

INTERIM REPORT TO THE
CHIEF JUDGE
OF THE STATE OF NEW YORK

COMMISSION ON THE FUTURE OF
INDIGENT DEFENSE SERVICES

December 1, 2005

Commission on the Future of Indigent Defense Services

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PREFACE

In January 2004, the Chief Judge of New York State, Judith S. Kaye, asked us to chair a commission on the future of indigent criminal defense services and we agreed. In February 2004, in her State of the Judiciary Report, Chief Judge Kaye announced the formation of the Commission, with members to be drawn from the bench, bar, private industry, public interest organizations and academia. The Commission's charge, she declared, will be to "examine the effectiveness of indigent criminal defense services across the State, and consider alternative models of assigning, supervising and financing assigned counsel compatible with New York's constitutional and fiscal realities."

In May 2004, Chief Judge Kaye appointed 31 Commission members and we began our work immediately. The Commissioners come from every judicial district in New York State and bring with them a variety of backgrounds and experience, including extensive experience in the prosecution, defense, and adjudication of criminal cases, experience in the state's legislative and budget processes, involvement in court and criminal justice improvement organizations and in academic scholarship regarding the structure and efficacy of indigent criminal defense delivery services. We are honored and grateful to be able to strive to secure the rights, guaranteed to indigent defendants in criminal cases to the effective assistance of counsel by the Constitution of the United States and the Constitution and laws of the State of New York, and thereby to enhance public confidence in the administration of criminal justice in the state.

This Interim Report represents our views at a meaningful juncture of the Commission's existence. More remains to be done, as will be specified in the Introduction to the Report. However, we thought it important to provide the Chief Judge with this Interim Report, which sets forth recommendations that are justified by our work to date. Our purpose is to facilitate

immediate public examination of, and dialogue about, meaningful change in the delivery of indigent criminal defense services, a matter that, given the liberty interests of every poor person who stands accused of crime, is of the utmost urgency. Our Final Report will provide extensive documentation for the recommendations contained in this Report and also will include more detailed recommendations for reform than are specified herein .

The recommendations in this Report follow from public hearings held by the Commission in different parts of the state, an extensive review of published materials, and information gathered to date by The Spangenberg Group, the Commission's consultant. We are grateful to the witnesses who testified at our public hearings, to the individuals who submitted written commentary to the Commission and to the many organizations in New York State and elsewhere, which shared the results of their work with us as it pertains to the Commission's inquiry. These groups include bar associations, legal services providers, the NAACP Legal Defense & Education Fund, Inc., the American Civil Liberties Union, the New York State Defenders Association, the New York Civil Liberties Union, the Association of Legal Aid Attorneys, the Northern Manhattan Coalition for Immigrant Rights, the Brennan Center for Justice, the League of Women Voters, the Prison Action Network and Prison Families of New York. We are also grateful to the Open Society Institute, the National Assoc. of Criminal Defense Lawyers, Davis Polk & Wardell and the Center for Court Innovation for their financial assistance, which has facilitated the Commission's ability to secure the consultant services of The Spangenberg Group.

We also acknowledge our debt to the Commission's able counsels, Paul Lewis, David Markus, John Amodeo, Robert Mandelbaum and Julianna Li, whose wisdom and energy have aided greatly the Commission's labors. William E. Hellerstein & Hon. Burton B. Roberts, Co-Chairs

Introduction

The constitutional right of a person charged with crime to the effective assistance of counsel lies at the foundation of our criminal justice system. That the effective assistance of counsel is a right also guaranteed to all who are too poor to retain counsel is another foundational element of our democracy, that which proclaims “equal justice for all.” Nonetheless, there is a serious question whether, in New York State, the right to the effective assistance of counsel is, in actuality, secured to each and every poor defendant who is charged with a criminal offense. To the extent that it is not, the written guarantees of the constitutional and statutory texts, as interpreted by the United States Supreme Court and the New York Court of Appeals, remain mere verbiage, high in theory, but low in fulfillment.

In 2004, when Chief Judge Kaye appointed the members of this Commission and charged us to examine the effectiveness of indigent criminal defense services across the state and to consider alternative models for securing effective representation, she did so with an awareness that, notwithstanding the increase of fees for assigned counsel by the Legislature in 2003, staggering defense needs still remained unmet. As she stated in her message creating the Commission, “[u]nder our current system created in 1965, which places the burden on local governments, a patchwork of indigent defense programs of varying size and character has developed around the State.” Thus, the Commission understood that its mandate was to (1) examine the current method of funding indigent defense services; (2) evaluate the effectiveness of the various types of criminal defense systems in use throughout the state; (3) assess the quality of the representation afforded indigent criminal defendants, including assessing the adequacy of the training received by the attorneys who deliver these services and the availability and quality of ancillary resources such as investigative and language translation

services.

The Commission Process

The Commission's members were chosen on the basis of their broad and diverse experience concerning the representation of the indigent accused and for their political, geographic and social diversity. Given the scope of the Commission's mandate, four subcommittees were established to deal with (1) the current status of indigent defense, (2) the need for change, (3) proposals for change, and (4) financing mechanisms. Subcommittee meetings were held between plenary Commission meetings. After several meetings, the Commission determined that, given the geographic and operational complexities of New York State's multi-faceted indigent defense system, the services of an experienced, highly reputable, outside consultant to supplement the expertise and experience of the Commission members was essential. The Commission also concluded that a comprehensive and accurate data collection on a statewide basis was required and that such a task could be accomplished only by a time-consuming, extensive field investigation and fact-gathering process. However, this task could not be undertaken efficiently by Commission members themselves, each of whom is actively engaged daily in his or her respective professions as judges, attorneys and academicians. Accordingly, Chief Judge Kaye and Chief Administrative Judge Lippman agreed that the well-regarded Spangenberg Group should be asked to serve as the Commission's consultant.

The Spangenberg Group, headed by Robert L. Spangenberg, its President, is a nationally recognized research and consulting company founded in 1985 and located in West Newton, Massachusetts that conducts projects intended to improve indigent defense systems. Its clients have included the federal government, state and local governments, the courts, indigent defense organizations, legal services organizations, the American Bar Association, state and local bar

associations, law firms, private foundations and other private sources. Among its most recent efforts are comprehensive reviews of indigent defense in Virginia and Georgia. As a result of the Georgia review, that state has completely restructured its indigent defense system.

The Spangenberg Group began its work for the Commission in January 2005. Mr. Spangenberg and his senior personnel have attended all commission and subcommittee meetings, have gathered a vast array of data, met with members of the New York State Association of Counties, the New York State Unified Court System and the New York State Defenders Association. They attended all public hearings conducted by the Commission and developed a Site Protocol, which was approved by the Commission. In September 2005, pursuant to that protocol, The Spangenberg Group began its site studies in 22 of New York's 62 counties; the site selections were determined by using various factors designed to produce the most accurate cross-section of indigent defense delivery systems.

The Commission held four public hearings: New York City on February 11, 2005; Rochester on March 11, 2005; Ithaca on March 23, 2005 and Albany on May 12, 2005. Ninety-three witnesses testified (see Appendix B) and others submitted written statements. The Commission's website, found at <http://www.courts.state.ny.us/ip/indigentdefense-commission/index.shtml>, contains information about the Commission, testimony from the public hearings, and this Interim Report.

The Commission's Final Report, to be completed in the Spring of 2006, will include The Spangenberg Group's detailed factual findings and data analysis and the Commission's final recommendations. In formulating our Final Report, the Commission will also take into account comments and suggestions that it receives from interested groups and individuals in regard to the recommendations contained in this report.

The History of Indigent Criminal Defense in New York – A Chronology of Crisis

There has never been a time in New York's history when the poor, as a class, have been afforded the legal representation essential to a proper defense. Historically, New York outdistanced other states in recognizing the importance of the right to counsel to a criminal defendant, which right is embodied in Article I, § 6 of the New York Constitution. Indeed, by the close of the 19th Century, New York had enacted a statute authorizing courts to appoint counsel in felony cases.¹ However, compensation for appointed counsel only existed in capital cases.² In 1951, the Legislature authorized counties to fund legal aid societies³ and, in 1961, the Legislature enacted Article 18-A of the County Law permitting, but not requiring, counties to establish public defender offices or contract with legal aid societies to represent indigent defendants. Some counties did, but most continued the traditional practice of judicially-appointed uncompensated counsel.⁴

In 1963, the United States Supreme Court delivered its landmark ruling in *Gideon v. Wainwright*,⁵ holding that the Sixth Amendment right to court appointed counsel applied to the states through the Due Process Clause of the Fourteenth Amendment. Two years later, the New York Court of Appeals, in *People v. Witek*,⁶ held that the right to counsel is a fundamental right and that, in all courts, the accused must be informed of the right to appointed counsel if they cannot afford

¹ L. 1881, c. 442; Code Crim. Proc. § 308.

² L. 1892, c. 521, Code Crim. Proc. § 308.

³ L. 1951, c. 798, County Law § 224 (10).

⁴ L. 1961, c. 365.

⁵ 372 U.S. 335 (1963).

⁶ 15 N.Y. 2d 391 (1965).

a lawyer.

The *Gideon* and *Witenski* decisions gave rise to the reality that New York had to address more comprehensively the need to finance a system of assigned counsel. As a result, the Legislature enacted Article 18-B of the County Law,⁷ which was signed into law by Governor Rockefeller on July 16, 1965. Although the law was supported by many bar associations, executive and judicial officials, opposition to it came from various localities which protested that Article 18-B would place serious financial burdens on counties. However, Governor Rockefeller, in his Approval Memorandum, expressed his view that “[s]tate per capita aid has been extended to counties this year for the first time, and that assistance far exceeds any cost which may be encountered by counties as the result of the establishment of a program for the legal defense of the indigent.”⁸

Article 18-B of the County Law required each county and the City of New York to establish a plan for providing counsel to indigent defendants.⁹ A locality could elect among several options. It could create an office of public defender¹⁰ and appoint through its legislative governing body an attorney to fill the position.¹¹ It could opt to designate a legal aid society.¹² Or, it could adopt a representation scheme presented by the plan of a bar association with the services of private counsel provided on a rotational basis; such a plan had to be coordinated by an administrator and be

⁷ L. 1965, c. 878.

⁸ *McKinney's 1965 Session Laws of New York*, p. 2117.

⁹ County Law § 722.

¹⁰ County Law § 722 (1).

¹¹ County Law § 716.

¹² County Law § 722 (2).

approved by the state administrator.¹³ The law also permitted adoption of a combination of such options.¹⁴ The law mandated that “[e]ach plan . . . provide for investigative, expert and other services necessary for an adequate defense.”¹⁵ However, private assigned counsel under § 722 received the rate of \$10 per hour for time out of court and \$15 for in-court time and, while counsel was authorized to obtain auxiliary services, such as the appointment of a private investigator, the amount for such service was capped at \$300.¹⁶

Although the *Gideon* and *Witenski* decisions made clear that enforcement of the constitutional guarantees of counsel for the indigent accused was the State’s obligation, the Legislature chose to place that responsibility on local governments. Thus, the expenses of counsel and other services were made a county or city charge.¹⁷ Other than a requirement that a public defender, legal aid society, or assigned counsel administrator file an annual report with the Judicial Conference,¹⁸ Article 18-B contained no standards by which the quality of representation afforded poor defendants could be assessed and it established no mechanism that could ensure that there would not be serious disparities, caused simply by the mere happenstance of geographic location. in the type of representation afforded indigent defendants.

The late 1960's and early 1970's brought a significant change in the recognition of a

¹³ County Law § 722 (3).

¹⁴ County Law § 722 (4),

¹⁵ County Law § 722.

¹⁶ County Law § 722-c.

¹⁷ County Law § 722-e.

¹⁸ County Law § 722-f.

defendant's constitutional rights within the criminal process and an extension of the right to counsel to juveniles, persons sought to be confined because of mental illness, and parolees facing revocation of their parole. The Supreme Court's decision in *Argersinger v. Hamlin*,¹⁹ which held that no person may be imprisoned for any petty offense without having been assigned counsel when requested increased significantly the right to assigned counsel for traffic infractions in New York if the defendant was to be imprisoned. The Supreme Court also made it clear that the constitutional right to counsel meant the right to the effective assistance of counsel at every critical stage of a criminal proceeding,²⁰ as did the New York Court of Appeals.²¹

If structural deficiencies from New York's chosen method for providing counsel to the poor were not immediately apparent, it did not take long for the system's defects to become evident and raise serious concerns. In January 1967, the New York State Bar Association, in conjunction with the Judicial Conference, held its first Indigent Defense Seminar to examine issues concerning shortcomings in indigent defense representation in New York. Among the issues heading the agenda were questions about the lack of uniform standards for eligibility and investigative procedures, standards and guidelines for representation of defendants, the scope of representation, and the representation of minors.

In 1981, the Legislature's realization that New York's system of indigent defense representation faced difficulties led to its funding of the New York State Defenders Association to

¹⁹ 407 U.S. 25 (1972).

²⁰ *McMann v. Richardson*, 397 U.S. 759, 771 n4 (1970).

²¹ *People v. Bennett*, 29 N.Y.2d 462 (1972); *People v. LaBree*, 34 N.Y.2d 257 (1974); *People v. Droz*, 39 N.Y. 2d 457 (1976);

administer a Public Defense Backup Center. The Association's mandate was to help defenders and their clients by assisting with cases, securing experts, and training. The Association was also called upon to “. . .review, assess and analyze the public defense system. . . identify problem areas and propose solutions in the form of specific recommendations to the Governor, the Legislature, the Judiciary and other appropriate instrumentalities.” Fulfilling that charge over the next dozen years, the Association filed numerous reports detailing the ever-growing shortcomings in New York's indigent defense system.

With regard to rates of pay for assigned counsel, the Legislature in 1977 raised the rate for out-of-court work from \$10 to \$15 and from \$15 to \$25 per hour for in-court work. In 1986, the Legislature increased the compensation rates for assigned trial counsel to \$25 for time expended out of court and \$40 for in-court time and authorized the payment for all work done on appeals at the in-court rate.

From 1986 to 2003, however, there was no change in the rates paid to assigned counsel. During this time, bar associations and other interested organizations and legal groups expressed growing concern about the amount of funding available for indigent defense representation as well as the quality of representation. For example, in 1994, the New York County Lawyers Association (NYCLA) raised serious questions about the quality of representation available to the indigent and the impact of decreased funding on defense entities. Consequently, it authorized its President to form a Task Force on the Representation of the Indigent. That same year, in New York City, Mayor Rudolph Giuliani reached an agreement with state court officials to begin using, as a cost savings measure, fewer 18-B attorneys to represent indigent defendants. The impact caused a greater burden on The Legal Aid Society's ability to fulfill its contractual obligations with the city. However,

when the Association of Legal Aid Attorneys went on strike, Mayor Giuliani proposed to reduce the Society's funding by \$16 million and issued a call for Requests for Proposals from nascent competing defense organizations to take over work of the Legal Aid Society at both the trial and appellate levels. As a result of this process, New York County Defender Services, Queens Law Associates, Brooklyn Defender Services, Bronx Defenders, the Center for Appellate Litigation, Appellate Advocates, and the firm of Battiste, Aronowsky & Suchow (in Richmond County), were allowed to contract with the city for defense work.

In June 1995, NYCLA's Task Force urged the immediate creation of a Board of Trustees for Indigent Defense to oversee and secure the professional independence of New York City defender organizations. It recommended that the Board have the authority to establish general policy for all individual or institutional counsel providing for the criminal defense of the indigent.

In October 1995, the Appellate Division, First Department established the Indigent Defense Organization Oversight Committee (IDOOC) to monitor the operation of organizations that contract with the City of New York to represent indigent defendants in criminal proceedings.²² However, IDOOC's mandate did not include the oversight of assigned counsel programs. On July 1, 1996, IDOOC issued its standards, "*General Requirements for All Organized Providers of Defense Services to Indigent Defendants*," which were adopted by the Appellate Division, First Department as court rules. While IDOOC has no power legally to alter the funding of any defender organization not in compliance with its standards, the court has the power to refuse to accept an

²² See, 22 NYCRR, Part 613.5.

organization's appearances. No body similar to IDOOC has been created elsewhere in the State.²³

In February 1997, NYCLA's Task Force declared that the rates of compensation in New York State established in 1986 were inadequate and "inconsistent with New York's commitment to equal justice." In December 1997, the New York State Defenders Association called for state support of assigned counsel plans as well as legal aid societies and public defender systems. In 1998, IDOOC issued a report concluding that, at its current funding level and caseload levels, The Legal Aid Society of New York was not fulfilling the standards it had established. That same year, the New York State Defenders Association held fact-finding hearings throughout the state at which numerous witnesses testified to widespread inadequacies in the representation afforded to indigent defendants.

By June 1999, the Unified Court System expressed its own deep concern with the inadequacy of assigned counsel fees and Chief Judge Kaye proposed using \$63 million of the state's share of surcharge dollars to offset the costs of a fee increase. Her plan was endorsed by the New York State District Attorneys Association, bar leaders, the four presiding justices of the Appellate Division and Attorney General Eliot Spitzer. In September, the Deputy Chief Administrative Judge for Justice Initiatives, Juanita Bing Newton, convened a working group to find solutions to the fee crisis underscored by Chief Judge Kaye.

In January 2000, the Unified Court System issued a report, "*Assigned Counsel*

²³ The only body with any similarity to IDOOC was The Oversight Committee for the Criminal Defense Organizations for the Appellate Division, Second Department, appointed in 1997 by then Presiding Justice, Guy A. Mangano. The Committee was formed in response to a request by the Mayor's Criminal Justice Coordinator for an evaluation of the performance of the criminal justice defender groups created within the Second Department in 1996 by the City of New York. In February 1998, the Committee issued its evaluation of three new defender organizations and found them to provide quality representation. However, neither The Legal Aid Society nor the 18-B Panel, by far the largest defense providers in the city, were evaluated, and there is no indication that the Committee is currently operational.

Compensation in New York: A Growing Crisis.” The report focused exclusively on a single aspect of the crisis in indigent defense services – that caused by the low rates of compensation and it urged that the rates be increased. The report also urged that the state government should share the cost of assigned counsel compensation, “which imposes considerable fiscal burdens on local governments.”

In February 2000, the New York County Lawyers Association filed a lawsuit in Manhattan Supreme Court in *New York County Lawyers Association v. New York State, et al*, alleging that indigent adult defendants and children in the First Department were being denied their constitutional rights to effective legal assistance. In January 2001, the Governor announced the creation of a joint task force to study the compensation rates for law guardians and assigned counsel and to come up with a proposal for legislation.

In March 2001, the Appellate Division’s Committee on the Legal Representation of the Poor issued a report entitled *Crisis in the Legal Representation of the Poor: Recommendations for a Revised Plan to Implement Mandated Governmentally Funded Legal Representation of Persons Who Cannot Afford Counsel*. The report stated that “[t]he entire system by which poor people are provided legal representation is in crisis.” The report concluded that the crisis went well beyond the low rates for assigned counsel. It pointed out that the key causes of the crisis were the “lack of resources, support and respect, [and] inadequate funding of institutional providers combined with ever-increasing caseloads. . .” Accordingly, in addition to advocating for an increase in assigned counsel rates, the Committee called upon “the New York State Legislature to reconsider the entire legislative structure relating to governmentally funded legal representation of the poor.” Also in March 2001, the New York State Defenders Association published a report entitled, *Resolving the Assigned Counsel Fee Crisis: An Opportunity to Provide County Fiscal Relief and Quality Public*

Defense Services. Among other things, the report recommended the creation of an independent and politically insulated statewide Public Defense Commission to oversee both the distribution of state funds and the provision of defense services.

In April 2001, *The New York Times* published an editorial, “Drive-by Legal Defense,” which commented on a three-part series on New York’s defender system written by two of its journalists. The editorial characterized the series as descriptive of a defender system in which “underpaid, ill-prepared, virtually unsupervised private lawyers sometimes represent hundreds of defendants per year, leaving little time or incentive for them to master the facts, prepare and argue the cases or file appeals of dubious convictions.” “There is a real question,” said *The Times*, “whether many defendants are getting the legal representation to which they are entitled, or are receiving merely token representation to give their trials a veneer of constitutionality.” *The Times* observed further that “[e]ven the public and nonprofit institutions that defend many of the state’s indigent defendants are so starved for funds that they cannot do their best for clients.” The editorial also called “for a strong state role – preferably through a politically insulated commission – in setting quality standards . . . and in exercising vigorous oversight to make sure those standards are met.”

In July 2001, asserting that the indigent public defense system was on the verge of collapse, Michael Whiteman, former counsel to Governor Rockefeller, Richard Bartlett and Warren Anderson announced the formation of The Committee for an Independent Public Defense Commission and presented a bill to the Governor and the Legislature to establish such a commission.

In May 2002, Senator Dale Volker and Assemblyman Martin Luster introduced bills to raise assigned counsel rates to \$75 per hour, eliminate caps, index the fees to the cost of living and create an independent public defense commission to promulgate standards and to serve as the conduit

for state financing of up to 40 percent of the cost of local defense systems.

On February 5, 2003, Manhattan Supreme Court Justice Lucindo Suarez rendered his decision in the lawsuit brought by the New York County Lawyers Association. He found that New York State's failure to increase the compensation rates for assigned counsel violates the constitutional and statutory right to meaningful and effective representation. He declared the statutes prescribing those rates unconstitutional as applied, and directed payment of \$90 an hour without distinction between time spent by counsel in court and out of court, and without ceilings on total per case compensation, until the Legislature addresses the issue. Describing the evidence bearing on the representation afforded the indigent, Justice Suarez stated:

Too many assigned counsel do not: conduct a prompt and thorough interview of the defendant; consult with the defendant on a regular basis; examine the legal sufficiency of the complaint or indictment; seek the defendant's prompt pretrial release; retain investigators, social workers or other experts where appropriate; file pretrial motions where appropriate; fully advise the defendant regarding any plea and only after conducting an investigation of the law and the facts; prepare for trial and court appearances; and engage in appropriate presentence advocacy, including seeking to obtain the defendant's entry into any appropriate diversionary programs.²⁴

In May 2003, the Legislature enacted legislation increasing the rates for assigned counsel.²⁵ The key provisions of the law, which took effect January 1, 2004, (a) increased assigned counsel fees to \$60 per hour for misdemeanors (with a per case cap of \$2,400) and \$75 per hour for felonies and all other eligible cases (with a per case cap of \$4,400), (b) raised the caps on expert and investigative services to \$1,000 per provider, (c) created a revenue stream for some state funding of defense services from various fees, such as attorney registration fees and Office of Court

²⁴ *New York County Lawyers Association v. New York State, et al.*, 196 Misc.2d 761, 774-75, 763 N.Y.S.2d 397, 403 (Sup. Ct. N.Y. Co. 2003).

²⁵ S.1406-B/A. 2106-B.

Administration charges for various electronic database searches, (d) established an Indigent Legal Services Fund, under the joint custody of the Commissioner of Taxation and the Comptroller, to distribute State funds based on the percentage of the total amount of local funds spent by localities on public defense statewide, and (e) created a task force to review the sufficiency of assigned counsel rates which sunsets on June 30, 2006. However, monies from the Indigent Legal Services Fund first go to reimburse the State for payment of law guardians. The remainder is to be distributed to localities based on the percentage spent by a locality of the overall statewide total for public defense services.

On November 5, 2003, at Pace University Law School, the Office of Justice Initiatives in the Office of Court Administration brought together criminal defense attorneys, prosecutors, judges, and other stakeholders in the criminal justice system to examine the structure, finance, and quality of representation provided by New York's indigent defense system. The decision to hold the summit was prompted, in part, by the Legislature's increase in rates for law guardians and assigned counsel in criminal cases. Experts from across New York State and the country identified major problems in New York's indigent defense system. The participants who addressed the structural design of the system reached a consensus on the following essentials for a sound defense system: (1) detailed statewide standards of practice for public defense providers; (2) provision of meaningful training, supervision and mentoring of attorneys; (3) parity in salary and resources between the prosecution and the defense; (4) ensuring defender independence and (5) development of a client-centered ethos.

In 2004, the Special Committee to Ensure Quality of Mandated Representation was created by then New York State Bar Association President, A. Thomas Levin. The Special

Committee was charged with the duty of studying the issues that arose from the rate increase and the responses of the counties, and recommending to NYSBA's Executive Committee steps that might be taken to ensure that mandated legal representation would satisfy constitutional standards. The Special Committee decided that the most effective measure that NYSBA could take *in the short term* to ensure the quality of mandated representation would be the promulgation of standards for the provision of such representation. Accordingly, the Special Committee produced an extensive set of standards which was approved by NYSBA's House of Delegates on April 2, 2005; the Association has also recommended that the standards be adopted as court rules. The Special Committee noted, however, that it "made no qualitative judgments about the different provider systems allowed under 18-B."

Among the standards which NYSBA has determined are essential to a quality public defense system are: (1) a highly qualified and well-trained staff who are committed to the defense function; (2) an independent board of directors that sets policy; (3) limitations on caseload and workload that its lawyers assume; (4) intensive training for each lawyer; (5) a strong support staff, including full-time professional investigators and other relevant personnel.²⁶ In October 2005, the Special Committee issued a follow-up report in which it urged NYSBA to "advocate for the creation of an independent public defense mechanism empowered to provide oversight, quality assurance, support, and resources to providers of mandated representation and to advocate for funding and reform when appropriate."

It is within this setting that this Commission set out to fulfill our mandate to examine

²⁶ Also, in July of 2004, the Chief Defenders of New York State approved *Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State*, which were adopted by the Board of Directors of the New York State Defenders Association.

New York State’s indigent defense system as it currently exists and to consider alternative systems, if warranted.

The Continuing Crisis in Indigent Defense Representation

Although we await The Spangenberg Group’s completion of its statewide site-survey of indigent defense representation and data analysis, the research already completed and the extensive testimony delivered at the four public hearings held by the Commission compels but one conclusion: the indigent defense system in New York State is both severely dysfunctional and structurally incapable of providing each poor defendant with the effective legal representation that he or she is guaranteed by the Constitution of the United States and the Constitution and laws of the State of New York. In actuality, it is a misnomer to call it a “system” at all. Rather, it is a composite of a multiplicity of modalities, all of which are sanctioned by the statutory framework which New York State adopted in 1965 when it enacted Article 18-B of the County Law. Unfortunately, this framework has resulted in a disparate, inequitable, and ineffective system for securing constitutional guarantees to those too poor to obtain counsel of their own choosing.²⁷

Deficiencies that are apparent from our research to date and the testimony at the public hearings are numerous and varied. Among the most troubling systemic problems that emerged from the testimony at the Commission’s four public hearings are the following:

- ! There are 1,281 town and village courts (also known as “justice courts”) outside of New York City with 2,149 town and village justice positions. The

²⁷ While the Commission’s mandate was limited to indigent criminal defense, both the on-site visits of The Spangenberg Group and testimony before the Commission has made clear that identical problems affect representation of adults in family court. This representation, carried out by the same 18-B providers, with the same staff, under the same statutory scheme (*see* Family Court Act § 262 [c]), needs to be addressed.

majority of the town and village justices are not lawyers. Like city courts, town and village courts are “local criminal courts” and have trial jurisdiction over misdemeanors, violations and traffic infractions committed within their boundaries. In addition, town and village courts have preliminary jurisdiction over felonies committed in any town located in a county where such town or village court is situated. In 21 counties outside of New York City, there is no city court and thus the 365 town and village courts in these counties have original jurisdiction in each of the aforementioned criminal cases.²⁸ We were informed by numerous witnesses and other sources of practices among many town and village courts which deprive indigent defendants of their right to the effective assistance of counsel. Specifically, that there is significant delay in the time between application for appointed counsel and actual appointment of counsel. We were told that, in those town and village courts, there is even a lack of a clear understanding as to which cases trigger the right to counsel. This is attributable largely to the absence of uniform statewide standards that inform the local courts exactly what is required of them to ensure indigent defendants’ constitutional and statutory rights.²⁹ We also learned that indigent

²⁸ The town and village courts in New York State are not courts of record and there is no central database reporting the number of court appointments or the cost of assigned criminal defense counsel in them. The funding for court-appointed counsel in these courts is the responsibility of the county in which the court is located. Town and village judges sign the payment vouchers submitted by court-appointed counsel and send the vouchers to the county for payment.

²⁹ At the recommendation of his Advisory Committee on Criminal Law and Procedure, Chief Administrative Judge Lippman issued an Administrative Order adopting a rule (22 NYCRR

defense counsel are often not available to attend the numerous town and village courts. In this regard, it is of critical importance to recognize that town and village courts handle the largest number of cases coming before the state's criminal court system and that they contribute greatly to state and local government coffers.³⁰

! There are no clear, uniform standards regarding eligibility determinations and procedures. Currently, a defendant may be found eligible for appointment of counsel in one county and ineligible in a neighboring county. Frequently attorneys, including public defenders and assigned counsel, are charged with the responsibility for making initial eligibility determinations, which conflicts with their own workload interests and, at times, their ethical obligations. Judges, court clerks, public defender support staff and probation officers also share in the responsibility of determining eligibility for public defense services with limited or no standards to follow.

! There is no uniform statewide standard that defines what "adequate" indigent

§ 200.26) devised by the Committee creating an obligation on town and village courts to make an initial determination of eligibility for assigned counsel at arraignment where a defendant is being held without bail or is unable to post bail. If the court determines that the defendant is eligible for counsel, it must immediately assign counsel and notify the defense provider and the local pretrial services agency of the assignment.

³⁰ Despite the lack of a centralized database containing indigent defense appointment and expenditure figures in town and village courts, all justice courts must account for and send all fines and fees collected by the court to the New York State Comptroller by the 10th of every month. According to the State Comptroller's Office, in 2004 the combined total revenue for all justice courts throughout the state amounted to \$175,989,926. Of this total revenue, \$78,422,182 was distributed to the state, \$10,488,627 to the counties and \$87,019,117 was retained by the localities.

defense services means. While the New York State Bar Association recently adopted *Standards for Providing Mandated Representation*, and the New York State Defenders Association promulgated *Standards for Providing Constitutionally and Statutorily Mandated Representation in New York*, these standards are not binding on anyone.³¹ One county reportedly defines “adequate” representation as sufficient if it avoids “ineffective assistance of counsel” claims on appeal — an after-the-fact standard used by appellate courts to determine whether a criminal conviction should be reversed. At least one public defender also thought that this standard determined the quality of representation in his office: that no conviction from his office had ever been reversed on ineffective assistance grounds, he maintained, meant that all attorneys in his office had never been less than effective.

! Along with counties, courts feel pressure to safeguard county dollars and to move cases along, often to the detriment of indigent defendants. One County Executive wrote a letter to judges telling them to view themselves as “gatekeepers” of county funds, and attached a list of court-appointed cases and dollars spent. One defender told of the County Executive’s demands that, as part of his contract, he waive certain of his clients’ rights. Another defender described how he was reprimanded by the County Executive for spending money on an expert in a homicide case rather than relying on the

³¹ As noted earlier, The New York State Bar Association is currently seeking to make its standards binding as court rules.

prosecution's expert. In addition, the asserted need for judges to be cognizant of the amount of money spent on indigent defense has resulted in a system with inconsistent standards for appointment of counsel; in some instances, judges are more vigilant about indigency screening than in others, whereas in some courts, judges do not appoint counsel when constitutionally required. The quantum of testimony on this subject suggests strongly that these sentiments are common among counties that, faced with funding pressures and shortfalls, are concerned with the bottom line.

! Some counties, in an effort to contain costs in accordance with the increase in assigned counsel hourly compensation rates, have shifted the caseload that would have otherwise been handled by court-appointed counsel to new or existing public defender or legal aid society offices. In some cases, the counties did not give the public defender or legal aid society adequate resources to cover the additional cases that would have otherwise been handled by court-appointed counsel, and thus their employees have increased caseloads and many are working long hours with no commensurate increases in salaries.

! Many of the institutional providers who testified from around the state complained of an overall insufficiency of resources for indigent defense work. This lack of resources affected every facet of representation. Significant numbers of public defenders testified that they could only be funded to work part-time. Many others testified that they had inadequate access to support

services such as investigators and social workers. In one county, public defenders complained that their paralegals spend all of their time screening defendants for indigency and are unable to prepare motions or perform research. In many public defender offices, attorneys do their own investigations. For example, one public defender, with an office of five full-time attorneys and six part-time attorneys, testified that he does not have an investigator for the office and that there is generally no money in the budget to hire outside contractors to perform investigatory services, so the attorneys must perform their own investigations. Other public defenders testified about the lack of adequate access to foreign language interpreters, an especially severe problem in smaller communities with changing ethnic work and residential populations. In addition, in many offices, basic office supplies are lacking. In one public defender office, the office ran out of toner for its printer and the attorneys also had to bring their own pens.

! Virtually all institutional defenders testified to having to work with excessive caseloads. These excessive caseloads are caused, in part, by the proliferation of specialty courts with no additional funding to increase public defender staff, travel time to various town and village courts, which are sometimes spread over large geographical areas, and the need to work days and then nights to cover town and village courts that meet only in the evenings. There is no evidence to suggest that public defenders or other institutional providers are given adequate staff to cover all town and village courts in a given jurisdiction

and requests for additional funds to keep pace with the growing caseloads are, for the most part, not granted. In one county, despite average annual misdemeanor caseloads of 1,000 cases per attorney and 175 felonies per attorney per year, the chief public defender must submit to the county a proposal as to how he would operate his office with a 10 to 12 percent budget cut.

! There is a broadly based disparity between the resources available to public defenders and those enjoyed by prosecutors in New York State. Prosecutors, although never funded to their full expectations, tend to be far better funded and better staffed than indigent criminal defense services providers. District Attorneys, Assistant District Attorneys, and their support staff tend to, on average, have higher salaries than their public defender counterparts. In addition, the disparity between prosecutors and defense counsel is not just apparent in funding, salaries and the number of FTE's (full-time equivalent employees), but also in additional, in-kind resources available only to prosecutors. This includes access to all law enforcement agencies in the county, as well as the New York State Division of Criminal Justice Services, the FBI and the state crime laboratory, to help with investigations. In addition, prosecutors often receive federal and state grant assistance that defenders do not.

! Attorney-client contact in far too many instances was *de minimis*, with attorneys not visiting their clients in jail, returning phone calls, answering

letters or, for that matter investigating their clients' cases at all. In some counties, the only attorney-client contact available is through collect calls to counsel, which many counsel refuse to accept. In a number of counties, attorney-client contact takes place only when the client is brought to the court for a proceeding. And while some judges indicated that defense counsel may request that an in-custody defendant be brought to the courthouse for a meeting in between court-appearances, there was no indication that this happens often. Testimony from former prisoners and from families of defendants as to the lack of contact with counsel and perforce the lack of attention afforded was especially disturbing.

- ! There exist wide disparities in the training of indigent defense counsel. Very few institutional defenders have in place viable training programs and access to training is inconsistent across the state; the training undertaken by assigned counsel and contract defense programs ranges from barely adequate to non-existent. While the New York State Defenders Association has training programs, they are not always easily accessible to overworked defenders.
- ! The expansion of specialty courts in New York (there were 218 operational as of September 8, 2005 with as many as 55 additional courts planned), while well intentioned, has largely ignored the impact of the courts on indigent defense service providers. Institutional providers, in particular, are expected to staff many more parts, and make many more court appearances, with no additional resources. The creation of new drug and other specialty courts

often comes with additional federal grants for courts and prosecutors but not for defense providers.

- ! Prosecutorial resistance to more open discovery procedures is extensive in many counties, thereby impeding efficient expedition of cases, investigation by the defense, including the location of witnesses, and thus gives rise to unfairness.
- ! Minorities are disproportionately represented in the jails and in the justice system such that the failures of the indigent defense system have particular implications for communities of color. Many witnesses emphasized the importance, especially to minorities, of a defense provider's awareness of, and ability to deal with, certain collateral problems that can affect critically a defense attorney's ability to provide effective representation. These include the defendant's employment history, housing status, or overall family situation. In addition, the changing ethnic nature of the minority population has greatly increased the need for a defense attorney to be aware of the immigration status of his or her client and be able to advise the client as to the possible effect on that status when assessing options that may be available to the client. Sadly, we were told of only a few defenders who were able to provide their clients with such comprehensive representation.
- ! Agreement was virtually unanimous amongst the witnesses that there is a pressing need for an independent indigent defense oversight entity that, at a minimum, promulgates and enforces standards of effective representation.

However, the witnesses varied in their opinions as to what the precise structure of such an entity should be. Some advocated for the creation of a statewide public defender system.

Contours of Reform – at Mid-Passage

As stated earlier, the Commission’s final recommendations await completion of The Spangenberg Group’s findings. Nonetheless, we have concluded that, in light of the extensive work already completed by us, there is a benefit to our reporting to Chief Judge Kaye and Chief Administrative Judge Lippman at this juncture the conclusions we have reached as to the outline that should govern reform of New York’s indigent defense delivery system. Given that we are persuaded that there is indeed a crisis in the delivery of defense representation of the poor and that there is great urgency to its remediation, we have determined that it is better to speak now, than to delay reform further.

A. The Funding Issue: An Observation and a Caveat

(1) New York has an expansive right to counsel that goes beyond the federal Sixth Amendment right in some respects. If the defendant cannot afford counsel, CPL 170.10 (3) (c) provides the right to assigned counsel “at the arraignment and at every subsequent stage of the action” regardless of the potential sentence.³² The sole exception is where the accusatory instrument charges no offense other than a traffic infraction.³³ Each accusatory instrument triggering the state

³² See also *People v. Ross*, 67 N.Y.2d 321 (1986). But see County Law §§ 717 (1) and 722-a [in effect, limiting the assignment of counsel provisions of County Law Articles 18-A and 18-B to felonies, misdemeanors and other offenses (except traffic infractions) “for which a sentence to a term of imprisonment is authorized upon conviction thereof”].

³³ But see *Alabama v. Shelton*, 535 U.S. 654 (2002) [reaffirming the principle that the actual imprisonment of an indigent defendant for any offense in the absence of counsel is

right to assigned counsel must, by definition, charge at least one “offense.”³⁴ An “offense” under section 10.00 (1) of the Penal Law is “conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law, local law or ordinance of a political subdivision of this state. . .” By definition, this includes not only “criminal offenses” such as felonies (punishable by imprisonment in excess of one year)³⁵ and misdemeanors (punishable by up to one year in jail),³⁶ but also “petty” offenses such as Penal Law violations (punishable by up to 15 days in jail),³⁷ traffic infractions,³⁸ and countless non-Penal Law violations, defined both in state statute (e.g. the Environmental Conservation Law) and in local laws or ordinances, even if made punishable only by a fine.³⁹ Thus, under CPL § 170.10 (3) (c), and the corresponding CPL provisions for felony offenses (CPL §§ 180.10 (3) (c) and 210.15 (2) (c), an indigent defendant charged with any level of offense, except for a traffic infraction, has a statutory right to the assignment of counsel.

According to the testimony of a Town and Village Court Justice, such an offense could include a local law or ordinance making it a violation to have a junk vehicle in one’s backyard. A violation of such a local law or ordinance can be prosecuted as an offense punishable by 15 days

prohibited by the Sixth and Fourteenth Amendments].

³⁴ CPL § 1.20 (1)-(8).

³⁵ Penal Law § 10.00 (5).

³⁶ Penal Law § 10.00 (4).

³⁷ Penal Law §§ 10.00 (3) and 55.10 (3).

³⁸ Penal Law § 10.00 (2).

³⁹ See also CPL § 420.10 (3) [authorizing a sentencing court, in imposing a fine, to provide that if the defendant fails to pay in accordance with the direction of the court, the defendant must be imprisoned, up to a specified maximum period, until the fine is satisfied].

in jail, and thus an indigent defendant is entitled to the appointment of counsel. Also, defendants accused of committing a violation such as harassment, trespass or disorderly conduct, which we were told make up a significant number of defenders' caseloads in Town and Village Court, are entitled to counsel even though these offenses are not defined as a crime.

Many "petty offense" cases that in New York involve local law or ordinance violations that carry potential jail time and thus require the appointment of counsel would, in many other states, not require the appointment of counsel because there is no possibility of jail time. Thus, New York State's right to counsel in criminal cases results in a huge number of cases for which indigent defendants are entitled to the appointment of counsel and contributes to the high cost *per capita* for indigent defense in New York.

(2) The Commission's mandate was limited to an evaluation of criminal cases and does not include the adequacy of appointed counsel in the area of family court. This limitation has made the Commission's work somewhat more difficult for several reasons:

(a) In many instances, the required representation of adults in family court is performed under 18-B by the same institutional provider or attorney panels responsible for providing representation in criminal court matters. Thus, this study excludes a significant portion of the caseloads of these institutional providers and court-appointed attorneys and does not take into consideration the distribution of office resources between criminal and family court representation. In addition, we have found that it is not possible to separate the cost and/or caseload between family and criminal court matters handled by the same provider. For example, the UCS 195 form that each indigent defense service provider must complete and file with both the Office of Court Administration and the Comptroller's Office does not separate out the cost of family court work from criminal court

work. The task of obtaining reliable statewide indigent criminal defense data is further exacerbated by the fact that the UCS 195 forms are inconsistently filled out or are often incomplete. Indigent defense case numbers for town and village courts are also not reported separately and in some instances may not be fully reported.

(b) Utilizing the same statutory scheme used for criminal cases, the counties are required to provide and pay for counsel to represent adults in certain family court matters. The State provides funds for children in these matters. Thus, in March 2005, the State Comptroller's Office reimbursed the State in accordance with the Judiciary Law,⁴⁰ the sum of \$25 million from the revenue collected during calendar year 2004 from the Indigent Legal Services Fund. The counties were then reimbursed for a portion of their 2004 county expenditures for both criminal and family court work involving the appointment of counsel to adults in family court representation. We have been unable to separate out the portion of the counties' reimbursement between criminal and family court work paid by the counties.

(c) Finally, it is our understanding that some family and criminal court cases have concurrent jurisdiction in the courts, but the number of cases and the costs of representation are not available.

With these limitations in mind, we turn to the issue of funding for criminal defense representation.

⁴⁰ N.Y. Judiciary Law, § 35 (5).

B. Funding for Indigent Defense Services in New York State⁴¹

Funding for indigent defense services in New York State remains primarily a responsibility of the counties and the City of New York (collectively, “localities”).⁴² Section 722-f of the County Law has, for many years, required each county’s public defense provider to submit annual indigent defense expenditures and caseload reports on form UCS 195 to the Office of Court Administration. We were told that, prior to 2004, there was no incentive for counties to submit accurate data, and some counties did not bother to turn in the UCS 195 form or submitted the form with missing, incomplete or erroneous data. Section 722-f of the County Law was amended in 2003 to comply with the new funding requirements of the Indigent Legal Service Fund (ILSF). In 2004, the Comptroller’s Office developed a new cover page for the ILSF Annual County Reports that contains information used to distribute ILSF money based on each county’s 2004 net local indigent defense expenditures and required that the UCS 195 be attached. The remainder of the forms included in the annual reports submitted by each county are used to supplement and explain the data contained in the UCS 195 form.

The UCS 195 forms contain the total number of defendants referred for all matters, defendants not represented after referral, defendants pending, number of attorneys on each panel and cost of operation plan for each indigent defense delivery system. Some counties use one UCS 195 form for each delivery system while others include data from all systems on one form. After

⁴¹ After an extensive attempt to obtain complete and accurate statewide statistical data on caseload and costs of indigent criminal defense representation we have concluded that, other than New York City, such data is not currently available.

⁴² County Law, § 722-e provides that “all expenses of providing counsel and services other than counsel hereunder shall be a county charge or in the case of a county wholly contained within a city a city charge to be paid out of an appropriation for such purposes.”

examining each individual county's ILSF 2004 Annual Report, we found that only 14 counties had fully completed UCS 195 forms. A number of counties either failed to submit UCS 195 forms or the forms were incomplete. In some instances we were unable to determine from the ILSF Annual Report what type of delivery system a particular county employed.

While performing their site work in the fall of 2005, members of The Spangenberg Group attempted to verify on site the data reported by counties on the UCS 195 forms certified for calendar year 2004 and sent to the State Comptroller's Office. They confirmed what they originally discovered when examining the original certified reports: that there are various errors, omissions and confusing data on a large number of submissions by the counties. These include:

- A single cover page that provided one set of total expenditures by the county for 2004, but no UCS 195 forms breaking out this data by provider and by total assignments by type of case, disposition and a detailed breakdown of county expenditures.
- UCS 195 forms that failed to include information on criminal appointments or cost of representation in town and village courts in the county.
- The failure to complete each of the sections on the UCS 195 form.
- In each of the counties' submissions, there was no separate reporting of caseloads for criminal appointments throughout the county and family court appointments throughout the county.
- The State Comptroller was unable to verify the data on the UCS 195 forms or the total expenditures by the county set out on the first page of the ILSF reporting forms.

Faced with this problem, the Comptroller's Office could only add up the total

reported county expenditures on the financial information form submitted by each county for calendar year 2004.

Accurate UCS 195 forms are critical for the purpose of monitoring counties' compliance with the new "maintenance of effort" provision in the law raising the hourly rates paid to assigned counsel and creating the Indigent Legal Services Fund to help offset the additional cost to the localities from the assigned counsel fee increases. The "maintenance of effort" provision ostensibly requires localities to use state funds provided to a locality from the Indigent Legal Services Fund "to supplement and not supplant any local funds which such county or city would otherwise have to expend" for the provision of indigent services, and to also use the state funds to "improve the quality of services provided pursuant to article 18-B of the county law."

With regard to the impact of the 2003 law, it is possible to make a number of points. First, while the "maintenance of effort" provision appears intended to prevent localities from reducing their level of funding for indigent defense services, a subsequent clause allows localities which fail to meet the maintenance of effort requirement to qualify still for distributions from the ILSF, as long as that locality can demonstrate – to whom is not specified – that state funds were "used to assure an improvement in the quality of services provided in accordance with article eighteen-B of the county law and have not been used to supplant local funds." Second, the statute does not make clear how a locality could reduce local expenditures, receive state funds from the ILSF, and yet not be using the additional state funds to supplant reduced local expenditures for indigent defense services. Indeed, as shown in the Table "*Analysis of Public Defense 2002-2004 Expenditures and Indigent Legal Services Fund 2004 Distribution*, (Appendix A), Seneca and Wyoming counties reduced local expenditures on indigent defense services even after the assigned counsel rate increases, but still

received distributions from the ILSF that more than offset the decrease in local expenditures.

The Table also illustrates our analysis of the information provided by the State Comptroller's Office involving the distribution of the ILSF money to the counties on March 31, 2005. The Table first sets out the total county expenditures for criminal and family court work for FY 2002, 2003 and 2004. The "'03-'04 Differential" column sets out the county-by-county differential in cost from FY 2003 to FY 2004. The "Percent change '03 to '04" column sets out the same data by the percentage change in county expenditures from FY 2003 to FY 2004. The "March 31, 2005 ILSF Distribution" column shows the total March 31, 2005 distribution of the \$51,551,719 to each county in the state. The "% '03-'04 Differential Funded by ILSF Distribution" column provides a percentage of the total increase or decrease in dollars by each county between FY 2003 and FY 2004. The remaining two columns indicate whether the ILSF distribution was less than the increase in county expenditures from '03 to '04 ("ILSF Distribution Deficiency") or whether the distribution was in excess of the increase in county expenditures from '03 to '04 ("ILSF Distribution Overage").

In addition to the examples of Seneca and Wyoming Counties above, 10 other counties received more money from the state's ILSF distribution than their increase in expenditures from FY 2003 to FY 2004, even though the counties did increase their funding during that time (unlike Seneca and Wyoming Counties). For example, Putnam County reported total county expenditures for FY 2003 of \$624,688 and \$655,490 for FY 2004. The total increase in expenditures for Putnam County amounted to \$30,802 or a percentage increase of 4.93 percent from FY 2003 to FY 2004. The total March 31, 2005 state ILSF contribution amounted to \$120,431. Thus, Putnam County received \$89,629 more from the state contribution than the county's actual increase in expenditure from FY 2003 to FY 2004 of \$30,802.

An analysis of the Table shows that county expenditures statewide were reported to be \$228,731,153 in FY 2003 and \$280,588,639 in FY 2004. Statewide, the total increase from FY 2003 to FY 2004 was reported to be \$51,857,487 or a statewide percentage increase in county expenditures of 22.67 percent. This figure of \$51,857,487 turned out to be substantially less than the \$100 million that was estimated in FY 2003. We are unable to account for this discrepancy but suggest that several possibilities exist.

First, for the reasons set out above regarding the analysis of the UCS data for FY 2004, we are convinced, as a result of our examination of the UCS 195 forms, that the statewide figure of \$280.588 million is understated. Second, some of the jurisdictions, including New York City, changed from systems that relied heavily on 18-B panels in FY 2003 to systems that created or expanded institutional providers, such as full or part-time legal aid societies or public defender programs. The facial effect of this change resulted in lower county expenditures than would have resulted if the county continued to maintain the percentage of county appointments distributed to the 18-B panel as existed in FY 2003. Many counties took advantage of this change to avoid the substantial increase in 18-B hourly compensation rates.

The 2003 law increasing assigned counsel fees also created a task force to “review the sufficiency of compensation rates and limits established pursuant to article 18-B of the county law and section 35 of the judiciary law.”⁴³ Although the task force is required to issue a report to the Governor and the Legislature on or before January 15, 2006, the task force has yet to be constituted.

Notwithstanding the complexity of New York State’s funding structure for indigent defense services and less than satisfactory data about its operation, several conclusions can be drawn:

⁴³ L. 2003, c. 62, § 13.

(1) the total amount of monies appropriated for indigent criminal defense on a statewide basis remains grossly insufficient; (2) the financing structure wherein counties remain the predominant funding stream for indigent defense perpetuates disparities in the quality of representation afforded to indigent defendants from county to county and permits political pressure to be brought to bear on defenders vying for county funds and county appointment; and (3) the 2003 increase in assigned counsel rates appears not only to have had little, if any, measurable effect on the improvement in representation of the indigent accused, it appears that it has put added pressure on counties to continue to look for the means *to reduce* the overall cost of criminal defense.

There is a clear trend among states to full or increased state funding of indigent criminal defense. As of October 1, 2005, 26 states fund their indigent defense system entirely through state funds.⁴⁴ There are another five states in which the state contributed more than two-thirds of the total funding.⁴⁵ Only 11 states contributed a smaller percentage of statewide dollars for indigent defense than New York.⁴⁶ Recent funding data that The Spangenberg Group has reviewed shows that 19 of the 25 states that provide the highest *per capita* spending for indigent defense were 100 percent state-funded. These states also had some form of statewide oversight and responsibility for the administration of the indigent defense system.

⁴⁴ Alabama, Alaska, Arkansas, Colorado, Connecticut, Delaware, Florida, Hawaii, Iowa, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Rhode Island, Vermont, Virginia, West Virginia and Wisconsin. See *Indigent Defense Costs Per Capita, A State by State Comparison*, prepared by The Spangenberg Group for the ABA Bar Information Program, July 1, 2005.

⁴⁵ Kansas, Kentucky, Oklahoma, Tennessee and Wyoming.

⁴⁶ Arizona, California, Louisiana, Michigan, Mississippi, Nebraska, Nevada, Pennsylvania, Texas, Utah and Washington.

The states that have moved to a fully state-funded system have used various financing mechanisms to provide revenues to these systems. Thus, it is critically important that the financing structure for indigent defense services in New York State be one of direct funding from the state's general fund. Contributions to the general fund may be made by localities from fees and surcharges exacted in their courts based on a formula established by the State Legislature. **C. A Statewide**

Defender Office: The Essential Ingredient for Meaningful Reform

There is also a clear trend among the states to develop some form of state oversight of indigent criminal defense. In terms of organization, 28 states place the responsibility and oversight of their state and local indigent defense programs within a state commission or a statewide public defender.⁴⁷ In many states, both those with a statewide public defender program and those without, such oversight is provided exclusively through a state commission or oversight board. The oversight board is typically charged with setting policy for indigent defense services and advocating for state resources. In several states, the commission provides some statewide oversight, but lacks full authority over indigent defense services. In other states, the oversight is provided exclusively by the chief public defender, and there is no commission. New York is one of only six states that have no statewide responsibility or oversight mechanism for indigent criminal defense.⁴⁸

⁴⁷ Alaska, Arkansas, Colorado, Connecticut, Delaware, Georgia, Hawaii, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, Texas, Vermont, Virginia, West Virginia, Wisconsin and Wyoming. Tennessee and Florida have statewide systems involving publically elect public defenders. Several of the remaining states have a commission with limited state oversight and responsibility. See *Statewide Indigent Defense Systems*, prepared by The Spangenberg Group for the ABA Bar Information Program, October 2005.

⁴⁸ The other states are Arizona, Maine, Pennsylvania, South Dakota and Washington.

We have determined, after consideration of the information before us, that a Statewide Defender Office is essential to both the independence of an indigent defense system and the ability to provide a consistently high level of representation to indigent defendants. The structure that we believe is best able to achieve this end is a statewide defender office that consists of a statewide Indigent Defense Commission, a Chief Defender, and Regional Defender Offices with local defender offices within each region that are established where needed. In the course of our investigation, we have found there is virtual unanimity that, to repair the dysfunctional nature of New York's indigent defense structure, there must be created a central, statewide entity to ensure the independence and quality of the defense function and to secure implementation and compliance with detailed, specific standards for the representation of indigent criminal defendants. While views as to the precise form of such a centralized entity varied, the unanimity that we found in regard to the need for centralized oversight impelled us to focus on the structural components of such a system. Because this is an interim report, we have concluded that it is sensible at this juncture to present the outline of the structure which commends itself to us and to reserve the extensive detail of such a structure to the Commission's Final Report.

I. The Indigent Defense Commission

- **Responsibility:** There should be created an Indigent Defense Commission (IDC) whose responsibility shall be to assure that excellent legal representation is provided on a consistent basis throughout the State, independently of parochial or private interests.

- **Composition:** The IDC should be comprised of a number of individuals⁴⁹ who are selected by the Chief Judge, the Governor and the leaders of both houses of the Legislature after solicitation of recommendations from bar associations and interested community groups and individuals. Appointees to the IDC should be individuals with significant experience in the criminal justice system or who have demonstrated a strong commitment to the provision of high quality, effective representation of criminal defendants. However, no individual who is employed as a public defender, prosecutor, judge or law enforcement officer should be eligible for appointment to the IDC. The IDC's chairperson should be chosen by a majority vote of the IDC's membership.
- **Function:** The IDC should (1) oversee a statewide defender system which is headed by a Chief Defender, and is comprised of Regional Defender Offices for discrete geographical regions with such local defender offices within each region as are needed;⁵⁰ (2) appoint the Chief Defender and the Regional Defenders; (3) assist the Chief Defender and the Regional Defenders in their efforts to provide effective legal representation; (4) together with the Chief

⁴⁹ We are informed that nine is the most common number of similar bodies that have been created in various states but, for purposes of this report, we have not focused on what would be the best numerical composition of the IDC.

⁵⁰ One possible Regional Defender Office distribution that has been suggested is one that is aligned with New York State's 12 judicial district structure, but with New York City counting as a single district, thereby allowing for the creation of nine Regional Defender Offices. However, as with the size of the IDC, we have not yet focused on any particular office distributions.

Defender establish and implement standards for performance, hiring, training, caseloads, support services and any other standards that are required to supervise and monitor the delivery of defense services; (5) standardize and collect data and maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation; (6) authorize funding to entities and plans within a given region; (7) determine, as a threshold matter, whether an existing institutional entity or plan should continue to receive funding a part of the indigent defense system; (8) establish auditing procedures in connection with the handling of public funds; (9) retain the ultimate responsibility to determine the most effective way of providing indigent defense services within each region.

II. The Chief Defender

- ! The Chief Defender should be appointed by the IDC and he or she should be selected on the basis of training, experience, and other qualifications as the IDC deems appropriate. The IDC, prior to making the appointment, should solicit recommendations from bar associations and interested community groups and individuals.
- ! The Chief Defender should assist the IDC with the development of standards for performance and ensure that those standards are being enforced in all regional and local offices.
- ! The Chief Defender should ensure that all regional and local offices are provided with adequate support services.

III. Regional Defender Offices and Local Defender Offices

- ! A Regional Defender Office in each geographic region should be established, headed by a Regional Defender. Within each region, local satellite defender offices should be established. The determination as to the location of such offices should be made by the IDC, in consultation with the Chief Defender and the Regional Defender for the region. Each regional and local office should provide representation that will enable counsel and support staff to have maximal access to clients and their families, courthouses and detention facilities.
- ! The Chief Defender, in consultation with the Regional Defender, should evaluate the quality of existing institutional defender offices as part of the statewide defender system and transmit such evaluation to the IDC.
- ! The Chief Defender and Regional Defender should consult with interested community groups and individuals in each region regarding matters affecting the delivery of indigent defense services in the region.

IV. Conflict Defense

- ! The Commission has yet to determine whether, within the statewide defender system we propose, a separate conflict defender office can or should be created, or whether some other mechanism for conflict

representation is preferable.

Conclusion

New York State's venerable commitment to a defendant's right to the effective assistance of counsel when facing criminal charges can, where the indigent defendant is concerned, only be fulfilled by a structural system that is fully funded by the state and is designed to provide high quality representation on a consistent and coherent basis. However, our examination to date of the current delivery of indigent defense services has left us with no alternative but to conclude that New York State's indigent defense delivery mechanisms do not meet those standards and are therefore in need of substantial revision. It is the obligation of the State to fully fund the statewide defender system that we have proposed. That will ensure that there is in place a system that meets the highest standards of legal representation and professionalism and that the right to the effective assistance of counsel for an indigent defendant does not turn on the mere happenstance of geographic location or the adequacy of local fiscal resources.

In our adversary system of criminal justice, the defense function is entitled to the same respect and support by the state and the public as is accorded the prosecution function. Now is the time for New York to act in accordance with that principle. We are fully cognizant of what our conclusion entails but we cannot in good conscience accept the status quo or recommend mere marginal increments towards improvement. We recognize that, in order for us to completely fulfill Chief Judge Kaye's charge to us, we have more work to do. Thus, the Commission welcomes any and all comments and suggestions that can assist us in arriving at our final determinations and recommendations.

Analysis of Public Defense 2002-2004 Expenditures and Indigent Legal Services Fund 2004 Distirbutions by County

County	2002 Net Local Expenditures	2003 Net Local Expenditures	2004 Net Local Expenditures	03-'04 Differential	Percentage Change '03 to '04	March 31, 2005 ILSF Distribution	% '03-'04 Differential Funded by ILSF Distribution	ILSF Distribution Deficiency	ILSF Distribution Overage
Albany	\$2,438,966	\$2,840,562	\$3,719,627	\$879,065	30.95%	\$683,396	77.74%	-\$195,669	
Allegany	\$332,065	\$365,916	\$457,306	\$91,390	24.98%	\$84,019	91.94%	-\$7,371	
Broome	\$2,134,020	\$2,054,489	\$2,999,403	\$944,914	45.99%	\$551,072	58.32%	-\$393,843	
Cattaraugus	\$635,222	\$836,896	\$1,047,806	\$210,910	25.20%	\$192,510	91.28%	-\$18,400	
Cayuga	\$354,359	\$345,235	\$597,394	\$252,159	73.04%	\$109,757	43.53%	-\$142,402	
Chautauqua	\$1,034,361	\$1,043,308	\$1,245,883	\$202,575	19.42%	\$228,902	113.00%	\$26,327	
Chemung	\$808,394	\$815,092	\$1,414,522	\$599,430	73.54%	\$259,886	43.36%	-\$339,544	
Chenango	\$261,602	\$293,794	\$374,613	\$80,819	27.51%	\$68,827	85.16%	-\$11,992	
Clinton	\$729,824	\$706,199	\$1,308,643	\$602,444	85.31%	\$240,433	39.91%	-\$362,011	
Columbia	\$563,220	\$563,123	\$700,742	\$137,619	24.44%	\$128,745	93.55%	-\$8,874	
Cortland	\$408,674	\$424,309	\$566,356	\$142,047	33.48%	\$104,046	73.25%	-\$38,001	
Delaware	\$194,455	\$275,326	\$489,737	\$214,411	77.88%	\$89,978	41.97%	-\$124,433	
Dutchess	\$3,249,752	\$3,319,116	\$3,634,647	\$315,531	9.51%	\$667,783	211.64%		\$352,252
Erie	\$5,657,206	\$5,919,031	\$9,289,477	\$3,370,446	56.94%	\$1,706,728	50.64%	-\$1,663,718	
Essex	\$126,464	\$266,680	\$436,413	\$169,733	63.65%	\$80,181	47.24%	-\$89,552	
Franklin	\$374,040	\$366,408	\$460,377	\$93,969	25.65%	\$84,576	90.00%	-\$9,393	
Fulton	\$246,850	\$230,799	\$323,787	\$92,988	40.29%	\$59,488	63.97%	-\$33,500	
Genesee	\$573,870	\$615,861	\$860,681	\$244,820	39.75%	\$158,130	64.59%	-\$86,690	
Greene	\$373,613	\$312,440	\$523,487	\$211,047	67.55%	\$96,179	45.57%	-\$114,868	
Hamilton	\$24,966	\$29,414	\$85,368	\$55,954	190.23%	\$15,684	28.03%	-\$40,270	
Herkimer	\$151,003	\$177,205	\$279,534	\$102,329	57.75%	\$51,358	50.19%	-\$50,971	
Jefferson	\$842,600	\$826,853	\$1,109,181	\$282,328	34.14%	\$203,787	72.18%	-\$78,541	
Lewis	\$201,185	\$229,691	\$257,185	\$27,494	11.97%	\$47,252	171.86%		\$19,758

County	2002 Net Local Expenditures	2003 Net Local Expenditures	2004 Net Local Expenditures	03-'04 Differential	Percentage Change '03 to '04	March 31, 2005 ILSF Distribution	% '03-'04 Differential Funded by ILSF Distribution	ILSF Distribution Deficiency	ILSF Distribution Overage
Livingston	\$408,354	\$362,509	\$558,655	\$196,146	54.11%	\$102,640	52.33%	-\$93,506	
Madison	\$413,101	\$430,747	\$593,747	\$163,000	37.84%	\$109,087	66.92%	-\$53,913	
Monroe	\$6,682,016	\$7,462,279	\$8,249,269	\$786,990	10.55%	\$1,515,614	192.58%		\$728,624
Montgomery	\$231,358	\$227,908	\$337,384	\$109,476	48.04%	\$61,987	56.62%	-\$47,489	
Nassau	\$5,528,751	\$5,697,770	\$7,840,340	\$2,142,570	37.60%	\$1,440,483	67.23%	-\$702,087	
Niagara	\$1,188,171	\$1,234,891	\$1,450,122	\$215,231	17.43%	\$266,427	123.79%		\$51,196
Oneida	\$2,195,568	\$2,370,871	\$2,885,928	\$515,057	21.72%	\$530,223	102.94%		\$15,166
Onondaga	\$3,979,837	\$3,965,549	\$5,467,320	\$1,501,771	37.87%	\$1,004,495	66.89%	-\$497,276	
Ontario	\$684,609	\$685,007	\$1,369,137	\$684,130	99.87%	\$251,548	36.77%	-\$432,582	
Orange	\$2,335,763	\$2,607,581	\$3,738,361	\$1,130,780	43.37%	\$686,838	60.74%	-\$443,942	
Orleans	\$217,197	\$218,787	\$388,483	\$169,696	77.56%	\$71,375	42.06%	-\$98,321	
Oswego	\$537,467	\$581,193	\$924,215	\$343,022	59.02%	\$169,803	49.50%	-\$173,219	
Otsego	\$550,667	\$563,809	\$762,628	\$198,819	35.26%	\$140,115	70.47%	-\$58,704	
Putnam	\$608,979	\$624,688	\$655,490	\$30,802	4.93%	\$120,431	390.99%		\$89,629
Rensselaer	\$931,741	\$1,048,642	\$1,443,126	\$394,484	37.62%	\$265,141	67.21%	-\$129,343	
Rockland	\$2,581,882	\$2,927,772	\$3,937,283	\$1,009,511	34.48%	\$723,385	71.66%	-\$286,126	
St. Lawrence	\$763,090	\$1,047,760	\$1,383,012	\$335,252	32.00%	\$254,097	75.79%	-\$81,155	
Saratoga	\$770,400	\$885,727	\$1,097,471	\$211,744	23.91%	\$201,635	95.23%	-\$10,109	
Schenectady	\$1,502,652	\$1,698,157	\$2,143,266	\$445,109	26.21%	\$393,776	88.47%	-\$51,333	
Schoharie	\$176,491	\$205,977	\$297,829	\$91,852	44.59%	\$54,719	59.57%	-\$37,133	
Schuyler	\$130,740	\$160,873	\$215,894	\$55,021	34.20%	\$39,666	72.09%	-\$15,355	
Seneca	\$234,079	\$353,384	\$323,686	(\$29,698)	-8.40%	\$59,470	-200.25%		\$89,168
Stuben	\$696,715	\$791,090	\$1,041,914	\$250,824	31.71%	\$191,428	76.32%	-\$59,396	
Suffolk	\$8,041,759	\$8,478,946	\$10,574,356	\$2,095,410	24.71%	\$1,942,795	92.72%	-\$152,615	
Sullivan	\$1,187,622	\$1,186,126	\$1,606,460	\$420,334	35.44%	\$295,150	70.22%	-\$125,184	

County	2002 Net Local Expenditures	2003 Net Local Expenditures	2004 Net Local Expenditures	03-'04 Differential	Percentage Change '03 to '04	March 31, 2005 ILSF Distribution	% '03-'04 Differential Funded by ILSF Distribution	ILSF Distribution Deficiency	ILSF Distribution Overage
Tioga	\$248,458	\$250,038	\$299,802	\$49,764	19.90%	\$55,082	110.69%		\$5,318
Tompkins	\$841,943	\$983,433	\$1,348,119	\$364,686	37.08%	\$247,686	67.92%	-\$117,000	
Ulster	\$1,464,829	\$1,597,968	\$1,982,290	\$384,322	24.05%	\$364,200	94.76%	-\$20,122	
Warren	\$323,486	\$360,753	\$611,679	\$250,926	69.56%	\$112,382	44.79%	-\$138,544	
Washington	\$277,880	\$260,817	\$438,249	\$177,432	68.03%	\$80,518	45.38%	-\$96,914	
Wayne	\$1,036,750	\$1,090,937	\$1,280,802	\$189,865	17.40%	\$235,318	123.94%		\$45,453
Westchester	\$10,224,802	\$11,807,433	\$16,504,125	\$4,696,692	39.78%	\$3,032,254	64.56%	-\$1,664,438	
Wyoming	\$221,369	\$262,173	\$251,715	(\$10,458)	-3.99%	\$46,247	-442.22%		\$56,705
Yates	\$177,660	\$176,217	\$271,408	\$95,191	54.02%	\$49,865	52.38%	-\$45,326	
New York City	\$136,779,856	\$143,265,594	\$166,132,905	\$22,867,311	15.96%	\$30,523,111	133.48%		\$7,655,800
Totals	\$215,892,753	\$228,731,153	\$280,588,639	\$51,857,486	22.67%	\$51,551,710	99.41%	-\$9,414,844	\$9,109,068

Appendix B: List of Witnesses

New York City Public Hearing - February 11, 2005

Name	Title	Organization
Jonathan Gradess	Executive Director	NYS Defenders Association
Hon. William Miller	Supervising Judge	Brooklyn & Staten Island Criminal Court
Steve Banks	Attorney in Chief	NYC Legal Aid Society
Susan Hendricks	Attorney in Charge of Legal Operations	NYC Legal Aid Society
Robin Steinberg	Executive Director	Bronx Defenders
Greg Lubow	Public Defender	Green County Public Defender
Carolyn Wilson	Attorney	NY County Defender Services
Kent Moston	Attorney in Chief	Legal Aid Society of Nassau County
Pat McCloskey	Assigned Counsel Defender	Assigned Counsel Defender Plan in Nassau County
Stephen Pittari	Executive Director/Administrator	Legal Aid Society of Westchester County/ Assigned Counsel Program
Henry Steinglass	Attorney	NY Criminal Bar Association
Sally Wasserman	Attorney	18B Appellate Attorney
Robert Quinlan	Assigned Counsel Administrator	Assigned Counsel Plan of Suffolk County
Russell Neufeld	Former Attorney in Charge of Legal Aid Society Criminal Defense Division	NYC Legal Aid Society
Jim Rogers	President	UAW Local 2325
Michael Marinaccio	Member of Board of Directors	Bronx County Bar Association
Stephen Singer	Representative	Queens County Bar Association
Louis Mazzola	Attorney	Legal Aid Society of Suffolk County
Dino Amoroso	Assistant District Attorney	Kings County District Attorney
Leonard Noisette	Executive Director	Neighborhood Defender Services of Harlem
Richard Greenberg	Attorney in Charge	Office of the Appellate Defender
Lynn Fahey	Attorney in Charge	Appellate Advocates
Robert Dean	Attorney in Charge	Center for Appellate Litigation
Paul Battiste	Administrator	Staten Island Legal Defense Services
Dr. Deloise Blakely	Community Mayor	Harlem
Vincent Warren	Senior Staff Counsel	American Civil Liberties Union
Donna Lieberman	Executive Director	NY Civil Liberties Union
Dawn Yuester	Project Counsel for Indigent Defense	NY Civil Liberties Union
Miriam Gohara	Assistant Counsel	NAACP Legal Defense Fund
Russell Gioella	Attorney	NYS Association of Criminal Defense Lawyers
Racquel Batista	Director	Northern Manhattan Coalition for Immigrant Rights
Rafaela Lozano	Beneficiary of Services	Northern Manhattan Coalition for Immigrant Rights
Ray Cusicanqui		Consulting Project with Legal Aid
Joe Vaccarino	Executive Director	Queens Law Associates
Laura Zino	Deputy Director	Queens Law Associates

Rochester Public Hearing - March 11, 2005

Name	Title	Organization
Ed Nowak	Chief Defender President	Monroe County NYS Defender's Association
Gary Horton	Public Defender	Genesee County Public Defender
Andrew Correia	Assistant Public Defender	Wayne County Public Defender
Sanford Church	Public Defender	Orleans County Public Defender
Ray Kelly	President Elect	NYS Association of Criminal Defense Lawyers
Michael Wolford	Member	Monroe County Public Defender Advisory Committee
Emily Chang	Associate Counsel - Provety Program	NYS Law Brennan Center for Justice
Barbary DeLeeuw	Director	Genesee Valley Chapter of NY Civil Liberties Union
Hon. Sid Farber	Judicial Hearing Officer & Former Town Justice	Monroe County Family Court
Jason Wellman	Prior Defendant in Monroe County	
Daan Zwick	Volunteer	NY Civil Liberties Union & NYS Defenders Association
Norman Effman	Public Defender	Wyoming County Public Defender
Richard Youngman	Conflict Defender	Monroe County Conflict Defender
Robert Lonski	Administrator	Assigned Counsel Program in Erie County
Helen Zimmerman	Chief Attorney	Legal Aid Bureau of Buffalo
Mark Williams	Public Defender	Cattaraugus County Public Defender
Jay Carr	Attorney	Private Practice in Orleans County
Shirley Gorman	Former Member of Public Defender	Genesee County Public Defender
Raymond Sciarrino	Assigned Counsel	Livingston & Wyoming Counties
Larry Kasperek	Attorney	Monroe County
Karla Burke	Interpreter	Criminal Defense Bar
James Monroe	Investigator	Monroe County
Lenore Banks	Judicial Specialist	League of Women Voters of NY

Ithaca Public Hearing - March 23, 2005

Name	Title	Organization
Norman Reimer	President	NY County Lawyers Association
Byron Cooper	Public Defender	Steuben County Public Defender
Richard Rich	Public Advocate	Chemung County Public Advocate
Craig Schlanger	Assigned Counsel	Onondaga Assigned Counsel Program
Jay Wilber	Public Defender	Broome County Public Defender
Malia Brink	Indigent Defense Counsel	National Association of Criminal Defense Lawyers
Barrie Gewanter	Executive Director	Central NY Chapter of the NY Civil Liberties Union
Kurt Andino	Director	Syracuse Jail Ministry
Bill Cuddy	Director - Bail Expeditor Program	Syracuse Jail Ministry
Hon. Francis Ciardullo	Town Justice	
Susan Horn	Executive Director	Legal Aid Society of Onondaga County
Stephen Schick	Executive Director	Sullivan County Legal Aid Panel

Marsha Weissman
Fern Miller

Executive Director
Public Defender

Center for Community Alternatives
Schuyler County Public Defender

Albany Public Hearing - May 12, 2005

Name	Title	Organization
Jerome Frost	Public Defender	Rensselaer County Public Defender
Mark Montanye	Former Public Defender	Essex County Public Defender
Livingston Hatch	Public Defender	Essex County Public Defender
Jack Carter	Director - Law Guardian Program	Appellate Division of the 3rd J.D.
Gaspar Castillo	Conflict Defender	Albany County Alternative Public Defender
Melanie Trimble	Executive Director	Capital Region Chapter of NY Civil Liberties Union
Judith Brink	Co-Founder	Prison Action Network
Terence Kindlon	Attorney	Private Practice
Steven Kouray	Conflict Defender	Schenectady County Conflict Defender
John Ciulla	Public Defender	Saratoga County Public Defender
Lisa Schreibersdorf	Executive Director	Brooklyn Defender Services
Brian Donohue	Conflict Defender	Rensselaer County Conflict Defender
Mark Caruso	Public Defender	Schenectady County Public Defender
Jim Murphy	Staff Attorney	Legal Services of Central NY
Darryl King	Recipient of Poor Representation	
Michael Whiteman	Former Counsel	To Governor Rockefeller
Alison Coleman	Director & Founder	Prison Families of NY
Tanya Jorder	Member	Prison Families of NY
Charlene Marsh	Parent of Incarcerated Woman	
John Putney	Public Defender	Livingston County Public Defender
Hon. Paul Toomey	Judge	Town of Sand Lake
	Supervision Counsel	Town, Village Courts Resource Center