

CITY COUNCIL
CITY OF NEW YORK

----- X

TRANSCRIPT OF THE MINUTES

Of the

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

----- X

November 22, 2016
Start: 10:13 a.m.
Recess: 12:46 p.m.

HELD AT: 250 Broadway - Committee Rm,
14th Fl.

B E F O R E:

RORY I. LANCMAN
Chairperson

VANESSA L. GIBSON
Co-Chairperson

COUNCIL MEMBERS:

Andrew Cohen
Ben Kallos
Carlos Menchaca
Paul A. Vallone
Barry S. Grodenchik
Vincent J. Gentile
James Vacca
Julissa Ferreras-Copeland
Jumaane D. Williams
Robert E. Cornegy, Jr.
Chaim M. Deutsch
Rafael Espinal, Jr.

COUNCIL MEMBERS:

Ritchie J. Torres
Steven Matteo

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

Sarah Solon
Deputy Director
Justice Initiatives
Mayor's Office of Criminal Justice

Chidinma Ume
Associate Counsel
Mayor's Office of Criminal Justice

Diana Gutierrez
Deputy Chief Operating Officer
Mayor's Office of Criminal Justice

Corey Sokoler
President
Bronx County Bar Association

Michael Farkas
President
Kings County Criminal Bar Association

Michael Cibella
Executive Vice President
Kings County Criminal Bar Association

Lisa Schreibersdorf
President
Chief Defenders Association of New York

Sergio de la Pava
Supervising Attorney
New York County Defender Services

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

Stan German
Executive Director
New York County Defender Services

Steven Zeidman
Professor
CUNY School of Law

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 5

2 [sound check]

3 [pause]

4 [gavel]

5 CHAIRPERSON LANCMAN: Good morning

6 everyone. I am Council Member Rory Lancman, Chair of
7 the Committee on Courts and Legal Services, and
8 welcome to this joint hearing of the Committees on
9 Courts and Legal Services and Public Safety. We are
10 joined by Council Member Vanessa Gibson, Chair of the
11 Committee on Public Safety and Council Members Matteo
12 and Andy Cohen was here [background comment] and
13 he'll be back.

14 We are here today to examine upcoming
15 changes in the City's plans for the provision of
16 legal representation for indigent criminal defendants
17 and in particular, the plan to shift responsibility
18 for representation in homicide cases from individual
19 attorneys assigned pursuant to Article 18-B of the
20 New York State County Law to institutional legal
21 services providers such as the Legal Aid Society,
22 Brooklyn Defenders, Bronx Defenders, etc.

23 In response to the Supreme Court's
24 landmark decision in *Gideon v. Wainwright*, which
25 required states to provide free legal representation

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 6

3 for criminal defendants who could not afford to pay
4 for an attorney themselves, the State Legislature
5 enacted Article 18-B of the County Law, directing
6 each county and the City of New York to establish a
7 plan for the provision of legal representation for
8 defendants who could not afford their own attorney.
9 To ensure that localities could flexibly meet this
10 mandate, County Law 18-B allowed legal representation
11 to be provided through some combination of the
12 following three approaches: (1) creating a public
13 defender office essentially staffed by government
14 attorneys; (2) designating a Legal Aid Society; or
15 (3) adopting a plan set forth by the County Bar
16 Association to secure services of private counsel on
17 a rotational schedule, known as an 18B panel.

18 Initially, the City relied on the Legal
19 Aid Society as the primary provider of indigent
20 defense services and has since expanded its
21 contracting to include other institutional providers,
22 all while continuing to rely on a robust panel of 18B
23 assigned counsel.

24 Currently, the 18B panel handles a
25 significant caseload, primarily of homicide
defendants, and some cases with multiple defendants

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 7

3 where institutional providers are unable to represent
4 a defendant due to a conflict of interest.

5 We are here today to examine an upcoming
6 request for proposals in which the City will be
7 soliciting bids on the provision of indigent legal
8 services citywide.

9 Although the details of the RFP have yet
10 to be publicly released, information gathered from a
11 concept paper, released by the Mayor's Office of
12 Criminal Justice, indicates a major shift is being
13 considered for the representation of homicide
14 defendants, whereby primary responsibility would be
15 taken away from 18B attorneys and given to the
16 institutional providers.

17 This hearing represents a vital
18 opportunity to engage the Administration,
19 practitioners and bar associations in a public
20 conversation on the details and logic of the proposed
21 changes in homicide representation to ensure that
22 quality legal representation is provided to all New
23 Yorkers charged with the most serious offense of
24 homicide. Council Member Gibson.

25 CO-CHAIRPERSON GIBSON: Thank you very
much, Chair Rory Lancman and good morning to each and

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 8

3 every one of you. I am Council Member Vanessa Gibson
4 of the 16th District in the Bronx and I'm proud to
5 serve as the Chair of the City Council Committee on
6 Public Safety. I welcome each and every one of you;
7 I thank you to my fellow colleague and Co-Chair Rory
8 Lancman for joining Public Safety to chair this
9 important hearing this morning -- examining the
10 City's plan for the provision of indigent defense,
11 trial-level services for homicide. I'd also like to
12 thank the members of the Public Safety Committee who
13 are here and also we will have others joining us.
14 Thank you to Minority Leader Steve Matteo.

15 With about 80% of all criminal defendants
16 qualifying for legal assistance, indigent defense
17 providers are the backbone to our criminal justice
18 system; they protect the rights and the freedoms that
19 are guaranteed by our constitution to individuals who
20 are charged with crimes, and they embody the right to
21 counsel which the Supreme Court has deemed
22 fundamental. It has been over 50 years since the
23 U.S. Supreme Court guaranteed a right to counsel for
24 every citizen that faces criminal prosecution. That
25 right to counsel must be both meaningful and

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 9

3 effective, regardless of an individual's ability to
4 pay.

5 New York State enacted Article 18-B of
6 the County Law in 1965, requiring that each county
7 and the City establish an Indigent Defense Plan.
8 Throughout the years, the City has implemented
9 several different models to meet the needs of
10 indigent defense for our residents. These models
11 include having cases distributed between
12 institutional providers such as the Legal Aid Society
13 and the 18B panel of attorneys.

14 Traditionally, institutional providers
15 were given cases and if they could not represent the
16 defendant due to a conflict of interest, such a case
17 with multiple defendants, the case will be given to
18 an attorney from the 18B panel.

19 In 2010, the City adopted a rule that
20 permitted the institutional providers to be assigned
21 conflict cases as well. Prior to that year, conflict
22 cases were exclusively given to attorneys in the 18B
23 panel; however, they continue to be assigned homicide
24 cases. The City believed that this reorganization
25 would reduce costs and increase oversight while
enhancing the indigent defense representation.

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 10

3 In August of 2016, the Mayor's Office of
4 Criminal Justice issued a concept paper, which
5 details the scope of the contract and the criteria
6 the vendors must meet to be eligible to provide
7 trial-level indigent defense, including the defense
8 of homicide cases. If selected, vendors would be
9 expected to provide an array of resources. In
10 addition to legal staff, they would be required to
11 have support services such as social workers,
12 paralegals, investigators, experts, and the ability
13 to serve non-English speaking clients. Vendors would
14 also be required to maintain client-attorney
15 communication outside of court appearances and
16 maintain a central office, accessible by public
17 transportation, which operates during regular
18 business hours and is located near the county's
19 criminal court. Subsequent to the concept paper, the
20 Mayor's Office of Criminal Justice plans on releasing
21 an RFP.

22 In this morning's hearing, I'm interested
23 in learning about the City and how we evaluate and
24 deliver quality representation for indigent defense.
25 I also would like to understand what factors led to
the decision to include homicide representation in

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 11

3 this RFP and why it was not considered earlier. In
4 addition, I'd also like to understand what
5 performance and evaluation indicators that we are
6 using to assess quality representation.

7 I'd like to thank the Administration for
8 being here, as well as many of our civil legal
9 service providers and members of the 18B panel.

10 I'd also like to thank the staff, the
11 Committee on Public Safety that did all of the work
12 to make today's hearing happen. I'd like to
13 recognize our Committee Counsel, Deepa Ambekar, our
14 Legislative Counsel, Beth Golub, and I'd like to
15 first congratulate the two new members of our Public
16 Safety team and family, because we work a lot so we
17 are a family. I'd like to recognize and welcome our
18 Policy Analyst, Ms. Casie Addison, and our Financial
19 Analyst, Steve Riester. Welcome to the team, and I
20 look forward to working with you. And certainly
21 wanna recognize the staff of the Committee on Courts
22 and Legal Services, our Committee Counsel, Josh
23 Hanshaft, our Policy Analyst, Casie Addison and our
24 Financial Analyst, Sheila Johnson.

25 And as we conclude today's hearing, I'm
looking forward to having a very spirited

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 12

2 conversation and certainly once the RFP is
3 administered, I'm looking forward to working with all
4 of our stakeholders to ensure that those that are
5 receiving indigent defense are given the services
6 that they absolutely need.

7 I wish you and your families a wonderful
8 and blessed Thanksgiving holiday; this is the season
9 of being thankful, and I wish you and your families a
10 wonderful holiday season. Thank you colleagues for
11 being here and now I'll turn this back over to Chair
12 Lancman.

13 CHAIRPERSON LANCMAN: Thank you. So
14 first we will hear from the Mayor's Office of
15 Criminal Justice. If you're testifying, I'd like to
16 swear you in. Do you swear or affirm the testimony
17 you're about to give is the truth, the whole truth
18 and nothing but the truth? [background comment]
19 Good. Thank you.

20 SARAH SOLON: Thank you. Good morning,
21 Chairs Gibson and Lancman and members of the
22 Committees on Public Safety and Courts and Legal
23 Services. My name is Sarah Solon and I am the Deputy
24 Director for Justice Initiatives for the Mayor's
25 Office of Criminal Justice. Thank you for the

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 13

3 opportunity to testify today. Chidinma Ume,
4 Associate Counsel, and Diana Gutierrez, Deputy Chief
5 Operating Officer from my office, are here with me to
6 answer questions.

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

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

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 14

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

19 Several indicators distinguish New York
20 City's indigent defense system. Every defendant is
21 assigned a lawyer at arraignments, which is not the
22 case in other jurisdictions within the state and
23 nationwide. And our City's institutional providers
24 have developed comprehensive wraparound services,
25 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 are exacerbated by contact with the criminal justice system. Additionally, the City's Assigned Counsel Plan is currently working on 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

COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 16

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 proposer who will provide citywide 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 RFP.

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 in all cases, including homicide cases. The process for codifying this plan was somewhat involved, including the issuance of an Executive Order (Executive Order No. 136), a public comment period (lasting for thirty days), the codification of Title 4 3, Chapter 13, Section 3 of the Rules of the

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 17

3 City of New York, and a requisite thirty days after
4 codification before the rule took place.

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

11 High standards for zealous, quality
12 indigent defense in homicide cases have long existed
13 in New York City, and these same standards will
14 remain under the request for proposals that will be
15 issued shortly by the City.

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

18 CHAIRPERSON LANCMAN: Thank you very much
19 and thank you for being here today.

20 Let's cut to the chase. I'm not hearing
21 in your testimony what it is about the 18B homicide
22 attorney that is defective or lacking or falling
23 short that would justify such a significant and
24 radical change. So what is it that is currently
25 lacking?

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 18

2 SARAH SOLON: So the next procurement
3 round is not intended to remedy any deficiency; it's
4 merely to bring the City into compliance with the
5 current Indigent Defense Representation Plan. So as
6 currently in place, the indigent defense system is
7 out of compliance with current law.

8 CHAIRPERSON LANCMAN: Okay. So it's out
9 of compliance; it's been out of compliance since
10 2010.

11 SARAH SOLON: Yes.

12 CHAIRPERSON LANCMAN: Have there been any
13 negative, harmful consequences to clients in homicide
14 cases as a result of the non-compliance, and what
15 then is the urgency to bring us into technical
16 compliance now? Because at the end of the day,
17 [background comment] we all agree, what matters is
18 the highest quality of representation for defendants
19 facing this most serious charge.

20 SARAH SOLON: Again, this next
21 procurement round is meant to bring the City into
22 compliance with current law; we also think that it
23 presents an opportunity to have a competitive bid
24 that will allow us to fill the services that we think
25 will be best in this case.

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 19

2 CHAIRPERSON LANCMAN: So repeating the
3 answer that doesn't answer the first question doesn't
4 get us to answering the question. I don't know what
5 you're used to in terms of testifying, but that's not
6 really how we roll here. So I'm gonna give you one
7 last opportunity to identify for me what flaws,
8 shortcomings exist now with the provision of defense
9 through the 18B panel that is going to be improved
10 upon or cured by the reassignment of those cases to
11 institutional providers? Is there anything other
12 than, we're just coming into compliance with the 2010
13 rules?

14 SARAH SOLON: There isn't, no. We're not
15 undertaking this next procurement round because of
16 any deficiencies that we see in the current provision
17 of indigent defense services.

18 CHAIRPERSON LANCMAN: So let's approach
19 it from this way -- What assurances can you give us
20 that transferring responsibility to the institutional
21 providers is going to provide at least the same
22 level, if not better, quality of representation to
23 defendants facing homicide cases?

24 SARAH SOLON: Well there are currently
25 pretty rigorous standards in place for the provision

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 20

3 of homicide defense services, and those same
4 standards will be in place under the next round of
5 contracts. We also, you know, as always, are
6 undertaking a competitive bid that we think will help
7 us to secure the highest quality contracts.

8 CHAIRPERSON LANCMAN: Okay. Have you
9 done any survey of judges as to whether or not they
10 think that the current system is hurting homicide
11 defendants and there's a need to transfer those cases
12 to the institutional providers?

13 SARAH SOLON: We have not, no. As with
14 all procurement, in order to protect a neutral
15 process, we don't tend to involve a lot of
16 stakeholders in shaping what the procurement looks
17 like.

18 CHAIRPERSON LANCMAN: No, I'm not asking
19 whether you solicited prior input from the judiciary
20 or any stakeholders in drafting the language of the
21 RFP; I'm asking whether -- and I know the answer, I
22 guess -- whether or not you conducted any kind of
23 survey of the judiciary to determine whether or not
24 this is a good idea, whether or not the current
25 defendants in homicide cases under the 18B system are
being poorly served and we need to do something else?

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 21

2 SARAH SOLON: We have not.

3 CHAIRPERSON LANCMAN: Have you done any
4 survey of the defense bar, the bar... [crosstalk]

5 SARAH SOLON: We have not...

6 CHAIRPERSON LANCMAN: No surveys
7 whatsoever?

8 SARAH SOLON: Again, no, we didn't engage
9 any judiciary [sic]... [crosstalk]

10 CHAIRPERSON LANCMAN: And again, just to
11 be -- 'cause I could save us both a lot of time...

12 SARAH SOLON: Uhm-hm.

13 CHAIRPERSON LANCMAN: you have no
14 rationale, no statistics, no data, no surveys, no
15 studies to tell us that transferring representation
16 in homicide cases from 18B to institutional providers
17 will improve the quality of representation other
18 than, we are just coming into compliance with the
19 2010 regulation?

20 SARAH SOLON: That's correct.

21 CHAIRPERSON LANCMAN: Wow. I'm gonna
22 move on from there, but I am absolutely shocked that
23 the City is undertaking such a dramatic change
24 without considering or being able to justify how it
25 will be in the interest of defendants who are

literally on trial for their life. Well,
figuratively for their life; certainly facing
imprisonment for the rest of their life, but let's
move on a little bit.

You know the nature of these hearings is
they're seriatim, so you're gonna leave and then the
next witnesses are gonna testify and then I don't get
the chance to ask you about the points that they
brought up. So let me bring up some points that will
be raised I know by some folks from the 18B world.

Right now the largest pool of indigent
service attorneys qualified to handle homicide cases
are members of the 18B homicide panel; meaning, they
do this work and our friends, the institutional
providers, don't. So where are they, the
institutional providers going to get this pool of
highly qualified, highly experienced lawyers to do
homicide cases?

SARAH SOLON: I think I can turn this
question a little bit over to Chidinma, but I'll just
start by saying that the institutional providers
already represent in some homicide cases, and we have
various assurances of the quality of indigent legal

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 23

3 services that are being provided by institutional
4 providers currently.

5 CHIDINMA UME: Absolutely, and as you can
6 imagine, Councilman Lancman, as part of our
7 evaluation of where [background comments] these
8 services will be contracted to, we will certainly be
9 considering the staffing and making sure that
10 everyone who's awarded a contract to handle homicide
11 cases will be adequately staffed with homicide
12 attorneys. This is not a new thing for some of the
13 institutional providers; they currently do handle
14 homicide cases, but the funding for that does not
15 come from the City, so we don't plan on overtaking a
16 completely radical change; we understand that this
17 may be a departure from cultural and current
18 practice, but again, that is to become in compliance
19 with the law.

20 CHAIRPERSON LANCMAN: But if I'm not
21 mistaken, without question, the institutional
22 providers are going to have to hire, retain; get
23 homicide attorneys, attorneys with experience doing
24 homicide cases beyond what they currently have,
25 right? They may handle the random homicide case --
we'll hear from them later as to what they handle and

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 24

3 what they don't -- but I think, without question, the
4 real locus of experienced homicide counsel come from
5 the 18B panel. So where are the institutional
6 providers going to get their experienced homicide
7 attorneys? Is it just a matter of promoting people
8 from within who might, you know be very experienced
9 trial attorneys handling very serious felonies, but
10 not homicides or -- like where are they getting these
11 folks from?

12 CHIDINMA UME: So Article 18-B actually
13 speaks to this; it provides the certification
14 standards that are required at every level of
15 representation -- for misdemeanor cases, for felony
16 cases, and also, within that, the homicide cases. So
17 we anticipate -- and you mentioned that the
18 institutional providers themselves will be
19 testifying, so I certainly defer to them on their
20 staffing decisions and how this would be approached,
21 but from where we certainly anticipate, that it would
22 just be a matter of certification and additional
23 training, right; I don't think anyone who is
24 currently handling all felonies will tomorrow be able
25 to handle all homicide cases, but we will ensure that
whoever is put forth to handle homicide cases will

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 25

2 meet the standards of Article 18-B and we defer to
3 the ultimate awardees of these contracts to ensure
4 that the training is in place. But... [crosstalk]

5 CHAIRPERSON LANCMAN: So... [crosstalk]

6 SARAH SOLON: And I think that the
7 procurement process itself will invite bids that
8 specifically address issues like that and the winning
9 providers will have the best solutions to deal with
10 things like that.

11 CHAIRPERSON LANCMAN: But they'll be the
12 best solutions within the framework of it's gonna be
13 an institutional provider who wins...

14 SARAH SOLON: That's right [sic].

15 CHAIRPERSON LANCMAN: So is there some
16 flaw in the 18B panel process now that you think is
17 not producing you know a quality pool of homicide
18 defense lawyers...? [crosstalk]

19 SARAH SOLON: No; I think that... the exact
20 same high standards that we see in the 18B panel well
21 be transferred to the institutional providers as
22 well.

23 CHAIRPERSON LANCMAN: Let's get this... I'm
24 sorry; go ahead... [interpose]

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 26

2 CHIDINMA UME: Actually, Councilman, I
3 think there is... we don't assume in any way that there
4 is some sort of lack of performance [background
5 comment] or failure on the part of the 18B panel;
6 we've long supported them and made sure that they
7 have a role in our system; currently, they handle all
8 summons cases exclusively, which is their own domain
9 in which they operate, so this is not to shift a
10 monopoly on cases in any way, and from our
11 perspective, a case is a case. We understand that
12 homicide cases are inherently different, because of
13 the severity of the charges, because of the penalty
14 on the back end, but in terms of how we award cases,
15 the City is charged with coming up with a plan that
16 will provide indigent defense, and in a uniform way,
17 and right now, the Executive Order requires that all
18 cases are awarded to the institutional providers on a
19 primary basis and then the conflicts go to 18B
20 attorneys. So for our purposes, we could not
21 continue to allow going into a new contract period,
22 we couldn't continue to allow our plan... the way we
23 administer services to be out of compliance with our
24 own plan.

25

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 27

2 CHAIRPERSON LANCMAN: But you see where I
3 don't think that an Executive Order from the
4 Bloomberg Administration is a particularly, you know,
5 strong read to lean on by the de Blasio
6 Administration when we're deciding about what's the
7 best way to provide a defense to people facing the
8 most serious criminal charges. What I had hoped to
9 hear from you is; here's why this is a better
10 mousetrap and we would be happy, or I would be happy
11 to rally behind you, but I'm not hearing that.

12 One of the things that I've heard; I
13 think it was implied in your testimony, and I've
14 heard it elsewhere, is well, the 18B lawyers don't
15 have the same access to investigatory resources,
16 forensic experts, blah, blah, blah; I believe all the
17 18B lawyers who are gonna testify later are gonna say
18 that that's not the case; we'll quiz them about that.
19 But are you aware of that being a problem and being
20 an impediment to 18B lawyers providing the most
21 zealous defense possible?

22 CHIDINMA UME: So we do a lot of work
23 with the 18B attorneys and we've heard a lot about
24 how indigent defense services are provided across the
25 board. Have we heard through our case processing

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 28

3 work to address case delays that there are lengthier
4 periods of getting experts, of getting investigators,
5 of getting social workers on a case when 18B
6 attorneys handle them? Yes, we have heard that, you
7 know, in terms of this being a reflection of that
8 structural operational challenge, we can't say that
9 that's the case. And... [crosstalk]

10 CHAIRPERSON LANCMAN: 'Cause we've... we've
11 heard...

12 CHIDINMA UME: And...

13 CHAIRPERSON LANCMAN: Yeah.

14 CHIDINMA UME: And in fact -- just to
15 finish -- in fact, we have won a grant from the
16 Department of Justice to better examine how 18B
17 attorneys administer indigent defense services, and
18 that's work that we're currently undertaking through
19 the Smart Defense Grant, so we're looking at that
20 very closely. The administrators of the 18B plan who
21 are here will tell you that that's something that we
22 are looking at very closely to figure out how we as a
23 city can remedy that, because it's not a structure
24 that we can just allow to exist, right. So in the
25 same way that we're trying to come into compliance
with how we administer services for all cases, we

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 29

2 want to enhance and empower how we pay for 18B
3 services through the Assigned Counsel Plan. So yes,
4 we have heard that it exists; it's something that
5 we're actively working towards addressing through the
6 Smart Defense Grant, and we hope, however the
7 contracts shake out for homicide cases, that we as a
8 city are putting the Assigned Counsel Plan in the
9 best position possible to defend the cases that they
10 handle... [crosstalk]

11 CHAIRPERSON LANCMAN: 'Cause the
12 Council's...

13 CHIDINMA UME: including homicides.

14 CHAIRPERSON LANCMAN: Right. 'Cause the
15 Council's a big fan of you know wraparound services
16 and all of that, but we've had the institutional
17 providers come and testify that they lack the
18 resources to have -- you know, they lack the
19 resources for social workers and case workers and
20 investigators and all that, so what I'm hearing is --
21 just so we can put this to bed -- that it is not --
22 this transfer is not because 18B homicide attorneys
23 are unable to get the investigators and experts that
24 they need from the court; correct?

25 CHIDINMA UME: Correct.

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 30

2 CHAIRPERSON LANCMAN: Okay. Good.

3 Let's go back to something -- I may not
4 have fully explored it. Right now the panels have
5 criteria for lawyers who are applying to be assigned
6 homicide cases; what is the criteria that you're
7 gonna be requiring the institutional providers, or
8 are they able to hire whoever they want based on
9 their own good judgment?

10 CHIDINMA UME: First, we don't assume
11 that there will necessarily be a whole lot more
12 hiring per se; we handle about 490 homicides per year
13 in the city and that's spread out amongst the five
14 boroughs... [interpose]

15 CHAIRPERSON LANCMAN: What's the mix
16 right now... sorry to interject. What's the mix right
17 now between 18B and institutional providers?

18 CHIDINMA UME: In terms of homicide
19 cases?

20 CHAIRPERSON LANCMAN: Yeah.

21 CHIDINMA UME: Primarily handled by 18B
22 attorneys.

23 CHAIRPERSON LANCMAN: Right. So if
24 they're not hiring new... Okay, let's go back. If the
25 institutional providers are not gonna be hiring new

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 31

2 attorneys to handle these cases, who is gonna be
3 handling these cases?

4 CHIDINMA UME: I'm just saying that we
5 don't assume that there will have to be a mass hiring
6 to handle the current inventory of homicide cases...
7 [crosstalk]

8 CHAIRPERSON LANCMAN: I would go even
9 further...

10 CHIDINMA UME: but... but I definitely
11 defer to them on **[inaudible]** on that... [crosstalk]

12 CHAIRPERSON LANCMAN: Okay. I would go
13 even further; that's a little alarming to me, because
14 I would insist that any attorneys on the
15 institutional provider side who are gonna be handling
16 these cases have substantial experience handling
17 homicide cases, and by definition... [background
18 comment] that's a good point... by definition, unless
19 I'm mistaken, that's not gonna be their current
20 roster of attorneys, 'cause they don't handle
21 homicide cases. And again, without question, they
22 have excellent attorneys handling all sorts of really
23 serious felonies where people are facing very
24 substantial penalties, but homicide cases are
25 homicide cases. So if they're not hiring new

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 32

2 attorneys, that means that some of their attorneys
3 assigned these cases, it's gonna be their first
4 homicide case; I don't think that's really -- I think
5 that should be of tremendous concern for us. So I
6 strongly suggest, if you're gonna proceed with this
7 -- and I don't know if that's something that I'd be
8 supportive of, but that you at least impose the same
9 standards on the attorneys handling homicide cases
10 for institutional providers as the 18B panels do for
11 their attorneys.

12 CHIDINMA UME: Absolutely, that'll...
13 [interpose][background comment] those standards will
14 definitely be in place, across the board; it'll be
15 the same requirements for **[inaudible]**... [crosstalk]

16 CHAIRPERSON LANCMAN: And what impact
17 does that... thank you. And what impact is that gonna
18 have on caseload? I mean I understand it's only 490
19 and they're handling tens of thousands, but like, if
20 they're not hiring new attorneys, it's gotta have an
21 impact on their caseload.

22 SARAH SOLON: And I think... Again, a lot
23 of these deals will be resolved during the bidding
24 and sort of solicitation process, so we expect from
25 every solicitation to lay out exactly what they

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 33

2 anticipate their staffing needs will be to meet the
3 caseload of anticipated homicides in each borough,
4 based on sort of recent trends.

5 CHAIRPERSON LANCMAN: Okay. The last one
6 for me, for now, is; I know that there's been a
7 comment period...

8 SARAH SOLON: Yes.

9 CHAIRPERSON LANCMAN: what can you share
10 with us in terms of the comments and feedback that
11 you've gotten from the different stakeholder segments
12 of... [interpose]

13 SARAH SOLON: This is likely to be
14 another unsatisfying answer, but given the rules of
15 procurement, the submissions are confidential.

16 CHAIRPERSON LANCMAN: Okay. Well I'm not
17 asking you to tell me what did she say, but what kind
18 of feedback, like just... [interpose]

19 SARAH SOLON: Even the sort of
20 conceptually, we're bound by the rules of
21 procurement.

22 CHAIRPERSON LANCMAN: Okay. Let me
23 mention that we've been joined by Council Member
24 Carlos Menchaca, Council Member Robert Cornegy and
25

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 34

2 Council Member Barry Grodenchik. Council Member
3 Gibson; do you have questions?

4 CO-CHAIRPERSON GIBSON: Yes. Thank you
5 very much. Thank you, Chair Lancman and thank you to
6 the Mayor's Office of Criminal Justice for your
7 testimony. And you know, certainly I understand the
8 concern that Chair Lancman has raised, and I too
9 share similar concerns. I understand that we
10 obviously always wanna be in compliance, but I'm also
11 just a little alarmed and you know, certainly wanna
12 say we have to proceed with caution. It's troubling
13 to me when you look at the number of cases that are
14 handled by 18B versus institutional providers and
15 predominantly, the population of clients we're
16 talking about facing these serious charges are young
17 men and women of color, from poor, minority,
18 immigrant backgrounds. So for me, this is obviously
19 deeply personal, so I wanna make sure that as we move
20 forward -- if this RFP moves forward in this fashion
21 -- that we're doing everything possible because many
22 of those clients I represent in my district of the
23 Bronx, so I wanted to find out and to further
24 understand. What was the annual number of cases that
25 you cited that are handled, homicide cases?

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 35

2 CHIDINMA UME: Roughly 490 per year.

3 CO-CHAIRPERSON GIBSON: And of the 490,
4 the majority are handled by 18B?

5 CHIDINMA UME: Currently, yes.

6 CO-CHAIRPERSON GIBSON: Okay. So to what
7 extent has MOCJ engaged both institutional providers
8 and 18B along this process? I think many of us here
9 have had several meetings with both institutional
10 providers and 18B, and you know a lot of the concerns
11 that Chair Lancman raised I have also received as
12 well -- 18B attorneys believe and know that they
13 serve a critical role and so I recognize that, you
14 know, RFPs must stimulate growth, stimulate
15 opportunity and provide a competitive process, but I
16 also wanna make sure that we're not taking away a
17 caseload that may not necessarily be handled by
18 another group of providers that do not have that
19 institutional background and knowledge, right, and so
20 everyone can learn, I get that, but it's just
21 concerning, moving forward, the level of engagement.
22 So could you share at all with us how engaged you
23 have been with both 18B and their concerns that have
24 been raised as well as institutional providers?

25

2 SARAH SOLON: Absolutely. I just -- kind
3 of circling back, I wanna say that I now have in
4 front of me all of the requirements to certify as a
5 homicide lawyer on the 18B pass [sic] panel,
6 [background comment] they're quite exhaustive; these
7 will be transferring to the institutional providers
8 and we would be happy to provide you with a paper
9 copy of this after the hearing, because reading it
10 won't be that fun for any of us. So in advance of
11 the concept paper being posted on the MOCJ website on
12 August 2nd, we engaged each of the bar associations
13 who represent some of the 18B providers. So on July
14 7th we had a call with the Bronx Bar Association; we
15 had an in-person meeting with them on August 16th;
16 the Brooklyn Bar Association we briefed on July 8th,
17 July 19th and August 16th; the Manhattan Bar
18 Association on July 7th; the Queens Bar Association
19 on July 7th; and the New York State Courts and their
20 law enforcement partners we briefed at the New York
21 City Bar on June 17th. We also briefed the 18B
22 homicide panel on June 20th. Additionally, we had a
23 few briefings for the Council's central staff, and
24 the director of our office called both Chair Gibson
25 and Chair Lancman before the concept paper was posted

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 37

3 on our website. We additionally briefed Council
4 staff on November 3rd.

5 CO-CHAIRPERSON GIBSON: Okay. So even
6 before July, before you started having those
7 conversations, I've been in conversation with both
8 institutional and 18B last year, in 2015, about some
9 of the challenges that they faced under the existing
10 contract following the Bloomberg Administration, even
11 prior to the concept paper. Was there engagement
12 during that process as well? I mean, we came to this
13 place for a reason, and even before July
14 conversations there were challenges within the
15 industry that I'm pretty sure that MOCJ had
16 identified, so to what extent did you engage both
17 sets of providers?

18 SARAH SOLON: So on the specific switch
19 on the homicides, we have just been briefing the
20 impacted parties, because... [interpose]

21 CO-CHAIRPERSON GIBSON: Okay.

22 SARAH SOLON: it isn't our protocol to
23 engage other stakeholders in advance of a
24 procurement, just to maintain the integrity and
25 neutrality of it, but we are in everyday conversation
with other institutional providers about some of the

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 38

2 challenges and needs surrounding providing high-
3 quality indigent defense in the city, and we hope to
4 resolve some of those issues through the next
5 procurement process, so we are generally very
6 invested in high-quality indigent defense and those
7 conversations are ongoing.

8 CO-CHAIRPERSON GIBSON: Okay. And
9 currently, all indigent defense service providers are
10 required to provide a level of wraparound supportive
11 services, letting clients know what the collateral
12 consequences could be if they decide to plead guilty...
13 [interpose]

14 SARAH SOLON: Absolutely.

15 CO-CHAIRPERSON GIBSON: so how do you see
16 that expanding through this new RFP, so will there be
17 any changes? Because I also think about -- in
18 addition to immigration, social services, paralegal,
19 investigators, many of our clients are facing some
20 other challenges in their own communities around
21 housing, it could be domestic violence; many other
22 factors that we have been working very hard on the
23 Council -- so would the level of wraparound services
24 be enhanced through this RFP?

25

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 39

2 SARAH SOLON: So we can't say
3 specifically what will be included in the RFP, but
4 focus on collateral consequences has long been a
5 major sort of goal and commitment from our office; it
6 will remain as such, and we would be more than happy
7 to talk to you more about any of your concerns.

8 CO-CHAIRPERSON GIBSON: Okay. In your
9 testimony you talked about a cutting-edge case
10 management technology tool [background comment] to
11 support 18B attorneys. Can you elaborate on what
12 that provides and what that means?

13 SARAH SOLON: Yes. So as you can
14 imagine, building a technology tool is a very
15 involved process, but this is part of the Smart
16 Defense Grant that our office was awarded last
17 October, and perhaps Diana can talk a little bit more
18 about where we are, or Chidinma, with the development
19 of that toll.

20 CO-CHAIRPERSON GIBSON: Okay. So Smart
21 Defense Grant from where?

22 CHIDINMA UME: From the Department of
23 Justice... [crosstalk]

24 SARAH SOLON: Bureau of Justice.
25

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 40

3 CHIDINMA UME: Bureau of Justice
4 Administration.

5 CO-CHAIRPERSON GIBSON: Okay; got it.

6 CHIDINMA UME: Last October we won the
7 grant to primarily do two things: first was to
8 enhance the case management services tools that the
9 assigned counsel plan currently uses, and second, was
10 to develop a set of best practices and to do a needs
11 assessment of the assigned counsel plan to understand
12 where the issues arise that they face in providing
13 quality indigent defense, and developing a series of
14 recommendations that will address those.

15 So with respect to the tool, we are
16 working with the Department of Finance, the 18B
17 administrators, and we are trying to do a complete
18 assessment of the current methods by which 18B
19 attorneys do their vouchering process and manage
20 their cases. We have done that assessment of the
21 existing system in place right now, which is 18B Web,
22 so our goals are to essentially make it so that the
23 attorneys have one system that they use to manage
24 their cases, which doesn't currently exist in a very
25 workable way; they're able to see what happens on a
court date or after the fact; they have hindsight

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 41

2 viewing of what's happening with their cases, but not
3 a proactive view, in a way that will help them better
4 prepare for trial, to better manage the activities,
5 the motions they filed on their cases, so that's our
6 goal in developing a tool, and we've done the
7 preliminary assessment of that and we're examining
8 what an upgrade could look like.

9 CO-CHAIRPERSON GIBSON: Okay. I think
10 earlier you talked a little bit about the extensive
11 requirements to become an 18B panel member; I wanted
12 to find out in terms of evaluation and indicators and
13 metrics of success -- Chair Lancman really emphasized
14 that, you know, if it's not broken, then you know,
15 why do we wanna fix it -- so if there's nothing wrong
16 with the current system of institutional providers as
17 well as 18B attorneys, then why the need for this
18 RFP, right? So moving forward, what types of metrics
19 are you using to analyze the success or the
20 performance of indigent defense cases, and does that
21 also include the wraparound services? So if someone
22 is found, you know not guilty, does that raise the
23 bar versus someone who's found guilty, like does that
24 include the supportive services that are also given
25

3 to many of these clients? How do we define and
4 measure the success?

5 CHIDINMA UME: So this is one place where
6 the -- one of the many places where the Smart Defense
7 Grant has been really instructive. We're working
8 with the Center for Court Innovation to develop a
9 comprehensive set of standards that we can use at the
10 outset to determine what are the expected steps that
11 we would want to see in the provision of quality
12 indigent defense, and use those same standards as,
13 essentially, evidence on the back end to show us what
14 data we wanna collect for each case, to show what
15 metrics we wanna be looking at, because we no longer
16 wanna use an outcome-based measurement; an acquittal
17 or conviction is not the rise or the fall of whether
18 or not an attorney was successful in representing a
19 client. So through the grant we're comparing New
20 York City practices with practices around the state
21 and other states; in fact, the Center for Court
22 Innovation did this very exercise analysis in
23 Massachusetts. So that's something that we're
24 comprehensively developing now.

25 There are other resources that are
instructive on this very topic that we are highly

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 43

3 considering; there's the Indigent Defense Oversight
4 Committee, which currently takes place in the First
5 Department through the New York City Lawyers
6 Association, where we are engaging with them; we're
7 using the materials that they previously provided to
8 inform our understanding of performance measurement;
9 there's also the Article 18-B requirements that are
10 set forth at length, so for now, that exists as our
11 threshold of requiring that the institutional
12 providers currently and that the Assigned Counsel
13 Plan attorneys comply with those same standards, so
14 [background comment] there's a dearth of information
15 that we're working with; as a city are... we expect
16 that soon, through the Indigent Defense Grant, we'll
17 be able to a apply more narrow lens to the front end
18 and the back end expectations that we wanna set on
19 how these cases are handled.

20 CO-CHAIRPERSON GIBSON: Okay. Well
21 before I turn it back over to Chair Lancman, I guess
22 I'll just say that, you know, looking forward to
23 working with you; I certainly, again, encourage you
24 to be extremely cautious moving forward; if we are
25 only administering this RFP as a way to comply with
law and to make sure that we can stimulate more

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 44

2 competition, then you know I'm concerned about the
3 level of services that we're getting moving forward.
4 I don't wanna support any measure that pushes 18B
5 attorneys out of this arena, they have been in place
6 for many years for a reason; if you could tell us
7 that there are some challenges and you're getting
8 some sort of negative feedback on 18B attorneys, then
9 I'll say well then we can talk, because that's
10 something of substance and value that we can define
11 and identify, but you have not said that; none of you
12 have said that there have been any problems with 18B
13 attorneys, but yet we're still moving forward. So
14 I'm hoping at the end of this hearing that we will
15 still have further conversations, and you know, if
16 there is a need, you know I'm certainly going to put
17 in a request, and I'll join my Chair in saying that
18 maybe we need to rethink this RFP, maybe we need to
19 take a step back and really look and say, is this the
20 right approach; is this the right measure; is this
21 the right step that we wanna take to make sure that
22 indigent defense services are provided to many of
23 these clients. So I just wanted to go on the record
24 of that, because I do think if there are no issues,
25 then why are we trying to fix a system that has not

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 45

2 given us any problems in the past. So I'll look
3 forward to working with you and we'll turn this back
4 over to Chair Lancman.

5 CHAIRPERSON LANCMAN: Thank you. Let me
6 recognize that we have been joined by Council Member
7 Ben Kallos and... [background comment] What? Oh,
8 Council Member Chaim Deutsch. [background comment]
9 Oh, and Council Member Espinal. Thank you very much;
10 he was here.

11 I know we have questions now from Council
12 Member Andy Cohen.

13 COUNCIL MEMBER COHEN: Thank you, Chair.
14 I have to admit I'm not as knowledgeable as the
15 Chairs on the topic, but it seems like the obvious
16 question is; while Chair Lancman asked if this is a
17 better mousetrap, I guess the follow-up question is;
18 is it the cheaper mousetrap; is that what the
19 Administration is trying to do here; do we think this
20 is gonna be a cost-saving measure?

21 SARAH SOLON: No, that's not the
22 motivation for soliciting this round of RFPs; it
23 really is just to bring us into compliance with
24 current law.

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 46

2 COUNCIL MEMBER COHEN: When you say
3 current law, again -- and I apologize that I'm not --
4 you're talking about an Executive Order from the
5 Bloomberg Administration?

6 SARAH SOLON: That was codified as a rule
7 of the City of New York.

8 COUNCIL MEMBER COHEN: But you could
9 change that if you wanted to. [laughter] I don't
10 know... [laughter] [crosstalk]

11 SARAH SOLON: That... uh...

12 COUNCIL MEMBER COHEN: I am a lawyer,
13 even though... I don't do criminal work, but I am aware
14 a little bit; you could change that, there...
15 [interpose]

16 SARAH SOLON: That's true. As I
17 testified, it's a little bit of a lengthy and
18 involved process to be able to codify a new rule, and
19 the current contracts for indigent defense services
20 elapse next July, and so given that we know how long
21 procurements take, it's very important for us to move
22 forward with this process in order to ensure...
23 [crosstalk]

24 COUNCIL MEMBER COHEN: But we're making a
25 significant change here and it seems like -- I'd feel

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 47

3 a lot better if it was coming from... that this
4 administration was not saying, well this is what the
5 last guy did; rather, they were saying, this is what
6 we think we should do and come here and say why you
7 think you should do it, other than just because the
8 last guy told us to; that's not really... I mean I
9 don't think anybody here is finding that particularly
10 satisfying.

11 You know what, and I'm also concerned
12 about the quality of service; I suspect when the 18B
13 lawyers testify that many of them are gonna testify
14 that they are alumni of many of these institutions,
15 that these are attorneys with vast experience that
16 may not be available at the institutions and you talk
17 about requirements, but those requirements are gonna
18 be a floor and I wonder if the 18B lawyers are, you
19 know, gonna... qualifications exceed that floor and
20 we're gonna be losing access to that and I wonder if
21 you've given that any thought or the Administration's
22 given that any thought.

23 SARAH SOLON: We have, yes; we think that
24 the pretty robust standards in place for a homicide
25 defense in the 18B currently, transferring those over

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 48

3 to the indigent defense services will ensure that we
4 have very high-quality services.

5 CHIDINMA UME: And there's still a role
6 for 18B to play, I mean... look, so after the
7 procurement takes place we'll see how the contracts
8 actually shake out, but in compliance with the
9 current standards, 18B attorneys still handle the
10 conflict on the conflicts [sic] and that will still
11 be true for the homicides. So you know any homicide
12 that an institutional provider **[inaudible]** out of,
13 either at arraignment or post arraignment, any case
14 where there are multiple defendants who are charged
15 will have an 18B attorney on those cases, so as we
16 sit here now, there is definitely still a role for
17 them, which may be increasing them after the
18 procurement round, depending on who bids and how that
19 shakes out.

20 COUNCIL MEMBER COHEN: Have you ever
21 compared like how, if you, you know take a random
22 sample of 18B attorneys who are handling homicide
23 cases, in terms of meeting the requirements, if they,
24 you know, exceed the requirements? Like it would be
25 interesting to know if -- I don't know what the
requirements are and I know that you have them, but

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 49

2 if they, you know require a certain amount of
3 experience, number of cases handled or you know, and
4 if the average 18... let's say the number is six cases
5 and the average 18B attorney has 25 cases, I mean
6 that's far exceeding the minimum requirements. And
7 again, I think that that has the potential for really
8 being a loss in terms of the quality of services, and
9 even though... like you know, like I said, it's a
10 floor; it's a minimum that you're looking for and if
11 we have many attorneys who exceed that minimum and to
12 not take advantage of that would be of concern to me
13 and particularly, as Chair Gibson said, you know the
14 clients here are, you know, in desperate shape and
15 probably not that sophisticated, in terms of
16 assessing the quality of their legal expertise, so it
17 really falls upon all of us to make sure that we're
18 providing the highest quality legal services
19 available.

20 CHIDINMA UME: Absolutely.

21 COUNCIL MEMBER COHEN: Thank you, Chairs.

22 [background comment]

23 CHAIRPERSON LANCMAN: Any other members
24 have questions? [background comment] Well let me
25 conclude by saying that if all you've got as a

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 50

2 rationale is that Mike Bloomberg issued an Executive
3 Order on this in 2010; I think you really need to go
4 back to the drawing board and be able to justify this
5 very, very significant change on the merits, and
6 that's all we're asking that you do. But thank you
7 very much for your testimony and hope that you will
8 consider the things that we have said today. I also
9 hope that you'll stick around for the 18B folks who
10 are next. [background comments]

11 With that, we would like to invite
12 Michael Farkas from the Kings County Criminal Bar
13 Association, if I have that correct, and Corey --
14 sorry; I cannot read the handwriting... [background
15 comment] Sokoler... [background comment] okay, from the
16 Bronx County Bar Association. [background comment]
17 [pause]

18 Alright, if you'd raise your right hand.
19 Do you swear or affirm the testimony you're about to
20 give is the truth, the whole truth and nothing but
21 the truth? [background comments] Terrific. In
22 whatever order you would like; just state your name
23 and your affiliation for the record.

24 COREY SOKOLER: Good morning... and I am...
25 there we go... and I am the President of the Bronx

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 51

3 County Bar Association. Very quickly, before going
4 into my speech, I wanna answer the last question
5 asked. On the 18B panel, homicide panel, the
6 attorneys average at least 20 years experience and
7 have tried over 75 cases to jury verdict.

8 [interpose, background comment] Homicide. What
9 they're talking about here is a minimum I believe of
10 five, if I am correct, in order to be qualified by
11 the providers to handle a homicide case; that is an
12 extreme difference.

13 Now I've been President of the Bronx
14 County Bar Association this year; I've practiced
15 criminal law for 33 years, the last 29 as an 18B
16 assigned counsel attorney. I am here today to urge
17 this Council to reject the proposal for the RFP for
18 homicide cases. These cases should only be handled
19 by the most experienced attorneys. Indigent people
20 charged with homicide-related charges are facing 25
21 years to life. This is not the type of case where
22 attorneys assigned should be learning on the job, and
23 that's what I heard this morning is what's gonna be
24 taking place.

25 The 18B panel of attorneys average, as
I've told you, average 20 years; 75 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; that's pretty much all we do. I know that's all I do; I've dedicated my professional life to representing indigent people. The providers on the other hand have attorneys who are now just learning their craft. There is a large turnover of attorneys, and no one has spoken about that, for the providers; they leave after three or four years. I know this because I've watched it for the last 33 years of my life, whether it be Legal Aid, Bronx Defenders or whichever defender organization, attorneys do not stay with them long-term. This means that the providers are bottom heavy with newer, younger, less experienced attorneys and lacking in attorneys with enough experience to handle the serious cases.

I urge all members of this Council to read the Report of Indigent Defense Organization Oversight Committee to the Appellate Division First Department for the Fiscal Years 2012 and 2013. This is the most recent report on this topic. The report

3 clearly states that the providers are allowing a
4 significant number of trial attorneys to represent
5 indigent people in both felony and misdemeanor
6 criminal matters who have not met the First
7 Department Qualification standards for handling these
8 cases.

9 So let's back up for just a second. We
10 heard this morning how they're gonna rigorously
11 enforce these requirements; they're not enforcing
12 them now. According to this report -- I'm gonna give
13 you statistics -- the report details the specific
14 numbers of attorneys for each of the providers that
15 do not qualify under the City's standards to do the
16 work they're doing. The numbers are shocking. In
17 the Bronx alone, 21 Legal Aid attorneys are handling
18 misdemeanors and 13 Legal Aid attorneys are handling
19 felonies and these attorneys do not meet the First
20 Department standards for handling these cases, and
21 that's what we were just told by the Mayor's office
22 was gonna be required. But it's not happening under
23 the original RFP. Similarly, in New York County, 28
24 attorneys currently handling felony cases, as per
25 this report, for Legal Aid do not meet the First
Department standards, and they're allowed to continue

3 handling cases and representing indigent people on
4 felonies and they're not qualified to do so. The
5 defender organizations are equally inadequate in
6 providing attorneys that meet First Department
7 standards. In the Bronx, according to this report,
8 20 misdemeanor attorneys and 26 felony attorneys for
9 Bronx Defenders did not meet First Department
10 standards. Attorneys who were interviewed stated
11 they were overwhelmed with caseloads, some exceeding
12 400 cases. And now the City wants to reward these
13 providers with homicide cases? I submit that this
14 cannot be allowed.

15 In contract, every single attorney on the
16 18B panel, whether it be their misdemeanor panel,
17 felony or homicide, are all fully qualified and
18 certified to handle the cases for the panels they are
19 on. There are no beginner attorneys on these panels.
20 The attorneys on the 18B panels are the cream of the
21 crop. Quite frankly, if you had to hire these
22 attorneys, I don't think anyone in this room could
23 probably afford to hire these attorneys to represent
24 them on a homicide case. But they volunteer,
25 attorneys on the 18B panel, and handle these very
difficult cases.

2 But there's one other issue that the
3 Council should consider. The truth is; money really
4 has no effect on the quality of representation in
5 these cases. You cannot award these contracts as if
6 they're road paving contracts given to the lowest
7 bidder and you equally cannot throw money at these
8 cases, excessive amounts of money, and think that
9 that will create competent attorneys, and this
10 Council pointed out beautifully this morning exactly
11 that. If they're not hiring, where are they getting
12 these experienced attorneys to represent homicide
13 cases? The fact of the matter is, they're not going
14 to, they're gonna promote from within and they'll
15 say, well we'll have an experience attorney second
16 seating them on the trials. It's absurd. As a trial
17 attorney I can tell you, I don't want anyone
18 whispering in my ear advice; I need to run my case.
19 I know what I'm doing; I've tried hundreds of cases.
20 I know exactly what needs to be done to provide the
21 defense my clients need. I don't need to turn to
22 someone and say, okay; what do I do now? And the
23 thought that that could be happening on homicide
24 cases is mindboggling. It is the decades of hard
25 work by the 18B attorneys that have created a

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 56

3 homicide panel of the most experienced, veteran trial
4 attorneys who are not learning what to do but doing
5 what needs to be done to provide the highest quality
6 of defense to the indigent people of the city.

7 The system of indigent defense in New
8 York City was far from broken before the Bloomberg
9 Administration decided to award conflict cases by way
10 of the RFP. In fact, in 2006, then Chief Judge
11 Judith Kay chaired a statewide commission whose
12 findings were that the system of indigent defense in
13 New York City was the finest of its kind in the
14 nation. Homicide cases had been exempt from the RFP
15 as the Bloomberg Administration themselves testified
16 that they would not touch these most serious cases.
17 The Mayor's office has not addressed -- when they say
18 we're relying on the Bloomberg plan -- and my god, I
19 don't understand that; how does our Mayor not have
20 his own plan for indigent defense? Why would you
21 rely on the Bloomberg Administration for an indigent
22 defense plan? It makes absolutely no sense. I think
23 I'm crazy when I hear this, 'cause I think I'm the
24 only one that's hearing this. The Mayor can simply
25 provide and present his own plan, the current Mayor,
for indigent defense. There's no law that says he

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 57

3 has to require; in fact, the lawsuits that the five
4 bars brought, we lost, we lost by one vote, one
5 judge, but basically the judges said that the Mayor
6 could do whatever he wants. So for the Mayor's
7 office to sit here and say we have to comply with the
8 Bloomberg plan is ridiculous, is silly; he does not
9 have to comply with the Bloomberg plan; he has carte
10 blanche to do whatever he feels is in the interest of
11 the indigent people of this city when it comes to
12 indigent defense, and I urge him to do that, to throw
13 out the Bloomberg plan and do the right thing here.
14 Homicide ca... I'm sorry.

15 Now the current administration wants to
16 fix something that's clearly not broken. The
17 experienced 18B attorneys provide the finest level of
18 criminal defense to our indigent population. They
19 should be allowed to do what they do best and protect
20 the rights and freedom of the indigent people who
21 live in this city. And I thank you all for listening
22 to me very much. And I'm open to any questions
23 **[inaudible]**... [crosstalk]

24 CHAIRPERSON LANCMAN: Thank you very
25 much. We're gonna hear from the whole panel and then
we'll have questions.

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 58

2 MICHAEL FARKAS: Is this on? [background
3 comment] Alright, I got it. Even I could figure
4 this out.

5 Good morning Councilpersons; Council. My
6 name is Michael Farkas; I'm the President of the
7 Kings County Criminal Bar Association, sitting beside
8 me is the Executive Vice President of the
9 organization, Michael Cibella.

10 I have been fortunate enough to be co-
11 counsel with Mr. Sokoler on some Bronx cases and
12 then, as now, he has said pretty much everything I
13 wanted to say, so he's made my job pretty easy. I'm
14 gonna cut through my testimony so as not to waste
15 everybody's time.

16 But the Criminal Bar Association in
17 Brooklyn is a singular bar association dedicated to
18 representing the criminal defense -- actually,
19 criminal law practitioners in the county. So we're
20 not the countywide bar association for all practice
21 areas, we are specifically related to the criminal
22 law practice in Brooklyn. On our Board is the acting
23 District Attorney of Kings County, Eric Gonzalez;
24 many other executive assistant district attorneys,
25 judges, private defense attorneys (retained and 18B),

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 59

3 as well as indigent service provider defense
4 attorneys. So we represent the interests of the
5 greater criminal justice community in Brooklyn at
6 large. And we, as a bar association, I feel this is
7 the purview of the Bar Association, is to raise
8 concerns that we have about the quality of defense in
9 any case, but specifically with regard to this
10 hearing, the quality representation of homicide
11 defendants in Kings County and in the entire city.
12 And we do no prejudice any particular provider's
13 ability to do so; in fact, I know that some providers
14 are better equipped as we stand today to take on
15 homicide cases than others, and I believe you're
16 gonna be hearing from them as well, so I'll let them
17 speak to their own individual abilities. And while
18 we don't prejudice them, any one in particular, we do
19 illustrate the challenges that the City has to
20 overcome and the standards that it must meet and
21 enforce, which we do not think it has been doing, as
22 Mr. Sokoler stated, to maintain the level of highly
23 skilled and really incomparably experienced service
24 that's being provided by the attorneys of the 18B
25 panel; it just really can't be matched.

3 As to Councilman Cohen's question a
4 little earlier, can't this rule be changed, I think
5 the City's response was, well it's a lengthy and
6 involved process. So perhaps the question we should
7 be asking is: is it as length and involved as
8 changing the decades-long practice of thousands and
9 thousands of homicide trial defenses that we've had
10 in the city? I mean I doubt that it's as lengthy and
11 involved a process to change that rule as it would be
12 to change the homicide defense practice, and it
13 certainly wouldn't have an impact on the people and
14 the families facing these prosecutions that changing
15 the rule would.

16 So of course we raise skepticism, as you
17 see in my printed remarks, about why the system
18 should change; I should also say that there are no
19 concerns, none whatsoever about the available
20 investigatory or other resources that are available
21 to the practitioners on the 18B panel on homicide
22 cases as compared to their defender organization
23 counterparts. It is true that the defender
24 organizations have social workers and investigators
25 in-house, they also have access to experts; I don't
believe they have a huge roster of experts in-house

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 61

3 because there's no way they could afford to do that
4 on a full-time basis.

5 The 18B panel, as the City
6 representatives explained -- and I'll give you a
7 little more detail -- have access to an incredibly
8 deep and rich resource of experts in every field
9 imaginable and investigators from every specialty
10 imaginable, and every bit of social work or
11 translation services that are necessary. In fact,
12 the City took great pains this morning to explain how
13 closely they have worked with the 18B panels to
14 ensure these types of resources so that especially
15 homicide defendants are provided with a highest
16 quality defense. So there are no concerns about
17 resources or access to resources, you know, and not
18 that I belittle collateral consequences of criminal
19 cases, but when you talk about homicide defendants
20 who are facing life in prison, you know, 18B lawyers
21 have enough access to an immigration attorney to talk
22 about how they might get deported after they serve
23 their life sentence, okay; that's really not a
24 concern, and the reason why the City didn't raise it
25 is because there is no indication that these are
concerns whatsoever.

2 So it must also be noted, and this is in
3 my printed remarks, that the great majority of non-
4 homicide cases are initially assigned to the indigent
5 defense providers, and yet the overwhelming amount of
6 trial experience rests with the 18B panels. And of
7 course, as we know, the overwhelming majority of
8 homicide cases go to trial, unlike general felony
9 cases, most of which conclude by way of plea bargain.
10 So again, there is no group more qualified than the
11 18B attorneys to handle such serious trial cases as
12 homicides.

13 Also to Councilman Cohen's point, of
14 course, if the RFP is successful and the indigent
15 providers then staff up, from somewhere -- first, I
16 would say they're going to try to hire 18B attorneys,
17 because where else would you find attorneys qualified
18 enough to handle homicide cases than to raid the 18B
19 panels. So really, we're just taking from Peter to
20 pay Paul if the RFP succeeds; I don't see how that's
21 in the quality or the economic interest of the City.

22 But also, the net result is going to be
23 then having the indigent providers try to get their
24 other non-qualified staff to be qualified under the
25 minimal standards and not that the 18B standards are

3 low, but they do set minimum standards for 18B
4 representation, right? So what's going to happen, I
5 believe, over the long run, is a lot more attorneys
6 "qualified" to handle homicides, creating a larger
7 pool of far less experienced attorneys handling
8 homicides. So as far as the City's concerned,
9 everyone's qualified; we're going a great job, but
10 compared to what we had when we had the 18B system,
11 you've got attorneys with five years experience, with
12 two or three homicides under their belt; whatever the
13 standards are, compared to attorneys with 20-30 years
14 experience and 70 homicides under their belt; that's
15 what we're moving toward, and that's what concerns
16 the Bar Association. And again, this has nothing to
17 do with whether the indigent providers can qualify
18 and provide decent representation for a homicide
19 defendant. The net effect, long term, is a lot less
20 experience in the pool of homicide defense, and that
21 is something none of us should want.

22 We also -- this has been raised, but it
23 bears mentioning again -- we're concerned that the
24 City has the ability to maintain the high standards,
25 even the minimum ones that I've just described,
because to date I haven't seen any audits or quality

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 64

2 reviews undertaken by the City to assess or enforce
3 the indigent service provider standards or the 18B
4 standards that apply to them, under the 2010 RFP or
5 otherwise. To the contrary, as Mr. Sokoler has
6 stated, we also have reviewed the report by the
7 Indigent Defense Organization Oversight Committee to
8 the Appellate Division First Department -- believe the
9 years were 2012-2013 -- I don't believe there is a
10 comparable report for the Second Department, so I
11 can't comment on stats in Brooklyn... [interpose]

12 CHAIRPERSON LANCMAN: Let's just... Let's
13 do one more minute, Mr. Farkas, **[inaudible]**
14 questions... [crosstalk]

15 MICHAEL FARKAS: You've got it. But the
16 poor track record of the City of oversight here is of
17 great concern to us; again, that's in more detail in
18 the printed remarks. And I'll defer to any
19 questions; I believe the printed remarks are
20 sufficient, and thank you very much for your time.

21 CHAIRPERSON LANCMAN: Thank you. One of
22 the things that I've heard -- I don't know if it's
23 true, so I wanted to ask you about it -- is that
24 within the 18B panel there are many, many lawyers who
25 have experience in district attorneys' offices and

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 65

2 that that is an advantage, or an important part of a
3 lawyer's experience; what percentage of your folks
4 would you say spent some amount of time in a DA's
5 office, and I will ask the providers the same
6 question later, but how do you understand that that
7 compares with the institutional providers...?

8 [crosstalk]

9 COREY SOKOLER: I would say... I would say
10 over half of former assistant DAs, and why I think
11 that's an advantage; if I was gonna be a tax
12 attorney, I'd work for the IRS first; find out how
13 their inner workings are and then I can fight that.
14 As a criminal defense attorney, when I was in the
15 DA's Office I learned exactly the mindset, I learned
16 how cases are built, how cases are tried, and it's
17 much easier from my point of view now, as a defense
18 attorney, to attack those cases and defend my clients
19 with that understanding.

20 MICHAEL FARKAS: Yes, and I was just
21 conferring. I'm obviously most familiar with the
22 Second Department panel; it is over half of the
23 attorneys. I myself was in the Homicide Bureau of
24 the Kings County DA's Office; when I left and I
25 became qualified for the homicide panel, I had 22 or

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 66

2 23 homicides under my belt before trying a defense
3 case. That is very common on the panel.

4 [pause]

5 CHAIRPERSON LANCMAN: Let me mention that
6 Council Member Ritchie Torres was here earlier; he
7 had to step out. [background comments] Council
8 Member Gibson.

9 CO-CHAIRPERSON GIBSON: Thank you very
10 much for your testimony, and certainly I thank you
11 for your dedicated service; I wouldn't say you're
12 old; I'll say you're seasoned. [laughter] Thank
13 you. Thank you.

14 COREY SOKOLER: My wife says I'm old.

15 CO-CHAIRPERSON GIBSON: No, I like to use
16 the word "seasoned" because you know, you don't find
17 quality services in a lot of fields these days, and
18 to build a rapport and a reputation of 20 plus years
19 of service in indigent defense, you know doesn't come
20 all the time, and so that takes time to build, so I
21 appreciate the work you've done, especially in my
22 borough and Council Member Cohen's borough, the
23 County of the Bronx; I know that you've had a number
24 of cases.

25

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 67

3 I just wanted to ask, in terms of some of
4 the support services that we have talked about, how
5 do 18B attorneys right now access some of those
6 wraparound services that we have talked about?

7 COREY SOKOLER: Well this is as easy as
8 can be; in fact, the Chief Administrator for the
9 First Department, Michael Alperstein, is present; I
10 would commend him on the record. We have a roster of
11 over 300 experts and my understanding is that 18B
12 last year paid out over \$2 million and close to \$3
13 million just to experts alone. When you interview
14 the providers, I would ask you ask: how much of their
15 budget goes not towards social workers and
16 investigators, but towards actual experts who are
17 gonna testify on cases, because that's really what
18 criminal defense is about now. And I can give you an
19 example; I don't wanna take a lot of time, but
20 recently I had a client who required an MRI brain
21 scan; that has never been done in the City of New
22 York before, but with Mr. Alperstein's help, we were
23 able to get a protocol in place where my client was
24 taken out of Rikers, was given this test; they had to
25 shut down a hospital at 6:00 a.m. for security
reasons; what we learned was, his brain injury

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 68

2 absolutely impacted his decision-making capabilities
3 and the Bronx DA eventually gave him time served on a
4 very serious case, with the understanding that he was
5 going to be entering into treatment for the injuries.
6 But without that brain scan, I could never have
7 documented it. And all I did as an 18B attorney was
8 call up Mr. Alperstein and say this is what I have,
9 Michael; do you have a doctor who would specialize in
10 this area that I can use and even if there wasn't one
11 on the panel, I can find one on my own and they'll
12 certify and get him paid or her paid to provide her
13 services. So we have this unending wealth of access
14 to experts, and it's very easy; all I simply do is
15 get a judge to sign an order and submit the order and
16 my experts... [crosstalk]

17 CO-CHAIRPERSON GIBSON: Okay.

18 COREY SOKOLER: begin to work on the
19 case.

20 CO-CHAIRPERSON GIBSON: And in terms of
21 the funding for that, 'cause you said once you
22 identify the person, how do they get paid?

23 COREY SOKOLER: Terrific question. That
24 at times can be somewhat problematic, because the
25 judges have to approve the final voucher. The order

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 69

3 that's signed has on it a ceiling of what they're
4 allowed to bill for. If they need to go over that
5 ceiling, we have to go back before the judge. But
6 sometimes what happens is, the judge doesn't remember
7 when they signed the expert, what it was about and we
8 have to conference, and every once in a while we'll
9 have to call Mr. Alperstein, who will call the judge
10 to explain what the services were, but ultimately,
11 I've never had a problem getting an expert paid.
12 Sometimes it takes a little more time, but I have
13 never had a problem getting the expert paid.

14 CO-CHAIRPERSON GIBSON: Okay. What about
15 clients that may have some sort of a mental illness;
16 you know that's something that we are extremely
17 passionate about supporting -- Rikers Island, a large
18 population of detainees have a mental illness -- but
19 for me in the Bronx, I have many residents that are
20 undocumented as well as they don't speak English as a
21 native language, so many of them are Spanish
22 speakers, West African, different dialects of French;
23 how do you address and deal with those clients?

24 COREY SOKOLER: This is one of my goals
25 as President of the Bronx Bar, and I've met with the
Criminal Justice Coordinator on this specific topic.

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 70

2 I believe there is a need for a misdemeanor mental
3 health treatment court. It should not require a
4 defendant to graduate to committing a felony before
5 they get evaluated and treated for mental illness,
6 and that's the system we pretty much have right now.
7 Unless you actually hurt someone, you're not gonna
8 get any mental health treatment. So I've been
9 advocating for and meeting with different agencies
10 and with the Mayor's office on this topic, to create
11 a mental treatment court. I would estimate one-third
12 of my clients have a mental health issue; it's an
13 epidemic. And... [interpose]

14 MICHAEL FARKAS: Yeah and this is
15 especially... this is going a bit beyond the homicide
16 topic, but this is especially bad news for out
17 defendants on misdemeanor cases, because at least if
18 they're incarcerated and they're at Rikers, which is
19 not something we want, of course, there are some
20 mental health systems there -- the CERT program, for
21 one, that comes to mind -- where sometimes they catch
22 them, but if you have mental health problems and
23 you're in the criminal justice system and you're
24 lucky enough to be out on bail or ROR, you're not
25 gonna get any services.

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 71

2 COREY SOKOLER: In the Bronx we have a
3 felony treatment court and it works beautifully,
4 there are advocates in all different agencies; your
5 client could be interviewed the same day,
6 recommendations made, plea negotiations, and a plea
7 and a bed available very quickly; we don't have that
8 for misdemeanors and that's what I'm advocating for,
9 and I know that has nothing to do with the homicide
10 cases.

11 CO-CHAIRPERSON GIBSON: Okay. No, I just
12 wanted to also ask about language access as well.

13 COREY SOKOLER: Language access not a
14 problem. We have on the expert roster and expert for
15 virtually every language there is and if there is one
16 that we don't, we can contact the U.N. and have
17 someone come in who will be paid for their time to
18 act as an interpreter, and we also have obvious
19 access to all the interpreters in the courthouse that
20 are available... [crosstalk]

21 CO-CHAIRPERSON GIBSON: Okay.

22 MICHAEL FARKAS: Right and you're talking
23 about forensic psychology, forensic pathology,
24 forensic psychiatry; whatever... you know, which are
25

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 72

2 the most commonly needed mental health-related
3 homicide defendant experts.

4 CO-CHAIRPERSON GIBSON: Okay. How many
5 18B attorneys do we have?

6 COREY SOKOLER: That's an excellent
7 question.

8 CO-CHAIRPERSON GIBSON: I used to know; I
9 just forgot... [crosstalk]

10 COREY SOKOLER: I think the more
11 important question is how many active members...
12 [interpose]

13 CO-CHAIRPERSON GIBSON: Okay.

14 COREY SOKOLER: you have, because you can
15 be on the panel, handle a case here or there, but I
16 would say we have between 100 and 140 active 18B
17 members in Bronx County; I don't know for the Second
18 Department, but the administrator is here.

19 MICHAEL FARKAS: Yeah, in fact, the
20 Second Department administrator is here too,
21 Councilwoman... [crosstalk]

22 COREY SOKOLER: Yes. Barbara Barron
23 DiFiore. Michael; are my numbers accurate?
24 [background comments] I don't know if that was
25

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 73

2 picked up by the microphone [background comment,
3 crosstalk]

4 CO-CHAIRPERSON GIBSON: Can you say it?

5 COREY SOKOLER: Okay. There are
6 approximately 750 18B attorneys in the First
7 Department, approximately 400 in Manhattan, and 300
8 or so in the Bronx.

9 CO-CHAIRPERSON GIBSON: The Bronx.

10 COREY SOKOLER: There's not a shortage of
11 18B attorneys, let's put it that way.

12 CO-CHAIRPERSON GIBSON: Okay.

13 CHAIRPERSON LANCMAN: But that's 18B
14 attorneys total; that's not the homicide panel;
15 right?

16 COREY SOKOLER: That's correct. In the
17 homicide panel -- do we have that number?
18 [background comments] Ninety in Manhattan and about
19 70 in the Bronx.

20 [background comments].

21 CHAIRPERSON LANCMAN: By the way... I
22 didn't mean to cut into your time... [crosstalk]

23 CO-CHAIRPERSON GIBSON: Oh no, I'm fine.
24 I'm done.

25

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 74

2 CHAIRPERSON LANCMAN: I know Council
3 Member Cohen has a question. First of all,
4 [background comment] Mr. Farkas... [crosstalk]

5 MICHAEL FARKAS: Yes, sir.

6 CHAIRPERSON LANCMAN: can you shut your...
7 your...

8 MICHAEL FARKAS: Yeah.

9 CHAIRPERSON LANCMAN: Gettin' a weird
10 feedback. [background comment] Uhm... [crosstalk]

11 MICHAEL FARKAS: But I wa... the numbers
12 for the Second Department are similar -- homicide
13 attorneys, 'bout 120 in the Second Department, which
14 is Brooklyn **[inaudible]**... [crosstalk]

15 CHAIRPERSON LANCMAN: How is an attorney
16 paired with a defendant?

17 COREY SOKOLER: Uhm there... [crosstalk]

18 CHAIRPERSON LANCMAN: In the homicide
19 cases.

20 COREY SOKOLER: There is a committee, a
21 screening committee; am I correct, Michael? You
22 wanna... I don't have the expertise in this area.

23 [background comments]

24 MICHAEL FARKAS: But we could answer
25 these questions, Councilman, but [background

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 75

2 comments] perhaps they're better suited for the...

3 [interpose, background comments]

4 CHAIRPERSON LANCMAN: Sorry; what?

5 MICHAEL FARKAS: We... We... We could
6 certainly answer the question based on our own
7 experience, but perhaps [background comment] those
8 questions are better for the **[inaudible]**... [crosstalk]

9 CHAIRPERSON LANCMAN: Well they're
10 sitting there and it's just kind of tangential, so
11 just do the best you can and then we **[inaudible]**...
12 [crosstalk] [background comments]

13 MICHAEL FARKAS: Sure.

14 COREY SOKOLER: If you work at the
15 arraignment shift and you're on the homicide panel,
16 you pick up that homicide case.

17 CHAIRPERSON LANCMAN: Oh I see...
18 [crosstalk]

19 MICHAEL FARKAS: Right, and... [interpose]

20 COREY SOKOLER: If there's a conflict, a
21 call will be made down to the administrators and the
22 administrators will assign an 18B to pick up a
23 homicide case.

24 MICHAEL FARKAS: Right, the
25 administrators seek to spread it out evenly amongst

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 76

3 the available attorneys on the panel so that no one
4 has too many cases.

5 CHAIRPERSON LANCMAN: Got it. Council
6 Member Cohen.

7 COUNCIL MEMBER COHEN: Thank you, Chair.
8 I think first I should disclose I'm a Bronx County
9 Bar Association members, and Mary is the officer of
10 the constituents and she's awesome, so -- just give
11 that a plug.

12 I know it's not about you guys
13 individually, but like are you solo practitioners;
14 are you -- do you have associa... what is the size?
15 [sic]

16 MICHAEL FARKAS: No, I'm a solo
17 practitioner, as is Mr. Cibella.

18 COREY SOKOLER: And I am also a solo
19 practitioner, and I would say 95% of my practice is
20 indigent defense clients, by choice.

21 COUNCIL MEMBER COHEN: Ninety-five
22 percent? And do you only do criminal practice?

23 COREY SOKOLER: That's all I do, every
24 day and only in the Bronx.
25

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 77

3 MICHAEL FARKAS: I can speak for both of
4 us; we're about 75% criminal practice and my
5 percentage of 18B is very low.

6 COUNCIL MEMBER COHEN: Is very low? [sic]

7 MICHAEL FARKAS: Yeah, right.

8 MICHAEL CIBELLA: My percentage of 18B is
9 approximately half of my criminal practice; I'd say
10 my criminal practice is approximately 75% criminal
11 defense. I, like Michael, was a prosecutor in the
12 Kings County District Attorney's Office back in the
13 90s; I've had my own practice for the last -- over 12
14 years now; I've been an 18B practitioner from the day
15 I began my practice; I've been a homicide
16 practitioner for about four years or so, after
17 getting homicide experience in the District
18 Attorney's Office and working with other private
19 defenders as co-counsel in other homicide cases.
20 Currently I'm handling two homicide cases right now
21 where one client speaks... all five defendants in the
22 case are Spanish-speaking defendants; all the
23 attorneys have assigned interpreters; I go with my
24 interpreter to Brooklyn House of Detention to meet
25 with my client and speak with him; to speak with his
family members; I had absolutely no difficulty in

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 78

2 getting that expert signed; we have DNA experts
3 working on that case as well. On another case where
4 there is a great deal of abuse that would lend
5 towards a psychological defense, I have forensic
6 expert, psychologist, with no difficulty in accessing
7 a number of experts in that area to assist in the
8 defense of just these two homicide cases that are
9 presently going on.

10 CHAIRPERSON LANCMAN: I wonder though, as
11 solo practitioners or people with small offices, you
12 know, I was a civil litigator, but on my own for a
13 very brief period of time; it's hard to juggle that
14 and I wonder, like, you know, if you have a Spanish-
15 speaking client who calls the office, do you have the
16 infrastructure to take care of that? Who's taking
17 care of -- you know, if you have multiple cases -- I
18 mean it seems that there are certain advantages to
19 having institutional providers who have just a deeper
20 bench, you know have the resources at their
21 fingertips... [interpose]

22 COREY SOKOLER: But see they don't. See
23 what they do is... as I sit in court every day, I
24 rarely see the attorney who's actually assigned by
25 the provider standing up on the client's case; it's

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 79

2 always so and so, I'm standing in for so and so. So
3 your answer or your statement that it might be an
4 advantage, I don't ever see that. Now as for me, and
5 I'm married to a Dominican woman who speaks fluent
6 Spanish, so I tell my clients to call me at night on
7 my cell phone; I give everyone my cell phone, and my
8 wife then interprets for **[inaudible]**... [crosstalk]

9 CHAIRPERSON LANCMAN: Well let me
10 interject, okay, because that's not really a way to
11 run a railroad necessarily, right, so our
12 institutional providers will tell you that there's an
13 advantage in having the depth and having a bench so
14 that if you can't make an appearance there's someone
15 else in the office who could do it and there's some,
16 you know continuity of... or some connection to the
17 lawyer who's primarily handling the case; it's not
18 just like a random per diem and that their offices
19 don't need to rely on, you know someone's wife speaks
20 Spanish or my best friend speaks Hindi. So speak to
21 that, 'cause I'm sure they're gonna testify next and
22 say, listen, we've got a breadth of assets in our
23 organization and that's better than, you know catch
24 as catch can nature of a solo practitioner handling a
25 lot of cases.

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 80

2 MICHAEL FARKAS: It's a fair question.

3 First I'll point out that one of the oversight
4 committee's observations was not only the lack of
5 qualifications by some of the providers, but also
6 their failure to comply with caseload standards; in
7 English, heavy caseloads within the indigent
8 providers. Okay, they are so loaded and one of the
9 aspects of the testimony that I did not go through
10 was the de facto flat fee arrangement, the low-cost
11 flat fee per case that has now resulted from the RFP,
12 because you have, you know, more cases; same amount
13 of money under the contract; they all now become low-
14 cost flat fee arrangement. Why does that matter?
15 Because their caseloads are too high, they have
16 people appearing for them because they have more than
17 they can handle -- not every single one is the same,
18 but this is the oversight committee speaking; not me,
19 alright. And on a homicide case, the singular most
20 important -- well the two -- to me, the most
21 important two things are the trial experience and the
22 access to the experts and resources, okay. I agree
23 that there are advantages within the institutional
24 provider system with regard to misdemeanor and
25 general felony defense, okay. There's a lot more

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 81

2 call for social work services, for collateral
3 consequence services, and there are advantages to
4 having people within your office, like working at a
5 district attorney's office, okay. With the homicide
6 cases, that advantage is very quickly negated by the
7 perfect access to the resources that you need and the
8 5, 10, 15, 20 years, or 30, 40, 50 cases worth of
9 trial experience, okay, because you're not getting
10 visits in the office on homicide cases; you're going
11 to the jail to speak with your clients with your
12 experts or your translators, okay; you're getting
13 calls now and then and then you have to arrange for
14 translator services, okay; I agree, but that's
15 generally not what matters in a homicide. So you
16 can't equate the advantages for indigent defense
17 providers on all cases to homicide cases.

18 COUNCIL MEMBER COHEN: Uh no, and I'm
19 gonna... I have to go to Land Use, [laughter] so thank
20 you very much.

21 CHAIRPERSON LANCMAN: I guarantee you
22 that'll be a lot less interesting **[inaudible]**...
23 [crosstalk]

24 COUNCIL MEMBER COHEN: I'm sure you're
25 right; no doubt.

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 82

2 CHAIRPERSON LANCMAN: Anything else?

3 CO-CHAIRPERSON GIBSON: Uhm-uhm. No.

4 CHAIRPERSON LANCMAN: Alright. Thank you
5 very much. Testimony and your written feedback have
6 been very, very helpful.

7 Next... [background comments] [pause]

8 Alright. So next we'd like to invite the
9 institutional providers. Well I know Lisa
10 Schreibersdorf; although she is from Brooklyn
11 Defenders, I believe she is testifying on behalf of
12 the Defenders Association of New York; Stanislav
13 German, from the New York County Defender Services;
14 and Sergio de la Pava, also from New York County
15 Defender Services. [background comments]

16 And just for those keeping score at home,
17 our next witness will be Steve Zeidman from the CUNY
18 Law School and then that will conclude our hearing.
19 So we are well on track to finishing way before one,
20 way before one. But I know we've been talking a lot
21 about you, so we wanna give you every opportunity to
22 tell us what we don't understand. If you'd all raise
23 your right hand. Do you swear or affirm the
24 testimony you're about to give is the truth, the
25 whole truth and nothing but the truth?

2 [background comments]

3 LISA SCHREIBERSDORF: Yes.

4 CHAIRPERSON LANCMAN: Thank you very
5 much.

6 LISA SCHREIBERSDORF: Did they swear you
7 guys in?

8 CHAIRPERSON LANCMAN: Thank you; we did...
9 [crosstalk]

10 LISA SCHREIBERSDORF: Okay. Wanna make
11 sure. [laughter] [background comment]

12 So I'll start. I'm speaking today as
13 President of the Chief Defenders Association of New
14 York, which is an honor of mine that I was blessed to
15 be President this year, and a coincidence, for this
16 testimony. But the Chief Defenders is a group of
17 people that run indigent defense systems throughout
18 the State of New York. So we have members who run
19 indigent... you know, like public... actually, public
20 defender officers, nonprofits like Brooklyn Defenders
21 **[inaudible]** and Legal Aid, and heads of Assigned
22 Counsel panel, and our joint goal is to assure that
23 indigent defense services in New York State, and
24 obviously for the purposes of this hearing, New York
25 City, are provided at the highest quality and that

3 there are sufficient resources to make sure that all
4 types of providers have the ability to provide
5 services. Because as Council Member Gibson said
6 earlier, our goal is to make sure that marginalized
7 and disadvantaged people of all types, and especially
8 in New York, with the diversity and variety of types
9 of people that need indigent services, that the
10 opportunity is there to provide not only good
11 representation, which is of course the first primary
12 responsibility in any type of case, but also all
13 kinds of other access to services, whatever way that
14 that might happen. And as you heard earlier,
15 sometimes services are accessed through the court and
16 sometimes they're accessed in other ways.

17 So I just wanna say that our primary
18 message here today is that we have a concern that the
19 amount of money that is being allocated to this
20 service may not be sufficient. Now again, I say may,
21 because it is hard to tell exactly how the budget is
22 going to be divided between the different types of
23 cases that are subject to the RFP. As a bidder under
24 this RFP, I have to tell you that delaying this RFP
25 would be a hardship on my office and the other
providers, because it incorporates not just homicide

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 85

3 cases, but also the misdemeanors and felonies that
4 are the core of our budget and our contract is up at
5 the end of July and if it gets delayed, I will tell
6 you, it will be extreme hardship on my office. So if
7 you're going to recommend any further action to be
8 taken, I wanna make sure that there's no delay in at
9 least the other services, because again, I cannot
10 emphasize enough what a hardship that would be on us,
11 because the only time that we can get a reallocation
12 of resources, meaning a raise, is in an RFP process
13 or that's the primary time that we get a chance to
14 tell the City, well this is how much we actually need
15 to do these services.

16 And with that I wanna say that in
17 addition, the prosecutors have gotten a lot more
18 resources over a period of time, where indigent
19 defense has not, and we are subject to a number of
20 standards, including case caps, statewide case caps;
21 there are standards that are implemented through the
22 Indigent Legal Service office, which is a statewide
23 office under the Governor, which also provides direct
24 funding to indigent providers, and there is also
25 funding from the State court system directly to
service provider offices, defender offices. And

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 86

2 access to those resources is not available under the
3 18B panel, which is bound entirely by hourly rate.

4 So I just wanna point that out that there's hourly
5 rates for the lawyers, for the experts and you will
6 hear more about issue from my colleagues to my left,
7 who have direct experience with some of this, but
8 it's just a different service model, right. And so

9 we have the opportunity to go back to the City and
10 say well actually... you know you've heard us say we
11 need more resources, but the City's free to say well
12 we're gonna expand your budget so that you can
13 provide a certain type of resource. For example,

14 just yesterday Mayor de Blasio talked about the
15 plight of immigrants in the City and I can tell you,
16 I have 25 immigration staff on-site who speak, you
17 know many, many languages and we're out in the
18 community, you know helping probably your

19 constituents calling us saying I don't know what to
20 do; I'm afraid I'm gonna be deported and we're giving
21 direct advice and that is one of the points I just
22 wanna say about institutional providers. We are a
23 service provider in your community, beyond just

24 indigent defense and the more access that people have
25 to our services, I think there is something to that

2 and I don't wanna say that some of the homicide
3 attorneys aren't very qualified to do that work, but
4 it is a different model and I know what the City did
5 say about why they're moving to a different model and
6 I just wanna say that -- I guess my main point here
7 is experience is not the be all and end all of what
8 model is better, and a procurement process is not
9 designed to critique the current system. I've been
10 through -- this is my fourth procurement process
11 since I started BDS 20 years ago; the point of a
12 procurement process is to find the best model in the
13 abstract, given the moment; it's not intended to
14 critique what is happening; it's intended to look at
15 well here are all the options; this is what we want...
16 you know this is the things we would like to
17 accomplish, and if you're building a bridge -- well
18 we wanna build a bridge from, you know Brooklyn to
19 Staten Island; this is what we want the bridge to
20 look like, and then people get a chance, providers
21 who are qualified get a chance to say well this is
22 how I would build this bridge. So when you ask
23 questions to, for example, somebody who doesn't work
24 in my office or even the City, about how for example
25 I might build that bridge, you know I just think that

question is misplaced and I would like to answer that
question to you, but we haven't seen the RFP yet.

We're in a very difficult position here; when I am
gonna say I'm gonna build a bridge, I'd like to know
what that bridge is supposed to be doing, and again,
there's some general principles in the concept paper,
and I'm not being coy at all. I mean the RFP is a
very technical document; it tells us how many cases
we're gonna be doing, it tells us what they expect us
to do, which resources they're gonna pay for, and
then we fill in to meet those requirements to the
level that we expect ourselves to. And I just wanna
say that the idea -- I know that the man from the
Bronx who testified earlier -- who, by the way, I
would hire in a second; he's obviously a great
attorney -- [laugh] but he's not familiar with my
office in Brooklyn; right, but many things that he
said, for example, are not applicable to my office
and I think you can tell that because people from
Brooklyn did not say the same thing. And I wanna say
is; I get to tell the Mayor's office what I can do in
Brooklyn with my staff and whatever ways I
personally, for Brooklyn Defender Services, would
enhance our services in order to provide homicide, if

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 89

2 I choose to do that. And I think it's important and
3 in some ways I think it's a hardship on us; we're at
4 a disadvantage today at this hearing without having
5 the RFP; I think the Council is at a disadvantage at
6 this hearing without seeing what the RFP itself
7 actually says. But I also think it's unfair and in
8 some way insulting to those of us -- I've going this
9 work for 33 years; this is my life, I think you all
10 know this, that I'm passionate about this work; I
11 have so many attorneys on my staff that are working
12 longer than I have, including attorneys who have been
13 on the homicide panel in the past, who have tried
14 many dozens of cases, and I also think it's hard, for
15 those of you who are sitting here, to really access
16 what experience is important experience to do this
17 work. I would really say yes, I think homicide's
18 unique, but there's nothing so special about a
19 homicide that makes an attorney who's handled a
20 mandatory persistent felon who's facing 25 years to
21 life on a serious rape or robbery or any... you know,
22 attempted murder case, that that person is not
23 qualified to do a homicide case; the only difference
24 is an autopsy. We have seen all kinds of medical
25 reports and you know, in all types of cases. So you

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 90

2 know I just feel that I need to express that the
3 emphasis on experience -- you know what's important,
4 good lawyers, really good, high-quality lawyers who
5 stop at nothing to make sure that their clients get
6 the best representation, that their clients get every
7 opportunity to prove whatever they need to prove in
8 their case to establish their innocence, to reduce
9 their liability, their criminal liability, to do that
10 in an efficient way. I mean again, I'm not here to
11 critique -- I have colleagues who I have a huge
12 amount of respect for [inaudible], I know you might...
13 you know, you wouldn't wanna work for me, but I just
14 wanna say that... you know we... I mean we share... you
15 know I'm a member of the Kings County Criminal Bar; I
16 share many of the same goals, and we all do; there
17 could be an attorney who's been practicing for 20
18 years and has never been a good attorney; there can
19 be an attorney that comes in to my office, and
20 believe me, I think we all know there are some who
21 are so talented and so dedicated and so passionate
22 and then they have the opportunity to get trained and
23 supervised by people like me who have been doing it
24 for 30 years and pretty much I think well know all
25 the different parameters of a case. And I think

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 91

3 you've made some really good points; I don't wanna
4 really belabor some of this, but I just have to point
5 out just a few things.

6 First of all, the issue of languages is a
7 very important issue and I'm glad you brought it up.
8 Immigration is a very important issue obviously in
9 New York City. I would say the idea that somebody
10 would have their wife or friend speak to a client
11 without a privilege, without a confidence, I mean
12 there's potential that person could be subpoenaed by
13 the DA to testify about what the person said on the
14 phone. I mean we have to respect our role; it is a
15 very profferer [sic] role to represent people who are
16 charged with crimes; we have to respect that; we have
17 to respect the fact that -- I'll give you an example.
18 If I have a client arrested right now, being
19 arraigned today, today, a lawyer can call me on the
20 phone from arraignment and say, I just picked up a
21 case of a woman who says she's been battered by this
22 man for 20 years -- and I've had cases like this --
23 let's not forget what some of these homicides are --
24 she's been battered by the same man for 20 years; she
25 just killed him; can I get an expert right now? Yes,
on the phone, right now, yes; I don't have to get

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 92

3 permission from a judge or anything like that, and
4 we've had that and that expert can be tomorrow in the
5 jail, talk to this woman while she's in the moment.
6 And I just wanna point out that we have a different
7 model and our goal is always to give our clients
8 everything that they need in the moment as quickly as
9 possible. We could have an investigator out to see
10 if there's video, literally, that same day. They can
11 call the investigator -- **[inaudible]** investigator and
12 say, can you send somebody out right now and see if
13 there's witnesses, right now; that's it, it's a phone
14 call or an email in today's world, as we well know
15 **[inaudible]**.

16 So I'm just pointing out to you that
17 there is a model, there's a difference in the model
18 and a good attorney is a good attorney, with 20 years
19 of experience, with 75 trials under their belt or
20 with 10 trials under their belt. The good attorney
21 is a good attorney and a lot of it is about the
22 resources, so having an invest... you know, and I guess
23 you'll hear more about this, and I just wanted to say
24 that.

25 Now you asked about mental health... first
of all, I wanna talk... I just really do wanna address

2 a couple of things that came up. One was the issue
3 of immigrants and access to services to immigrants.
4 You're from Queens; you're from the Bronx; I'm from
5 Brooklyn, I mean we all have a large immigrant
6 community; this is not an issue of just telling
7 somebody when you get convicted you're gonna get
8 deported; that's Padilla [sic] advisals, which I know
9 all about, of course, we all have to provide those,
10 but we provide a much deeper level of immigration
11 services in our offices. My office... the City Council
12 funds my offices doing **[inaudible]** services, meaning
13 that we represent people that are in jail being
14 deported. So we -- I'll just give you an example --
15 a case the other day -- our client was gonna take a
16 conviction, it was very carefully orchestrated, we
17 then collected all the information that we needed to
18 defend that client, when he was going to be deported,
19 we collected everything while the criminal case was
20 pending and when that client got put into immigration
21 detention, within one month, which the average is
22 between six months to a year, one month we had a
23 hearing and that client's been released. So the idea
24 that just telling somebody, you're gonna be deported,
25 is really I think the goal, is that the goal or is

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 94

3 the goal to give that person what he deserved, which
4 is... actually he had entitlement through -- I'm not an
5 immigration attorney, but you know, a waiver of...
6 whatever; it's like a waiver of deportation; he was
7 entitled to that. We have so many immigration
8 attorneys that we actually identified that remedy and
9 we prepared that, which involves getting documents
10 from other countries and having them translated; it's
11 very involved. So I thank the Council for those
12 services, but you understand the continuity of
13 services that help. I myself represented a
14 trafficking victim who was brought here -- I'm not
15 gonna say against her will, 'cause she thought she
16 was coming here for one purpose -- but she was
17 undocumented and this one many was bringing all
18 people from this one town to this country; she was
19 charged with attempted murder, it wasn't murder but
20 it was attempted murder; I was able to get her a
21 special visa, trafficking visa and today, three years
22 later, she's here, her kid is back with her, and she
23 has a green card and so does her kid. So these are
24 the kinds of services that you're funding our offices
25 to provide. So the idea that... and that person
could've been charged with murder just as easily as

attempted murder and she would've had the same
defense and the same right to -- it's just
unfortunately a matter of whether -- thank god that
person didn't die. And the point is that there are
other services that are important. Many people who
are charged with homicide do have a mental illness.
We don't wait for mental health court to treat those
people -- and homicides are not eligible for mental
health court -- we give them a social worker in the
office on the spot; we send somebody... I have a jail
liaison who, full-time, just goes to jail. I had one
the other day; I said, please go see this client,
called her up; she was at Rikers already, she went
and saw the client; the client was suicidal; we can
provide services on the spot, in the moment, very
quickly. And I don't think that should be minimized
just because it's a homicide case, because there are
a wide variety of homicide cases. Yes, some are
major conspiracy cases with very serious drug lords
and then there's other kinds of cases which are very
sad. There are parents who don't get medical
treatment for their child in time; there are people
who kill... you know, kill their abuser; I had a young
kid one time myself who killed his mother's abuser;

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 96

2 he was 17 years old, you know and I did an amazing
3 amount of work for that client; he got youthful
4 defendant treatment and probation. So the idea that
5 this is all about trying cases, and I just wanna say
6 that that's the last resort. Yes, I know many
7 attorneys **[inaudible]** who are very qualified to do
8 that work, as are many attorneys in our offices. But
9 that is not the be all and end all that you can try a
10 case; there is a lot more here. And so I'm not
11 speaking for the City when I say that that's what
12 they're doing, 'cause I don't speak for them, but I
13 don't want that to be unsaid today.

14 CHAIRPERSON LANCMAN: Thank you.

15 [background comments]

16 SERGIO DE LA PAVA: My name is Sergio de
17 la Pava; I'm here to testify on behalf of New York
18 County Defender Services as a Supervising Attorney
19 and someone who has been a public defender for 21
20 years; has represented multiple indigent homicide
21 defendants.

22 Now since its inception almost 20 years
23 ago, New York County Defender Services has devoted
24 itself exclusively to its goal of providing the best
25 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 full-time 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.

3 This point bears some deconstruction.

4 There's an undeniable stereotype, abetted perhaps by
5 pop culture and other cursory examinations; even some
6 of the earlier witnesses at this hearing, of the
7 full-time public defender as an overwhelmed and
8 inexperienced lawyer left to sink or swim of his or
9 her own devices. However, while stereotypes may have
10 some measure of power, crucial systemic decisions
11 like the instant one must be guided by facts. Those
12 facts are that the average NYCDS attorney has 14
13 years' experience; fully 40% of our attorneys have
14 more than 20 years' experience. If we focus solely
15 on that subset of attorneys an organization like ours
16 would entrust with homicide defense, the numbers are
17 even more striking. In fact, a remarkable 50% of our
18 attorneys meet or exceed the First Department's
19 certification level for handling homicide cases.

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

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 99

3 qualified attorneys have an average of 27 years of
4 experience and have collectively handled more than
5 300 homicide cases while conducting over 100 such
6 trials. Given those numbers, any suggestion of an
7 experience or qualifications deficit with respect to
8 NYCDS is plainly misguided.

9 The other element that makes our office
10 and all other institutional defenders ideally suited
11 to the provision of indigent homicide defense is our
12 development and access to the very resources most
13 integral to this special area of indigent criminal
14 defense. The truth is that truly superb homicide
15 defense can only be achieved by multiple
16 professionals working diligently and skillfully as
17 part of a cohesive team and it is here that
18 institutional defenders excel in a manner that should
19 be exemplary. Any responsible attorney engaging in
20 homicide defense will rely extensively on
21 investigators, mitigation specialists, appellate
22 practitioners, legal assistants, corrections
23 specialists, and other professionals who are not
24 always expected to litigate directly in the courtroom
25 still plan 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, corrections specialists, 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 attorneys, 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 and experienced 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 supervisions, 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

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 102

3 in multiple jurisdictions, for example, simply
4 cannot.

5 NYCDS shares the goal of ensuring a
6 system that provides only highest-level advocacy for
7 all indigent criminal defendants. For almost 20
8 years our office has focused exclusively on this goal
9 while deservedly earning a reputation for exemplary
10 courtroom performance that honors the dignity and
11 constitutional rights of our clients. If
12 appropriate, we eagerly welcome the opportunity to
13 extend our professional diligence, focus and
14 resources into this critical area. Thank you.

15 STAN GERMAN: I think we're right at
16 noon, so I'll say good afternoon, Council Members.
17 My name is Stan German; I'm the Executive Director of
18 New York County Defender Services and I think I can
19 offer this hearing a unique perspective. I am
20 somebody who started as a public defender in Kings
21 County at the Legal Aid Society, opposite Mr. Farkas,
22 who was a young prosecutor at the time. I am
23 somebody who then went into private practice; I was
24 on the 18B panel; I was on the Criminal Justice Act
25 of attorneys for the United States District Court in
the Southern District of New York, and now I have the

2 honor of having returned to indigent defense work as
3 the Executive Director of an organization, so I
4 really have seen the entire field.

5 Councilman Lancman and Gibson both asked
6 a lot of questions about the availability of
7 services; the assignment of services when you're on
8 the 18B panel, and with all due respect to the folks
9 who testified on behalf of the 18B panel, I think
10 they painted a very rosy picture. The reality is is
11 that when you need services the first thing you have
12 to do is start filling out paperwork, you have to
13 type up an order, you've gotta put all the
14 information in; you then have to go to a judge to ask
15 for permission to get that service, be it an
16 investigator, be it a social worker, be it an expert,
17 you have to at times explain what your defense is
18 going to be and to justify why in fact you need that
19 expert service, and all of this, as you can imagine,
20 takes time. There are times where a judge will limit
21 the amount of hours that an investigator could spend
22 on a case, where they will limit the time or the
23 money that will be used on an expert, and as both
24 Lisa and Sergio have already pointed out, time is of
25 the essence in these cases. We can get an

investigator in a case within minutes of an
arraignment, even before the person is arraigned. We
can get a social worker to go down to the jail while
it's still in arraignment and start to have a
conversation with that client, regardless of
language, regardless of where they are from, so time
is of the essence. I have heard horror stories from
members of the 18B panel who are despondent with
judges have cut their vouchers for work and hours
that they have put into the cases... [interpose,
background comments] I was on the 18B panel for about
eight years and I have heard it directly from
individuals who were upset when they cut their
vouchers, and what effect does that have then on that
lawyer the next time they have to do a case and the
amount of hours that they put in? I'm not blaming
the 18B attorney; I'm blaming the judiciary whose
role it is to oversee, essentially, the amount of
money and resources that is put into the defense of a
case. They're not overseeing the prosecution,
they're not telling Cy Vance in Manhattan how and in
what way he should spend money to prosecute a case,
but they are telling the defense and that system
needs to be broken, regardless of what the Mayor's

decision is on the distribution of homicide. You know we heard today that all three of the gentlemen who testified were solo practitioners; I was a solo practitioner; I had some associates, but time, time is an important asset when you are a solo practitioner. These are gentlemen who have responsibilities in large part in different boroughs, in different jurisdictions, in different courthouses; depending on the practice, in different states, and that all leads to being overstretched. One of the complaints that I have heard when I've been on case processing committees with the judges in our jurisdiction is that one of the primary delays to case processing is co-defending cases and the private bar; not because they're not dedicated; not because they're not good lawyers; they're busy, they're trying cases in different jurisdictions and sometimes just trying to get them where they could block out two weeks to try the case, they have to wait two, three, four, six months; it's understandable, but it is a situation that must be addressed when you are a dedicated institutional defender; we are in one courthouse, doing one type of case 24/7 and I believe that we will be able to handle these cases more

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 106

2 quickly. In the Bronx, where Councilperson Gibson is
3 from, we all know about the delays in cases. When I
4 was in private practice, I had a homicide that I was
5 ready to try at the 16-month mark and the judges
6 laughed at me, saying get in the back of the line;
7 come back when this case is about two-and-a-half
8 years old. That's the reality of what's happening in
9 some of these jurisdictions with respect to some of
10 these cases. The other issue is... [crosstalk]

11 CHAIRPERSON LANCMAN: Yeah, but [sic]...
12 I've gotta stop you. Does any of that have to do
13 with the 18B panel? I mean there are, unfortunately,
14 many, many reasons for delay, but we're talking about
15 the 18B panel and who should have murder cases. The
16 delays in the Bronx; does that have anything to do
17 with the reliance of 18B lawyers for homicide cases
18 as opposed to, let's say Bronx Defenders or Legal
19 Aid?

20 STAN GERMAN: I believe that as
21 institutional defenders dedicated to doing work in
22 one courthouse, we will be able to bring these cases
23 to trial more quickly.

24 LISA SCHREIBERSDORF: May I answer that
25 one? I just wanna answer that quickly and then go

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 107

2 back. Yeah, it's absolutely true. In Brooklyn, when
3 we do our case processing meetings, come... homicides
4 are in general much more delayed than other cases,
5 and one of the biggest causes of that is because the
6 attorneys are unavailable. There's a small group of
7 active members of the homicide panel and they're
8 always on trial, so oftentimes, well this is my
9 fifth... my -- you know let's say this attorney's fifth
10 trial in the lineup, let's say, so now if you're
11 talking about that particular case, you have to wait
12 until that attorney does those other five trials. Do
13 I think that we can change that, as providers? Yeah,
14 I think we could.

15 STAN GERMAN: And I will just end by...

16 [interpose]

17 CHAIRPERSON LANCMAN: How would you...
18 sorry... How would you change that?

19 LISA SCHREIBERSDORF: Well for one thing,
20 there could be more attorneys doing homicides and
21 doing other things so that instead of just doing one
22 trial after another after another, they have one
23 homicide case that they're working very hard on while
24 they have other responsibilities, like other types of
25 felonies that are plea bargaining, so they would not

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 108

2 necessarily -- that's one way, but again, I haven't
3 seen what the RFP looks like, so that's just one
4 example. The other example is, you know, being
5 careful about how they get assigned cases so that
6 they don't get into that situation. We have the
7 ability to move cases from one person to another,
8 which a private person doesn't have.

9 STAN GERMAN: Just two final thoughts..
10 [crosstalk]

11 CHAIRPERSON LANCMAN: Yeah, if you could
12 just...

13 STAN GERMAN: one is that... you know, one
14 of the things that the institutional providers
15 obviously have is oversight -- we have supervisors,
16 we monitor caseloads; we see what folks are doing on
17 their cases. I can tell you that in eight years on
18 the 18B panel nobody ever looked at my caseload --
19 how many cases I have; am I overextended -- it's just
20 not their role and that's not the way that system
21 works.

22 The last thing I will say, and this is to
23 Councilperson Gibson's point of view, which is, this
24 is personal to me as well, Councilperson; I am a
25 product of Washington Heights, I am a son of

2 Dominican immigrants; I know all too well that the
3 majority of folks that my office represents, and all
4 of us represent, are black and brown, mostly male
5 individuals. I have had family members who have been
6 murdered; I have had family members who have
7 committed murder, so the notion that I would somehow
8 trust these kind of cases to unqualified,
9 inexperienced and folks who are not capable of
10 delivering first-rate legal services is insulting,
11 quite frankly, and I can tell you that I take this
12 job to heart and I can assure you that it is personal
13 to me, to my organization and to all of my sister
14 organizations as well.

15 CHAIRPERSON LANCMAN: Let me ask you a
16 question, because one of the things that Mr. Sokoler
17 brought up, and which you know, I'm aware of, has to
18 do with the First Department's Indigent Defense
19 Organizing Oversight Committee from 2012-2013 and he
20 testified, which I think is an accurate
21 representation of what the report concluded; the
22 report clearly states that the providers allow a
23 significant number of trial attorneys to represent
24 indigent people in both felony misdemeanor criminal
25 trials who have not met the First Department

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 110

2 qualification standards for handling these cases.

3 The report details the specific numbers of attorneys
4 for each of the providers that do not qualify under
5 the City's standards -- Bronx, 21 Legal Aid attorneys
6 handling misdemeanors; 13 Legal Aid attorneys
7 handling felonies; New York County, 28 attorneys
8 handling felony cases for Legal Aid do not meet First
9 Department standards. I mean it's not as if the
10 institutional providers don't have their problems in
11 meeting the Department's guidelines and standards,
12 [background comment] they don't mention New York
13 County Defenders; I don't... we don't know... [crosstalk]

14 STAN GERMAN: That's because it's zero.
15 Every single one of my attorneys in that report met
16 First Department standards.

17 CHAIRPERSON LANCMAN: Right. So you
18 understand though that this policy is not gonna... the
19 RFP, I would assume, is not going to be awarded only
20 to New York County Defenders, but presumably, all of
21 the public defender organizations will get their
22 piece, so...

23 STAN GERMAN: Well I mean I will let
24 other folks speak as to, you know, what are the
25 nuances of their organizations. You know, with

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 111

2 regard to certification process, I think a lot of
3 things have changed since those standards were first
4 promulgated in 1996. But I know that in our
5 discussions, you know, we are only going to trust the
6 most qualified and experienced attorneys to do this
7 kind of case. I had a meeting with 20 attorneys in
8 my office and I told them, you know, more than half
9 of you, although you're qualified and have maybe even
10 handled homicides, will not be doing homicides
11 under this process if we were entrusted with handling
12 these types of cases. So I just think there's a
13 disconnect between talking about certification level
14 for misdemeanor attorneys and when they start
15 handling felonies and when we're talking about the
16 most serious cases in the criminal justice system,
17 and I don't believe there is a single executive
18 director of any institutional provider that is just
19 going to hand this over to somebody who is not 100%
20 qualified and experienced to do so.

21 CHAIRPERSON LANCMAN: But I'm hearing
22 that there's a willingness to hand these cases over
23 to very, very qualified criminal defense attorneys
24 who might be handling very, very serious felonies but
25 not necessarily homicide cases, so one of the pillars

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 112

2 of the argument that this is a bad move is that
3 homicide cases require homicide experience; do you
4 disagree with that? And then I'd like to ask that of
5 Ms. Schreibersdorf.

6 STAN GERMAN: I'm gonna let Mr... 'cause
7 he's addressed this issue with regard to homicide
8 experience in our office, so Mr. de la Pava.

9 SERGIO DE LA PAVA: Well I think, as
10 Mr. German said, we have 21 attorneys in our office
11 who not only are qualified to handle homicides, but
12 are either currently doing so or have done so in the
13 past. In fact we have, generally speaking, about
14 four homicides a year at New York County Defender
15 Services, between three and four, so we're handling
16 these cases now and the procedures that are in place
17 when we handle these cases are to ensure that these
18 cases are steered to obviously the most experienced,
19 most talented, most effective attorneys we have. So
20 it's just a question of obviously once we see the
21 actual figures of tweaking the system of how we would
22 go about doing that when you're talking about, you
23 know, an additional number of cases, but this is not
24 something we don't... [crosstalk]

25

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 113

2 CHAIRPERSON LANCMAN: So the response
3 from New York County Defenders to the question: are
4 homicide cases special, the response is: we've got
5 homicide attorneys.

6 SERGIO DE LA PAVA: Correct, we agree
7 they're special and we treat them in a special
8 manner...

9 CHAIRPERSON LANCMAN: Okay.

10 SERGIO DE LA PAVA: and we would continue
11 to do so.

12 CHAIRPERSON LANCMAN: Lisa.

13 LISA SCHREIBERSDORF: I don't think it's
14 fair to say are they special; I mean I don't think
15 that's really the question that any of us are
16 answering. I think every case is special; there are
17 cases where a person charged with a misdemeanor could
18 be facing a lot more, you know horrible outcome than
19 some people charged with a homicide, I mean that's
20 true.

21 CHAIRPERSON LANCMAN: But that's my
22 question... [crosstalk]

23 LISA SCHREIBERSDORF: But my point is,
24 when you say the word "special," do you mean does it
25 take a unique set of experience in order to be able

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 114

2 to do an adequate job? And I guarantee you that
3 everybody that's tried a homicide, everybody that's
4 tried 70 homicides; there was a time when they were
5 on their first one. I mean to say that you can't do
6 a homicide unless you've done a homicide; I mean
7 means that pretty much all the... you know, all the
8 qualifications to do this will die when we die...
9 [interpose]

10 CHAIRPERSON LANCMAN: So then let me...

11 [crosstalk]

12 LISA SCHREIBERSDORF: and... wait, wait,
13 'cause I think it's important; one of the purposes of
14 an institutional provider, by the way, is to bring in
15 young people and bring them along for ten years so
16 they become qualified; something that does not
17 happen.

18 CHAIRPERSON LANCMAN: Alright, so let me
19 ask you the real question that's before us, which is
20 whether or not it's better for homicide defendants to
21 have attorneys who've done 10, 15, 20; 30 homicides
22 or whether it's better for them to have a really
23 exceptional trial lawyer doing their first homicide?
24 I get it, everyone's gotta... if you've done 70
25

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 115

2 homicides, at some point it was your first...

3 [crosstalk]

4 LISA SCHREIBERSDORF: I'll tell you what;
5 if I tried 10 rape cases and my client was charged
6 with raping and killing somebody; I would have a lot
7 of information about the medical evidence on that
8 rape charge that a person who tried 10 homicides that
9 related to drug cases would not have. And what I'm
10 saying to you is; it's really unfair. And as Stan
11 said, and I don't wanna say you're intentionally
12 insulting us, but the idea that you could somehow
13 quantify something that is really like our life's
14 work and say that somehow this is better or that is
15 better, when every case requires something different.
16 I never tried a homicide before I did one of my
17 clients who killed her husband, I never tried a
18 homicide, okay, but I won that case. For that client
19 I was the best attorney she could have ever had,
20 because I understood what she needed, what her
21 defense was gonna be; I decided whether or not to
22 waive a jury; all of these decisions that happened.
23 What I'm saying to you is, how could you... that's what
24 we do, we do this all day every day; we decide what

25

3 an individual client needs and we give them that what
4 they need.

5 And I wanna just respond, going back to
6 what you said about not meeting the standards on
7 misdemeanors. My office is not in the First
8 Department, so we're not actually bound by that
9 committee. There was a committee in the Second
10 Department, but -- actually, your father's on that
11 committee, Michael's father was out of it -- and
12 after the first analysis of the certification level
13 of our attorneys, when we first started in 1996 --
14 and we have our 20th anniversary right now -- after
15 that, I went back to him and I said, okay, like we
16 have some new people and he went back to the
17 appellate division and they decided, at that time,
18 that they didn't wanna do an ongoing analysis of our
19 work, because at that time, what he said to me was,
20 we believe that you know whether your people are
21 qualified. And you know, we take people out of law
22 school and we went to court and we got a special
23 order that allows us to have law graduates practice
24 under the supervision of an attorney in order to
25 learn how to do misdemeanor cases, right, who may not
technically qualify with that, but our appellate

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 117

2 division has agreed that that's okay. And so what
3 I'm saying is, if you did a clinic in law school --
4 and it's very different now than it was in 1996 --
5 you could've done the clinic for two years in law
6 school, you could've been a pro bono scholar where
7 you actually work full-time; you could've even worked
8 full-time in a defender office; you could be coming
9 from, you know a place where you... I think the federal
10 defenders, they have law students doing misdemeanor
11 trials in federal court; you could've had a lot of
12 experience; you don't technically meet the criteria,
13 but you come in, we have a special order that allows
14 you to practice as an attorney in court that the
15 appellate division has agreed to, and then we watch
16 everything you do all day, we have weeks and weeks of
17 training. To say that those people, even if they
18 don't meet some objective criteria, are not
19 qualified; that's what I'm trying to say, same thing;
20 individual people are qualified, based on their
21 individual experiences, the training that they get,
22 the supervision that they get, and the experiences
23 they get; it's all of those things, and, in some
24 ways, their maturity, the amount of time they've been
25 doing the work; I mean it's all relevant and that's

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 118

2 what we do, that's what we do all day; we decide --

3 and I'm sure they do it too -- well this attorney

4 just got admitted, so now they're qualified to do

5 felonies; are they ready to do felonies? What are we

6 gonna do to help them get ready? Or do they need to

7 do another trial or hearings; do they need special

8 training? You know when people go from the

9 misdemeanor panel in 18B to the felony panel and from

10 the felony to the homicide, they don't get extra

11 training. I could send somebody to a full-week

12 homicide training for capital defense in North

13 Carolina, which I would do; I'm sending somebody to

14 appellate training, you know, out of the state all

15 the time. We have people coming from other states; I

16 have an attorney on my staff who's did capital cases

17 in North Carolina; they bring a huge amount of

18 experience, right; she wouldn't actually qualify to

19 do felony, right, but she's done capital cases. So

20 my point is; these objective criteria... when you go

21 down the road of objectifying individual human

22 quality that attorneys bring to the table, you know I

23 think it's the wrong road and this procurement

24 process is designed for us to articulate what road it

25 is that we feel, as an office, we need to go down in

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 119

2 order to qualify, if we choose -- and maybe some of
3 the offices won't, I don't know -- if we choose to do
4 that, what way we would do it -- and by the way, the
5 first RFP that went out in 1995, there were seven
6 opportunities to bid; there were bids for all seven,
7 but only three were awarded; that's why my office is
8 20 years old. New York County came in the next year,
9 the next procurement; that's when somebody in New
10 York said, you know I think I would like to try that.
11 So they did not get it the first year; they just bid
12 the second year. So in other words, the City could
13 decide nobody's qualified to do this; the City could
14 decide people are qualified to do a certain portion.
15 I mean this is part of a technical process; it really
16 is very... you know, it's very driven by these
17 regulations and it's an important process, and it's a
18 valuable process; it's an opportunity, with the
19 guidelines in front of us, to say well this is how
20 I'll do it, and each of us will be different and
21 that's one of the points to having a wide variety of
22 providers in New York City.

23 And I just wanna end it by saying there's
24 a couple of other things that are very important with
25 providers; we bring diversity, okay; I mean, this is

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 120

2 not unimportant. You know the providers are able to
3 use all kinds of strategies to bring people out of
4 law school who are from the communities that we
5 serve, who speak languages. I don't wanna be very
6 pointed about the two panels, but that is the truth
7 of it; we have an opportunity to bring in people who
8 we can train up, who are young, who bring something
9 to this work that somebody whom else might not bring
10 to the work, right? What is... You know, what do these
11 two men bring that they speak Spanish to their own
12 client, right? What do I bring as a woman to a woman
13 who killed her husband? What does that bring? I
14 don't know, but it does bring something and I think
15 it's important. And I'm not saying the 18B panel
16 doesn't have diversity, but we have an ability to
17 affirmatively like go after that quality, right,
18 which we all do. We also have the ability... We have
19 all the technology already built; we have all the
20 computer systems, it's all there; we don't have to go
21 and get a grant to build it, we already have that.

22 And the last thing I really just want to
23 also comment on is the level of -- Michael -- they
24 were both homicide DAs, and I think if you ask them
25 to honestly say whether trying a homicide as a

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 121

2 defense attorney is exactly the same as trying a
3 homicide as a DA, I think they would honestly tell
4 you it's very different.

5 CHAIRPERSON LANCMAN: I don't think that
6 they said it was the same... [crosstalk]

7 LISA SCHREIBERSDORF: Okay, but what I'm
8 saying is the idea that they came into this with 20
9 trials of experience and somehow that's the same
10 thing as having 10 or 15 trials as a defense attorney
11 on like a very serious felony, right, to say that
12 somehow that's some magical bullet because they tried
13 a homicide as a DA so they could get right on the
14 homicide panel, you know that... I just think when we
15 get into these objective numbers where it doesn't
16 matter you know where you tried it or what... you know,
17 we just need to stay away from that... [crosstalk]

18 CHAIRPERSON LANCMAN: Yeah, I get it;
19 here's where... here's where I'm at though; we have a
20 system that, objectively, seems to be working,
21 certainly MOCJ couldn't point to any flaw in the
22 current system that was letting a homicide defendant
23 go unrepresented or represented by less than
24 qualified zealous attorneys; anecdotally, our
25 conversations with judges who are trying these cases

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 122

2 are satisfied with the current system, and so I don't
3 wanna trot out again if it ain't broke don't fix it,
4 but I'm not hearing anything that is compelling to
5 justify such a significant change and there are
6 concerns, and I have concerns, [background comment]
7 that both MOCJ will be unable to monitor and assure
8 the result that they are shooting for and that the
9 institutional providers will be able to have enough
10 attorneys who have actual homicide experience, which
11 I think is very valuable, to justify changing a
12 system that's working; that's where I'm at...
13 [crosstalk]

14 LISA SCHREIBERSDORF: I had ten jobs
15 available last year; I had 700 resumes, all of which
16 are basically qualified for that job. The idea that
17 we wouldn't have qualified attorneys from around this
18 country -- New York City is the most desirable office
19 -- the offices in New York City are the most
20 desirable offices for anybody that wants to be a
21 public defender around the country; I have
22 applications -- right now I have like maybe
23 [inaudible] just for lateral attorney; I have
24 applications from people on the 18B panel today that
25 wanna work for me not even to do homicides. There is

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 123

2 no shortage of qualified people, so I think we need
3 to get away from that. We hire people from all over
4 the country all the time, so... [crosstalk]

5 CHAIRPERSON LANCMAN: Qualified... Will
6 they be qualified homicide attorneys with New York
7 experience...? [crosstalk]

8 LISA SCHREIBERSDORF: Well they... I will
9 tell you, if I decide to bid, but... [crosstalk]

10 CHAIRPERSON LANCMAN: Look, if I
11 committed a homicide, which... you know... [crosstalk]

12 LISA SCHREIBERSDORF: If I decided...

13 CHAIRPERSON LANCMAN: you spend enough
14 time at the Council, you might; I'd wanna be
15 represented by somebody who's got homicide experience
16 in... [interpose]

17 LISA SCHREIBERSDORF: Okay, really?
18 Because if I showed up in court that day...

19 CHAIRPERSON LANCMAN: Right.

20 LISA SCHREIBERSDORF: only having done
21 one homicide trial, would you really think... and you
22 know me pretty well; you really think you wouldn't
23 want me to be your lawyer? You don't think I would
24 do everything I could to... I mean, I'm just saying; I
25 think that... [crosstalk]

2 CHAIRPERSON LANCMAN: You are sui
3 generis.

4 LISA SCHREIBERSDORF: that's kind of..
5 well, so **[inaudible]**... [crosstalk]

6 CHAIRPERSON LANCMAN: there's only one
7 you.

8 LISA SCHREIBERSDORF: that's right. But
9 my point being, it's not a fair thing to say, it's
10 not a fair thing to say what you think you would want
11 or what you would do, and I also don't think it's
12 fair to say that the system isn't broke. It is true
13 that the City is not -- and again, I don't speak for
14 the Mayor's office at all, but -- and I'm not privy
15 to their information because that's part of the
16 procurement; it's very secret, but they are not
17 saying to you it's not broken; they are saying that
18 isn't the reason we're doing it. And I'm not saying
19 it is broken, but I would say this, and I said this
20 to the *Law Journal*, there were 21 exonerations,
21 almost all homicide cases in Brooklyn alone the last
22 two years for cases that were handled by homicide
23 attorneys. Now I'm not saying that there aren't
24 major flaws in our system, including a lack of
25 discovery, as you well know is the biggest flaw in

2 our system, and in fact many of those cases were
3 prosecuted to [sic] withheld information, but I just
4 wanna give you an example of one case, which was
5 handled by an 18B attorney. The client was in
6 Florida; he was exonerated, so he was actually in
7 Florida when the murder happened; the DA was arguing
8 that he could've flown -- they knew he was in Florida
9 -- could've flown in, done the homicide and flew back
10 to Florida. There was a receipt in the DA's file
11 that actually showed that the person had used their
12 credit card in a hotel within an hour of the
13 homicide, okay. That was not turned over; that case
14 was exonerated because of what the prosecutor did,
15 and I don't wanna shortchange that; however, I would
16 tell you that if one of my attorneys thought what
17 that client was saying, they were in Florida, we
18 would have an investigator in Florida; we would get
19 our own receipt. So the idea that there isn't an
20 impact to resources on whether or not innocent people
21 get convicted every single day is a wrong thing to
22 think. And the idea that this system -- I'm not
23 saying it's broken, I'm not saying it's broken, I
24 can't say that, but I can say it could be a lot
25 better and maybe it is broken. Nobody here is saying

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 126

2 that it couldn't be improved a lot; the idea that 21
3 people have been exonerated, who were represented by
4 18B attorneys, you know, we have to look at that;
5 there has to be a look at whether that might be
6 impacted by the fact that they are too busy or that
7 they couldn't get the judge to give them an
8 investigator to go to Florida or you know, that they
9 just... you know it took them a long time to remember
10 that they needed to follow up on that because they
11 were trying 10 other cases. So I just think that's
12 an unfair way to... and [sic] analyze the situation, I
13 think the City's trying to find the best way to do
14 it; that's what they're supposed to do; I think
15 that's what they are doing. So I just wanna say that
16 I do think we can do a very good job and maybe a
17 better job... [interpose, background comment]

18 STAN GERMAN: I would just add that I
19 think the whole criminal justice system is broken and
20 the notion that somehow 18B homicides in New York is
21 immune from all of the issues that people are talking
22 about about mass incarceration, criminal justice
23 reform; this is a bipartisan issue. So I mean, I
24 think we'd be naïve to suggest that this is the
25 shining example of what works in the criminal justice

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 127

2 system but everything else is broken. I think to
3 Lisa's point, this is about evolution; this is about
4 can we improve the system; can we tackle these cases
5 in a different manner? And I think the answer to all
6 of that is yes.

7 CO-CHAIRPERSON GIBSON: Thank you very
8 much, and I also wanna thank you for the work that
9 you've done. And you know, certainly this hearing is
10 not about you versus us; this is about everyone
11 together and about making sure at the line at the end
12 of the day, the clients that are recipients of these
13 services are getting the absolute best. And so you
14 know, we at the City Council have invested in legal
15 services and we will continue to do that moving
16 forward. Certainly in light of everything that is
17 going on, legal services, moving forward, is going to
18 always be a critical priority. And so no, I
19 understand and you guys, this is your passion, this
20 is your life and so Chair Lancman and I are certainly
21 not taking that away from you at all. I don't want
22 you to feel like you have to defend your work,
23 because your work speaks for itself. You have a
24 record of accomplishment and you're standing on that,
25 so you don't have to prove to us the work that you

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 128

2 do, but I do think, you know, moving forward, you
3 know we just had general concerns with the Mayor's
4 Office of Criminal Justice and why we were moving
5 forward, because many of the question that we were
6 asking them, they simply did not have any answers,
7 and so just to say that we want to be in compliance
8 with law and we wanna make sure that we provide the
9 contracts necessary, to us isn't the only answer that
10 we should have moving forward as to why we're going
11 to make changes to an RFP in this fashion. So I
12 wanted to be clear with that and to thank you for
13 your work, because I do see the work that
14 institutional providers do give. For me, the
15 continuity is important, the wraparound services are
16 important; the easy access for many of my residents
17 that do not speak English, that sometimes agree to
18 anything just so they can go home, and I know that
19 from personal experience; I'm working with DA Clark
20 and many of those cases that come to the borough I
21 represent are very, very heartbreaking. I've been
22 to, sadly, too many funerals of young people who were
23 killed by other young people, and so to work with
24 that family, which I do, after the fact is extremely
25 tough, getting the families relocated, getting them

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 129

2 documented, 'cause many of them are undocumented, so
3 I know that's the work that you do, so we're not
4 taking that lightly at all.

5 What I wanted to ask is; MOCJ identified
6 that annually there are almost 500 of the homicide
7 cases, and the way the current contract is written,
8 the majority of those cases go to 18B. I wanted to
9 ask the question of how institutional providers pay
10 for some of the homicide cases that you have
11 currently. How is that paid for and then, all of the
12 wraparound services that you have assembled; how is
13 that also paid for as well?

14 STAN GERMAN: Well I mean, at New York
15 County Defender Services we are about 75% funded by
16 the City of New York, with 25% of our funding coming
17 from New York State. And so in New York County we've
18 had about -- the last few years -- 35 to 40 homicides
19 a year; we've handled about 3 to 4 of them. The
20 truth of the matter is that we've just used our
21 existing budget to address those few homicides that
22 we have handled. Obviously, if we're talking about
23 taking on a significant number of homicides, there's
24 gonna have to be significant funding increases to
25 address that. But as far as the 10% or so, the

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 130

2 homicides that we are handling currently, we just pay
3 for that out of our normal funding stream.

4 CO-CHAIRPERSON GIBSON: Okay. And I
5 appreciate you expressing the concern about any RFP
6 delay as it relates to the continuity of services for
7 some of the other misdemeanor cases, I mean that's
8 very important, so I definitely appreciate you
9 sharing that and reminding us as we move forward.

10 Without knowing all of the specifics,
11 because of the wonderful process of RFPs, moving
12 forward you anticipate that you would need to hire up
13 more staff and, you know, supportive staff as well;
14 you've talked about an overflow of resumes that you
15 get and the available pool. I mean we work in the
16 greatest city in this country; everyone wants to come
17 here because not only do you, you know, have an
18 abundance of cases, I mean that could be a good and a
19 bad thing, if we're thinking about homicide cases,
20 but also, the work you do is rewarding. You know for
21 me and the district I represent in the Bronx, when
22 you represent someone or even me and my office, you
23 know helping a family, it's the best because you give
24 them a new opportunity, you give them hope that they
25 can have a future, even despite a mistake that they

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 131

2 may have made. My district attorney has recently
3 started their Conviction Integrity Review Unit,
4 recognizing that there could be potential cases of
5 convictions that, you know, probably didn't need to
6 happen, so you know I recognize in the realm of
7 criminal justice there's room for everyone; there's
8 room for everyone to participate, to engage and to
9 really provide the critical service. So it is your
10 firm belief -- just going on the record -- that you
11 agree with the concept paper and the Mayor's Office
12 of Criminal Justice moving forward with the RFP in
13 the current structure of what we're talking about;
14 right?

15 [background comment]

16 LISA SCHREIBERSDORF: I don't think any
17 of us feel that it's our place to say whether we
18 agree to disagree; we're just here to say that the
19 most important thing is that there be sufficient
20 resources, no matter what, that there be sufficient
21 resources, and to the extent that that may not
22 totally be possibly true, given an amount of money
23 that's been spent all along on indigent defense, as
24 you well know, is maybe not sufficient, in any way of
25 providing services; that would be something I think

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 132

2 the Council should look at, which I think is the most
3 important thing to look at in this RFP, is just to
4 make sure that the Mayor, in making any decisions,
5 allocating proper resources to that.

6 In terms of the rewarding nature of our
7 work -- no, I'm very proud; we're opening a community
8 office in East New York, with help from the IOLA
9 Fund, which is a lawyers' account, and you know I do
10 think that all of us want to be the best for the
11 people that unfortunately... you know, it's getting
12 worse and worse because of the income disparities in
13 this city and I think we all agree that the most
14 important thing is that people get the best services
15 that they can get and that the proper amount of
16 resources is dedicated towards that, so that's all.

17 STAN GERMAN: And Councilperson Gibson, I
18 will say that it is one thing to say we can do the
19 work, but then there's a second part of the
20 conversation, which is the City has to fund us
21 appropriately. You know, we are not gonna do this
22 work on the cheap; we know what it takes; we know
23 what it takes: experts, transcripts, mitigation
24 specialists, forensic social workers, dedicated
25 investigators, right? That means hiring more

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 133

2 lawyers; not to do homicide, Council Member Lancman,
3 but to replace my lawyers who are handling other
4 kinds of cases, 'cause if I'm gonna slide these
5 experienced lawyers to do homicides, they're not
6 doing misdemeanors anymore, right; they've got to
7 focus on these very serious cases that demand an
8 extraordinary amount of time. So you know; folks
9 have to put the money where their mouth is; if they
10 want us to do it, that's fine, but you know it's
11 gotta be properly funded.

12 CHAIRPERSON LANCMAN: Great.

13 CO-CHAIRPERSON GIBSON: Thank you.

14 CHAIRPERSON LANCMAN: Thank you very
15 much.

16 STAN GERMAN: Thank you.

17 CHAIRPERSON LANCMAN: Our... [background
18 comment] panel; we've got a guy... [background comment]
19 but he's a smart guy, so stick around. Steven
20 Zeidman, CUNY Law School. Come on down. [background
21 comment] Do you swear or affirm the testimony you're
22 about to give is the truth, the whole truth and
23 nothing but the truth?

24 STEVEN ZEIDMAN: I do.
25

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 134

2 CHAIRPERSON LANCMAN: Thank you. Please
3 state your name and affiliation for the record.

4 STEVEN ZEIDMAN: My name is Steven
5 Zeidman; I am a Professor at CUNY Law School.

6 Thank you for this hearing; thank you
7 again for affording me the opportunity to speak and
8 also to say again, you know, kudos and gratitude for
9 all the focus on criminal justice; it's pretty much
10 unprecedented in the city.

11 So I come at this three ways; this is
12 what I think I can add. I was a supervising attorney
13 with the Legal Aid Society in Manhattan over 30 years
14 ago, so I have a sense of what institutional
15 providers can do. I served for several years on the
16 18B screening committee, which evaluated people who
17 wanted to be on the panel as well as people seeking
18 recertification. I was also a founding member of the
19 Indigent Defense Organization Oversight Committee, so
20 I crafted, wrote a lot of the standards and I wrote
21 the report that has been -- or was a co-author of the
22 report that people have referred to, so I think I
23 have my arms around this to a great degree.

24 But just let me suggest the following;
25 that I urge you to think about this unencumbered by

the knowledge of the way things presently are. In other words, if we were tackling, if we said homicides are the most serious charge on the books, how should people be represented? Otherwise we just end up with inertia. I mean this is an opportunity and I wanna echo some of the things that have been said. Lisa talked about a model; to me, that's what this is about, it's about developing a model. Whether MOCJ comes at this because of a technical reason or not, it's an opportunity to think: How do we handle homicides? And just indulge me for a second in particular to say I really wanna mention that because I know all the individuals involved, just about everybody; I have countless friends on the 18B panel, I know the heads of all the defender offices; I know Michael forever, Barbara forever, so I'm really not talking about individuals but I'm talking about system, and viewed through that lens, let me just ask you this question: Would we really start tomorrow, if we knew nothing, saying that the way we should represent people charged with homicide is to have them represented by sole practitioners paid \$75.00 an hour with various caseload caps and other impediments? And I think the answer would be

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 136

2 no, that that's not the ideal system, and for me,
3 that's what I'm striving for is to make sure that
4 poor people -- and overwhelmingly these are poor
5 people of color -- are provided the best possible
6 homicide representation they can. So I see this as a
7 very fortuitous opportunity.

8 Chair Lancman, you mentioned qualitative
9 studies; what's the data out there? I don't know;
10 are you familiar with the Philadelphia study; has
11 that surfaced at all?

12 CHAIRPERSON LANCMAN: I ask the questions
13 here, Counsel.

14 [laughter]

15 STEVEN ZEIDMAN: I reference it in my
16 written remarks. There was a study done by RAND back
17 in 2012, which was an effort to look at this
18 quantitatively; they looked at assigned counsel and
19 the Defender Association of Philadelphia, public
20 defenders and assigned counsel, and they were trying
21 to look at outcomes, effort expended, to try and see
22 how, other than anecdotal, what does this judge say,
23 and though they did that as well, they interviewed
24 judges, lawyers at the Defender Association of
25 Lawyers, at assigned counsel, and they came up with

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
2 THE COMMITTEE ON PUBLIC SAFETY 137

3 the following results. They had particular concern
4 or surfaced about assigned counsel homicide
5 representation.

6 First, there were conflicts of interest
7 of the appointing judges and of appointed counsel;
8 second, limited compensation available to appointed
9 counsel led to adverse consequences; and third, they
10 pointed to the relative isolation of appointed
11 counsel.

12 And let me just suggest that their
13 findings over a multiyear study, they're evident and
14 present here as well. So I'll just take them one at
15 a time and then I'll stop, 'cause I know it's late.

16 About 25 years ago, the Central Screening
17 Committee decided it was time to recertify lawyers on
18 the 18B panel -- this is for the First Department,
19 'cause essentially it had been an appointment for
20 life. And so a group of us who were on the panel, we
21 interviewed people and one particular person -- let
22 me just give you an example so you'll see why that 75
23 trials means something but not as much as you might
24 think. One lawyer we looked at had tried about 15
25 homicides the year before (which is an awful lot of
homicides to try in a year), and as we were reviewing

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 138

2 his files, because we said -- we wanna see your file
3 -- there was virtually nothing in the file, very
4 little pretrial prep -- and when he was called in to
5 the Committee he said, "You have to understand, I'm
6 one of the go-to guys. I get called in at the last
7 minute, hard case, and I've done so many homicides, I
8 can try them in a minute's notice," which concerned
9 us. The more questions were put to him, the answers
10 were the same: "I know how to try these cases." He
11 was not recertified.

12 We got a phone call the next day from the
13 Administrative Judge of Bronx County, Burton Roberts,
14 a well-known figure in New York City, who was livid
15 and his words in a conference call were: "He's one of
16 our go-to guys. He'll try a case in minute," which
17 to me raised the whole conflict; he didn't understand
18 that; for us, that was exactly what was troubling,
19 that someone would come in and say, I'll pick a jury
20 tomorrow; I know how to do this.

21 We also heard countless stories of
22 lawyers who didn't have secretaries or who did rely
23 on family members; children to act as interpreters or
24 to answer the phone. The limited compensation for
25

2 assigned counsel in the Philadelphia study also
3 creates adverse incentive in New York City.

4 Here; I'm not gonna use his name, but
5 there's a very highly regarded criminal defense
6 lawyer who used to be on the 18B panel, a dear
7 friend; he said to me at one point, he said, "It's
8 human nature," he no longer does the work, he said,
9 "So I have three cases on for Monday -- a privately
10 retained case, a Section 1983 Civil Rights Action,
11 and my 18B case -- they're all on for trial on
12 Monday. Where am I gonna spend most of my time that
13 weekend? No matter how well-intentioned I am; which
14 case is gonna get the bulk of my attention?"

15 The relative isolation of counsel noted
16 in the Philadelphia study is also cause for concern
17 in New York City. They argued that only an
18 organization, like a defender association, could have
19 entities like digital forensics units to mount
20 challenges to burgeoning technological evidence --
21 I'm paraphrasing from their report -- to keep best
22 abreast of the latest challenges to DNA evidence,
23 false confessions; misidentification. They cite to
24 the American Bar Standards that recommend a team
25 approach to homicides of at least two lawyers,

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 140

2 investigators, mitigation specialists, social
3 workers; mental health professionals. I also wanna
4 note; I've handled homicide cases in New York and you
5 know by and large, the prosecutors have a team. You
6 know my experience; there was never one DA there;
7 there was usually a cadre, not only investigators,
8 but other prosecutors as well. The idea of doing
9 this solo strikes me as a very, very heavy lift.

10 And the last point. There is an
11 unquantifiable benefit of shared organizational
12 knowledge. Where attorneys in the same office are
13 trying homicides, they're better equipped to confront
14 recurring issues. Lisa mentioned Detective Scarcella
15 in Brooklyn, the 21 exonerations. I don't think it's
16 a stretch to say that if those cases had been tried
17 in the same office, the seeming perjury that he kept
18 saying would have surfaced pretty quickly, as opposed
19 to he said it when he was represented by that lawyer
20 over there; two years later, a different lawyer, and
21 it took 20 years and lives were ruined and the City
22 paid our millions of dollars.

23 I think it's important as well to ask,
24 not just, as Chair Gibson mentioned about who are the
25 accused, and I believe somebody alluded to this as

2 well, but -- and maybe I'm dating myself, but I can
3 tell you, the panel that we looked at when we were
4 recertifying the lawyers, was overwhelmingly white
5 and male and older attorneys; the institutional
6 offices are much more diverse than that.

7 And last point, and then I will stop.
8 How does the diversity of the lawyers affect the
9 representation they provide? What are the
10 motivations of the lawyers? And I say this -- when I
11 was a public defender with Legal Aid and I was
12 involved in hiring and interviewing, I was looking
13 for people who had a demonstrated commitment to
14 defending the rights of poor people accused of crimes
15 or concerned about their clients, their clients'
16 families and communities. To me that was the single
17 greatest factor. Is that the case with someone who
18 says I was a prosecutor for three years and now I
19 wanna be on the 18B panel? My experience was; a lot
20 of those folks saw it as a source of income. And why
21 does that matter most with homicides?

22 I'll end by going back to the
23 Philadelphia study. The RAND study found that
24 appointed counsel were often critical of public
25 defenders from meeting frequently with clients to try

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 142

2 and persuade them to accept a guilty plea. As one
3 appointed counsel stated, "Time with clients is
4 overrated." Another attorney said, "I accept my
5 client's desire to go to trial at face value and I
6 leave it at that." On the other hand, the study
7 concluded public defenders spent more time with their
8 clients in ongoing efforts to build trust, and that
9 as a result they achieved more advantageous
10 negotiated pleas with shorter sentences.

11 A lot of homicide work isn't I can try a
12 case tomorrow; it's negotiating the best possible
13 disposition. So I come back to motivation. What is
14 your motivation for the work; are you gonna go to
15 Rikers Island Saturday, Sunday, Monday, Tuesday to
16 work with your client. If I'm getting paid \$75.00 an
17 hour and I'm near a particular cap, I hope I am that
18 sort of person who it's not about money, but then
19 again, human nature being what it is, I have my
20 concerns about it.

21 CHAIRPERSON LANCMAN: Thank you very
22 much; that's a very good summation of that
23 perspective. Do you have any questions?

24 CO-CHAIRPERSON GIBSON: Uhm-uhm.
25

1 COMMITTEE ON COURTS AND LEGAL SERVICES, JOINTLY WITH
THE COMMITTEE ON PUBLIC SAFETY 143

2 CHAIRPERSON LANCMAN: Okay. Don't take
3 my lack... [background comment] Don't take my lack of
4 questions for lack of appreciation [background
5 comment] for your being here and for the information...
6 [crosstalk]

7 STEVEN ZEIDMAN: The Philadelphia study,
8 please take a look [sic].

9 CHAIRPERSON LANCMAN: Yeah, you got it.
10 Thank you... [crosstalk]

11 STEVEN ZEIDMAN: Much appreciated [sic].

12 CHAIRPERSON LANCMAN: That concludes our
13 hearing; this will be probably the last hearing of
14 the Courts and Legal Services Committee for the year,
15 and that means that it is the last hearing that our
16 Counsel, Josh Hanshaft, will be with the Committee.
17 January 1st you can refer to him as Judge Hanshaft;
18 we thank him for his service and wish him all the
19 best.

20 [cheers, applause, background comments]

21 CHAIRPERSON LANCMAN: Thank you everyone.

22 [gavel]

23

24

25

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 December 15, 2016