanics of our
Indigent Defense System has evolved significantly
since its inception in 1965. Today, six legal
services organizations employ 1,000 lawyers to handle
300,000 criminal cases a year. And a cadre of
hundreds of other private practitioners represent
thousands of defendants in the most serious cases
where the institutional--and where the institutional
providers are conflicted out. Additionally, as you
know from last month's hearing on summons court,
private practitioners handle well over 100,000 cases
in summons court annually.

But more than our mechanics has evolved.
So has our expectations of the Indigent Defense

System. Defendants and their cases are not mere numbers, and neither are the lawyers representing them. We've made so much progress wrestling the numbers to manageable quantity as a proxy for quality. Now, we want to evaluate the quality directly. How well trained and how experienced are our defense lawyers? How well supervised are they? How well supported are they by other experts who can contribute not merely to an adequate defense, but to getting the defendant off the criminal justice turntable entirely. Because today we expect that for \$252 million a year, our Indigent Defense System ought to contribute positively where it can to moving people out of the criminal justice cycle as much as possible. The taxpayers deserve that return on their investment. If a defendant has a mental health issue or housing issue-

SERGEANT-A-ARMS: [interposing/yelling.

You can't go there. Nobody goes back there.

CHAIRPERSON GIBSON: [gavel] Order.

[pause, background comments]

SERGEANT-A-ARMS: Don't move there.

Don't move there. Don't move until I tell you to.

[yells] I told you not to go. [sic]

[gavel]

CHAIRPERSON GIBSON: Sergeant-at-Arms.

Sergeant-at-Arms, please remove these individuals
from this Chamber. Sergeant-at-Arms, please remove
these individuals from this Chamber. [gavel]

[CROWD CHANTING]

[off mic conversation between Co-Chairs]

CHAIRPERSON GIBSON: Thank you, Sergeant-
at-Arms and now we will continue with our hearing,
and we have remarks continuing from Chair Lancman.

CHAIRPERSON LANCMAN: If a defendant has
a mental health issue or a housing issue or a family
issue or a public benefits issue that impedes his or
her ability to stay on the straight and narrow, it
make sense to confront those issues as well. But
which complimentary services does it make sense to
provide? How do we measure the effectiveness of this
sort of holistic defense? These are some of the
answers we hope to find in today's hearing, and I
look forward to learning the perspectives of the
distinguished witnesses planning to testify today.

CHAIRPERSON GIBSON: Thank you very much,
Chair Lancman, and I also want to acknowledge another
staff, the Counsel for the Committee on Courts and

Legal Services, Josh Hanshaft, and thank the entire team on both team on both committees for all of the work done for today's hearing. And now with that I would like to call up our first panel which is Jennifer Jack from the Mayor's Office of Criminal Justice and Carol Dansky also of the Mayor's Office of Criminal Justice. Please come forward.

[background comments]

CHAIRPERSON GIBSON: And anyone wants to provide testimony or sign up to speak, please do so with our clerk on the side.

[pause]

CHAIRPERSON GIBSON: Okay, ladies, before you begin I need to administer the oath. I need you both to raise your right hand. Do you affirm to tell the truth, the whole truth, and nothing but the truth in your testimony before this committee, and to respond honestly to Council Members' questions? Thank you much, and you may begin.

KARA DANSKY: Good morning Chairpersons Gibson and Lancman, and members of the Public Safety and Courts and Legal Services Committees. My name is Kara Dansky, Special Advisor in the Mayor's Office of Criminal Justice. Jennifer Jack, a Contract Analyst

also from the Mayor's Office of Criminal Justice joins me today. I welcome the opportunity to speak with you about the provision of indigent defense services in New York City. The Mayor's Office of Criminal Justice serves as the Mayor's advisor on public safety strategy and develops and implements strategies aimed at achieving three main goals: Continuing to drive down crime; reducing unnecessary incarceration; and promoting fairness. Our office works with the courts, law enforcement, defenders, and agencies including the Department of Correction, and the Department of Probation to set consistent citywide criminal justice policy; evaluate systemic strengths and weaknesses, and implement new initiatives to solve problems.

New York City should be proud of its system for providing indigent defense. A few metrics distinguish us from nationwide norms. For example, in New York City, as Council Member Gibson noted in her opening statement, every criminal defendant gets a lawyer, which is not true in all jurisdictions throughout the state or country. New York City is also a national leader in the successful implementation of specialty courts such as drug

treatment and mental health courts. These specialty courts require the effective assistance of defense counsel in order to succeed. A testament to the ways in which high quality indigent defense counsel help to sustain system wide successes. And currently, there are efforts on the state level that aim to bring the rest of New York in line with the services New York City provides.

Indigent defense services are provided by a combination of institutional providers and private attorneys who are part of the Assigned Counsel Plan otherwise known as 18B attorneys. The Mayor's Office of Criminal Justice contracts directly with the institutional providers and works closely with 18B attorneys--18B administrators and the Department of Finance in overseeing the plan's operations.

Institutional providers include the Legal Aid Society, Neighborhood Defender Services of Harlem; New York County Defender Services; Queens Law Associates; Brooklyn Defender Services; and the Bronx Defenders.

The Mayor's Office of Criminal Justice oversees \$150 million in criminal trial level contracts for these providers and tracks their

services on a monthly and quarterly basis. These organizations not only provide high quality criminal legal services, but also provide comprehensive wraparound services in areas such as housing and immigration. For both institutional providers and 18B attorneys there are quality control measures to ensure that all of the people represented by these attorneys receive high quality representation. 18B attorneys must apply to be admitted to one of three panels. The Felony Panel consisting of attorneys who had been admitted to the bar for a minimum of seven years, and have substantial criminal trial experience that includes felony trials. The Misdemeanor Panel consisting have demonstrated actual court experience, and at least ten criminal cases including at least one jury trial. Or the Homicide Panel consisting of attorneys with at least 60 criminal cases, including serving as the sole attorney in a minimum of five felony jury trials. Or, as co-counsel in a minimum of eight felony jury trials. In addition, 18B attorneys are required to do frequent trainings, and completed a recertification process in the second department.

Institutional providers have various quality control measures in place including rigorous standards in hiring, performance reviews, and an internal structure of robust supervision and training for attorneys. As Council Member Gibson noted in her opening statement, measuring the quality of Indigent Legal Services is widely acknowledged to be difficult, and most existing evaluations are limited. For example, some performance metrics only evaluate one-time snapshots of a public defender office. Have access to limited data, or do not allow for evaluation of changes in policies, practices or procedures. Most existing evaluations also fail to provide information about the most effective resource allocation, and do not always tell you what is or is not working or why. The challenges associated with evaluating Indigent Defense Systems exists nationwide. Currently, the city tracks conviction rates, incarceration rates, case duration, charge reduction, and disposition at arraignment for felonies, non-felonies and violent felonies by both borough and provider. In addition the Mayor's Office of Criminal Justice is currently in the process of developing a more robust evaluation system to ensure

effectiveness of indigent defense provision. As a first step, we have examined comprehensive Indigent Defense System Evaluations recently completed by Harris County, Texas and the State of North Carolina. Two of the only places to do such a thorough evaluation, and are working to identify an appropriate mechanism for conducting a system wide evaluation in New York City.

Additionally, we intend to collect information on compliance with established standards in ten fundamental areas:

1. Independence from undue judicial or executive influence.
2. Resource parity with the prosecution.
3. Vertical representation.
4. Attorney qualifications.
5. Attorney training.
6. Client financial eligibility determinations.
7. Timeliness of appointment of counsel and contact with client.
8. Confidential meetings with clients.
9. Attorney performance, and

10. Attorney caseload and workload.

The Mayor's Office of Criminal Justice works with academics, statisticians, and behavioral economists and in house we conduct sophisticated data analyses to help city agencies determine how their Criminal Justice resources can be best invested. In the coming months, we plan to work to determine how to collect the right data, and construct the right indicators to measure the effectiveness of the Indigent Legal Services in New York City with respect to these ten standards. Ensuring that we are using smart science to evaluate indigent legal services is one component of the de Blasio Administration's ongoing efforts to use evidence-driven methods to reduce unnecessary arrests and incarceration; direct criminal justice resources to where they will have the greatest public safety impact; and make the system fair.

Indigent Legal Services are not provided in a vacuum. Instead, they must be considered as part of a hydraulic criminal justice system. This administration will not only drive to bring more sophisticated methods to our measurement of effectiveness in this arena, but will also pursue

reforms that reduce unnecessary arrests, reduce case processing times, and divert people to programs and services in cases where those interventions are appropriate. While we do need to ensure that Indigent Defense Services are functioning well, and reinforced, the ultimate goal is to prevent crime well before it begins.

In closing, we feel that our current system does provide quality Indigent Defense Services, and now we have an exciting opportunity to expand our ability to evaluate these services. Thank you again for the opportunity to speak to you today. I'm happy to take your questions.

CHAIRPERSON GIBSON: Thank you very much. Thank you. I appreciate your testimony, and I thank you for all of you being here today. I want to acknowledge the presence of our colleague Council Member Rafael Espinal. Thank you for being here, and I just have a couple of questions, and obviously when you look at the Indigent Defense System in New York City, I would say yes it is an incredible system. I think we've done an amazing job to ensure that legal defense is provided to the most vulnerable New Yorkers. But I guess I'm of the mindset, as many of

you, that we always have room for improvement. And so these conversations that we start today, and that we have had I want to make sure we continue especially around the performance measurements. Obviously, every case is very different, but we want to make sure that we have, you know, an idea of what we can do to make the system even better. Because I think as we look to future contracts, and, you know, all of the providers that do the incredible work, we want to make sure that we are obviously being much more efficient.

So, I guess the first question that I have is in the quarterly reports that you receive from the providers, you ask information as to the average time of a case to disposition. And I'd like to know how do you use this data, and if you think it's necessarily better for a case to be resolved quickly or slower?

KARA DANSKY: So, as you know, we collect on a quarterly basis information pertaining to case disposition times, as well as a number of other metrics, including incarceration rates, et cetera. Those factors that I mentioned in my testimony. And we think that these are appropriate metrics for

measuring the system as a whole. And we think that we have some work to do in identifying metrics that will be specific to measuring the effectiveness of indigent legal services.

CHAIRPERSON GIBSON: What has been some of the challenges that the providers have shared with you guys in terms of the work they're doing? So not necessarily in the quarterly reports, but your interactions with the providers? What has been some of the challenges that they have faced in providing services?

[pause, background conversation]

KARA DANSKY: We think that the challenges faced by the institutional providers vary, and we're not prepared to provide specifics about that today, but we would be happy to follow up with your office.

CHAIRPERSON GIBSON: Okay, but just giving us a general sense of where we have like the areas of greatest concern. Are you prepared to speak on that without getting too specific? Just in terms of general is it, you know, the process by which the services are administered? Is it because of the number cases? Is there any guidance you can give us?

KARA DANSKY: We'd be happy to follow up
with your office about that.

CHAIRPERSON GIBSON: Okay. Is there
anything that you have learned about the
implementation of the case cap over the last several
years, over the last four years? Is there anything
that you've learned in terms of should there be
changes moving forward?

[pause]

JENNIFER JACK: So the Case Cap Rules
that's implemented by--on the State level by OCA, and
they're the ones that are overseeing that. So on a
year-to-year basis we're not involved in making those
determinations.

CHAIRPERSON GIBSON: But as OCA makes
these decisions, I would assume that they have
conversations with MOCJ about any recommendations
that you would make in terms of whether that case cap
should be changed or altered in any way. Have you
seen any changes in the quality of the cases with
that cap in place?

JENNIFER JACK: I think yes. I think
Indigent Defense is stronger for having those case

caps, and I think that that's certainly an important metric to consider.

CHAIRPERSON GIBSON: Okay. The other questions I was thinking about the City recently restructured a number-- Hello? Okay. The City recently restructured a number of its contracts, and I was wondering if you have seen any consequences that fell out as a result of that in relation to the opening up of the representation of conflict cases, to the institutional providers. So with some of the changes that the City has gone through with the RFP, have you noticed any unforeseen consequences as a result of that?

[pause]

KARA DANSKY: Nothing unforeseen, Council Member. The rollout of the RFP process went smoothly, and we're happy with the way that it's gone so far.

CHAIRPERSON GIBSON: Okay. Well, I mentioned earlier to Director Liz Glazer, and I know she was unable to be here, but as the RFPs are shared with the public and are started--we're rolling out new contracts, I certainly would like the Council to be a part of those conversations. Because obviously

RFP sets forth the vision of this Administration in terms of delivering of services. And I think it's important for the Council to be a part of the conversations around the performance measurements, and metrics and things that we're looking at as these services are being provided. So I put that out there to Director Glazer, and I want to make sure that for the record, you know, you're aware that that's the sentiment of the Council.

KARA DANSKY: We're very happy to work with the Council moving forward on all of the issues we're discussing today.

CHAIRPERSON GIBSON: Can you give me an idea of some of the wraparound services that you have and changes that you're looking to make? You mentioned in your testimony housing and immigration. Obviously, those are two very substantive issues that many of our New Yorkers face. However, there are a number of other social factors. So I'd like to know as we're developing the wraparound services, what changes are you looking to make beyond housing and immigration?

JENNIFER JACK: As to changes that we're going to make, I don't know that I could speak to

that specifically. The RFP is--the next RFP is several years away. But in terms of other wraparound services that are currently being provided under the last RFP, we requested that all of our institutional providers have social workers, as well as investigators. So that they can really troubleshoot and address the needs of each individual client. And they are also at times providing other legal services outside the scope of immigration and housing. Family Court is another example.

CHAIRPERSON GIBSON: Okay. The current contracts that we have in place for trial level criminal defense cases, and our conflict cases they're in place and were established by the previous administration. And I'd like to know if MOCJ has currently done any assessment of the current contracts to determine if they are, indeed, meeting the goals that were set forth under the request for proposals? So have you started to look at a lot of the current cases under the previous administration? And are you looking to make any changes?

[pause]

KARA DANSKY: We currently do review contract performance, and all of the institutional

providers were evaluated in terms of their ability to meet the requirements set forth in the original RFP. So we do collect information on a monthly basis pertaining to contract compliance.

CHAIRPERSON GIBSON: Now, if the City Council has an interest, which I know we will, in looking at some of the data that has been shared with you from your providers whether it's the quarterly reports or the monthly reports, all of this is kept in a database, and you're using it to track obviously trends and other patterns. But the City Council if we would like to get copies of that, are you able, and will you share some of that with the Council?

KARA DANSKY: So, the quarterly data that we collect, we collect in raw form, and it's not identified. So that--that data is not in and of itself appropriate for public distribution, but we do analyses on aggregate data on an annual basis.

CHAIRPERSON GIBSON: Okay. So are there any changes that you're looking to make in terms of how you receive the data? I know we're in a world where we, you know, are trying to embrace this technology. And this committee gets a number of quarterly reports already from the Police Department,

and it's in raw data, and which we have to, you know, interpret and alter. So we're working with them to try to get things a little bit more modern. But I would like to work with you on that because I think a lot of this data is very informative and helpful for us. So if we could have conversations about that, I would appreciate it.

KARA DANSKY: We would welcome those conversations.

CHAIRPERSON GIBSON: Okay. And I guess the very last question I have before I turn it over to my Co-Chair is when MOCJ contracts with defense providers, are the contracts based on the number of cases that are arraigned or handled in total? And then the second question is do you track how many cases the provider arraigns, then another provider is reassigned on the very next court date?

[pause, background comments]

JENNIFER JACK: So as to your first question, yes, we're looking at assignments based on the universe of cases that they can take. And we are tracking intakes on a monthly basis to ensure that our contractors remain in compliance with the contract. And your second question?

CHAIRPERSON GIBSON: Do you track how many cases that the provider arraigns, and then another provider is reassigned on the very next court date--

JENNIFER JACK: So the rate at which our--

CHAIRPERSON GIBSON: --of that case.

JENNIFER JACK: --the providers are transferring cases--

CHAIRPERSON GIBSON: [interposing] Uh-huh.

JENNIFER JACK: --we have looked into that in the past. Yes. It's not something that we are collecting on a monthly basis now, but it is something that we're looking to collect on a monthly basis going forward.

CHAIRPERSON GIBSON: Okay, even within the current contracts, you're going to ask for that information to be shared moving forward?

JENNIFER JACK: Yes.

CHAIRPERSON GIBSON: Okay. So you'll be asking for it on a monthly or quarterly basis?

JENNIFER JACK: On a monthly.

CHAIRPERSON GIBSON: Okay. Okay. Thank you very much. I always have many more questions, but for the sake of time-- I also want to acknowledge the presence of Council Member Julissa Ferreras and Council Member Ben Kallos. Thank you, and now I'll turn this hearing over to my fellow Co-Chair, Chair Lancman.

CHAIRPERSON LANCMAN: Thank you. Good morning. I want to focus a little bit initially on this concept of holistic defense or wraparound services. I understand that currently as part of the RFP that produced the current group of service providers, there was a requirement for, as you described, social workers and investigators. And my understanding is that the thinking at the time was that those were essential to help the defense lawyers represent their clients in that case. And responding to the four corners of the--the indictment or whatever the charging instrument was. The concept of holistic defense is a little bit broader. It's that other lawyers, or other professionals who might have experience in immigration matters, or housing matter not merely would assist in the provision of defense against those particular charges. But while you've

got the client there, you can maybe sort through their other legal problems and contribute to keeping them out of the justice system. So it's a little bit broader than just what do we need to do to defeat count 1 and count 2 and count 3? Does MOCJ have an opinion on whether or not that is a valuable and worthwhile aspect of the Indigent Defense System, and whether that's something that you might consider putting into future RFPs, the provision of those kinds of services?

[pause]

KARA DANSKY: We'd like to continue discussing that issue with the Council, and we're not prepared today to testify about what will go into the next RFP. As my colleague said, that's several years off. But we would look forward to continuing that conversation.

CHAIRPERSON LANCMAN: Okay. You list in your testimony additional information that you hope to collect. You said, Additionally, we intend to collect information in compliance with established standards in ten fundamental areas, and then you enumerate them. What is vertical representation? Can you just explain that?

3 KARA DANSKY: So this list of ten
4 fundamental areas comes from a set of standards
5 published by the National Legal Aid and Defenders
6 Association. And we think that this list is an
7 appropriate starting point for thinking about what
8 kinds of indicators we might want to collect to do a
9 robust evaluation of Indigent Defense Services in the
10 city. Are you asking specifically about--

11 CHAIRPERSON LANCMAN: [interposing] yes,
12 what do you mean by vertical representation?

13 KARA DANSKY: --vertical representation?

14 CHAIRPERSON LANCMAN: Yes.

15 KARA DANSKY: So, vertical representation
16 my understanding is that it's a particular approach
17 to providing representation that involves having one
18 attorney represent a single client from the beginning
19 to the end of a case. As opposed to horizontal,
20 which refers to changing counsel midway through the
21 case.

22 CHAIRPERSON LANCMAN: Okay. So it
23 doesn't relate in anyway to other services or other
24 legal matters that a client might be confronting at a
25 particular time?

KARA DANSKY: To the best of my understanding, this refers to an approach to providing criminal defense services only.

CHAIRPERSON LANCMAN: All right, and in plain English it means one lawyer represents a client throughout the duration of the case?

KARA DANSKY: That's my understanding. Yes.

CHAIRPERSON LANCMAN: Has that been shown to be the most effective way for--to provide indigent defense rather than perhaps attorneys who specialize in the arraignment process, and attorneys who specialize in the pre-trial motion process, et cetera?

KARA DANSKY: It's a standard the National Legal Aid and Defender Association thinks is appropriate, and it's one of many that we will be looking at to determine whether it's--whether it's appropriate to replicate such systems here. Along with the other nine fundament areas.

CHAIRPERSON LANCMAN: Okay, let me ask you about two other potential evaluation metrics, and whether or not you've considered them or might consider them. One is whether or not at any point

the clients will be asked to provide their assessment of whether the legal services that they were given were adequate, and appropriate. Whether or not the client feels that they were informed of their rights, or that they were informed of what the proceedings were? If they were, you know, understood what it is that they were-- Not what they were pleading to, because that could have other issues. But some way to measure a client's satisfaction. Is that something you'd be willing to look at? Do you think it's worthwhile?

KARA DANSKY: So the evaluation conducted of the North Carolina Indigent Defense System did recommend client satisfaction surveys. And that is something that we will be looking at.

CHAIRPERSON LANCMAN: Okay. And the other potential evaluation process is--is there any consideration given to actual on-site observation of defense lawyers as they are handling arraignments in court or conducting trials? I know that that is a hot topic for debate in the educational world where the teachers generally bristle at being evaluated purely based on numbers. And in some cases would say that an on-site observation would be more

illuminating in evaluating whether or not they are actually doing their job. Is there any model for that, or any precedent for that in any other evaluation system in the country? Do you think it's worthwhile exploring here?

KARA DANSKY: I would say that the institutional providers do conduct performance reviews, and have in place a robust system of supervision. And, of course, 18B Panel attorneys are required to meet numerous requirements to demonstrate their experience. It's a condition of participating in the panel. As to whether we would incorporate in-person reviews of attorney performance as part of an evaluation, we'll be considering all of the available indicators that we're aware of to determine which ones we think are most appropriate for the City.

CHAIRPERSON LANCMAN: Thank you. Something that's been useful to me as I, you know, became Chair of the committee and started meeting with administrative judges and others, is I learned that there's another terrific resource for evaluating whether or not legal service providers or the 18B lawyers are doing a good job, and that is the judges

themselves. Is there anyway that you could maybe engage the judiciary in a conversation about their participating in some appropriate way in the evaluation process. Either an individual cases as individual lawyers, or at least organizationally?

[pause]

KARA DANSKY: I would note that the Harris County, Texas evaluation that I mentioned in my testimony did conduct interviews of judges in the course of their evaluations. So that will be included in the universe of approaches that we will be considering in determining an appropriate evaluation system for the City.

CHAIRPERSON LANCMAN: Great. And my last question this round. I want to get a couple of particular items to your attention after my colleagues had a chance to ask their questions. Are you considering tailoring your metrics to the specialty courts, the problem solving courts. I mean I would think that some of the metrics that you might be interested in, in the mental health diversion part or the human trafficking court. Or, any of the others, the Veterans Court, might be different. And

is that something that you are looking at, or would consider looking at?

KARA DANSKY: We will be looking at and trying to determine the most effective way to evaluate the Indigent Legal Services provided citywide. We'll be doing--we'll be taking a comprehensive look, and determining the most appropriate indicators that we want to collect to be able to evaluate the quality of Indigent Defense Services across the city.

CHAIRPERSON LANCMAN: Okay. I'll come back for a second round later.

CHAIRPERSON GIBSON: Thank you. Thank you Chair Lancman. Just one quick question. Within the reports that you do receive from the providers they specify the number of cases that are resolved at arraignment. And I guess I'm trying to understand with a lot of the data that is collected and shared with MOCJ the purpose behind it, and what it's being used for. So do we have a situation where we're looking at cases being resolved at arraignment where they're necessarily better or more effective. I'm not saying that there is any pressure being put on providers, but ultimately the information that you're

given from the providers, what are you looking at?

What are you trying to assess from that data?

KARA DANSKY: Information about cases resolved at arraignment is part of the universe of data that we collect quarterly as you noted. And the data that we collect quarterly we think is important for doing system wide evaluations. And again, we will be looking at what are some of the more specific indicators that we can collect that will allow us to evaluate the provision of Indigent Legal Services in particular.

CHAIRPERSON GIBSON: So I always come back to the same question of trends. So with the data that's being shared if you see potential patterns of particular criminal cases, you know, is that something that's going to serve as an indicator that maybe, you know, the number of cases coming in are geared towards a certain way. And they're being arraigned. Like are you looking at any of those measurements where it could raise an eyebrow for further analysis?

JENNIFER JACK: I think generally the answer to your question is yes. On a monthly basis we're looking at arraignment trends really more with

an eye to volume rather than an eye to the specific cases that are coming through the court system.

CHAIRPERSON GIBSON: Okay. Thank you. We've been joined by Council Member Vincent Gentile, and we have a question from Council Member Ferreras.

COUNCIL MEMBER FERRERAS: Thank you, Chairs. I just have one question in relation to some savings in the budget. So the Office of Management and Budget estimated a net savings of \$6 million annual beginning in FY15 due to a more cost per case of the institutional providers compared to the 18B. Additional savings are anticipated to lower number of actual contract cases. What have been the actual savings since September 2013?

[pause]

JENNIFER JACK: Given that the providers only began providing conflicts representation in 100% of the arraignment shifts in December 2013, at this point we're not comfortable coming up with a analysis of actual savings. But that is something that we discuss with OMB regularly, and we are working very closely with them to make sure we make an accurate determination.

COUNCIL MEMBER FERRERAS: But there is an estimated net savings of \$6 million that was given by OMB. Is that not accurate?

[pause, background conversation]

CHAIRPERSON GIBSON: So the savings were derived from the transfer of the 18B attorneys.

[pause, background discussion]

JENNIFER JACK: As the Mayor's Office of Criminal Justice I can't really state one way or another anything about OMB's Cost Savings Analysis. But I think in terms of the way cases are handled, we're not yet at a point where we're going to be able to really accurately say that that figure is.

COUNCIL MEMBER FERRERAS: Well, I just wanted to know if the budget transfer was from \$20 million from the 18Bs to-- So that's where the cost savings is. So I think you should follow up with both of these two committees, but also the Finance Committee and let's just further discuss this. Especially since we're going to be beginning preliminary budget hearings, this is something that we should be able to see where the savings is. And for future budgeting, we want to make sure that you have all the dollars that you need. But also if

there is future savings, that we are to account for it early on and not have to do through modifications later.

JENNIFER JACK: We will be happy to do that, and we've been working very closely with OMB over the past year analyzing really the cost associated with all of this.

COUNCIL MEMBER FERRERAS: Okay. Thank you. Thank you, Chairs.

CHAIRPERSON GIBSON: Thank you, Council Member Ferreras, and I will turn it back over to my Co-Chair, Chair Lancman.

CHAIRPERSON LANCMAN: So I just want to ask you about a particular problem that was brought to my attention, and whether or MOCJ can take a look at it, and also factor into its evaluation, but mostly take a look at it. And that is arraignments and so-called night court. And the issue of there being not enough institutional provider lawyers there to handle all the arraignments. And, people are getting held over for the next day. While there are 18B lawyers who are there, a standby I guess for--to be conflict counsel who are not engaged. And, could be used to handle the arraignments of the people who

are instead being held over and have to spend the night in jail. Are you aware of this problem? Do you have any information? Could you get any information on how many people are being held over, and whether or not there's a way that the system could more efficiently use the lawyers that are already being sent to--to the courthouse?

KARA DANSKY: I don't have any information about that particular issue before me today, but I'd be happy to follow up with your office.

CHAIRPERSON LANCMAN: It would really be interesting if we could get the numbers for how many holdover arraignments, if that's the term, there are in a month, or in a reporting period. And that would just at least tell us the scope of the problem. But I don't have to tell you someone who is could be arraigned. Maybe they see a lawyer sitting there doing nothing, and now they 're going to have to spend the night in jail. It's pretty terrible. But there might be a good reason why that--that 18B lawyer cannot be engaged because he or she just has to be there in case there's--the last case of the night presents a conflict so-- But if we could look

at getting to the bottom of that, that would really
good.

KARA DANSKY: We'd be happy to follow up
with you about that.

CHAIRPERSON LANCMAN: Okay. Thank you.
All right, that's all. That was all the questions
that I had.

CHAIRPERSON GIBSON: Just a final
question. So much information, you know, is overseen
obviously by all Albany by OCA. To what extent do
you work with OCA on a number of changes or
recommendations. Like is that something that you
have done in the past under MOCJ, formerly CJC? And
is that something you're looking to do during this
Administration?

[pause]

KARA DANSKY: We are in frequent
communication with OCA, but I don't have the
particulars before me today. We'd be happy to follow
up with you about that.

CHAIRPERSON GIBSON: Okay. I appreciate
your testimony today. We don't have any more
questions, but I will just say that, you know,
obviously there is a lot of follow up that needs to

be done. Chair Lancman talked about holdover arraignments, and that is of particular interest to me. I represent Bronx County, and the entire court system in the Bronx from family to civil to criminal. All the courts in the Bronx are in my district. And so, a lot of times I am affected by many of the individual cases that do come to my office. So, I certainly would love more information on that. And just in general, the quarterly reports that you receive from the providers is helpful for the City Council to get that information. The question that was asked by Council Member Ferreras, who chairs Finance in terms of some of the OMB savings that have been realized, would like more information about it as well.

And then, just generally conversations moving forward if there could be a greater dialogue. I know that Ms. Glazer has a task force that works with her when RFPs are administered. But even absent of that, I think it's important for us as partners to really have conversations around performance measurements, around some of the other social factors, the wraparound services that are very critical. So, I'd love to continue to partner with

your office, and I thank you for your testimony
today.

KARA DANSKY: Thank you, and we look
forward to working with the Council.

[background comments]

CHAIRPERSON GIBSON: Our next panel is
Carolyn Wilson of the New York County Defenders
Services; Justine Luongo from the Legal Aid Society
Criminal Defense Practice; Justine Olderman from the
Bronx Defenders; and Lisa Schreibersdorf from the
Brooklyn Defender Services. Please come forward.

[pause]

CHAIRPERSON GIBSON: Are you all ready?
Okay, we may--you may begin. We'll start with you,
Miss Justine.

JUSTINE LUONGO: Good morning. I'm
Justine Luongo. I'm the attorney in charge of the
criminal practice at Legal Aid Society, and I want to
thank both Council Member Gibson, and yourself,
Council Member Lancman for inviting us to participate
today. We began sort of this morning talking about
50 years after *Gideon v. Wainwright*, and whether or
not, in fact, indigent legal defense has sort of met
the mandate for providing what I think was sort of

defined as meaningful and effective. And I think as the primary public defender in New York City representing over 220,000 people that we have come to learn across a number of years that we have had that role is that what is defined as meaningful, and what is defined as effective 50 years ago, is certainly meaningful and effective today.

And I think it was discussed sort of in opening statements and in the questioning that what we have to look at is that data is important. And we all want to sort of look at, and we all do look at the number of trials and the number of hearings. But sort of what we have to recognize and start to both qualitatively and quantitatively really asking what does this client need? And that changes from person to person. And data on its own simply will not give us the information to make sure we are actually being meaningful and effective. And as public defenders and institutional providers on behalf of-- I certainly can say on behalf of Legal Aid Society, we have had to redefine and work on and be innovative. And sort of smart with resources to try to bring the broadest perspective of what it means to represent a New Yorker in the criminal justice system.

It's no surprise the Supreme Court right from Antonin Scalia right down to what data shows us is that the number of trials and hearings are on a decline. But that does not mean that as institutional providers we don't litigate every single day from the start of that case to arraignments, right through the parole revocation case, or an appeals case for our clients. And I'll give you an example. Just this past month we ended in our Kings County Office an 18-month litigation, a Frye hearing. Complex litigation to challenge OCME's use of low copy forensic and their forensic tools in DNA cases, and the judge agreed with us. That has set a new litigation standard by which not only public defenders, but 18B counsel and private attorneys not only down here in New York City. But in New York State can use on behalf of their clients.

Early investigation and social work is important. We have a one-to-ten ratio of investigators to social workers. We have investigators and social workers to attorneys. It's set by the First Department Oversight Committee. However, we've provided a report to the First Department Oversight Committee after a two-year

comprehensive task force that we worked with Davis Polk to make the case. Today, our clients come to us with such a host of civil legal services and obstacles in their life that the one-to-ten ratio particularly for social workers is not enough. And that investigators if we are to go out and scour the city, and get that video tape or get that witness statement one-to-ten is not enough.

And we hope that the First Department and the Second Department and the City of New York agrees, and find us differently. So that we can provide those services. But we have to sort of have a conversation about going beyond just trial and litigation. And that really is the comprehensive or holistic representation that I think Council Member Lancman you talked about. That with the number of clients- And I think MOCJ did an analysis under the Mayor's Task Force on Behavioral Mental Health. That we are seeing a staggering number of people with mental health in the criminal justice system. And those people should be diverted, not arrested. But once they are arrested, we need to get services. So we do. We employ wraparound services to hopefully divert that client away from the criminal justice

system, and back into the community in residential or in-patient facilities, or back with their family where they're getting treatment instead of jail. We have an innovative approach to that.

A number of years ago we were funded by the Langla [sic] Law Foundation to pilot a program where we replaced social workers in arraignments. We are happy to say that we created a citywide response to that. So in everyone of our arraignment shifts, there is either on site a social worker or a social worker on call that can help evaluate the client and divert that client right at arraignment, 24 hours after arrest. Because what we know is early intervention, not have bail set and having somebody sit in jail where they decompensate or they're disconnected from their services. But early intervention is the key to really keeping somebody out of the system, and not having them cycle back the minute we let them go. The other issue is immigration.

Once thought of as collateral. It certainly isn't any longer. The Supreme Court has said it's our mandate, and we have taken that on. We have immigration specialists in each one of our

offices, and they are on hotlines to get calls right at arraignments. Because I'm sure as we will hear today about the number of pleas and arraignments, they are high. And if a client decides to take a plea, we must advise them at arraignment as to whether or not there is a consequence to that. And that client and that lawyer makes that vital decision. As institutional providers, we provide that service up front. So that at arraignments if we have to take a plea because the client wants to take a plea, they are properly advised.

But now it's a new era, and we do have to look at housing, but we also have to look at benefits, and all the other life consequences that are often actually the most important thing to the person when we meet them in arraignments. We assume it's the criminal case, as defenders and as the community. But really for the clients it's where's my next shelter bed? Am I going to get out of arraignment now in order for me to make that curfew, because if not, I'm on a park bench. And guess what, with the policing the way it has been, that person will get re-arrested and right back in the system. So we have to look at comprehensive services, but I

1
2 implore the City of New York to start to fund
3 indigent defense providers and, in fact, all assigned
4 counsel with the ability to give civil legal services
5 right up front as part of the case.

6 As Legal Aid Society, we are fortunate we
7 have a civil practice and also a juvenile rights
8 practice. So we provide those wraparound services,
9 but it's sort of an unfunded mandate. And if we
10 don't start to think of those things as important as
11 immigration, we're sort of losing the battle. We
12 will not stem recidivism and, in fact, we won't have
13 a very just justice system. So there's been a lot of
14 talk, and then I'll wrap it up because I'm sure my
15 colleagues here have also very important points to
16 make.

17 But I want to wrap it up, and talk about
18 this concern about holdovers. There's a lot of
19 reasons why. Unfortunately, clients don't make it
20 from the central pen area up to meet our lawyers.
21 But I really want to implore you all to look beyond
22 sort of this notion that it's the defense counsel
23 that doesn't want our clients to go home, or there's
24 not enough of us. We staff sufficiently. Often, the
25 paperwork isn't ready. Often, the rap sheet system

with DCJS is out. Or the clerks in OCA simply don't give us the paperwork in enough time. We have supervising attorneys in each of our shifts to ensure that clients who can go home, want to go home, and their paperwork is ready get a lawyer. Our supervisors will step in if need be.

So looking at that, look beyond that holdover number. I implore you to really look at what happens between downstairs and when we get the paperwork. Certainly, what we know is when the court staff provides us the paperwork, our lawyers will often stay past 5 o'clock, past 1:00 a.m. so long as that judge that judge stays on the bench to make sure that those clients go home. It is our mandate to do that, and we would never hold back paper simply so that someone else--probably another provider because we're all in different shifts--would get those cases. There's no real need for us to do that, and we have gone above and beyond to make sure that will give extra time to our lawyers in order for-- And work even during the dinner break to make sure that happens. Thank you.

JUSTINE OLDERMAN: My name is Justine Olderman. I'm the Managing Director of the Criminal

Defense Practice at the Bronx Defenders. I also want to thank the Council for the opportunity to be here and speak to you all today.

When it comes to evaluating the effectiveness of public defense, traditional measures have, as has already been discussed, talked about a range of categories including independence, the experience of lawyers, training, supervision, and caseloads, just to name a few. And on their face these seem like perfectly fine metrics for evaluating public defense. But fundamentally these standards that already exist fail to adequately assess the effectiveness of our work. And they do that because at their core, they are based on an outdated model of criminal defense, one that puts the case at the center of the representation instead of the client. And in doing so, they ignore the importance that this Council has already recognized addressing the root causes of criminal justice involvement. And they treat enmeshed penalties as an afterthought.

In today's criminal justice system, we simply cannot afford to talk about caseloads and experience and training and supervision without taking into account the radical change in our

responsibilities to our clients. We have to recognize that no matter how well organized, trained and supervised we are, we are simply not meeting minimum standards of indigent defense. If we're pleading people out to low-level offenses, misdemeanors, even violations only to have them deported, fired from their jobs, and kicked out of public housing. We are practicing today in a different era than when most of these standards were drafted. Over the past ten years, the Criminal Justice System has seen a significant shift in the nature of its cases. The most recent criminal court data shows that misdemeanor violations and infractions make up 86% of all the cases arraigned in New York City. Felonies just 14%. And that felony number drops and that misdemeanor number goes up when you take into account that many felonies are reduced after arraignments once they're evaluated by the Grand Jury Bureau. A figure that our internal data shows is approximately 15%.

In addition, recent data from the City shows that the vast majority of both misdemeanors and felony cases are, in fact, resolved through plea-bargaining. In 2013, citywide only .2% of Criminal

Court and only 5% of Supreme Court cases were resolved by trial. Given the large number of cases resolved through guilty pleas, it's more important than ever that criminal defense attorneys live up to the mandate in *Padilla v. Kentucky* to advise their clients not just of immigration consequences, but of all the serious and likely consequences of a plea. But our world and the changing nature of it isn't just because of *Padilla*. Effective representation that this Council has recognized, and that even courts with their specialty court systems have recognized. Effective representation requires that we not just protect against those enmeshed penalties in criminal justice involvement.

By focusing on the client instead of the case, we ascertain the full range of our client's legal and social service needs. We build better relationships with them. We understand their goals and their priorities better. We receive better case results as well as like outcomes. Traditional metrics that were discussed earlier this morning simply don't capture sufficiently the changing nature of the criminal justice system, our work and our role. As indigent defense evolves so, too, must our

understand of what it means to provide effective representation. And so, too, must the metrics by which we evaluate it. There are many different ways of capturing the nature of the work, but I want to just highlight, and I do this in much more detail in my written testimony, three new metrics that I propose that this Council look at. The first is evaluating indigent defense providers based on their ability to address the causes and consequences of this involvement--

CHAIRPERSON LANCMAN: [interposing]
Just--just so I can follow along.

JUSTINE OLDERMAN: Yeah.

CHAIRPERSON LANCMAN: I know you're mixing written and other-- I'd love to see where is this in your testimony? What page is it?

JUSTINE OLDERMAN: Yes, so on each--in each section of my written testimony I have a list of recommendations. So, for example, for the metric that seeks to add evaluating indigent defense providers by their ability to address causes and consequences, the specific breakdown of those recommendations and what that would look like is on page 7. They include questions like does the

provider offer training to its lawyers to identify these causes and consequences? Does the provider have in-house lawyers and non-lawyer advocates who can advise clients about a MESH Penalties or at least access to external advocates who can do so. Is there the ability to consult with these advocates before taking guilty pleas even at arraignment? Does the provider have the ability to refer clients to in-house or external advocates who can help address other legal and non-legal needs? And there are a few others in there as well.

CHAIRPERSON GIBSON: So you're talking about the holistic defense metric; the client satisfaction; and the innovative metric, right?

JUSTINE OLDERMAN: That's correct.

CHAIRPERSON GIBSON: [interposing] Okay.

JUSTINE OLDERMAN: So those are the three metrics that I--that we are proposing, evaluating on holistic defense services. Evaluating based on client assessment, and an organization's willingness. In any other practice, in any other business client satisfaction is at the core of what motivates and organization to change and adjust. And yet, in our system, somehow client satisfaction seems to be not

even an afterthought. It's not even something that any standard really embeds as being a priority. And we are arguing that it should do so. And the third one is, in fact, evaluating indigent defense providers based on our ability to innovate and adapt to the changing needs of our criminal justice system, and our client population. And again, those recommendations follow a more robust discussion of them. The client satisfaction metric is on page 9, asking, Does the provider have a system in place for assessing client satisfaction? Is that assessment done on an annual basis? Does the provider have a system in place for analyzing the results, and putting those results into practice for implementing change. And then on page 11 a breakdown of the innovation metric, and how we can begin to incorporate that standard in our evaluation of public defense.

And I just want to say that these new metrics, and others that I'm sure will come up in the course of conversation about the work we do and how it's changed. And how we--the way we evaluate it needs to change, will go a long way toward ensuring what this Council is concerned about, which is

effective representation of New Yorkers charged with crimes. But updating metrics alone will not result in the delivery of quality representation. If those who have oversight of the work we do really care about ensuring that it is effective, then you must also look to the effectiveness of the court systems in which we operate. Our current system is plagued by staggering congestion and delay. And that congestion and delay has become one of the greatest obstacles that we currently face in delivering on the promise of effective representation.

If we as lawyers are spending four to six hours in court simply to have our cases, our clients' cases postponed again and again and again because there's no trial part to hear their case. Because there are no judges available to work on reaching a disposition. Then we have little time left at the end of the day to do what we need to be doing, meeting with clients, investigating our cases, writing substantive motions, and preparing for trial. And if cases pend for years because of that congestion, then our own pending caseload, a snapshot of what we have in our drawer or what's in our office at any one time. That caseload will balloon despite

the caseload caps that are evaluated on an annual basis

And in the meantime what is happening is that our clients are losing faith in us as their lawyers, and in the judicial system, which has promised them their day in court. This is a promise that we are failing to deliver on. Our effectiveness in the systems are inextricably intertwined, and up until recently that relationship has largely gone ignored. We have, however, been very heartened by this administration's and this Council's unprecedented commitment to helping address both the causes and consequences of criminal justice involvement. And has seen that the city is focusing for the first time on this problem of delay. But making these issues part and parcel to an evaluation of indigent defense will solidify the work that's already been done by the City, the Council, and the providers in this room. And will go a long way towards ensuring that we are able to meet the mandate of the *Padilla v. Kentucky*, as well as the promise of *Gideon v. Wainwright*. Thank you for your time.

CHAIRPERSON GIBSON: Thank you.

LISA SCHREIBERSDORF: Hello. [background comment]. My name is Lisa Schreibersdorf. I'm the Executive Director of Brooklyn Defender Services, and thank you very much for taking the time to look at the issue of indigent defense in New York City. I want to start out by saying everything that my colleagues have said so far. I couldn't agree more with. And I really--I want to go onto some new information that I might add to the conversation rather than repeat it. But I don't want that to mean that I don't everything that they're saying is exactly right.

So Brooklyn Defender Services, as most of you know, is a defender office in Brooklyn, of course. We have about 270 employees of which 160 are attorneys, and we represent people in three different practice areas, and what we say is, you know, if somebody brought to us, brought to court, we will represent them. In criminal cases, family, many child welfare cases, and immigration cases. As you probably know, the Immigration Project is funded by the City Council, and we really appreciate that support. So for all of those clients who are unfortunately burdened with, you know, being brought

in for some accusation, or some deportation or losing their kids, we provide them with a full panoply of supplemental services.

We use a model of specialization, which I think is unique to our office. And I'll just give you an example of our specialization model because it--I think it's very effective, and we find that it works very well in Brooklyn. And I hope that as you look at holistic services you'll consider maybe the way we do it, or understand also that different offices can do it in different ways. And each of them can be effective because of the community that the office works in, or because of the size of the office, the ability to provide those services.

So I'll just talk about the Adolescent Unit because I think it's the best example. Our Adolescent Unit has about 12 specialized attorneys who rep-- Our Adolescent Unit, Adolescents. Sorry. So we have about 12 specialized attorneys who have a special interest in working with young people 16 and 17 but up to the age of 21 as well. And they understand that in working with those young people they're also going to be working with those young people's parents, with the schools, with community

1 organizations, and working with teenagers who
2 sometimes are hard to talk to. As you know, if you
3 have a teenager. So, they have specialized services
4 to work with that unit. So, for example, they have
5 specialized social workers who work exclusively with
6 teenagers.
7

8 And we also have youth advocates who are
9 credentialed people who have been in jail actually,
10 and worked directly with our clients. And when I
11 talk about why is this so important. So our social
12 workers in our Adolescent Unit, some of which are
13 funded outside our funding from the City, they
14 actually go out to the community and they even walk
15 kids to school. They go to their houses. They sit
16 next to them in court. They call and remind them,
17 Oh, you have to go to Community Service tomorrow. And
18 we try to do everything we can to make sure that
19 these kids meet the requirements of the Criminal
20 Justice system. But also help them deal with what's
21 going on in the community. And by having specialized
22 services, we are very aware of what's going on in the
23 community in I think a unique way.

24 So our social worker, for example, we had
25 kid who-- It's a horrible story, but just to tell

1 you how bad it is for some of the kids in our
2 community. We had a kid in court just last week who
3 was talking about that he was having trouble. They
4 were threatening him. He was charged with a gun
5 possession. You know, he felt really threatened, and
6 we were trying to work with him. And, in fact, had
7 an appointment to come in and meet with us. But
8 before he came back to our office he got killed. And
9 when I tell you that this is not a funny or laughing
10 matter what's going on with these kids. And they--we
11 are the people. We are in a sense the first
12 responder for many of these kids in dire--and many
13 people mentally ill, and otherwise, who are dire
14 straits out in the community.

16 And if we don't have the services to help
17 them, and also if the resources aren't out there for
18 us to get them to services, these people will die.
19 These people will end up in mental institutions.
20 They will end up struggling with poverty, and
21 horrible outcomes from their criminal case including
22 lack of employment. And as you heard, many of the
23 consequences, and deportation, of course, being a big
24 one in Brooklyn. And it's very important that the
25 city as a whole recognize that as first responder for

these issues, the Defender's Office needs to have a robust opportunity to provide services in whatever way works best for that office and their community.

Just to give another example about our specialized unit. We also provide educational attorneys within that unit who can go to--try to keep the kids in school. Help them get transferred. Provide suspension relief, and also help under-credited kids. Another thing we're able to do is help kids transfer from Riker's Island back into the education system and vice versa. So there are a lot of things that we can do because we have a group of people that are-- there are about 20 people in our Adolescent Unit all rather with roles to play to help those kids, you know, basically overcome the obstacle that they just faced when they got arrested. That's one example. We have other specialized units. We have a Mental Health Unit. We have Veterans Unit, a Trafficking Unit. We have a unit specialized in clients who have both child welfare cases and a criminal case.

And each of those units has specialized services for that unit. So they would be very different from one to the other. Of course we

1 primarily have to focus on the criminal case. So we
2 also have investigators and social workers to work
3 with any client that needs it. And we have a vast
4 number of immigration attorneys, over 20 immigration
5 staff to help us both understand and advise the
6 client. But also to provide direct representation
7 beyond just the adviser. So if the client says,
8 well, you know, just to give you an example right
9 now: I'm under 30 years old, and I--maybe I could
10 qualify for DOCA. I think it's the obligation of the
11 public defenders because we are one of the biggest.
12

13 We are really the biggest providers in
14 the poor community to have the ability to dig in and
15 actually do the DOCA Application. Now we do that.
16 We do that for clients, but that funding is not
17 provided as part of our criminal defense contract,
18 for the most part. And we do--we do try to get other
19 grants, although we do have a lot of support from
20 the City Council under the NYIFUP Project to provide
21 some of that assistance. And I want to say that I
22 think the capacity that you build-- When you build
23 your defender offices so that they can provide these
24 services, I think what you're doing is providing
25 capacity in the community to grow where the needs is

most. So I think right now with the executive action let's say, there's a big need in immigration, and all the-- Our offices all have very rich immigration services. We are able to kind of get in there and make a difference.

Now I know that this is about indigent defense, but I think you understand that we can't do indigent defense in a vacuum. But one of the things that hasn't been brought up that I feel is very important to look at is what role the indigent defense provider is playing in policy. And changing maybe laws that aren't fair, or that are applied in unfair ways. And I've been doing policy advocacy, and BDS has done policy advocacy over time and is even growing in that way. Because it's very important that we be able to speak to MOCJ, the City Council, go to Albany and talk to the Assembly, the Senate, and the Governor, and even go to Washington, DC, and talk about issues that are really importantly. Particularly, about the racism and racial disparities in the criminal justice system, which are national conversations and are not limited just to New York City. And certainly, we are the people that have the most experience, direct

knowledge, and minute-by-minute understanding of how even a law such as the lack of discovery in New York State can affect the daily life in criminal court right here in New York City.

So it's important that we go to Albany, and talk to policy makers. And I think that's another important measure of the effectiveness of an institutional provider. You know, we have the ability to speak in larger terms than anybody else. And, in fact, I think we've been doing a lot more of us. All of us have been requested by MOCJ to come in and talk about a lot of very important issues. As you know, summonses has been a big issue. Case process time has been a big issue. And I just want to say that I think it's a positive change in this administration to actually hear the defenders out on policy issues. And I'm really glad about that. It's been a very important issue for me. And I want to say that my other important issue is expungement, and I just had to put a picture before it because there is no expungement essentially in New York State.

So I just want to say one more thing just to answer a couple of question. You asked earlier if it was better for cases to go quickly or slowly. And

I want to say it's important what's right for that case that it be able to happen. So in a case where the client needs a quick resolution because they cannot miss, you know, days on their job it's important that we be able to resolve that case if the case--if there's a good disposition. If the case needs to be fully developed because it's going to trial, it's important that that case not be rushed. So we have time to follow every lead, and get every witness and every piece of evidence. So it's very important that we be a little bit of the guide about whether that case should move or slow down. And, unfortunately, many of our courts we don't have that ability. The cases--the congestion stops us from being able to move cases quickly if we need to. And exterior goals that the court system might impose on itself actually stop us from being able to get delays when we need them. So I'd just like to say I think it's very individual, and I think that is our job to figure out what that client needs, and try to advocate for it.

And I just wanted to comment on one other thing, which is the vertical representation because that seemed important. And I want to say that I

think it's probably the single most important factor on whether or not an attorney is doing a good job for their client. So even if it may not be in theory the most efficient way, if you represent the client throughout the life of the case, then as a lawyer you develop understanding about what's going to happen from the beginning to the end of the case. If you've never done a trial because you're always in arraignments, it's very hard to tell the client in arraignments you should take this plea or not take this plea. Because you don't really have a good understand of what's going to happen later. So I want to say I don't think under any circumstances the question of whether vertical representation is the best way to provide services should even be considered. I can tell you as a defender for 30 years, and as somebody who is involved a national level, a state level, and a city level that there is no question that good lawyers need to be developed. And the way that they are developed is by representing clients from beginning to end. Thank you.

CAROLYN WILSON: Good morning. My name is Carolyn Wilson. I'm a Co-Director of New York County Defender Services.

CHAIRPERSON GIBSON: Use the microphone.

CAROLYN WILSON: New York County Defender Services has had a contract with the City of New York since 1997 to handle a port of the indigent defense cases. We're a somewhat smaller office. We have approximately 57 attorneys including supervisors, and, of course, it's the curse of the person who goes last that one doesn't-- So many good points, and so many points that I had intended to address have been made. And I'm going to try and not be repetitive. But I certainly second every point that's been made. But I certainly want to echo the fact that during the past 20 years, the role of the criminal defense attorney has changed dramatically. It's almost unrecognizable from what it was 20 years ago. It's far more complicated to represent a client today, and so much more is expected of the lawyer and required of the lawyer. They have to be really on top of so many complex issues, and the client has a--the clients have a right to know information about things like will I lose my job because of this conviction?

Will I be legally barred from a job, which I've been doing? Will I be unable--will I lose or be unable to attain a license such as a driver's license and barbering licenses, licenses in healthcare or education, a myriad of fields. Will I--my home? What will happen with regards to my home? Will I or my family potentially be evicted from our public or subsidized housing as a result of this case? What will--how will my family be impacted because of my case? Will I be barred from living with my own children? Will I potentially lose custody of my children? Will I--even in some extreme case--lose visitation rights with my children. And, of course, the huge issue of what will happen with my immigration status? Will be deported? Will I be able to visit my friends and family, my country of origin and come back and be with my family here in the United States.

So all of these things have made the practice much more complex. And, of course the issues of--the classic issues of defense: What defenses are available? Are there available alternatives to incarceration? Drug treatment, diversion programs, mitigation programs, mental

health programs? What is available and what are the eligibility requirements? And is that something that can help this particular client? All of these issues are now part of every criminal case to some degree, and failure to adequately know about them, and address them can result in post-conviction litigation, and result in reversed convictions, second, even third trials. And potentially civil judgments for wrongful convictions. So attorneys must be on top of these issues, and they must explore these issues with their clients, with every single client.

Institutional defense providers in my view, and New York City--New York County Defender Services in particular are well suited to this mode of practice. As for New York County Defender Services, we provide in-house immigration counsel. Immigration trained specialists who are able to advise clients and the lawyers about immigration consequences of the case. And these people are available during night shifts and weekend shifts to consult with lawyers if a question arise.

We have an integrated domestic violence attorney on our staff who works with several--at all

times has several interns whose practice is limited to integrated domestic violence, which is a particular court part in New York City, and it is a component of civil family court. It addresses matrimonial issues, the criminal case, of course, and a myriad of family issues. So one client may have four or five different cases pending--[coughs] Excuse me--in the integrated domestic violence unit. We have social work support, which includes psychosocial social reports for the court or prosecutors to facilitate appropriate dispositions.

Counseling referrals to alternative incarceration programs; drug treatment program referrals; mental health treatment program referrals. And there was a question I believed asked to the two women who testified from MOCJ about whether social work-- Whether it would be considered to put that as a requirement into the contract. All of our organizations have always had social workers and social work support. All of our organizations have always had investigators. Often former NYPD detectives. Our investigators are Spanish speakers, and available for immediate early investigation in cases as well as more complex detailed investigation

of cases at a more--at a later state in the case.
NYCDS has paralegals and law student interns for
legal research and logistical report. We are an
accredited continuing legal aid-- or continuing
legal education provider, and we provide training to
all attorneys in a number of formats. And we more
than satisfy the OCA, CLE requirements for each
attorney for each year.

Case law distribution is all relevant,
appellate. Case law is distributed to the attorneys
on a daily basis. Our attorneys have a variety of
experience levels. The majority are experienced from
upwards of 20 years of criminal defense experience.
Many participate in training as trainers themselves
in trial advocacy training in local law schools, and
law schools in the metropolitan area. Our management
group, which provides training and supervision has
more than 30 years experience, each of us in
litigation and the training of criminal defense
attorneys. We have some newer-- In recent years
we've taken on some newer attorneys and all of these
attorneys go through an in-house training program.
And are directly supervised throughout their early
appearance in both criminal court, and later on when

they get to Supreme court. The first trials or hearings are second set by a supervising attorney, and the types and severity and number of cases handled by this group are closely monitored.

On an organization level, it should be noted that NYCDS and the other institutional providers provide an accountable structure that is available to the court to respond to specific problems and situations. Administrative problems can often be resolved with a phone call. Where emergency staffing issues require we can and have on numerous occasions assisted the court.

I know that this committee is concerned about oversight, and I would just note that those of us in our First Department are since our inception, NYCDS has been overseen by the First Department Indigent Defense Oversight Committee. Which prepared bi-annual reports, conducts site visits, has conversations with judges. It does in-court observations of the attorneys, and comes to the office and talks to the attorneys. As well as poring through our statistical information.

Many of the-- Just to wind up, all of the training, services and support that NYCDS

provides our attorneys and clients ensure that we have and will continue to provide the highest quality representation possible. And I thank you for the opportunity to speak.

CHAIRPERSON GIBSON: Thank you all. I appreciate it. From Legal Aid to Bronx Defenders, Brooklyn Defenders and New York County Defenders I thank you very much for your very intensive testimony. It's very helpful for us as we move forward. I want to acknowledge the presence of Council Member Carlos Menchaca, Council Member Robert Cornegy, and Council Member Jumaane Williams, and I just had a couple of questions. I mean you answered many of the questions I already had. But, I appreciate the chance and the fact that you really spoke about a lot of the holistic services in recognizing outside of housing and immigration how important mental health is. I think from some of the recent incidents that we've seen across the city how real mental health is. I represent a district where there was an individual who pushed someone off of a subway platform. And obviously, he had a number of mental health issues. So for many of us we experience it all too often. So I appreciate the recommendations that many of you

have made. And I just wanted to ask about some of the specialty areas.

A number of you alluded to mental health, the adolescents unit, the veterans, the trafficking, the domestic violence. I do know--I think Bronx Defenders may have now One Arrest Project and the Bail Reform Project. A number of mental health providers that have been included. I wanted to ask a very specific question. And, this is because with my district in the Bronx I represent a lot of young people that have been pressured into gangs, gangs and drugs, and they get younger and younger. Are you seeing a lot of these cases around gang activity, and if so, are you looking at any specialty that will focus-- Similar to the adolescents that you talked about at Brooklyn Defenders. But also when you look at a lot of the gang issues obviously many of it stems from poverty and unemployment. And that's been our major issue. Are you looking at anything on that because I have a lot of gang issues?

JUSTINE LUONGO: I'm very happy sort of personally that you raised this. Prior to coming to Legal Aid Society, I actually worked for ten years with the Board of Education here in New York City in

Gang Intervention and Prevention. You know, I think as public defenders we sort of have to think out of the box about being proactive. And sort of meeting the people we serve prior to them ever getting arrested. And one of the real proud we have, and it is in partnership actually with this Council and the City, is our Anti-Gun Violence Unit. So as public defenders we take a pause when we use that term, and go really? Because we're also litigating case on behalf of clients who are actually charged with perhaps with gun prevention, but--possession. But there is a role because we have to be in the communities. As my colleagues talked about the fact that we are talking about not merely representing someone on a case, but that you are representing a human being. It means we have to think about that human being, and what brought them or drives them to the criminal justice system. And really look at ways to prevent it. So we have an Anti-Gun Violence Project that is made up of both criminal public defenders and civil litigators that work the 18 Cure Violence sites throughout the city. And as many of you know because you were right there in the beginning of it, this is a model that looks to

1 identify the issues ahead of time and stop them from
2 occurring by providing a more robust community
3 involvement in a young person's life. And there is a
4 role for legal services there. So when there is an
5 issue in the community, we're there to provide advice
6 and guidance. We're there to for instance help
7 facilitate. And in my written testimony I talk about
8 the example of this unit where there was a mother
9 whose son was a target and shots we fired in her
10 home. It was our Anti-Gun Violence Unit, and our
11 Civil Practices Housing Unit that facilitated a
12 safety transfer for that family. So that young
13 person was safe. But more importantly, that young
14 person was--didn't have to make that choice as to
15 whether or not they should protect themselves by
16 doing something to retaliate. So, there is more for
17 us to look at as public defenders and institutional
18 providers than just those issues that are listed on
19 the accusatory instrument or the indictment. Or,
20 when we meet our clients talking about them in the
21 arraignments. We should be moving as a system all of
22 these issues upfront. And in the communities and as
23 public defenders we have a role in that to play.

24
25 LISA SCHREIBERSDORF: Can I--?

CHAIRPERSON GIBSON: Sure.

LISA SCHREIBERSDORF: I'm sorry.

CHAIRPERSON GIBSON: Uh-huh.

LISA SCHREIBERSDORF: I just wanted to add a little bit to that. Do we do a lot of gang-- obviously, kids who are in gangs or refuse to be in gangs in our Adolescent Unit. And I wanted to just say that I think the best model for that are Violence Interrupters, the Cure Violence or those that are called that Legal Aid is working with. We have SOS and Man-Up in Brooklyn, and we often work directly hand-in-hand with them. And I think one of the things that we can do that's most effective is actually identify kids who can use their services at point where those kids are really invisible out there in the community. So if the kids are getting arrested even sometimes it's a minor situation--they might get arrested for jumping the turnstile.

But when we get them into the office, and we have a conversation with them, we realize that there's a little more going on. Either they're either being victimized, or they're afraid or being pressured to be in a gang, or maybe their cousin is in a gang or something like that. And the best--the

best thing we can do for those kids is actually work directly with those programs. So if I could just say that whatever the Council could support, and we certainly could all use more resources, that those resources are very effectively used. Those people go out. As soon as there's violence that happens in the community, they immediately go out. And they actually talk to everyone who saw it. They talk to everybody else who was witnessing it. And they use like a model, like a medical model to stop it from spreading. So we work very closely with them.

I think it's important to understand that we are noticing kids that need those services, and then we want to use those services in the community. But I want to say the first and foremost thing, the piece kids need. It's true they need jobs, but the also need better education. So the other thing that needs to happen is significant change. The biggest problem for these kids is that they get one little incident in school, they get suspended. We had a kid suspended the other day for 30 days because of an incident with a teacher. She was college bound. That 30-day suspension will probably prevent her from graduating on time. And that is where the change

needs to happen. So I would recommend looking very much at the education of people in the poor communities.

And one last thing I want to say about gangs is a lot of kids are accused of being in gangs who are not in gangs. If they were on the corner and they were with people who were in gangs. And what happens is the DA's Offices tend to use that to prosecute them more harshly than they might otherwise be prosecuted. So the solution is not to identify people who possibly are in gangs, and give them more time or force them into jail. Because then they come out of jail-- We can't--you know, it's harder for us to resolve those cases. So I'd like to look at sort of a humane way of thinking about kids who are gangs that goes beyond saying, well they need to get a harsher penalty. Because many kids are, as you just said, pulled in because of their communities, and their lack of opportunity.

CHAIRPERSON GIBSON: Right. I thank you and I appreciate that, and this Council and this committee we are looking to in the next several months at school safety in terms of the number of summons, and arrests of many of our children in our

school system. So it's something that's already been, you know, brought to our attention, and obviously of great concern. So I agree with you and I appreciate you raising that, and certainly thankful that this Council last year, you know, expanded anti-gun violence to ten more neighborhoods. My borough benefitted because we now have CCI and Save Our Streets Morrisania, and lot of the incredible partners that are on the ground working with you. So I applaud you for your work on the anti-gun violence. And I obviously want to recognize since he's here, my colleague, Council Member Williams for his leadership of Co-Chair of the Task Force and Council Member Cabrera for their leadership. Because it's very important. Many of us are of the mindset that prevention is always better than detention. And if we could prevent young people from getting into the court system in the first place, then we're doing a great job because we're preventing that statistic and that data.

I wanted to ask the question, and I think Miss Justine you brought it up about the client satisfaction. I think that's very key. Oh.

JUSTINE LUONGO: I'm Justine.

CHAIRPERSON GIBSON: I'm sorry. The second Justine. Sorry, Justine number two. I wanted to raise that because one of your recommendations you talked about was client satisfaction metric for evaluating the effectiveness of indigent defense. And is that something that you guys are already doing? Is that something you're having conversations with MOCJ about? I think it's very important for not only you as the providers, but also for the clients to feel like they're part of a process after, you know, their case is heard. Whether it's arraignment or whether it's trial, to get a sense of what they're feelings are about the performance of their attorney. And also how they feel? You know, we could also improve as better providers. So is that something that you are looking to do, or is that the recommendation?

JUSTINE OLDERMAN: It is both something that are already doing, and also a recommendation. So what we do currently is that we during the summer when we have lots of free labor in the form of interns, we develop and annual client satisfaction survey, and our interns administer it by making phone calls to a sample of our clients who we have

represented over the course of the past year. They then generate a report based on that client's satisfaction. Those surveys then go to the Executive Management Team, and we review them carefully both to figure out if there are targeted issues perhaps from time to time with respect to particular attorneys in the office but much more looking globally to see other trends we're seeing, other needs that we're not meeting. Although, you know, in all frankness that is something that we would in and of ourselves at the Bronx Defenders like to expand. Like, for example, we don't yet have a survey that evaluates the feedback or assesses the feedback from people who are incarcerated. So usually it's a short turnaround time, and they tend to be people who are not incarcerated that we're reaching out to. And figuring out the next step of expanding that is definitely something we're looking at. But the other piece is that it sort of speaks to a broader issue that I didn't include in the recommendations because it's slightly more nebulous. But it has to do with the idea of client engagement. So we have a community intake system so that anybody from the community, whether they're a prior client or not can

1 come into our office and speak with somebody that
2 very day. If it's an issue--if they have a legal or
3 a non-legal problem that we can address, obviously we
4 will seek to do so. If not, it's something that we
5 will make a concrete referral. We'll make the phone
6 call for them instead of just sort of giving them a
7 slip of paper and saying here's the name of somebody.
8 But what's important about that is that we collect
9 the data. So every request that comes in, every
10 question that is asked we collect, and we also
11 analyze that on an annual basis to see are the needs
12 of the community changing. Are they coming in
13 seeking services that we're not providing. But it's
14 speaking to some sort of issue that is significant
15 enough that it's important enough that we now need
16 to--this goes to the second, the third suggestion--
17 innovate that change. Seek more funding so that we
18 can adequately address those needs. So we're looking
19 at it both from a community perspective, and we're
20 also looking at it from an individual client
21 satisfaction perspective.

22
23 CHAIRPERSON GIBSON: I can imagine as
24 well looking at trends in data with the change of
25 population and, you know, demographics and different

1
2 cultures. You know, melting pots we have across the
3 city. That's also something that you look at as
4 well, any trends in terms of new residents that are
5 coming into a particular neighborhood where there
6 could be some conflict going on within the community?

7 JUSTINE OLDERMAN: Absolutely. So we're
8 looking at those trends as well as in some of the
9 questioning of MOCJ this morning, there was a
10 question about why do you look at the arraignment
11 data. And they said we're not really looking at the
12 types of cases that we see, but more just for volume.
13 But that is something that we're looking at. So
14 we're both looking at the community level, and in
15 terms of the criminal justice system. On a monthly
16 basis we run reports about what are the top ten cases
17 that we're seeing in arraignments. Because that
18 helps us track where the needs are of the community.
19 What we're seeing. What's changing in terms of
20 policing policies. Whether or not there is some sort
21 of advocacy that we need to be involved in because we
22 are on top of seeing those trends and changes. And
23 most importantly, how can we adapt and adjust to make
24 sure that we're meeting the needs of the clients that
25 are coming through the courthouse doors.

CHAIRPERSON GIBSON: Okay, and the other providers are you doing any client assessment as well? Any surveys?

LISA SCHREIBERSDORF: Well, we don't do a formal survey, but we have a full-time jail liaison who goes and visits clients in jail to see how they're doing. And, in fact, we double up on clients who are in solitary confinement so they could get a visit, and pull them out of there for a little while. And what we're trying to do, because we think the biggest issue right now for our clients is actually jail conditions. So we do--we do have a lot of ways of finding out what our clients care about. But we haven't done direct, you know, how are you doing with our attorney. But informally and I think all of us do this. I think it's a great idea actually, and I'm going to steal it because I was just thinking. But it's a good thing to do actually. But I think we all take to heart that there is a way for people that are not happy with their attorney to call into the office, and speak to a supervisor. And I think all of us, you know, we do have a rich array of supervisors, management that can actually hear out if there's a problem and solve that problem. So, you

1 know, I just want you to know that that is there so
2 if there's a problem. We really don't get a lot of
3 calls, but we've certainly solved them. And I do get
4 a lot of letters from clients saying that they're
5 happy, and we're glad to hear that, too. Of course,
6 we could--I think that we could do better.

8 CAROLYN WILSON: We don't have a formal
9 client satisfaction survey. However, many of our
10 supervisors, particularly in the case of our
11 intermediate lawyers accompany lawyers to court
12 frequently or sit in on video conferences. And are
13 very aware of what they--the relationship is between
14 the client and the attorney. And if there is a
15 feeling that something is lacking that they will take
16 corrective measures with that attorney. I also think
17 it's a good idea to have in place a survey mechanism
18 set up just as Justine requires. And it's something
19 that we've discussed over there years, and I would
20 anticipate that we'll be doing it in the near future.

21 CHAIRPERSON GIBSON: Just one more
22 question. How often do you provide training for your
23 attorneys to keep up with some of the constant
24 changes coming from the State as well as from the
25 city just to keep the attorneys abreast of new

regulations of the new laws? To make sure that, you know, they're providing the best of services?

CAROLYN WILSON: I'll just be first here.

LISA SCHREIBERSDORF: Yeah, you're first.

CAROLYN WILSON: We have--well, we have two out of our--for our senior attorneys we have in-house CLEs probably every six weeks or so. We also give scholarships to some of the more advanced CLEs that are offered by various bar associations and law schools for attorneys to attend all day seminars. Which give the CLE credits, but have also, of course, have the main benefit of bringing them up to date on the law. For our intermediate attorneys there are update training sessions with our training supervisor at least monthly. Sometimes if there's a particular topic at hand, it might be more often. And for our junior attorneys that are handling only misdemeanors, they meet with the training supervisor at least twice a week.

[background comment]

CHAIRPERSON GIBSON: Justine number one.

CAROLYN WILSON: [interposing] Right, I'm just reminded that we also send new attorneys to-- Are they three-day sessions. Bronx Defenders runs a

training program. It's a several day session.

There's a several day session that's run in Troy, and we send each class of our new attorneys. Some go to one of those sessions or another.

JUSTINE LUONGO: So I think that Carolyn mentioned it, but there's a certification process that happens for all of our attorneys. So when you-- For instance for the Legal Aid Society we start our classes normally in the fall. It's a two-month training before they even go to court and meet their clients. And that is sort of the whole host of what they need to know in order to be ready to go into court and represent human beings charged with misdemeanors. But then, as they progress throughout the year, and this is in detail in my testimony. But as they progress throughout the year and they become sort of able to understand the misdemeanor process. And they're litigating and they're being supervised and evaluated, we also second seat them on their first trial and hearings. They go through a felony training program to allow them to actually be limited certified. Which is a little bit different than I think, you know, what people expect where you go from misdemeanors right to felonies. We have an

intermediate step that says before you can actually take on full felony caseload of clients charged with very serious things facing very serious time, there's an intermediate step called limited certification. And that is that you represent sort of lower level felonies where state prison is not mandatory, and where you are working toward understanding what it really means to fully represent somebody charged on all types of felonies. And, of course, homicides are different. But training never stops actually as public defenders, and certainly not at Legal Aid Society. There are CLEs and we also do scholarships where we will provide scholarships to our lawyers to go to all of the borough associations. Many CLE programs that happen sort of in either local or sometimes we'll send them to other jurisdictions to learn obviously how to think beyond just how we see something in New York City.

CHAIRPERSON GIBSON: Thank you. Justine number two.

JUSTINE OLDERMAN: [off mice] We basically all do the same thing with all of our center training programs, [sic] but basically--

CHAIRPERSON GIBSON: No, no. If you had anything else to add absolutely. Sure.

JUSTINE OLDERMAN: No, we're basically all doing the same-- [on mic] Thank you. Sorry. We basically all do the same thing. We have an intensive training program for our new lawyers. We have an intensive training program for our lawyers when they are also in our office. We have the same sort of division of labor in terms of the felonies. So when they become limited certified, we have an intensive training program. The substantive trainings are ongoing on a, as Carolyn said whenever an issued comes up I mean within days we will have experts come in if we don't have them in-house, and do in-house CLEs. We're CLE, we're all CLE providers, and prove that on an ongoing basis. And then the only thing that got briefly mentioned that we do at the Bronx Offenders that's a little different is that we do have this intensive trials skills program, which is for all of our in-house attorneys. And it's also open to attorneys across the state.

CHAIRPERSON GIBSON: Okay. Thank you.
I'll turn this hearing over to my Chair, Chair
Lancman.

CHAIRPERSON LANCMAN: Well, thank you all
very much for your testimony. It's nice to see you
all again. Can you give me your assessment of how
well MOCJ works with you, collaborates with you as it
develops its policies that relate to the work that
you do? And whether or not there's been any
conversations about the changes that MOCJ might be
making to its evaluation process?

CAROLYN WILSON: I've found this--this
administration to be much more collaborative with us,
and we have--

CHAIRPERSON LANCMAN: You need--you need
to--you need to turn the mic on, or just move it
closer.

CAROLYN WILSON: It's on. There are
various initiatives and pilot projects, and
committees that we all are meeting at. I had more
interaction with MOCJ since this administration than--
- Well, a lot more now--

CHAIRPERSON LANCMAN: [interposing]
[laughs]

CAROLYN WILSON: Let's just say that. So they are working very collaboratively with us in my experience in my opinion.

LISA SCHREIBERSDORF: I also think that they respect our expertise in a way that is refreshing, and we've all been-- We're laughing because we've seen each other more in the last few months than we probably saw each other in years before that. And we have been called in on many different issues and, you know, I don't know that they've started talking to us about how they evaluate our services. But I--they do ask us a lot of information, and we just spent a lot of time with them. So, I--I think they really do know us. They know what we do. They know us very, very well. We have a lot of projects. We have two separate contracts with the same office. We our family contract with them. We have other agencies that administer other contracts. I think they do have a very-- You know, the numbers don't tell every story, and I think they have a very, very good sense of what our offices do. [off mic] Yeah, we--

CHAIRPERSON LANCMAN: Okay. SO when MOCJ testified and they testified about measuring quality,

1 their testimony included a recitation of some of the
2 internal quality measures that your organizations
3 have. And as we go forward, the Council is going to
4 advocate for more wraparound services, more holistic
5 defense, et cetera. Are you comfortable that there
6 are ways for the City to evaluate those services?
7 And can you assure us that you're going to cooperate
8 in developing a sound evaluation process. Because it
9 seems as if to some degree MOCJ is going to have to
10 get inside your--your business to evaluate how you
11 evaluate your attorneys. And you train your
12 attorneys, et cetera. I mean in the category of be
13 careful what you ask for. Is this something that you
14 really want to embrace, and with all the
15 responsibilities that it entails.

17 JUSTINE OLDERMAN: You know when--when I
18 was asked to speak here, I was reminded of having
19 been in Albany, and asked to speak about standards
20 there at the summit that they had on indigent
21 defense. And I remember that I had sort of started
22 my comments by the question that was asked is what do
23 we think of the standards that are out there. And I
24 was sort of talking about all of the issues that I
25 have with standards, and sort of recognized that may

just be the nature of the fact that I have to respond to the evaluation based on. And that any set of standards I'm going to have somewhat of a contentious relationship. But, you know, as far as the indigent defense providers in the First Department, the evaluation that is done for us, of us every two years by the Indigent Defense Organization Oversight Committee is incredibly thorough, and very expansive. And it was not just by the numbers. It does call for narrative explanations of training and supervision in all of the tradition metrics. And I can only speak for myself, and our organization. But I do, in fact, welcome, and I think it is important to have those metrics be expanded to include our ability to causes and consequences of criminal justice involvement. I think that having them be embedded in the standards, and the expectations. And what goes hand-in-hand with that is the evaluation, is the only way to really make sure that it is getting the focus that it deserves. And ideally what comes with that is the funding that it needs.

LISA SCHREIBERSDORF: You know, standards in indigent defense were always talked about as both a sword and a shield. And I think we have to embrace

the shield factor of standards, and then, of course, being measured against those standards. Often times, unfortunately, indigent defense pushing on the country is not very well funded. And when they have standards, they use them against the provider to say you're not meeting standards. Therefore, you're inadequate. And I think a lot of my colleagues I think outside of New York, I mean outside of New York City actually always question how those standards are going to be used. But in New York City we're really fortunate in the fact that we have caseload caps that are statutorily enforceable. And that in general because we have an administration and City Council that really cares about us, doing good work. And cares about our clients in a way that is unique. If we have standards, we can use them affirmatively to show what we want to do, what we probably should be doing, and what resources we really need in order to do that. So I would welcome that only because it's New York City, and because I feel that when we--when we've got caseload caps we were able to add lawyers. So that our lawyers have enough time to do everything they needed to do in every single case. And that is a major victory, and it shows our clients we really

care about what's happening to them in their lives.

So I think we have to understand that, you know, it

all goes hand-in-hand. And I hope that New York City

can really be a model for the rest of the country.

We're at the point now where New York City is

probably providing the best indigent defense in the

country. And I think we can do even better, and I

think we can be a model and we should. And we should

be proud of it. So I really do welcome this process.

I do want to be a part of it, though. I don't want

standards to be imposed from outside. I think we

have a lot to add to what those standards should be,

which you've heard today.

JUSTINE LUONGO: You know, I agree with

everything that was said, and I think it's the timing

of when resources come verse standard sets. [sic]

And that's really important, but we have to have--

load those conversations now to discuss what

resources we need provided. So that we can then

evaluate what it is we sort of set out to be. And I

think they referenced-- MOCJ referenced the North

Carolina model, and that's something where you have

to set an objective. And then talk about how you

evaluate that objective. But in order to sort of get

1 to point--from point A to point C you need the
2 resources. And I think they did mention this morning
3 that we are in the--that we are a few years away from
4 the issuing of a new RFP. So we would have to look,
5 for instance, at what our contracts are now. And our
6 funding now and say is there a way to sort of
7 building some of this in now so we don't have to wait
8 until the next granting cycle. But certainly before
9 the next granting cycle and before the next RFP, we
10 should be having conversations about what we want
11 that to look like. What do we want defense to look
12 like in New York City beyond what we're doing now,
13 and what we're funded for now. But we--we gather
14 data on our clients, and the cases far beyond sort of
15 the data that MOCJ requires. And that's sort of the
16 cultural lift for public defenders to start thinking
17 about capturing the data. Ad that is sort of a
18 training component that we embed right now in lawyers
19 right now to say it's not enough to sort of have in
20 your head and written on your file what you've done
21 on your case. You have to get it into a case
22 management system so that we can actually analyze it.
23 And that altogether in the next couple of years I
24 believe is where indigent defense should go in New
25

York City, but certainly as a trend across the country.

CHAIRPERSON LANCMAN: So let me ask my final question, and let me challenge you a little bit because the committee oversees lots of legal service providers and not just the six who have contracts to provide indigent criminal defense. Why are we reinventing the wheel where we already have many, many legal service providers in New York City who are providing civil, legal services across all the range of matters that you might evolve and expand to housing, immigration and public benefits litigation. Why not just develop partnerships with those organizations that are already doing that work rather than organically growing some new piece of your own organization?

LISA SCHREIBERSDORF: I think it's important to understand that even though there are some fantastic legal services organizations, Legal Aid Society being one of them, that they don't have anywhere near the capacity to handle all of the cases and all of the people that are in need. And what happens is they are forced to triage who they're going to help. This is really an unfortunate

1 situation, I talk about housing because I think it's
2 the easiest way to see it. There are so many great
3 legal services providers in Brooklyn on housing. And
4 if ten people walk in their office in the morning for
5 help, they can only help I would say two of those
6 people. So what they do is they talk to each of
7 them, and they figure out who--which two have the
8 most need, and have maybe the best case. Because
9 they have no choice. And if there are two elderly
10 people, that walk in and say, you know, I'm about to
11 get evicted. I have no heat or whatever, then as it
12 should be, they probably will get those resources.
13 Our clients walk in and say, I'm getting thrown out.
14 I'm getting thrown out of a housing project because I
15 was arrested and I have a conviction. And,
16 unfortunately, that sounds like somebody that's going
17 to be at the bottom of the totem pole when it comes
18 to triage. What you know, and what we know is that
19 those people-- There's a group of people that are in
20 that situation, and they are the ones that are
21 actually using all of-- You know, they're the ones
22 that are using the shelters. They're the ones that
23 are using all of the resources for poor people
24 because they--their options are so limited. We have
25

specialized knowledge about how to help those people,
which actually, many of the legal service providers
or specialist units for civil services actually don't
have. And I give you housing as a perfect example.
Our units know how to work with people who have a
conviction in the housing projects, in private
residences, and can actually do a different kind of
litigation. So I don't think that we replace those
organizations, and we do have excellent relationships
with all of them. I think we all do, and we refer
and they refer to us. But immigration is another
example of if somebody goes into an immigration
office to get help, and they have a conviction many
of those offices don't have the expertise to work
with that particular client. And we when we do civil
services, civil legal services, and related services,
we tend to get an expertise that is actually non-
existent or is very, very hard for our clients to
access because people like elderly or other people
tend to get those resources first, as they should.
Domestic violence victims are also-- Now they use a
lot of the sources, and our clients always go to the
bottom of the list. And that's sad, but we really
want to get their issues out there. So that's one

reason, and I think one thing is to evaluate what the need is for this client base versus other legal services needs, which I think are distinct. They're really quite different.

JUSTINE OLDERMAN: I agree with everything Lisa said, and I just want to sort of, you know, point to one thing and sort of focus on it, which is that when Lisa was talking about the civil legal needs of this client population, not only is there the interconnectedness between the criminal justice involvement and their civil legal needs. But also there's the immediacy that we have to pay attention to, which goes back to this issue about the work that we're doing day in and day out in the court system. When we're helping a client evaluate what they should be doing with their case, and advising them, we need access to that information about enmeshed penalties of a potential plea or a conviction after trial, and we need it immediately. We need it right away. We can't really afford to be in arraignments, and say to somebody who might get held in on bail, I can't advise you about whether this certain disposition, which will get you out will get you evicted from public housing. I can't afford

to wait until the next court date to reach out to somebody to get that information. I need it immediately. I need it right then and there. My clients need it. And then, in addition what ends up happening is that can't really parcel out our role in advising clients about enmeshed penalties of criminal justice involvement from the collaboration and communication that needs to happen ongoing between what would traditionally be a criminal defense attorney and a civil legal service provider. Because what ends up happening is that from time to time the priorities of that client depending on the development of their civil legal case, and their criminal case. And so, what you need in any public defender office in order for this to work in the way that we're all talking about it, is that you not only need the immediacy. But you need the ability to build in dynamic ongoing communication and collaboration between the civil legal service provider and the criminal defense attorney. And that is just something having separate organizations where a FOIL is being made, or you're trying to get somebody on the phone. You simply will not be able to provide the kinds of services that we're talking

about that lead to effective, zealous, meaningful representation of clients when those two systems are completely separate.

JUSTINE LUONGO: I have a bit of different-- Obviously, we do have a civil practice. Many of those contracts that you're talking about are for our civil practice. But there is sort of right now only a relationship whereby the civil practitioners who are under their mandates for their contract for that targeted population often can't-- sometimes can't take our clients because it is an unfunded legal service mandate that they're doing. And so, our population we represent 220,000 people who are arraigned in the criminal court system every year. And our civil practice is the smallest practice, although growing thanks to this Administration and the City Council's sort of understanding that we have to get to the root causes of poverty such as homelessness and shelter. But we have to sort of connect.

For that to work, I agree we have to think about our contracts. And so why we come and say it should be a mandated part of the public defense system is because public defense is a

mandate. And we don't have that yet in this country or in New York State. Although I hope that in New York State we could be the leader for mandated civil legal services, but we're not there. Until we get there, the better thing to do is mandate it for us in our contracts. Because we are seeing on the front line that affect of poverty that's sort of unfortunately has to be triaged because civil legal services is sort of an unfunded requirement now where ours is not. Ours is constitutionally guaranteed so move some of the services to where it matters most for the people who are charged in the criminal justice system at least for now.

LISA SCHREIBERSDORF: You know, I just want to add, you know, some legal services providers are restricted in what they do partly by their funding, but also the Legal Services Corporation federally funds a lot of that. And they're not allowed to serve, you know, undocumented immigrants at all. So I mean there are issues that are not always met by those offices. And there are also issues that come up uniquely for our clients, and civil forfeiture is a big one. When our clients are arrested, and their property is taken from them,

there's--none of the legal services providers actually serve that function. We do that in-house as well. So, I think even if there were, and I hope someday there will be mandatory lawyers for all kinds of loss of-- Especially housing and benefits, there's still a role for the housing of those services as Justine--as Justine explained within the defender offices. And I think as moving towards that, the other Justine made a really good point, which is we have capacity. We're here. We have the clients. So, I do think it is the right-- You know, it's important to think about it as-- There are different functions actually.

CHAIRPERSON GIBSON: Thank you very much. Thank you, Chair Lancman, and now we have questions from Council Members. Council Member Menchaca followed by Council Member Williams.

COUNCIL MEMBER MENCHACA: Thank you, Chairs to both of you, and this discussion has revealed a lot of the things that I think we've been thinking about, too. I'm glad you mentioned NYIFUP earlier as kind of a landmark opportunity that the Council took even before this new Council, and how we've been able to grow it. Ms. Luongo, I want to

1 talk--I want to ask you really representative of the
2 panel, how is the Administration seeking your advice.
3 And what we're all seeing as the changes that we all
4 want to see coming? How have they involved you?

5 JUSTINE LUONGO: So certainly I think we
6 have been brought to the table more since this
7 administration in discussing disparate treatment such
8 as what's happening in the summons parts. And why
9 are--why do we have 365,000 people being issued
10 summonses? And why is there such a high warrant
11 rate? So we're sort of proactively getting engaged
12 there. I was also happy that this administration
13 discussed with us the ICE Detainer Policy that many
14 immigrant New Yorkers were sort under has
15 restrictions. So when we met a client often there
16 was a detainer already in place from ICE, and there
17 was no constitutional basis for that. It was some of
18 our lawyers, our actually new lawyers that came with
19 a vision and hope to sort of challenge this
20 litigation Fourth Amendment grounds that began to
21 find rifts [sic] throughout the system this summer.

22 That helped us have that conversation
23 with this administration that ultimately led to a
24 policy that now is in place, and is fair and just and
25

constitutional. But there's more. I think that--

You know, we like to--we would like to be at the table more. For instance, before the change in the marijuana policy, we would have like to have had a conversation before the announcement about it.

Because there were some significant issues with how we shift a person who's arrested and brought to court on a marijuana change and a summons. And the initial plan to try to figure out how to quickly facilitate was to perhaps do a plea by mail. And we came to the table and said, You can't do that because there are enormous consequences if somebody simply checked the box even on a summons to a violation for marijuana. That would be life devastating. Luckily, we were brought into the conversation pretty quickly after the policy announcement so that they would readjust that. And luckily we were able to sort of have that be taken off the table as an option.

COUNCIL MEMBER MENCHACA: And--and I'll pause you there just because I think there's probably more examples of where they didn't come before an announcement, and where they did come before an announcement. And I think we can all safely say that when they include the stakeholders that you have

so masterfully explained to us and continued to kind of prove the public defender system. And actually articulate the vision of public defender 2.0, as I'm kind of really understanding it. The goal here is that they come to you before. And so, I heard that loud and clear, and as Chair of the Immigration Committee, we're going to do that on immigration. We're going to ask for that, and really I think honor what we're hearing today, and really working with all the chairs. Let's make that a habit. Let's make that a tradition. Let's create consistency. And so, really all my questions you've really nailed in a big way about revealing that opportunity not just for immigration, but for gun violence. For really the entire spectrum of services. And so really that's all I'm going to say. Let's stay strong in that message as council members and stakeholders, and we'll be there with you. Thank you.

JUSTINE LUONGO: Thank you.

[pause]

COUNCIL MEMBER MILLER: Madam Chair. Oh, thank you. [clears throat] Thank you, Madam Chair, and Mr. Chair. I thank you for your testimony. I came halfway. So I apologize and I work with many of

1 you. And also, you've answered a lot of the
2 questions I had. I did have a couple. If I missed
3 it, you answered it already. What are the factors
4 that affect different rates of guilty pleas at
5 arraignments among different providers? And just
6 some follow-ups. Do you know what the rate of guilty
7 pleas are for the private attorneys. It seems after
8 the cap in 2010, the percentage of pleas at
9 arraignments went down for Legal Aid, Bronx
10 Offenders, New York Court Defenders, but it went up
11 for Neighborhood Defender Services of Harlem. Any
12 information as to why that might be?

13 [pause]

14 JUSTINE LUONGO: It's long understood or
15 at least believed, and maybe even a little bit now,
16 that the large percentage of pleas and arraignments
17 was because defense attorneys are overburdened by
18 case and triaging. And I think I could certainly
19 speak on behalf of our attorneys. But perhaps
20 everybody else on the panel would agree that actually
21 as the caseloads dropped, while we're seeing the
22 decline, we're not see as big of a decline in the
23 number of pleas. And we raised this recently with
24 the First Department Oversight Committee as to why
25

1 that would be. And I think we really have to have an
2 honest conversation about why people take a plea at
3 arraignments. And a lot of it has to do with bail,
4 but if we don't start challenging the bail system on
5 low level quality of life offenses that are getting
6 set for poor people, our clients, mostly people of
7 color from communities of color, we're missing the
8 boat on why people take a plea. Because really what
9 a client wants to do most is go home after they've
10 been in the system 24, 36, or 72 hours.

12 They want to make sure that they secure
13 their bed back in their shelter, or show up for their
14 job, or be there for their children. Or, sometimes
15 even their pact. There are a whole host of life
16 issues, and obstacles that people who are ripped from
17 the community, dragged through the booking process,
18 put in a cell from 24 to 36 hours. By the time we
19 see them as public defenders, they want to go home.
20 And despite the fact that there may be a very strong
21 issue, Fourth Amendment issue and proper policing
22 issues, life issues that we want to address, they
23 have a right to plea and go home. And that is our
24 mandate, and that's what we're required to do
25 ethically. And so we have to start looking at that

to really look at why we have such a high rate of pleas and arraignments. We have to start taking on the, If I--if the client doesn't take the plea to the 2420, which is disorder or disorderly conduct now, the District Attorney takes it off the table the very next time. We have to start thinking about that, and having honest conversations to really get at the heart of it.

JUSTINE OLDERMAN: I echo a lot of what Justine said. But this Justine also wants to add something else to that-- [laughter] which is and it takes me back to something I was talking about earlier, which is the question of delay. So anybody who comes through the arraignment system who has already had an experience with the criminal justice system knows full well what it means for them to fight their case. And even in low-level misdemeanor cases, especially in the Bronx where delay is at its worst, it means coming back and forth to court literally for years to get their trial.

And ultimately when they are faced in arraignments at that moment with resolving their case with a disposition that under the advice of their attorney who is knowledgeable enmeshed penalties,

1 they know will not have any further consequences on
2 their employment or their immigration, or their
3 housing. And they are faced with that decision of
4 coming back to court possibly 19 or 20 times over the
5 course of the next two or three years to get their
6 day in court. That is not really giving people a
7 realistic honest choice about fighting their case.
8 The statistics in the Bronx just to help give us some
9 sort of concreteness. The Criminal Court of the City
10 of New York annual report reported that the mean time
11 it took a case to be resolved in an all purpose part
12 was 127.6 days. In the Bronx, it was 186 days.

14 For cases that were resolved by bench
15 trial in the Bronx, it took 512 days. And for jury
16 trials it took 732 days. So what is also at play
17 here in addition to people prioritizing their freedom
18 over anything else is prioritizing living their
19 lives, being able to go to their jobs. Not missing
20 school. Being with their families. Not missing key
21 medical appointments that they have to keep coming
22 back to court over and over again year after year
23 simply to hear the same phrase: The prosecution is
24 ready. The defense is ready. I'm sorry. There are
25 no parts. Come back in six weeks. Literally that

happens to the vast majority of our misdemeanor clients who want to fight their cases in the Bronx. And something has to be done about that if we want to address the volume of guilty pleas that are taken early on in the life of a criminal case. We have to make people's day in court a reality, something that they can have, and something that they don't have to wait years for.

COUNCIL MEMBER WILLIAMS: Are the defendants are they--do they fully understand the impact of the guilty plea when they're taking it?

JUSTINE LUONGO: All of the attorneys in all our-- You know, as you've heard and, you know, throughout this, our attorneys are so well trained to understand what the consequences are that they are very good at talking to clients in arraignments about what the possible consequences could be to them. So we ask every client wherever they belong. We ask every single client where they live. We ask them where they work. Then we try to get at most of the consequences that could happen if property was taken from them. We ask all of that before we go out in the courtroom and advise them what to do. Obviously, nobody could do that in the short amount of time that

we have. But we really take it seriously, and we spend a lot of time training our attorneys to that when that moment presents itself that they are able to do it really well and fairly and extremely competently.

But you have to also understand that we can-- [coughs] We can get pleas sometimes early on the case that saves a person from the horrors of returning to court. And many times missing a job, missing school, and also potentially avoiding immigration consequences. Sometimes if people get out right then and there, they miss the detainer. And so it's a real--it's really important that we don't take away the opportunity for people who have a good offer on the table. And want to take it. You know take the consequences of a fine or something like that. So you have to really balance. Pleas and arraignments are not necessarily always bad or wrong. I think the real problem is pressuring people like kind of forcing them to do it by taking the plea off the table at the next court date. So it's a very difficult balance that our attorneys are well trained to handle, and it's tough. It's never easy.

COUNCIL MEMBER WILLIAMS: So I heard I think it sounded like bail reform and DA's taking pleas off the table quickly. They sound like State issues. Is there--is there something that the Council can do to help with that, and particularly in that balancing act that you were talking about?

JUSTINE LUONGO: Well, I do think it sort of goes back to are there other resources that we should have as public defenders to be able to advise? Civil legal services for instance and having the capability of having lawyers be able to be on call the way we do with immigration, right. Where we are right then and there being able to tell a client of what an immigration consequence it is. The more we build that resource, the better off we can front-load it and have it available throughout the whole process. Particularly that 24 hours after arraignment where we--after arrest where we have to give really important very timely and correct information to a client for them to fully understand what it means to take that plea.

And understand that perhaps even-- They have to sort of make that really terrible decision of well which consequence is worse for me. If I take

the plea and lose my housing or if bail gets set?

And so, the more ways to provide that information up front so that attorneys are ready, willing and able to make sure that their clients are fully advised the better off we are. The other thing is training, and not only training in our offices. We take that on, but there is an assigned counsel program, and providing trainings and making sure that the assigned counsel programs have access to the same services that we're able to have in our office will build a better system.

COUNCIL MEMBER WILLIAMS: I have a couple more questions. I don't know we're on time, Madam Chair.

JUSTINE LUONGO: Can I just add some more to that? We need a culture shift in the system, and we've been speaking to the Mayor's Office about this. Your problem is your judges and the DAs, honestly. It's a culture shift. They believe it's appropriate to set bail in order to quite frankly force people to plead guilty. Because they are the ones that can't handle the load. I mean we can handle our cases. They--there's a built-in systemic desire on the part of everyone to see people having bail set. So that

they will plead guilty, and that's caseload management. And I do think that's one the Council can take and try to work on. I don't have a quick solution to that, but that is a culture shift. We don't need new legislation. It's just a change in thinking, a shift.

COUNCIL MEMBER WILLIAMS: Well, my two questions are very quick then, and they can answer?

CHAIRPERSON GIBSON: [off mic] Yes.

COUNCIL MEMBER MILLER: What is the--I want to know the average, and you may have mentioned it, the average time from when you see a client to them taking a plea deal? I also want to know if you knew what the percentage of pleas were for private attorneys? And then last I believe you mentioned the work you've done with the gun violence. I wanted to know if you knew or could think of anything else that we could be doing, or you could be doing in that same holistic vain that we might be able to push for us?

JUSTINE LUONGO: So I believe that--I don't have the--the percentage of the number of guilty pleas by the private bar, but I do know that MOCJ tracks--tracks the pleas and so does OCA the number of pleas of guilty. And so I'm sure that that

information is readily available. I think when it comes to sort of prevention--

COUNCIL MEMBER WILLIAMS: [interposing]

Now, just before that, the average--do you have the-- does anybody have the average time from when you see a client to when they plead?

JUSTINE LUONGO: A plea and arraignments or throughout the sort of--if a client is released and--

COUNCIL MEMBER WILLIAMS: [interposing]

The plea and arraignment.

JUSTINE LUONGO: Plea and arraignment.

So a client is arrested. Thanks to litigation and policy change the public defenders did about arrest to arraignment, a client is, we hope, right, seen by a judge within 24 hours. But if not, it's longer. The lawyer will meet with the client and discuss the case. Intake all the life issues that the client may have. For us in our arraignment parts we--we have computers so we have the ABA Collateral Consequences Inventory Database on each one of our--each one of our computers so that or lawyers if they don't--if they don't know what the consequence of a plea would be can research that information. They go back in

1 and they discuss it with the client, and then the
2 client ultimately makes a decision. And when they
3 are brought before the court, you know, time in front
4 of the court taking the plea will vary depending on
5 the judge. But certainly they'll take a--if they
6 choose, they'll take a plea that night. And they
7 mostly go home if, in fact, it was a plea the allowed
8 them either a time served or a conditional discharge?
9

10 CAROLYN WILSON: But is your question how
11 long between the conversation with the client, and
12 the actual taking of the plea?

13 COUNCIL MEMBER WILLIAMS: Yeah, I was
14 trying to get that. I don't know if I asked it
15 correctly.

16 CAROLYN WILSON: That sort of depends if
17 it happens--the lunch break is about to happen or
18 something. But other than something unusual, I'd say
19 probably 45 minutes as an estimate.

20 COUNCIL MEMBER WILLIAMS: Thank you, and
21 I think you answered my last question. Thank you.
22 About the--is there any other initiatives like the
23 holistic approach that we are--we're trying to do
24 with the gun violence that would--you'd be interested
25 in pursuing?

JUSTINE LUONGO: [off mic] I think we
covered the gun violence. [sic]

COUNCIL MEMBER WILLIAMS: Okay, thank
you.

CHAIRPERSON GIBSON: So I just wanted to
make one final statement, and certainly a lot of the
recommendations that you've made the committee will
follow up with you. So the case cap started in 2010,
and for all of you I think your percentages of pleas
and arraignments all went down. And I just wanted to
know, and MOCJ didn't really answer the question.
But a lot of that, you know, coming down from OCA do
you have any recommendations on maintain the case cap
where it is or will you put forth any recommendations
on changes to the case cap?

JUSTINE LUONGO: Prior to the case cap we
worked with Davis Polk to do a very similar analysis
that I referenced about social workers and
investigators, and we actually-- That analysis
actually had a case--a caseload lower--that showed
that actually it should be lower than the 400. As we
move from the phase-in, the four-year phase-in to now
being--what is to be the years of compliance, we're
going to put our task force back together to relook

at--look at the data we have verse the data we had when we analyzed this several years ago before 2009. To see if, in fact, we can continue to make the case that it should even be lower than the 400 standard that's in place now.

CHAIRPERSON GIBSON: Anyone else before I close?

JUSTINE OLDERMAN: I just wanted to add that I don't have all the details of it. I haven't looked at it specifically. But recently Texas just came out with their own caseload study and, in fact, echoed that their recommendations were that the caseload caps were in the low 300s even for somebody who was handling entirely a misdemeanor caseload. So I just, you know, want to echo what Justine said, and I completely agree that while we have seen significant changes as result of the Caseload Cap Legislation, that certainly shouldn't be where we stop in terms of looking at what's necessary in order to ensure effective representation.

CHAIRPERSON GIBSON: Okay. Thank you, ladies. I really appreciate it. I know it was lengthy, but definitely full of substance. Thank you to Legal Aid, to Bronx Defenders, Brooklyn Defenders

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2 COMMITTEE ON COURTS AND LEGAL SERVICES

122

3 and New York County Defenders. Thank you for your
4 service, for your work and certainly for your
5 partnership. We look forward to continued work.

6 JUSTINE OLDERMAN: Thank you.

7 CHAIRPERSON GIBSON: Thank you for being
8 here.

9 [background comments]

10 CHAIRPERSON GIBSON: Okay, our last pane
11 for the afternoon includes William Leahy from the New
12 York State Office of Indigent Legal Services, Norman
13 Reimer from the National Association of Criminal
14 Defense Lawyers; Nicole Austin-Hillery from the
15 Brennan Center for Justice at NYU School of Law; and
16 Steven Zeidman from CUNY Law School.

17 [background comments]

18 CHAIRPERSON GIBSON: William Leahy,
19 Norman Reimer, Nicole Austin-Hillery, and Steven
20 Zeidman.

21 [pause]

22 [background comments]

23 MALE SPEAKER: Is Paula Brown here? No?
24 Okay, thank you.

25 [pause]

CHAIRPERSON GIBSON: And if we have
Vincent Riggins and Adelaide Brotlay [sp?], you're up
next. So I just wanted you to prepare. Thank you.

[pause]

CHAIRPERSON GIBSON: And I take this
opportunity to recognize and acknowledge the students
who are here from the Coro Fellows Program. Welcome
to our Public Safety and Courts and Legal Services
hearing. We hope you find it informative and
productive and welcome to the City Council. Thank
you for being here.

[pause]

CHAIRPERSON GIBSON: Panel, are you
ready? Okay, you may begin. Thank you.

NORMAN REIMER: Good afternoon. I'm
Norman Reimer. I'm the Executive Director of the
National Association of Criminal Defense Lawyers. I
want to thank the Chairs and the council members for
inviting my organization NACDO is what we call
ourselves as well as me to testify. By way of
personal introduction, I am not a stranger to New
York. New York has been and always will be my true
home. As some of you may know, all of the folks on
this panel know this because I worked with them at

one time or another on projects related to indigent defense. I was keenly involved in reform efforts of New York's--in efforts to reform New York's Indigent Defense System for about 15 years from the early '90s through 2006 of 7. I served as chair of the Central Screening Committee for the Assigned Counsel Plan in the First Department, and I oversaw the first recertification of that panel in more than a generation. As a leader at the New York County Lawyers Association, I was the prime organizer of the successful lawsuit *NYCLA v. New York* that challenged the failure of New York State to raise the rate pay to assigned counsel attorneys from \$25 an hour to \$40 an hour. \$40 for out-of-court work and \$40 in court had to be-- It has been frozen at that level 12 to 15 years. After that successful lawsuit, I also predicted that there would be an effort to shift work away from assigned counsel, and that has indeed happened. In working with various law groups and with my colleague here Steve Zeidman when a former mayor of this city first resolved to aggressively fund alternative providers to the Legal Aid Society following efforts by the rank and file lawyers to enhance the quality of service they could provide I

1 advocated for the creation of the independent--the
2 Indigent Defense Organization Oversight Committee.
3 Which you now know as IDOC, which was established in
4 both departments to ensure that there would be some
5 independent guarantor of minimum quality. Our
6 concern at that time, as it has always been, was for
7 the welfare of the poor people who are dependent upon
8 appointed counsel. And the concern was that once you
9 start bidding this out, if you don't have independent
10 standards to ensure quality, you are going to end up
11 driving quality down. Now, that's my personal
12 background. But I'm not here to comment on the
13 current state of the defense--indigent defense in New
14 York. I am now eight years removed from my work here
15 in New York. So rather, I'm here on behalf of NACDO
16 to address the issue that you've taken up today from
17 the national perspective.

19 Our organization is the nation's criminal
20 defense bar. Our members include the entire criminal
21 defense community, private lawyers, public defenders,
22 military defense counsel, private lawyers who
23 represent indigent client either by contract or
24 assignment. One of our core missions nationally is
25 to work to achieve the promise of *Gideon* by

supporting the Indigent Defense community through training and technical assistance, by exposing flows in the Indigent Defense Systems and pursuing reforms throughout our country. With that national perspective, let me suggest humbly that if you are serious about assessing quality, you don't have to-- to echo the words that the Chair used before-- reinvent the wheel. The tools are there if you have the will to use them. There are many standards, benchmarks, and best practices provided by a number of groups. You heard some people refer to the NLADA Standards, but first and foremost if you are to effectively gauge the quality of representation you provide to the indigent it is essential that you first start by looking at how well the system comports with the ABA's Ten Principles of a Public Defense System. Any proposed legislation, any mechanism to deal with or to address the quality of indigent defense should explicitly reference the Ten Principles as critical guideposts. All of those principles are crucial to the health of an Indigent Defense System. But for today's purposes, I suggest that you seek to measure-- In your efforts to

measure quality, I'd like to focus on four of those principles in reverse order.

Principle No. 8: There must be parity between defense counsel and the prosecution with respect to resources, and defense counsel must be included as an equal partner in the justice system.

So here are the questions:

Can you say that that is the case here in New York? Is that equivalency in pay, in resources, in training? What about the availability of ancillary services? Are you even measuring these issues? And when a new law enforcement initiative is launched--as we just heard from the last panel--is the defense community at the table to address the impact on defense services and defense resources?

The next principle that I want to highlight is Principle No. 5: Defense counsel's workload is controlled to permit the rendering of quality representation. I urge the Council to note the emphasis on workloads, not caseloads. The steps that may have been taken to impose caseload limits may be a step in the right direction. There is no denying that, but arbitrary caseload limits that have no regard for the complexity of particular cases or

the needs of individual clients are no guarantors of quality. Are you assessing workloads? Does the lawyer have adequate time to meaningfully and effectively represent each client? Do they have the time and resources to investigate? How much time do they spend on each case? Are you requiring indigent defense providers to record the time and task they perform? Let me repeat that one. Are you requiring indigent defense providers to record the time and tasks that they perform? There is a growing national consensus that this is an absolute necessity. Many defenders have resisted this for a lot of good and valid reasons, but reasons which may no longer be valid. It is incredible to find in an era in which metrics are so important that many defender offices simply do not require the lawyers to record the task they perform and the time they spend doing those tasks on the cases they handle. That's why my organization is working with defender organizations around the country to implement time tracking so that it's possible to assess how much time a defender spends on specific tasks. We are then conducting what are called Delphi studies with an array of practitioners to develop benchmarks so that the

defenders can have the tools necessary to advocate for the level of funding that they need in order to achieve those benchmarks.

Now you talk about--there were a lot of questions about how much time are spent on cases. I just want to mention one study that was done in another state. We did a study in Florida on how justice was unfolding in the misdemeanor/criminal courts. The report is called Three-Minute Justice because that was what researchers found was the average amount of time that a person spent before a court, and ended up disposing of their case.

So one of the questions you might want to ask is whether or not there is three-minute justice in New York? Do you have courts that for all of the reasons that you just heard have become meet and plead courts? Not only because of whatever pressures are brought to bear on the defenders themselves, but because of these other factors, which are at play including the desire to dispose of the case because freedom is at stake, or the desire to end the case because they'll have to keep coming back. But that is something that can and should be measured. How much time do lawyers spend with their clients before

entering a guilty plea? How much time is actually spent? What is the percentage of cases that are actually disposed of at the first appearance? These are the metrics that will tell you if you have quality.

Principle No. 2: Where the caseload is sufficiently high the public defense delivery system consists of both a defender officer and the active participation of the private bar. How are you doing in that regard? Do you have the robust participation of the private bar? How do you support the assigned counsel plans? Do you panel administrators have adequate staff to properly screen and recertify the lawyers who are on the panels? Is the panel's perspective considered when policies are implemented, and are the lawyers receiving adequate training. Many experts have written about the importance of maintaining such a hybrid system. It frankly acts as a release valve to prevent overburdening public defenders. It provides also a natural constituency within the legal profession to advocate for adequate funding.

Principle No. 1: The public defense function including the selection, funding and payment

of defense counsel is independent. The number one principle of a healthy public delivery defense services is independent. A public defense system must be independent from political influence. A non-partisan board should oversee defender. Defender's assigned counsel or contract systems to safeguard independence, promote efficiency and quality of services. Is that what we have here in New York. As I mentioned earlier, the reason why many of us fought for independent oversight through IDOC was a deep concern about having the contracting authority serve as the arbiter of quality. It is frankly an inherent conflict. The usual metric of success in most business models, cost per unit translated into cost per case is a metric that leads to injustice, wrongful conviction and the denigration of human dignity.

Finally, when the contracting authority is not independent and is subject to the vicissitudes of shifting political winds, it is uniquely ill suited to assess quality. And I say that recognizing that it appears from everything I've heard today that this particular Office of the Criminal Justice Coordinator has been more responsive, more interested

1 in what the defender's perspective is and that's
2 wonderful. But from a structural standpoint, that is
3 also something that has to be of concern in the long
4 run because there are shifts, as we all know, in the
5 political winds. The defense function especially in
6 a nation that's become addicted to the use of the
7 criminal law to regulate all manner of social,
8 economic, and personal behavior is too precious and
9 too fragile and too important not to be independent.
10 So see how your system measures up against these
11 principles, and you will go a long way toward
12 assessing its true quality.

14 I want to conclude with one other point
15 from a national perspective. I actually want to
16 congratulate each and every one of you for caring
17 about the quality of indigent defense representation.
18 This is an issue that seldom draws the attention of
19 elected leaders because the indigent accused as a
20 constituency whose voices are seldom heard. But we
21 are a nation, which now arrests 14 million people a
22 year. And that has led to the highest incarceration
23 rate of any country on earth both per capita and in
24 actual numbers. Increasingly, all of us have to
25 realize that these so-called criminal are our

neighbors, our friends, our family, our co-workers.
The criminal justice system touches everyone of us,
and so all of us have a duty to ensure that when a
person is charged with a crime the constitutional
mandate to provide counsel is fulfilled. Fulfilled
not with a harried lawyer who's overburdened and
scarcely gets to know the client before disposing of
the case, but fulfilled with a fully trained
dedicated and resourced attorney.

One who can address, as you heard, all
this talk about collateral consequences or enmeshed
penalties. Council Members, the nature of criminal
defense has indeed drastically changed in the past
decades. The proliferation of collateral
consequences has created a vast hidden network of
legal penalties, debarments and disabilities that now
stigmatizes--and I want to underscore this number--
the 70 million people in this country who have
criminal records. You heard reference to the ABA
inventory that Ms. Luongo from the Legal Aid Society
mentioned that they have available. The ABA has
documented at least 50,000 of these collateral
consequences that affect virtually every aspect of
human life. So when you think about the thousands

who pass through the criminal justice system in this city every year, you have to do whatever you can to ensure that every one of them has a lawyer who has the time, the knowledge, and the resources to understand these silent sentences and hidden penalties. We live in an era in which every criminal adjudication may forever consign a person to second-class status. So again, I thank you for your interest, and I thank the invitation to share my perspective.

CHAIRPERSON GIBSON: Thank you very much.
Thank you.

STEVE ZEIDMAN: Sure. Good afternoon.
My name is Steve Zeidman. I'm a professor at CUNY Law School. I just want to give you a little background. As Norm was mentioning, some of us have been struggling with this precise issue for years. I had the opportunity to serve on Chief J--Chief--former Chief Judge Kay's Commission on the Future of Indigent Services. I serve now on the Appellate Division Oversight Committee that's been referenced, IDOC. I've had the privilege of teaching at NYU Law School in the Criminal Defense Clinic. I teach now at CUNY Law School in the Criminal Defense Clinic. I

say all that by way of saying I am grateful for the opportunity to address this, to talk about this. It has been ignored for far too long. I also want to say at the outset that I concur with all the comments made by the heads of the offices here. We are indeed incredibly fortunate in New York City to have that kind of representation. So I want to do instead is just try and focus on some other issues, and maybe come at it another way. But let me just frame it this way: As you go about this really difficult task, and I think everyone would say it's a difficult task of how do you assess the quality? Think about this. What would you want a lawyer to do for your son, your partner, yourself if you were arrested? What would you expect that lawyer to do, and that's what I think we need to expect in every case. And secondly, and I don't think this has been mentioned enough certainly not through the lens of MOCJ. We need the defense bar to be the organization that somehow sheds some light, casts the actions of the police department to some meaningful scrutiny. Because if not them, who else? So how do we get runaway stop and frisk problems? Who are the only people we need to rely on? So as yourself what do I

1 need from a lawyer? I think look at it from those
2 two lenses.

3
4 So I want to frame this another way as
5 well. With all the discussions in criminal justice
6 all we've heard about for the last, I don't know 12
7 years, has been policing. Stop and frisk policing,
8 broken windows policing. I've had the occasion to
9 serve on many panels with Council Member Williams
10 about policing. It is high time that someone says
11 what happens after the police deposit that person at
12 the courthouse. And I was looking at the clock
13 before and thinking, all right, we know about a
14 thousand people are arrested a day in New York City.
15 So figure about 400 have been arrested since we've
16 been here.

17 CHAIRPERSON GIBSON: [interposing] Right.

18 STEVE ZEIDMAN: What happens to them?
19 Okay, what's the nature of the representation, and
20 what's the outcome? It's an imperative question. So
21 I believe here is another fundamental distinction. I
22 was looking at the title, How the City Evaluates the
23 Effectiveness, and I want to suggest that there's a
24 critical difference. And I don't know if you use
25 that word specifically. How the city evaluates

versus how should the City evaluate because I think what we've seen over the years is no matter how you slice and dice it, the city has been most concerned about efficiency/cost per case. And that was embedded in what we heard from MOCJ this morning.

There were questions from some members of the Council. I think Council Member-- I can't remember which. I think it was the Chair or two Chairs. There was a question about what do you mean? When you say you evaluate case duration, what do you mean? Well, we know what they mean? The shorter the case, the quicker it's resolved. Sure in many cases it's good for the accused, and in many cases it isn't but they want cases to be resolved quicker. It costs less money. You asked about when you measure arraignment dispositions what are you measuring? Well, again, we know what they're measuring. The more cases go away quicker, the less money it costs. And fundamentally, and I know this may sound, you know, just like rhetoric, but we're not talking about widgets. We're talking about people.

This is precisely why there has never been any hearing like this before. Because it's all be generated by efficiency. We've had 15 years of

mayors saying crime is going down, crime is going down, crime is going down. And no one looking at any part of the criminal justice system, and it's wonderful that you folks are. So how should the city evaluate the effectiveness of the provision of indigent defense? I think with an eye toward what does it mean? The Constitution, what does that require? The Sixth Amendment, effective assistance of counsel. The Accident Standards [sic] and they are out there, but also be guided by what is fundamentally decent and moral. That's why I asked you to think what would you want for your own child, partner, or loved one.

So then, what to do. Let me also suggest this because I think there's only been a passing reference to it, and I know I'm probably dodging the ultimate question. But you can't begin to address the question of how to evaluate the defense bar without considering first the role of the prosecution and the judiciary. Because in a phrase certainly in the last 15 years, we've seen so much strife in criminal justice the prosecution and the judiciary has been missing in action. With the rampant stop and frisk litigation there was nary a word from the

1 district attorney or the judiciary. And by that I
2 mean if you were the district attorney, wouldn't you
3 have said, what does my office do? We just learned
4 that there was--there were Fourth Amendment
5 violations.
6

7 There were equal protection violations.
8 We had a federal judge say there was a problem.
9 What's going on in the courthouse? If you were the
10 judiciary, wouldn't you say what were we doing? How
11 did this happen on our watch? And I say this because
12 you can't evaluate the defense attorneys without
13 considering the context within which they practice.
14 The district attorney has well, I want to mention,
15 broken windows just for a second. You heard one of
16 the defense providers mention that 86% of the cases
17 coming in are misdemeanors and violations. So think
18 about that for a moment. The questions you're really
19 asking is how do you provide effective assistance to
20 those--what is 86% of the your work.

21 Misdemeanors and violations and before
22 you ask, how do you effectively represent someone for
23 riding a bike on a sidewalk? You have to ask why is
24 this being prosecuted and adjudicated in the first
25 place? With laser like precision, we've asked the

1 police why are you arresting. We never get to the
2 next part, why are you prosecuting and why is the
3 judiciary adjudicating? Isn't there a better way to
4 approach this rather than just going through the
5 motions? And I mentioned the prosecution and the
6 judiciary to situate in context, but also because, as
7 you know, they're the ones with the power. They're
8 the ones who dictate how things go in the criminal
9 court, and I urge you one other I think important
10 step you can take and this may sound somewhat ironic.

12 There were questions--I forget who asked
13 about on-site evaluations. Does anybody like go and
14 watch or observe or see how people are doing? If you
15 went into arraignments tomorrow, and there was so
16 much discussion about what happens at arraignments.
17 Do you know what you would hear the first thing every
18 judge in New York City ask when somebody is brought
19 before them? The very first thing? What's the plea
20 offer? Not what's the constitutional basis for the
21 arrest. Not how much evidence do you have against
22 this person. Those issues are virtually never
23 explored. Again, it is this context within which
24 defense attorneys try to provide effective
25 assistance. So some concrete examples. You heard

Justine Olderman mention the consumer's perspective asking what the clients want.

It's a wonderful place to begin. I know in IDOC the Oversight Committee we've been asking that question for quite some time. Encouraging defense providers to solicit the input of their clients. I mean who better to comment on the services received than those who actually the services. But let me just suggest this. One thing to flag. Those studies have been done ever since *Gideon v. Wainwright*. We've had consumer studies. There have probably been about 40 of them. I've read every single one of them, jurisdictions at every level. Not in New York City frankly. Here's the constant them. When those people who have been represented by public defenders are asked to comment on the quality, the nature of their representation, inevitably they all raised two particular complaints. (1) I never felt like I got my day in court, an opportunity to be heard; and (2) I felt like there was unending pressure to plead guilty.

And the question becomes in New York City is the answer ultimately going to be the same: My lawyer cared. My lawyer listened, but did I ever get

1 my day in court, the opportunity to be heard? Did I
2 feel unending pressure to plead guilty. I think we
3 know ultimately what the answer will be given the
4 system within which we all work. And so, that brings
5 me back to prosecutors and judges because those
6 client grievances are hard if not impossible for
7 defense counsel to address in a system that demands
8 disposition of the charges at the accused's initial
9 appearance, punishes people who assert their
10 constitutional rights to go to trial to have a real
11 opportunity to be heard. And prosecutors who revoke
12 plea offers should any defendant have the temerity to
13 assert their constitutional right to a pre-trial
14 hearing.

16 Let me mention one other piece that I
17 think might be more concrete or show you the problems
18 here. Following the homicide of Eric Varner, Mayor
19 de Blasio declared, "We all believe in due process,
20 fairness, a full investigation, a full legal process.
21 we believe everyone should be treated equally in that
22 process." Appeals to due process also surfaced in
23 the related debate about how people should respond in
24 a police officer's attempt to place the under arrest
25 even for minor transgressions. The Mayor again

1 urged, "When a police officer comes to the decision
2 it's time to arrest, that person is obligated to
3 submit because they will then have every opportunity
4 for due process in our court system." And to
5 underscore that point, he went on to refer to "our
6 thorough due process system."

7
8 And should anybody on the Council be so
9 inclined to ever come to the criminal court and
10 observe what goes on, let me suggest what you will
11 see is an endless throng of young men of color
12 paraded before a judge within minutes, one after the
13 other. It is virtually impossible for any human
14 being to consider what you're seeing as having any
15 resemblance to due process in any way, shape or form.
16 So when those consumer perspective studies revealed
17 that defendants bemoan the lack of an opportunity to
18 be heard, they were not just reporting their
19 perceptions. They were speaking truth. And defense
20 attorneys, we all--I consider myself a defense
21 attorney struggled in the system--have to think about
22 ways to vigorously respond to this reality.

23 Other concrete suggestions. Defense
24 organizations are beginning and must make better use
25 of data to properly defend in the 21st Century. I

raise that here because funding becomes an issue.

And obviously where to look for funding but to places like the City Council. The NYPD has been relying on data at heralded CompStat program for years. The District Attorney offices now have incredibly thoughtful, detailed database and programs to help them prosecute. The Defense Bar, the defense organizations have to be funded adequately to maintain the same kinds of data. Let me give you a concrete example, and very scientific.

CHAIRPERSON GIBSON: [interposing] Okay, before you continue I just wanted to-- We're on a timeframe.

STEVE ZEIDMAN: Yeah.

CHAIRPERSON GIBSON: So if you could just--

STEVE ZEIDMAN: Okay, this is it.

CHAIRPERSON GIBSON: Thank you.

STEVE ZEIDMAN: The money here is critical. Think about this. Detective Louis Scarcella, which I think everybody is familiar with what was going on in Brooklyn. There were 71 convictions that District Attorney Thompson is investigating. If a defense attorney if we go into

1 arraignments and we pick up that file, and we are
2 able to enter that officer's name into our database.
3 We come up with every complaint that officer has ever
4 filed in a courtroom--ever filed in a courtroom.
5 Every piece of pre-trial hearing testimony, all
6 public records of civilian complaint review board.
7 Those sorts of things, that particular type of
8 conduct would be caught ahead of time. Not only with
9 wrongfully convicted people would not be convicted,
10 but the City wouldn't be paying out millions and
11 millions. Defense organizations can't do that
12 without adequate funding.

14 So I'll close with this. My colleague
15 mentioned arraignments meet and plead. Let me just
16 urge this. Council Member Williams has asked, and
17 I've heard him ask that question before. What can
18 the Council do? What is the authority other than the
19 bully pulpit and other than funding? If this Council
20 is truly concerned about public safety, I urge you--
21 And I end up coming back to funding, but also to
22 putting pressure. I hope there is going to be a
23 conversation about indigent defense where you bring
24 in the district attorney. Where you bring in the
25 judiciary, and ask them the hard questions. Because

ultimately the way the system functions, it functions as a system of coercion. And nothing will change unless and until the council addresses that.

CHAIRPERSON GIBSON: Thank you very much.
Thank you.

NICOLE AUSTIN-HILLERY: Good afternoon
Chairman Lancman and Chairwoman Gibson and to the member of the Committees on Courts and Legal Services and Public Safety. My name is Nicole Austin-Hillery, and I serve as the Director and Counsel of the Washington Office of the Brennan Center for Justice. I feel a little bit out of the water here simply because I think I'm the only witness today who does not have New York ties. But I will say for the record that my husband is a former Legal Aid attorney in the Civil Division. So I hope that gets me some brownie points. [laughs] The Brennan Center for Justice, however, is indeed a New York institution. We are a part of the New York University School of Law, and the Brennan Center is a national advocacy think tank litigation organization that uses the mechanisms of litigation, advocacy and strategies and communications to help what we like to think is fixing the broken systems within our democracy. That

includes work on a range of issues including voting rights, money and politics, fair courts, liberty and national security. And most notably for today's purposes our work on the justice system.

Our Justice Program focuses primarily on trying to end mass incarceration in this country. Part and parcel of doing so has to include and certainly includes our Indigent Defense System. We are very concerned with racial disparities in the criminal justice system, and how that impacts the faces of those individuals whom we find within our criminal justice system. And we are concerned that the lack of a good and adequate Indigent Defense System can often lead to and perpetuate mass incarceration. So it is from that vantage point that I'm here to talk to you today.

In addition, our work at the Brennan Center because we are a national organization we work on issues both at the state and national levels. And in my role as Director of the Washington Office, I have the privilege of working with colleagues around the country who have national organizations including Mr. Reimer, as part of a group we call the National Indigent Defense Collaborative. It is made up of

several organizations who have the focus of using the tools at our disposal to ensure that with respect to Congress, with respect to the Executive Branch that we are doing what we can to help reform the broken parts of our Indigent Defense System.

I'd like to tell you just a little bit about the Brennan Center's history and how we come to this work. And then I'd like to focus primarily on what is indeed going on at the national level. You already heard Mr. Reimer talk about the ABA Ten Principles, and how that really should serve as a template. But I also think there are lessons to be learned of best practices that can be adopted that we have all been engaged in on the national level working directly with the Executive Branch, working directly with Congress. That I think can serve as a template for the New York City Council. Being someone who has worked at both the State Legislative level in Pennsylvania, I worked with the City Council for the District of Columbia, and now work for this national organization. I know the importance of learning from all of those different levels. None of us are islands unto ourselves, and I think what goes on at the national level and what goes on at the

local level should be equally examined to see what can be learned at each juncture.

When the Brennan Center was founded almost 20 years ago, we focused in our justice program very pointedly on trying to ensure that funding for legal services was at an adequate level and was always protected. And we did so by focusing on the Legal Services Corporation and working in tandem with other organizations to protect funding for the Legal Services Corporation. That really has been the genesis of our justice program work. And that work has continued to evolve over our 20-year existence. Our current justice program, as I said, is focused on ending mass incarceration. And in so doing we are focused on creating a rational and effective criminal and civil justice system that treats all people fairly and equally by reducing mass incarceration by closing the justice gap. And by ensuring racial equality within these systems. This work continues to encompass efforts to ensure adequate legal defense for the poor.

The Brennan Center is alarmed at many of the statistics that you've heard today, including the fact that 80% of low-income people have trouble

obtaining legal representation, or otherwise
accessing the civil court system to protect their
property, family, and livelihood. As we've discussed
in many Brenna Center reports, access to counsel has
very real implications for individuals being
processed in our justice system. In the criminal
context research suggests that socially vulnerable
individuals more readily submit to assertions of
government authority. This is particularly so with
respect to people of color. Black suspects are more
likely to feel coerced by the police compared to
white suspects. And less confident that their rights
will be respected. Poor black and brown suspects
similarly acceded to--acceded more quickly to
government demands in the courtroom such as pressures
to plead guilty by prosecutors or judges. Without
meaningful and adequate representation, socially
vulnerable people are more likely to succumb to
external pressures to plead guilty to offenses
regardless of whether they committed the offenses or
not. Given such realities, the need for balance and
independent representation of individuals is
critical. In order to close this justice gap, the
Brennan Center aims to improve the effectiveness of

the civil justice system to better serve all. And we've done that in a few different ways. We use our litigation skills, and our litigation practice to be involved as Amici in key cases.

In late 2014, Legal Services Advocates, as we all know, won a significant victory in the effort to ensure defendants' Sixth Amendment Right to Counsel in the *Hurrell-Harring v. State of New York* case. Plaintiffs in that case argued that the New York County provided inadequate representation to the indigent. In 2010, the Brennan filed Amicus brief in that case representing 62 prosecutors including former Manhattan District Attorney Robert Morgenthau. and many others. We've also been engaged as Amici in other major cases.

Currently, the Brennan Center is drafting a new report entitled Reducing Racial Disparities in American Jails. This report examines the many factors that lead to racial disparities in our nation's jails, and outlines a set of recommendations to help eliminate these disparities in our jails. Our findings in this report show that one of the major contributing factors leading to this disparity is the lack of available legal counsel. For example,

of the approximate 10 million misdemeanor cases filed every year, almost 25% of individuals charged go before a judge without a lawyer. Public defenders are guaranteed for all cases where a criminal defendant faces a term of incarceration. Nevertheless, counsel is physically or effectively denied due to court practices, overwhelming caseloads and underfunded public defense systems. All of which you've heard details about today.

The report that we have forthcoming in February of this year will outline ways in which this problem can be combatted. And finally, I'd like to point out that the Brennan Center recognizes the crucial need for representation in the criminal context, but also understands that many of our vulnerable Americans lose precious rights and protections due to a lack of representation in civil proceedings. Civil *Gideon* is a concept that we very much are in favor of. Most recently, the Brennan Center has been engaged in working individuals across the country and with national organizations to help provide representation for those Americans who have been facing foreclosure. A crisis that we know has hit many economically challenged populations

particularly in black and brown communities from the generational benefit of homeownership. So these are just a few examples of the ways that the Brennan Center works to help protect the interests of the poor whose access to representation is often severely limited.

Now, I'd like to talk about how we use that work in our partnerships across the country to focus on national efforts to reform Indigent Defense Systems. The Brennan Center along with our partners at other national advocacy organizations have worked diligently to increase the national focus on indigent defense reform. Our goal of improving indigent defense nationwide was buoyed when Attorney-General Eric Holder made clear at the start of his tenure that one of his primary goals was to improve indigent defense across this nation. This commitment was further enhanced when in 2010 he helped create the Access to Justice Initiative within the Department of Justice. And at the same time created a range of new grant programs meant to support indigent defense. And what does this mean in terms of what we did as national advocates.

Well, we did two major things. First, as a result of the joint effort of several of the organizations that make up the National Indigent Defense Collaborative, and other key groups, we helped to form with the Justice Department and Indigent Defense Working Group. This group meets regularly with the Department of Justice to discuss what steps the department is taking to improve indigent defense. What issues the groups want to bring to the department's attention concerning areas that could benefit from executive levels support, and to discuss recommendations for how we should improve indigent defense. This direct access to the very decision-makers who oversee relevant grant programs and other mechanisms for supporting indigent defense is a crucial part of advancing the continued effort to ensure right to counsel for the poor. And secondly, the national groups that work on efforts to protect and reform legal services for the poor have and continue to engage in efforts to meet and confer regularly about shared work and ideas. Again, this is something that we think is crucial regardless of whether you're working on these issues on the national level or the local level.

And let me close with a few brief focus-- with some brief focus on some of the national reform and recommendation strategies that we have been working closely with in Washington. First of all, assistance from the Department of Justice. I've already noted that we have been encouraged by Attorney-General Holder's focus on reforming indigent defense. As a result of that, we have been pushing the Department of Justice to do certain things such as insert their support where needed on relevant cases. Again, DOJ has done so by providing statements of interest in key cases, such as in the *Hurrell-Harring* case. Their assistance on the State level has been tremendously helpful, and we think there may be instances in which local jurisdictions will find it continually useful to request such assistance.

Next, the Department of Justice we found can be instrumental in helping to investigate failing systems. Conducting investigations into failing systems across the country is an important step that must be taken in order to pinpoint exactly where problems exist. Certainly, you've heard today from your providers on the local level about where those

1 problems lie. But often, it is extremely helpful to
2 have an outside objective voice that can assist in
3 that effort. The national groups have requested that
4 DOJ intervention into particularly troubling matters
5 at the State level continue. For example, the DOJ
6 has led investigations into failing juvenile court
7 systems in several jurisdictions such as in Saint
8 Louis, Missouri and in the State of West Virginia.
9 Not only have we found that DOJ can be helpful for
10 use of its investigatory power, but also the use of
11 the DOJ bully pulpit is extremely important, and
12 cannot be underestimated.
13

14 We also think that work to ensure
15 adequate funding is something that must continue, and
16 must be examined. Having adequate funding for
17 indigent defense is crucial, as we know, to ensuring
18 as much legal representation for the poor is put in
19 place in as many jurisdictions as possible. Our
20 national groups have focused a great deal of effort
21 on encouraging DOJ to expand funding for indigent
22 defense. These requests have not gone unanswered,
23 I'm happy to report. During 2014, the Department of
24 Justice provided funding for the Smart Defender
25 Program to provide money for data collection and

analysis. We know that using data collection and analyzing that data is extremely important as we try to evaluate what is wrong with our systems and how we can move forward with fixing those broken parts of it.

The national groups have also been focused on reforming those parts of large funding programs that we believe can work more effectively to support indigent defense. Most notably, the Byrne JAG Grant Program. This is the largest pocket of federal funding that goes to law enforcement agencies throughout the country. The Brennan Center has been particularly engaged on this work. In 2013, we introduced a report called Reforming Funding to Reduce Mass Incarceration. Which outlined a new proposal to reform grant funding of the nation's largest criminal justice funding program to help promote innovative crime reduction policies nationwide.

This funding proposal if adopted would, among other things, help to ensure that grant recipients are using their dollars in ways that will help to reduce mass incarceration. And this includes protecting the rights of the indigent. We also think

1 it is important to ensure that leadership roles are
2 filled that provide support for indigent defense.
3 Protecting and advancing the right to counsel goes
4 far beyond ensuring adequate funding, and
5 investigating failing systems. It requires that the
6 right leadership be in place. We have worked
7 diligently again with the Department of Justice and
8 with the White House to ensure that offices such as
9 the Access to Justice office at DOJ, has adequate
10 national leadership. We know that having the right
11 voices in the right places makes a huge difference in
12 terms of whether we get heard with respect to these
13 issues.
14

15 And then finally, I would like to point
16 out that we have to look at the legislative tool as a
17 mechanism for helping to advance reform. It is
18 impossible to focus on indigent defense reform
19 without considering the impact of legislation. On
20 the national level, our collective groups have
21 continued to support legislative efforts that will
22 positively affect indigent defendants. During the
23 113th Congress. several pieces of legislation were
24 closely followed by the advocacy community including
25 the formation of the National Center for the Right to

Counsel. This was an act that was introduced by Representative Deutsch. We've also focused on reauthorization of the Justice for All Acts, sponsored by Senator Leahy of Vermont. We continue to be focused in this new 114th Congress on legislation that will reduce the effects of collateral consequences that are inherent in the criminal justice system. These consequences that we know disproportionately impact those who find themselves in the system without proper and adequate representation. And we are please that there has been a great deal of effort, and a great deal of focus on bi-partisan support for these issues. Most notably with the Redeem Act, which was introduced by Senators Rand Paul and Cory Booker. And we are continuing to push for bipartisan support for these legislative efforts.

I'd like to conclude by saying this:

While many of the efforts that I've noted today can easily seem like inside the beltway efforts, and they are, I want to point out that these efforts are very much transferrable to many of the efforts that I've heard discussed here today. And things that you are thinking about here in New York City. Those of us

working at the national level are always pleased when local jurisdictions are focused on ways to improve delivery of effective counsel to the poor. The Brennan Center and our national partners are pleased to continue to provide advice and assistance as we can. And we are grateful that you have brought this issue to the attention of many, and that you are holding this conversation today. Thank you so much for your invitation.

CHAIRPERSON GIBSON: Thank you very much. Mr. Leahy, before you begin with your testimony, I just want to acknowledge our new panelist that has joined us, Paulette Brown, the President Elect of the American Bar Association. Welcome and thank you for being here, and also we have submitted for the record received testimony from the Manhattan Borough President Gale Brewer in regards to the hearing today. And specifically Intro 214, introduced by Council Member Rosie Mendez. So I want to thank her staff for submitting this, and you may begin.

BILL LEAHY: Thank you very much. My name is Bill Leahy. I'm the Director of the New York State Office of Indigent Legal Services. We've been in business just short of four years now, and we're

mostly know for our work Upstate. We're doing things that New York doesn't really have to worry about like providing counsel at arraignment in 25 counties out of the 57 Upstate counties. We're working on caseload reduction in 47 of the 57 Upstate counties. Of a little more relevance, perhaps to New York is the fact that we have--we have funded the Immigration Coordinator in the Mayor's Office of Criminal Justice, and staff immigration attorney, and five Legal Aid officers. And the other offices who are the providers whose leaders you've heard from today to work on these per diem implementation. And we have recently received from New York City a response to our Request for Proposals. We're going to have-- New York is really going to be the first state that will have a statewide network of Padilla resourced and assistance centers that will provide training not just to the institutional providers, but to the assigned counsel providers as well. New York City will be one of the six regions. So it will have its own region. That proposal is under review right now. And since it's the only proposal from New York City, it has a good chance to be approved.

1 I want to say that another thing that
2 we're working on that is I think is directly relevant
3 to what you're doing-- Two things. One, we have
4 been working on creating standards. We have a
5 statewide set of standards for criminal trial
6 representation at the trial level. Also, more
7 recently at the appellate level, and we have built
8 those upon the pre-existing New York State Bar
9 Association Standards. And that's in our little
10 booklet. I have it with me that the New York State
11 Bar Association has put together their standards
12 combined with our enhancements to those standards.
13 They're a good place to go for assessing the kinds of
14 steps that should be taken in any case.

16 Another thing I want to mention is that
17 we are working on specific assigned counsel program
18 standards because in many parts of New York State
19 even where you may have a good institutional provider
20 reasonably well supported, reasonably well
21 structured, you often have an unsupported assigned
22 counsel, 18B which does-- Whose clients do not have
23 access to the same services, whose attorneys do not
24 have the same level of supervision and support. And
25 it's telling to me that while I've worked with all of

1 the people who have spoken with you today, and the
2 institutional providers both trial and appellate in
3 the city. And you've heard from-- You know, really
4 eloquent testimony from them today. But we also have
5 Barbara Di Fiore and Michael Alberstein here equally
6 eloquent, equally passionate, equally dedicated.
7 They work with us equally well, and they're listening
8 and they're hearing, and they're-- I know you hear
9 their voices in other ways. But it goes to the point
10 I think that the-- I think it's really important if
11 we're serious about serving clients.

12 I don't mean inefficiently. It has to be
13 done efficiently. But if we're really serious about
14 measuring how clients are served, how well they're
15 represented, we have what, almost 20 years of
16 experience I think under IDOC, which many speakers
17 have referenced and Norman Reimer is a founding
18 father of. I've read the IDOC reports, and as good
19 as these institutional providers are in New York
20 City, IDOC is not afraid to tell them how they can be
21 better for their clients. And this is something that
22 any organization no matter what level of excellence
23 it has achieved, always must aspire to. Because if
24 you're not progressing, you're falling back. So
25

number one, I want to say to you to really utilize the expertise and the history and the experience of IDOC, their methods, what they look at, how they go about their business.

Number two, IDOC never expanded into the second department in terms of their really rigorous examination of performance. So it should be expanded into the second department, Brooklyn and Queens and Staten Island. And thirdly, it only covers institutional providers. It does not cover the Assigned Counsel Program. And when you get to looking at the Assigned Counsel Program, you're going to find out that it does not have similar levels of support. It does not have similar training, supervision, access to experts and investigators. We put into our contract with the City, the first one that set up the immigration advocates attorneys a requirement that there be equal access using those State funds for 18B attorneys as through institutional providers.

But, we could not force the city to put one of those attorneys in the Assigned Counsel provider office. They're all in the institutional provider's office or in the Mayor's Office of

1 Criminal Justice. And so, these are things that
2 really if all the clients, who are served by
3 providers in New York City. And bear in mind the
4 large proportion of persons charged with the most
5 serious criminal offenses of homicide are represented
6 by these lawyers. I think that is an area that I
7 would commend to you specifically for your attention
8 as you go about assessing the evaluation. You've got
9 good leaders here, and they can help you with this.
10 Just as the institutional provider leaders assist you
11 by their testimony and by their input. The only
12 other thing I want to say is we're a little band of
13 eleven people up in Albany. We're shaking things a
14 lot in Upstate. We'd be very happy to work with you
15 to improve things here in the city as well.

17 CHAIRPERSON GIBSON: Thank you. Ms.
18 Brown.

19 PAULA BROWN: Good afternoon. Thank you
20 very much for this opportunity. As you mentioned
21 again my name is Paula Brown and I'm the President-
22 Elect of the American Bar Association. And I'm
23 pleased to speak to you today about evaluating the
24 indigent criminal justice system. And I probably
25 should have spoken in more detail to Mr. Reimer

1 because I am going to say a lot of what he has
2 already said. We view this as a constitutional issue
3 that deserves great attention than it has received to
4 day. The American Bar Association, as you may know,
5 is the voice of the legal profession in the United
6 States. We have nearly 400,000 members, and it's one
7 of the largest voluntary professional organizations.
8 For decades the ABA has promulgated national indigent
9 defense standards and policies. And today, I'd like
10 to focus on the ABA Ten Principles of a Public
11 Defense Delivery system. The Ten Principles are the
12 cornerstone of indigent criminal defense in--
13 criminal--of criminal--indigent criminal defense in
14 America. Our Attorney-General Eric Holder said the
15 principles have not only given shape to our
16 aspirations, but quite frankly literally set the
17 standard and developed a framework for progress.

18
19 Additionally, the National Legal Aid and
20 Defender Association has stated about the Ten
21 Principles: Never before has there been a concise
22 and authoritative statement of the key components of
23 an effective public defense system in plain language
24 accessible to busy, non-lawyer policymakers. I
25 believe that the Ten Principles have been sent. I

1 don't know if they have actually arrived, but the
2 actual Ten Principles will be delivered to each of
3 you. And so, rather than discussing the principles
4 one by one, I would like to use the principles to
5 give you a brief overview of what you should look for
6 in an Indigent Defense System. You will need the
7 right structure, the right attorneys, the right
8 clients, and the right time and space. Quality
9 indigent defense starts with a sound structure. The
10 first principle tells us that an Indigent Defense
11 System must be overseen by an independent non-
12 partisan board so that quality representation isn't
13 subject to judicial or political whim.

14
15 Before you look at how citizen clients
16 are being represented, I urge you to look at an
17 agency's governing body. Is there a board in place?
18 Does the board have the power to set indigent defense
19 policy? Are board members appointed by several
20 diverse bodies or by a single entity. Is the board
21 itself diverse? Is the chief defender chose on merit
22 rather than politics.

23 Next. [coughs] Excuse me. A quality
24 Indigent Defense System must have workload limits.
25 As we know from observation, scholarship, and recent

litigation, this is one of the most important issues facing indigent defense today. For too long, criminal justice systems have prized efficiency over effectiveness creating radically excessive workloads. Excessive workloads rob attorneys of the ability to adequately represent their clients, and systematically deprive clients of the Sixth Amendment right to effective counsel. To put it simply, even the best attorneys cannot provide quality representation when she or he is saddled with 300, 400, 500 cases for which they are responsible at one time. Although excessive workloads are addressed in the second and fifth principles, the issue is so pressing that in 2009 the ABA adopted Eight Guidelines of Public Defense related to excessive workloads, and the work is ongoing in that regard. The ABA has also conducted several studies and the studies are continuing to establish state specific workload standards. If you wish to learn more about those standards and studies, you can find them at www.indigentdefense.org. And that will--that's in the paper you have.

Attorney workloads are directly tied to funding. Although prosecutors have been severely

underfunded for decades, remarkably defense funding is often far worse. Principle 8 calls for funding and resource parity between prosecutors and defenders. Without proper funding, not only can you not enforce reasonable workload limits, but your office stands no chance of hiring investigators, mitigation specialists, social workers, immigration attorneys, and family law attorneys. All who are needed for a holistic approach and representation of the indigent defendant.

A well-funded independent system with workload limits is really just the start or the beginning. A quality Indigent Defense System must also require and provide rigorous training, supervision, and evaluation for its attorneys. Principles 6, 9, and 10 provide guidance in this area. How does the agency train new attorneys? What kind of continuing legal education does it provide to seasoned attorneys? Does the training cover criminal law, criminal procedures, negotiation skills, trial skills, and client communication? Do attorneys' training and experience match the case to which they are assigned? Are attorneys supervised? How often are attorneys evaluated? What measures do you use to

1
2 evaluate attorneys? The Ten Principles not only set
3 the basic standards here, but they also reference
4 additional standards and policies that can assist in
5 evaluating attorney training, supervision, and
6 evaluation.

7 Once the independent system with workload
8 limits, sufficient funding, and proper training and
9 supervision have been established, the next thing
10 that happens is that attorneys are assigned to
11 clients. And then we have to determine who are the
12 clients. We look at Principle 3 for this. An
13 Indigent Defense System should be neither under nor
14 over inclusive in accepting clients. That is poor
15 clients cannot be deprived representation in
16 violation of the Sixth Amendment. Nor should clients
17 who can afford counsel--and that's a questionable
18 area--be deprived representation in violation of the
19 Sixth Amendment. I'm sorry. Those who can afford
20 counsel should not be permitted to have the resources
21 that are allocated for indigent defense. A defense
22 system must, therefore, screen clients for
23 eligibility to ensure proper representation.
24 Eligibility screening should not, however, include
25

the use of application fees, or other means intended to deter would-be clients.

Finally, quality indigent defense representation requires proper space and time. I'll start first with space. Principle 4 tells us that there must be a space in which an attorney and client can speak confidentially. The defense system must have private meeting spaces in jails, prisons and courthouses and any other place where an attorney and his client are scheduled to meet. Timing is equally important, as was discussed. Too often, non-counseled criminal defendants suffer serious consequences both direct and collateral in the first days after an arrest. Principles 3 and 4 state that counsel should be provided upon request, and at the very latest at first appearance. After that, counsel must have sufficient time to meet with clients to discuss the law, the facts and procedures. When an attorney lacks the time to thoroughly discuss a case with his or her client, no amount of training or supervision can guarantee quality representation. And that obviously goes back to one of the other principles with no attorney can be effective if they have too large of a caseload.

I'd like to point out that New York has been in an innovator in its holistic defense, digital forensics, and community involvement. Yet, if the system does not meet the Ten Principles, it is bound to fail its clients. Indigent Defense Systems across the country have long been understaffed, underfunded, and poorly trained. But we have seen with recent litigation and the creation of several indigent defense commissions the tide hopefully is turning. I applaud your committee, both of them, for tackling this issue. It is far better that cities, counties, and states improve indigent defense from within. Thank you very much again for this opportunity. And hopefully if you-- I know that the Ten Principles were sent to you, but I brought an extra copy just in case.

CHAIRPERSON GIBSON: Okay.

PAULA BROWN: Thank you.

CHAIRPERSON GIBSON: Thank you very much. Thank you to all of you for your presence and your testimony, and my colleague has a question. Chair Lancman.

CHAIRPERSON LANCMAN: Good afternoon. Thank you for your testimony particularly those of

you who traveled from far away to get here. And will have an interesting experience getting back to where you came from I guess. [laughter] I'm from Queens so I've got a trip myself.

NORMAN REIMER: [off mic] I was going to say you have an interesting trip.

CHAIRPERSON LANCMAN: And she's in the Bronx so-- Two issues. The issue of a non-partisan board, the issue of independence, this Principle Number 1.

PAULA BROWN: Number one.

CHAIRPERSON LANCMAN: Could you explain how that could work. I mean in New York City at least in the First Department we have IDOC. Is MOCJ not independent, the Mayor's Office of Criminal Justice Services not independent from the Legal Services Provider? What kind of structure are you talking about.

PAULA BROWN: [mic] Thank you. You can take that.

NORMAN REIMER: The concept is really that the contracting authority should not be the one that is the arbiter of quality. and that there's some insulation. New York is, as New Yorkers know, very

unique in lots of different ways. Even the providers in New York City are unique from many other defenders. Many of them have their own independent boards. They raise money independently as well as getting government funding. But the concept and the concern is yes there is a serious problem that I fear one day will explore when you have the contracting authority potentially being driven, as I said in my testimony, the cost per unit or cost per case basis. So what you do have at the moment with IDOC, and if you could strengthen it and provide some more support, but I would-- I don't know. I would love to know. I would bet that the providers themselves, and they are-- You know, you do have some of the best providers in the country particularly compared to what we see going on in other places.

And where in many places there are no defenders at all. But I would think that they probably appreciate the value of IDOC. Because IDOC is there to provide that ultimate break. Actually, if you look at the court rules, it's established by the Appellate Division. If you look at the Court Rules, the courts could refuse to commit a provider who didn't meet certain standards from appearing in

1 the courts. That was done to protect against the
2 possibility that they would be-- That the money that
3 would be put out there would be so little. And
4 remember, this was at a time-- This came about at a
5 time when the then Mayor was reacting negatively to
6 the Legal Aid Society. And there was as great-- We
7 had a great fear that it would drive quality down.
8 So, I have to say that yes from a structural
9 standpoint, the idea that the City, the coordinator
10 for Criminal Justice, which gives out the contract
11 would be in charge of these bodies. But it is not--
12 it does not comport with the First Principle.

14 CHAIRPERSON LANCMAN: Okay. And then my
15 second and last question as mentioned in your
16 testimony, Principle 2, the importance of their--the
17 system--the public defense delivery system consists
18 of both a defender office, and the active
19 participation of a private bar. So, for example, in
20 New York City the legal service providers and the
21 active participation of the private bar, which is
22 actually our 18B system. [coughs] Over the years,
23 the percentage of cases handled by the private bar,
24 and the 18B system has really become miniscule. And,
25 for all that we're talking about with wraparound

services, holistic defense, all the other resources that are necessary really provide a good representation. I mean is it realistic to expect that 18B lawyers have that kind of infrastructure and support to provide the kind of holistic full-bodied representation that I know all of you think is so important. And so, I-- It would be interesting to hear what the Bar Association has to say and the State Public Defender Office in particular.

BILL LEAHY: [off mic] Do you want to go first?

PAULA BROWN: Sure. Principle 1 I think is really critical because it talks-- If you don't have independence, if people are subject to the political--

CHAIRPERSON LANCMAN: Principle-- I'm sorry. Principle 2.

PAULA BROWN: Two.

CHAIRPERSON LANCMAN: I'm sorry. Principle 1 was the question about independence?

PAULA BROWN: Right.

CHAIRPERSON LANCMAN: Principle 2 is the question about having a mix of both public defenders

and the private bar, and whether-- I know you
weren't here for the earlier testimony--

PAULA BROWN: [interposing] Right, right.

CHAIRPERSON LANCMAN: --but in New York
City the way it's working out is the private bar the
assigned counsel.

PAULA BROWN: Right.

CHAIRPERSON LANCMAN: There's a very,
very small percentage of cases and getting less so.
And whether or not with all we want to do, with all
that we want our public defenders to take on in terms
of representation, investigation, social work,
ancillary matters that relate to the person's, you
know, the defendant's fundamental issues. Is it
reasonable to expect that 18B lawyers can take on
that enormous responsibility without the
infrastructure and support, et cetera, that the
public defenders, the institutions, the Legal Aids,
the Bronx defenders have. Principle 2.

PAULA BROWN: Well, I think that you have
to have the additional lawyers because it's
impossible to provide the additional support to the
defender's office because it's impossible for those
who are available within that structure to provide

the necessary services. And it goes--it's a crossover also with the training and supervision that has to occur that those people get the same type of training that the other lawyers would get. So that they could be adequately prepared to represent the indigent defendant as well. But I do believe that your need them both.

CHAIRPERSON LANCMAN: Okay.

BILL LEAHY: [off mic] I want to just say. [on mic] I would just say that I don't know the ultimate answer to your question. It certainly cannot be done without the infrastructure and the support. That can be done with assigned counsel programs as well as with public defender institutional providers. I'll give you an example of Erie County, New York, Buffalo where the primary provider is assigned counsel. It's a very good provider. It's a very-- You know, it's nationally recognized, and complies with all the ABA standards and principles. But I want to flip the question around and look at this from a client perspective. And the question becomes then should a client who happens to be represented by a non-institutional provider be entitled to less? And so I think that

the answer that I hope you would have to that question no they should not be entitled to less.

CHAIRPERSON LANCMAN: That's--that's the premise of the question that they're not entitled to less.

NORMAN REIMER: That they're not--exactly that they're not entitled to less forces then an examination of how those--how that equality among clients is--

CHAIRPERSON LANCMAN: [interposing] And then it begs this question whether or not the-- whether or not it's possible to give that support and infrastructure to the 18B lawyers and whether it's worth that effort. Or, do we move even farther away from using the 18B lawyers, and expand the organizations that already have that infrastructure.

BILL LEAHY: Well, I'm not the voice of the Assigned Counsel Program in New York City, but let me take a guess and say that just as the institutional providers very properly pushed you very strongly to say that we must do more, we must provide wraparound services. We must because the clients are entitled to it, and deserve from us as a society. How can the answer be any different for it depending

upon the fact of a type of case in which a client is necessarily represented by a non-institutional provider. It's just that much more of a challenge I agree.

NORMAN REIMER: If I may, Mr. Chair, the simple answer to your question is yes. Can we expect them to provide the same quality of service? Yes, we can. And I'll give you a couple of reasons why. First of all, the money that goes into training and resources, and you're already seeing that with some of the providers here who testified. They are providing that training and support for assigned counsel attorneys. Mr. Leahy has talked about the efforts that he's making upstate. I know of other training programs that are even being planned, which we're going to be doing upstate that's going to bring everybody in. But let me also remind you of one other thing. We're talking--in my testimony I said the function of the defense has changed radically because of all of these radical consequences. Because we use the criminal justice system as a dumping ground. We use it to regulate all kinds of personal, social, and economic behavior that has nothing to do with people doing violence to one

another or public safety. So we're flooding the system. We're flooding the system. The defense function has changed, and I will say this you. If you're not expecting the--if you're not expecting the private lawyers who are doing the work on an assigned basis to do it, what about the private lawyers who are being hired by low and middle-income people who don't qualify. So if we're not doing it as a profession, we've got a big problem. And if we are, then it's not unreasonable to expect that the assigned portion of the program will be able to do the same work.

CHAIRPERSON GIBSON: Thank you very much, and I appreciate your remarks about the fact that defense counsel has really changed a lot. And I guess I say that because in my community, many of my constituents that are in the criminal justice system is because, you know, no one has addressed some of the other factors of why they're in the system in the first place. I shared with my colleague, with Chair Lancman, that I appreciate this panel, just have so much expertise and value as part of a larger conversation around indigent defense. And I would certainly love at another date to have another

1 conversation with you as well as our respective
2 counsels beyond a hearing. I think a lot of this
3 will come over the next several months as we start on
4 our new budget cycle for FY16. Many of us will be
5 talking about additional funding, but also with any
6 funding there will come regulations, and then
7 performance measurements. And as you can see from
8 earlier today, MOCJ does a lot of the oversight on a
9 lot of the contracts. And we want to be a part of
10 those conversations. I appreciate the recommendation
11 on the independence aspect of it. I think that's
12 important as you look at some of the factors. And the
13 fact that we should be trying to shift towards
14 quality, right. And looking at not just the data,
15 but looking at the people right behind the numbers.
16 And the fact that, you know, they're going through a
17 number of struggles that are to us crying out for
18 attention. And because they haven't been addressed,
19 that's why they fall in the hands of the criminal
20 justice system. So I appreciate the chance to speak
21 to you, and I thank those of you that traveled from
22 afar for being here. We have your testimony
23 submitted into the record, and we certainly will keep
24
25

working with you having future conversations. Okay,
thank you very much for being here today. Thank you.

[background comments]

CHAIRPERSON GIBSON: So as we close this
hearing, I want to thank everyone for their presence
here today. And I especially want to recognize the
amazing staff on both Public Safety and Courts and
Legal Services Brian Crow, Beth Golub, Laurie Wen,
Ellen Eng, Josh Hanshaft, Eisha Wright and Pfiza
[sp?] Alli and Thea Moore. Thank you for your work
and for helping us to have a very productive hearing
today. And each of you I wish you safe travels.
Governor Cuomo has declared a state of emergency. So
please be safe in your travels going home, and thank
you again for being here. And this hearing of
Committee on Public Safety and Courts and Legal
Services is hereby adjourned. [gavel]

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COMMITTEE ON PUBLIC SAFETY JOINTLY WITH
COMMITTEE ON COURTS AND LEGAL SERVICES

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COMMITTEE ON PUBLIC SAFETY JOINTLY WITH
COMMITTEE ON COURTS AND LEGAL SERVICES

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date January 30, 2015