



**Mayor's Office of Criminal Justice  
New York City Council  
Committees on Public Safety and Courts & Legal Services  
November 22, 2016**

Good morning, Chairs Gibson and Lancman and members of the Committees on Public Safety and Courts and Legal Services. My name is Sarah Solon and I am the Deputy Director of Justice Initiatives for the Mayor's Office of Criminal Justice ("MOCJ"). Thank you for the opportunity to testify today. Chidinma Ume, Associate Counsel, and Diana Gutierrez, Deputy Chief Operating Officer from my office, are here with me to answer questions.

The Mayor's Office of Criminal Justice advises the Mayor on public safety strategy and, together with partners inside and outside of government, develops and implements policies aimed at reducing crime, reducing unnecessary arrests and incarceration, promoting fairness, and building strong and safe neighborhoods.

A key goal of the Mayor's Office of Criminal Justice is to coordinate the effective and fair functioning of the criminal justice, which is done in close partnership with other Mayoral agencies, with the Courts, defense attorneys, prosecutors, and members of the public. This work encompasses everything from partnering with the City Council to reduce barriers to bail payment to partnering with leadership from all parts of the criminal justice system to develop systemic solutions to case delay. It also includes advising on and funding both effective prosecution and effective defense.

The topic of today's hearing – the upcoming request for proposals for indigent defense services in New York City – can be seen in this larger context. Not only is New York City committed to fulsomely complying with a constitutional mandate to provide indigent defense services, we also see zealous, high-quality defense as crucial for a well-functioning, efficient, and fair criminal justice system. The City invests significant resources in providing high-quality indigent defense services. In Fiscal Year 2015, New York City spent more than \$225 million on indigent representation. The City takes this investment seriously and is proud of its robust system for providing indigent defense, which serves the vast majority - over 90% - of the people who go through the City's criminal justice system.

Several indicators distinguish New York City's indigent defense system. Every defendant is assigned a lawyer at arraignments, which is not the case in other jurisdictions within the state and nationwide. And our City's institutional providers have developed comprehensive wraparound services, including dedicated immigration lawyers and social workers who assess needs and connect clients to available support. Such services, coupled with high-quality legal

representation, serve as a lifeline for many New Yorkers who come from chronically disadvantaged neighborhoods and face significant housing, employment, and immigration challenges, some of which can be exacerbated by contact with the criminal justice system. Additionally, the City's Assigned Counsel Plan is currently working a cutting-edge case management technology tool to support the City's hundreds of 18B lawyers.

The high-quality representation that exists in New York City's indigent defense services is attributed to various quality control measures that are already in place. These include rigorous hiring standards, extensive and ongoing training, performance reviews, and constant supervision for attorneys.

The upcoming solicitation will be a competitive process explicitly designed to select the highest quality indigent defense services. The procurement prioritizes a few things: in addition to maintaining reliable methods of client communication as well as other indicators of high quality representation, selected vendors will be expected to maintain an array of resources in addition to legal staff, which may include social workers, paralegals, investigators, and experts and have the capacity to serve non-English speaking clients. The City is interested in proposers who will provide City-wide collateral consequence services in such areas as immigration, housing, and other situations arising from a criminal case. Contracts will be awarded to the vendors whose proposals are determined to be the most advantageous to the City, taking into consideration the price and other factors which will be set forth in the upcoming Request for Proposals.

This procurement round, importantly, is also designed to bring the City into compliance with the current Indigent Defense Representation Plan. In 2010, under prior administration, the City revised its Indigent Defense Representation Plan to allow institutional providers to be assigned as the primary defenders for all cases, including homicide cases. The process for codifying the plan was somewhat involved, including the issuance of an Executive Order (Executive Order No. 136 (2010)), a public comment period, the codification at Title 43, Chapter 13, Section 3 of the Rules of the City of New York (43 RCNY §13-01), and a requisite thirty days after codification before the rule took place.

Consistent with the rules of procurement, the concept paper outlining these changes was posted on our website for about 45 days beginning August 2, 2016. Many have submitted comments and we are taking these into account in preparing final procurement.

High standards for zealous, quality indigent defense in homicide cases have long existed in New York City, and these same standards will remain under the Request for Proposals that will be issued shortly by the City.

Thank you for the opportunity to testify here today. I am happy to take your questions.

*The City University of New York*

**CUNY SCHOOL OF LAW**

Steven Zeidman  
Professor of Law  
Zeidman@mail.law.cuny.edu

(718) 340-4357 Tel  
(718) 340-4478 Fax

2 Court Square  
Long Island City, NY 11101-4356



**Committee on Courts and Legal Services**  
**Committee on Public Safety**

**Oversight – Examining the City’s Plans for the Provision of Indigent Defense Trial-Level Services for Homicides**

November 22, 2016

Thank you for holding this hearing and for providing me the opportunity to speak. My name is Steven Zeidman. I am a Professor at CUNY School of Law.

I am very familiar with the New York City Criminal Court. I was a supervising attorney with the Legal Aid Society Criminal Defense Division in Manhattan. Thereafter, I taught a Criminal Defense Clinic at NYU Law School, and I presently direct a similar Clinic at CUNY Law School where students under my supervision represent indigent people facing criminal charges. I’ve handled homicide cases in New York City, served on the Assigned Counsel Screening Committee that reviewed applicants for the “18B” Panel,<sup>1</sup> and was a founding member of the Indigent Defense Organization Oversight Committee (IDOOC) created by the Appellate Division to review all organizations that contract with the city to provide indigent criminal defense.<sup>2</sup>

Allow me to suggest that the best way to think about the question of who should represent people charged with the most serious of all crimes is to wipe the slate clean and think about what would work best if we were unencumbered by our knowledge of, and familiarity with, the current system. Viewed through that lens, I doubt that anyone would suggest that people charged with homicides should be represented by sole practitioners who are paid a very limited hourly rate and subject to fee caps. I urge you to support moving homicide representation from assigned counsel to the institutional providers.

Three basic approaches to indigent defense were developed after the Supreme Court decided in Gideon v. Wainwright<sup>3</sup> that everyone charged with a felony was entitled to a lawyer: governmental Public Defender systems, independent contract organizations (i.e., the Legal Aid Society), and individually assigned lawyers (i.e., lawyers appointed pursuant to Article 18B). While each system had, and still has, its supporters and opponents, the assigned counsel plan was built on two pillars: 1) that it was important to encourage the active participation of the private bar so that experienced lawyers could lend their skill and knowledge and thereby elevate the practice, and 2) that a cadre of sole practitioners would ease the caseload burden on a Public Defender or contract organization by handling conflict and any overflow cases.

<sup>1</sup> Article 18-B of County Law §722 (1965).

<sup>2</sup> <https://www.nycourts.gov/courts/AD1/Committees&Programs/IndigentDefOrgOversightComm/index.shtml>.

<sup>3</sup> 372 U.S. 335 (1963).

Neither one of these pillars remains standing. Rather than luminaries of the bar occasionally stepping into the fray to model and thereby improve the practice, membership on the 18B Panel has become for many lawyers their primary, if not sole, source of income. Further, the impact of legislated caseload caps has resulted in institutional providers carrying lower caseloads than they have for many years so that the need for 18B attorneys has considerably diminished.<sup>4</sup>

A recent RAND study of Philadelphia homicide cases provides powerful evidence that these cases are best handled by institutional offices rather than individually assigned lawyers.<sup>5</sup> That study raised, *inter alia*, the following concerns about assigned counsel homicide representation:

- \*conflicts of interest of the appointing judges and of appointed counsel;
- \*limited compensation available to appointed counsel; and
- \*relative isolation of appointed counsel.

These concerns are evident in New York City as well.

Almost twenty-five years ago, the Central Screening Committee of the Assigned Counsel Plan directed for the first time that every member of the 18B panel had to apply for recertification. Up to that moment, membership on the panel was essentially a lifetime appointment. One person's recertification application disclosed a very large number of homicide trials in the preceding year. The attorney's case files revealed that he had done very little pretrial preparation. When questioned, the attorney stated that he was usually called in at the last minute and that he could, and often did, try a homicide on a moment's notice.

The Administrative Judge of the county where the attorney practiced was upset that the attorney was not recertified. The judge contacted the Central Screening Committee to complain and stated, "He's one of our best guys. He'll come in on a moment's notice and try any case whenever we need him." It was clear that the judge did not appreciate that that was the very reason the lawyer was not recertified.

The limited compensation for assigned counsel noted in the Philadelphia study also creates adverse incentives in New York City. Imagine an 18B attorney who has three cases on for trial on Monday – a privately retained criminal case; a privately retained personal injury case; and an 18B case. Which case do you think he or she will spend the most time preparing for over the weekend?

The relative isolation of assigned counsel noted in the Philadelphia study is also cause for concern in New York City. Only an organization can have entities like a digital forensics unit to mount challenges to burgeoning technological evidence, or can keep abreast of the latest challenges to DNA evidence, false confessions and misidentification. The American Bar Association Standards recommend a team approach of at least two lawyers, investigators, mitigation specialists, social workers, and mental health professionals. Similarly, in virtually all

---

<sup>4</sup> See, e.g., <https://www.ils.ny.gov/files/Brooklyn%20Case%20Caps%20Article%20NYLJ%20080515.pdf>.

<sup>5</sup> Anderson & Heaton, "Measuring the Effect of Defense Counsel on Homicide Case Outcomes," RAND (Dec. 2012).

homicide cases the prosecution consists of a team that has developed its own institutional knowledge, contacts and approaches.

There is also the unquantifiable benefit of shared organizational knowledge where attorneys in the same office talk about their cases and are better equipped to confront repeat issues and players. It may not be a stretch to imagine that the wrongful convictions of Detective Louis Scarcella<sup>6</sup> would have surfaced much earlier, saving the lives of many innocent men and also saving the city millions of dollars, if all his cases had been handled by the same defense office.

Who are the 18B Homicide Panel attorneys? How does the diversity of these lawyers compare with the diversity in the institutional offices? Do lawyers apply to be on the 18B panel because of a demonstrated commitment to defending the rights of poor people of color? When I was involved with hiring as a supervising attorney with the Legal Aid Society, I believed that my goal was to find people who were motivated by concern for their clients and their clients' families and communities. For many lawyers, the 18B panel is simply a source of steady income.

A lawyer's motivations matter greatly in all cases, but perhaps even more so in homicides. Public defense work is hard. Homicide public defense work is as hard as it gets and lawyers need to be willing to spend considerable time, usually on weekends, speaking with their clients all day at Rikers Island and pounding the pavement looking for witnesses and examining the crime scene. Even a well-intentioned 18B attorney will think twice about spending all those many hours when he or she is being paid only \$75/hour.

The Philadelphia study noted that some appointed counsel were critical of Public Defenders for meeting frequently with clients to try and persuade them to accept a guilty plea. As one appointed counsel stated, "[T]ime with the client was highly overrated." Another attorney said he just accepted his client's desire to go to trial at face value and left it at that. On the other hand, the study found that Public Defenders spent more time with their clients in ongoing efforts to build trust, and that as a result they achieved more advantageous negotiated pleas with shorter sentences than did assigned counsel.

The city recently transferred conflict cases from 18B attorneys to institutional providers, and, despite concerns raised in a lawsuit,<sup>7</sup> there has been no evidence of any negative impact as the institutional defense organizations have proven up to the task. Nevertheless, homicide cases present new challenges and the question is whether these organizations have the capacity to take on this tremendous responsibility. The answer to that question depends on funding. While all the institutional providers have investigators, social workers, mental health professionals, and other experts on staff, they would still need to hire more people to assist with the demands of preparing for, and actually trying, homicide cases. Just as the NYPD relies on data and its heralded COMPSTAT program, and as District Attorney offices are increasingly relying on data collection and analysis, so, too, must defense organizations upgrade their own data systems to aid them in providing the best defense possible. And, as the RAND study reflected, homicide cases demand that the attorneys engage in many hours of substantial counseling to ensure that

<sup>6</sup> See, e.g., [http://www.nytimes.com/2016/01/09/nyregion/new-york-reaches-settlement-with-roger-logan-wrongfully-convicted-in-1997-murder.html?\\_r=0](http://www.nytimes.com/2016/01/09/nyregion/new-york-reaches-settlement-with-roger-logan-wrongfully-convicted-in-1997-murder.html?_r=0)

<sup>7</sup> Matter of New York County Lawyers' Association v. Bloomberg, 19 N.Y.3d 712 (2012).

their clients are making the best possible decisions about whether to plead guilty or go to trial. All of these requirements for effective homicide representation require a commitment of significant funds.

Although one seemingly intractable problem with New York City criminal justice is the absence of meaningful adversarial litigation, homicides are the exception. As a result, homicide cases set the standard for adversarial justice in our courts. If it is true that a rising tide lifts all boats then it behooves the city to do all that it can to ensure that homicide representation is as effective as possible. Institutional providers are best situated to meet that goal.

**Kings County Criminal Bar Association**  
**Testimony before the Committees on Courts and Legal Services, and Public Safety**  
**November 22, 2016**

The Kings County Criminal Bar Association (KCCBA) is the singular bar organization in Brooklyn representing the interests of the criminal defense community. The KCCBA counts among its directors and general membership judges, prosecutors (including the Acting District Attorney of Kings County), indigent defense providers, military service members, and private criminal defense attorneys engaged in Federal and State practice, many of whom have led and currently lead other City and State-wide bar associations.

The KCCBA harbors several concerns relating to the City's plans for the provision of indigent defense trial-level services for homicide cases, all of which reflect our apprehension that such plans can adequately provide for sufficiently effective representation to indigent homicide defendants. While we do not prejudge any particular provider's ability to adequately represent such clients, we raise these concerns in order to illustrate the challenges that the City must overcome, and the standards that it must meet and enforce, if it is to maintain the level of highly skilled and incomparably experienced service currently provided by attorneys certified by each county's Assigned Counsel Plan (18B) panels.

First, and perhaps most obviously, the current service providers are not assigned homicide cases absent very rare exception. Thus, the largest pool of indigent service attorneys qualified to handle homicide cases are in fact the members of the 18B homicide panel. We are skeptical as to why this should change, given that for a reasonable cost to the City, the attorneys on the various county 18B homicide panels have delivered exceptional service to indigent homicide defendants, gaining over many decades irreplaceable and not easily replicable experience. Similarly, there are no concerns relating to available investigatory or forensic expert resources for these practitioners as opposed to their defender organization counterparts, nor is there any question that the bulk of actual trial practice experience (as opposed to handling cases that end with plea bargains) rests with the 18B attorneys, despite the fact that the great majority of non-homicide cases are initially assigned at arraignment to institutional defenders under the current RFP. It must be noted that the overwhelming majority of homicide cases go to trial, unlike other felony cases, most of which conclude by way of plea. Thus, no group is more qualified than 18B attorneys to handle such serious trial cases.

While the various providers could hire attorneys and staff in order to qualify for assignments under a new RFP (or, in some cases, call upon some qualified attorneys already within their ranks), assigning homicide cases to providers whose attorneys do not currently meet the requirements for 18B homicide panel certification seems to pose a heightened risk to indigent defendants facing such major prosecutions. Even over the long term, as service providers utilize qualified homicide practitioners and, presumably, seek to train younger attorneys on such cases, the result may be more attorneys with less experience handling homicides as compared to the current pool of highly experienced 18B counsel. We also note that the federal CJA system recognizes the obvious value of non-institutional defenders, assigning cases to individual attorneys even when the Federal Defenders offices are not conflicted.

Second, are concerned about the City's ability to maintain the high standards now enforced by the 18B homicide panels. To date we have not seen any audits or quality reviews undertaken by the City to enforce the indigent service provider standards applicable to general felony defense established by the City's 2010 Indigent Defense RFP. To the contrary, we have reviewed the report by the Indigent Defense Organization Oversight Committee to the Appellate Division First Department for 2012-2013, which indicates a lack of compliance with such standards, as well as concerns over the organizations' total caseload and the ratio of clients to attorneys and investigators within the various defense organizations. The City's poor track record of oversight and enforcement, therefore, raises serious doubts as to whether high quality standards of representation in more serious homicide trial cases will be consistently applied. Note that the Assigned Counsel Plan (18B) in Kings County ensures that "homicide panel" attorneys have been in practice for at least 10 years and have been lead seat on homicide cases, and further provides supervision by way of comprehensive recertification reviews and an oversight committee. Comparable quality controls do not seem to be employed by the City, even with regard to non-homicide cases.

Third, by virtue of the City's 2010 Indigent Defense RFP and the manner in which providers amass case assignments in order to satisfy their contractual obligations, the City seems to have inadvertently set up a *de facto* flat fee pay arrangement for indigent defense cases. As a result, we believe that providers essentially receive a below-market-rate payment for each case assigned (put another way, the more cases that are taken on, the less it costs to service each case). We are concerned about how this affects high quality representation in general, let alone how it may adversely affect homicide cases, owing to their extraordinarily complicated nature and high trial ratio. We note that the National Legal-Aid and Defender Association (NLADA) has delineated guidelines relating to the monetary compensation of attorneys for indigent representation. Several major Bar Associations, including the NLADA, have frowned upon flat fee arrangements with respect to indigent defense services. This rationale further mitigates against altering the currently effective provision of homicide defense services by 18B panel attorneys.

Finally, as many other bar associations across the City have consistently noted in prior discourse relating to the City's RFP's for indigent defense services, we urge the City to work hand in hand with the various bar associations when it comes to actually setting quality and oversight standards, and contracting out services for indigent defense. The clear intent of New York County Law Section 722 is to afford the bar associations input into the representation of indigent defendants, and with good reason: the members of those very bar associations are in the best position both to evaluate the individual needs of indigent defendants facing all manner of prosecutions, and to execute the best plan to provide for their effective representation.

Michael C. Farkas  
President  
Kings County Criminal Bar Association



11/22/2016

## **TESTIMONY OF NEW YORK COUNTY DEFENDER SERVICES**

Since its inception almost twenty years ago New York County Defender Services has devoted itself exclusively to its goal of providing the best possible representation to those indigent criminal defendants we have the honor of representing. As with any big-city institutional defender, these years and hundreds of thousands of clients have provided our office with two elements that make us ideally suited to handling the considerable challenges of large scale homicide defense. Specifically, our experience these many years has given us both expertise and the ability to best develop targeted resources.

When we say expertise we're referring to a special kind of expertise that can only be achieved by relentless repetition and singular focus. At its core, indigent homicide defense is an admittedly magnified extension of those sound principles central to all indigent criminal defense. NYCDS attorneys are expert in these principles primarily because of the astounding number of times they've carefully considered and applied them. This is largely a function of being a fulltime public defender in the most high-profile jurisdiction in the country but it is also traceable to our office's emphasis from the very outset on the use of highly experienced attorneys to a perhaps unprecedented degree.

This point bears some deconstruction. There's an undeniable stereotype, abetted perhaps by pop culture and other cursory examinations, of the fulltime public defender as an overwhelmed and inexperienced lawyer left to sink or swim of his or her own devices. However, while stereotypes may have some measure of power, crucial systemic decisions like the instant one must be guided by facts. Those facts are that the average NYCDS attorney has fourteen years' experience and fully forty percent of our attorneys have more than twenty years' experience. If we focus solely on that subset of attorneys an organization like ours would entrust with homicide defense, the numbers are even more striking. In fact, a remarkable fifty percent of our attorneys meet or exceed the First Department's certification level for handling homicide cases.

Moreover, this is not a technical or spurious assertion without real world import, as evidenced by the fact that one-third of our attorneys either currently handle or have handled homicide cases, and several of them were either previously employed by this state's Capital Defender Office or otherwise certified to do capital defense. These homicide-qualified attorneys have an average of twenty-

seven years of experience and have collectively handled more than three hundred homicide cases while conducting over one hundred such trials. Given those numbers, any suggestion of an experience or qualifications deficit with respect to NYCDS is plainly misguided.

The other element that makes our office and all other institutional defenders ideally suited to the provision of indigent homicide defense is our development and access to the very resources most integral to this special area of indigent criminal defense. The truth is that truly superb homicide defense can only be achieved by multiple professionals working diligently and skillfully as part of a cohesive team and it is here that institutional defenders excel in a manner that should be exemplary. Any responsible attorney engaging in homicide defense will rely extensively on investigators, mitigation specialists, appellate practitioners, legal assistants, and other professionals who while not always expected to litigate directly in the courtroom still play an outsize role in fulfilling that attorney's constitutional obligations.

Institutional defenders excel at fostering and employing these resources. NYCDS, for example, has investigative, social work, special litigation, immigration, juvenile defense, and other units wherein dedicated professionals work collaboratively to support the lead attorney in securing the best possible result for her client. This differs significantly from the current system, in which primarily independent contractors, who are often not subject to close supervision and whose level and means of compensation may be at issue, are employed in a fundamentally inconsistent manner. Additionally, this spirit of powerfully effective collaboration extends to the fact that at NYCDS more than one attorney, and often several, are responsible for the litigation of the office's most serious cases. In this manner, the lead attorney on these cases benefits from the combined insight and expertise of other equally talented litigators. This approach has a proven track record of success in homicide defense but is the almost exclusive domain of institutional defenders.

None of the preceding is meant to suggest that our office is not highly attuned to the challenges that would result from adding to our considerable responsibilities. As is often the case, appropriate funding is the key to instantiating the professional ideals offices such as ours aspire to. What is asserted, however, is that institutional defenders like us are expert at intelligent and careful resource

allocation and at creating internal systems designed to ensure only highest level advocacy for our clients.

This quality of service is paired with models of efficiency not easily replicable by the current system. A distinction that can be readily appreciated when considering the difference between employing a singularly focused office with an established track record versus relying on a pool of disparate individuals who do not generally engage in close collaboration, are not subject to close supervision, and may have varied demands on their attention. The result is that an office like NYCDS can prioritize the responsible and timely resolution of these cases in a way that individual attorneys whose availability may be compromised by practicing in multiple jurisdictions, for example, simply cannot.

NYCDS shares the goal of ensuring a system that provides only highest-level advocacy for all indigent criminal defendants. For almost twenty years our office has focused exclusively on this goal while deservedly earning a reputation for exemplary courtroom performance that honors the dignity and constitutional rights of our clients. If appropriate, we eagerly welcome the opportunity to extend our professional diligence, focus, and resources into this critical area. Thank you.

Good Morning,

My name is Corey Sokoler and I am the President of the Bronx County Bar Association. I have practiced Criminal Law for 33 years, the last 29 as an 18b Assigned Counsel. I am here today to urge this Council to reject the proposed RFP for Homicide cases. These cases should only be handled by the most experienced of attorneys. Indigent people charged with Homicide related charges are facing 25 years to life in prison. This is not the type of case where the attorney assigned should be learning on the job.

The 18b panel of attorneys average twenty years of practice as criminal defense attorneys and have tried on average, seventy five Felony cases to verdict. Unlike the attorneys for the providers, these attorneys are not practicing criminal law on their way to forging their careers. These are attorneys who have reached their final career destination which is to represent indigent people charged with crimes. The providers on the other hand have attorneys who are just now learning their craft. There is a large turnover of attorneys for the providers as these attorneys tend to leave after three or four years for greener pastures. This does not happen with 18b counsel. This means that the providers are bottom heavy with newer, younger, less experienced attorneys and lacking in attorneys with enough experience to handle serious cases.

In fact, I urge all members of this Council to read the Report of the Indigent Defense Organization Oversight Committee to the Appellate Division First Department for the Fiscal Years 2012-2013. This is the most recent report on this topic. This report clearly states that the Providers are allowing a significant number of trial attorneys to represent indigent people in both Felony and Misdemeanor criminal matters who have not met the First Department Qualification standards for handling these cases. And now, the City proposes to reward these providers with Homicide cases. This just cannot be allowed. This report details the specific numbers of attorneys for each of the providers that do not qualify under the City's standards to do the work they are doing. The numbers are shocking. In the Bronx alone, 21 Legal Aid attorneys handling misdemeanors and 13 Legal Aid attorneys handling felonies do not meet First Department Standards for handling these cases. Similarly, in New York County, 28 attorneys handling felony

cases for legal aid did not meet First Department Standards. The Defender organizations are equally inadequate in providing attorneys that meet First Department standards. In the Bronx, 20 misdemeanor attorneys and 26 felony attorneys for Bronx Defenders did not meet First Department Standards. Attorneys who were interviewed stated they were overwhelmed with case loads in excess of 400 cases.

In contrast, every attorney on all the 18b panels including misdemeanor, felony and homicide are fully qualified and certified to handle the cases for the panels they are on.

The truth is money really has no effect on the quality of representation in these cases. You cannot award these contracts as if they are road paving contracts given to the lowest bidder and you equally cannot throw money at these cases and think that will create competent attorneys. It is the decades of hard work by these 18b attorneys that has created a homicide panel of the most experienced, veteran trial attorneys who are not learning what to do but doing what needs to be done to provide the highest quality of defense to the indigent people of our City.

The system of Indigent Defense in New York City was far from broken before the Bloomberg Administration decided to award conflict defense cases by way of an RFP. In fact, in 2006, Chief Judge Judith Kay chaired a State wide committee whose findings were that the system of Indigent Defense in New York City was the finest of its kind in the nation. Homicide cases had been exempt from the RFP as the Bloomberg Administration testified that they would not touch these most serious cases. Now, the current administration wants to fix something that is clearly not broken. The Experienced 18b attorneys provide the finest level of criminal defense to our indigent population. They should be allowed to do what they do best and protect the rights and freedom of the Indigent people who live in this City.

**Kings County Criminal Bar Association**  
**Testimony before the Committees on Courts and Legal Services, and Public Safety**  
**November 22, 2016**

The Kings County Criminal Bar Association (KCCBA) is the singular bar organization in Brooklyn representing the interests of the criminal defense community. The KCCBA counts among its directors and general membership judges, prosecutors (including the Acting District Attorney of Kings County), indigent defense providers, military service members, and private criminal defense attorneys engaged in Federal and State practice, many of whom have led and currently lead other City and State-wide bar associations.

The KCCBA harbors several concerns relating to the City's plans for the provision of indigent defense trial-level services for homicide cases, all of which reflect our apprehension that such plans can adequately provide for sufficiently effective representation to indigent homicide defendants. While we do not prejudge any particular provider's ability to adequately represent such clients, we raise these concerns in order to illustrate the challenges that the City must overcome, and the standards that it must meet and enforce, if it is to maintain the level of highly skilled and incomparably experienced service currently provided by attorneys certified by each county's Assigned Counsel Plan (18B) panels.

First, and perhaps most obviously, the current service providers are not assigned homicide cases absent very rare exception. Thus, the largest pool of indigent service attorneys qualified to handle homicide cases are in fact the members of the 18B homicide panel. We are skeptical as to why this should change, given that for a reasonable cost to the City, the attorneys on the various county 18B homicide panels have delivered exceptional service to indigent homicide defendants, gaining over many decades irreplaceable and not easily replicable experience. Similarly, there are no concerns relating to available investigatory or forensic expert resources for these practitioners as opposed to their defender organization counterparts, nor is there any question that the bulk of actual trial practice experience (as opposed to handling cases that end with plea bargains) rests with the 18B attorneys, despite the fact that the great majority of non-homicide cases are initially assigned at arraignment to institutional defenders under the current RFP. It must be noted that the overwhelming majority of homicide cases go to trial, unlike other felony cases, most of which conclude by way of plea. Thus, no group is more qualified than 18B attorneys to handle such serious trial cases.

While the various providers could hire attorneys and staff in order to qualify for assignments under a new RFP (or, in some cases, call upon some qualified attorneys already within their ranks), assigning homicide cases to providers whose attorneys do not currently meet the requirements for 18B homicide panel certification seems to pose a heightened risk to indigent defendants facing such major prosecutions. Even over the long term, as service providers utilize qualified homicide practitioners and, presumably, seek to train younger attorneys on such cases, the result may be more attorneys with less experience handling homicides as compared to the current pool of highly experienced 18B counsel. We also note that the federal CJA system recognizes the obvious value of non-institutional defenders, assigning cases to individual attorneys even when the Federal Defenders offices are not conflicted.

Second, are concerned about the City's ability to maintain the high standards now enforced by the 18B homicide panels. To date we have not seen any audits or quality reviews undertaken by the City to enforce the indigent service provider standards applicable to general felony defense established by the City's 2010 Indigent Defense RFP. To the contrary, we have reviewed the report by the Indigent Defense Organization Oversight Committee to the Appellate Division First Department for 2012-2013, which indicates a lack of compliance with such standards, as well as concerns over the organizations' total caseload and the ratio of clients to attorneys and investigators within the various defense organizations. The City's poor track record of oversight and enforcement, therefore, raises serious doubts as to whether high quality standards of representation in more serious homicide trial cases will be consistently applied. Note that the Assigned Counsel Plan (18B) in Kings County ensures that "homicide panel" attorneys have been in practice for at least 10 years and have been lead seat on homicide cases, and further provides supervision by way of comprehensive recertification reviews and an oversight committee. Comparable quality controls do not seem to be employed by the City, even with regard to non-homicide cases.

Third, by virtue of the City's 2010 Indigent Defense RFP and the manner in which providers amass case assignments in order to satisfy their contractual obligations, the City seems to have inadvertently set up a *de facto* flat fee pay arrangement for indigent defense cases. As a result, we believe that providers essentially receive a below-market-rate payment for each case assigned (put another way, the more cases that are taken on, the less it costs to service each case). We are concerned about how this affects high quality representation in general, let alone how it may adversely affect homicide cases, owing to their extraordinarily complicated nature and high trial ratio. We note that the National Legal-Aid and Defender Association (NLADA) has delineated guidelines relating to the monetary compensation of attorneys for indigent representation. Several major Bar Associations, including the NLADA, have frowned upon flat fee arrangements with respect to indigent defense services. This rationale further mitigates against altering the currently effective provision of homicide defense services by 18B panel attorneys.

Finally, as many other bar associations across the City have consistently noted in prior discourse relating to the City's RFP's for indigent defense services, we urge the City to work hand in hand with the various bar associations when it comes to actually setting quality and oversight standards, and contracting out services for indigent defense. The clear intent of New York County Law Section 722 is to afford the bar associations input into the representation of indigent defendants, and with good reason: the members of those very bar associations are in the best position both to evaluate the individual needs of indigent defendants facing all manner of prosecutions, and to execute the best plan to provide for their effective representation.

Michael C. Farkas  
President  
Kings County Criminal Bar Association

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 11/22/16

(PLEASE PRINT)

Name: Stanislaw A. German

Address: 325 Broadway, Ste 200, NY, NY 10007

I represent: New York County Defender Services

Address: Executive Director

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Michael Farbas

Address: 32 Court St, Suite 408, Brooklyn

I represent: Kings County Criminal Bar Assoc

Address: same

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 11/22/16

(PLEASE PRINT)

Name: MICHAEL V. CIBELLA

Address: 546 FIFTH AVE

I represent: KINGS CO. CRIMINAL BAR ASSOC.

Address: 32 COURT ST, BROOKLYN, NY 11201  
Suite 408

Please complete this card and return to the Sergeant-at-Arms



**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: 11/22/06

(PLEASE PRINT)

Name: Diana Gutierrez

Address: \_\_\_\_\_

I represent: Mayor's office of Criminal Justice

Address: 1 Centre St.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: 11/22/06

(PLEASE PRINT)

Name: Chidinma Ume

Address: \_\_\_\_\_

I represent: Mayor's office of Criminal Justice

Address: 1 Centre St.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: 11/22/06

(PLEASE PRINT)

Name: Sarah Solon

Address: \_\_\_\_\_

I represent: Mayor's Office of Criminal Justice

Address: 1 Centre St.

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 11-23-76

(PLEASE PRINT)

Name: Corey Sultzer

Address: 881 Grand Ave. Bx NY 10416

I represent: Bronx County Bar Assoc.

Address: 851 Grand Ave. Bx

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Steven Zeidman

Address: CUNY Law School, 2 Ct Square

I represent: Law School Professor LIC NY 11101

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Sarah Salton, Mayor's office of

Address: Criminal Justice

I represent: 41 Centre Street

Address: Deputy Director for Justice

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: 11/22/16

(PLEASE PRINT)

Name: Sergio De La Rava

Address: 126 E. Grove St. Bogota, NJ 07603

I represent: New York County Defender Services

Address: 225 Broadway - 1100 NY, NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: 11/22/2016

(PLEASE PRINT)

Name: Lisa Schreibersdorf

Address: \_\_\_\_\_

I represent: Chief Defenders Association of NY

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms