

**REPORT OF THE INDIGENT DEFENSE ORGANIZATION  
OVERSIGHT COMMITTEE TO THE APPELLATE DIVISION  
FIRST DEPARTMENT FOR FISCAL YEARS 2012-2013**

**I. Introduction and Summary of IDOOC History**

The first Report of the Indigent Defense Organization Oversight Committee (the “Committee”) issued in 1996 provides background information regarding the formation of the Committee, the Rules of the Appellate Division, First Department, relating to the Committee (22 NYCRR Part 613), and the process by which the Court promulgated the standards entitled “General Requirements for All Organized Providers of Defense Services to Indigent Defendants.”

Since the Committee began its monitoring functions in 1996, it has regularly collected and examined detailed information from the First Department’s institutional providers of defense services to the indigent. In addition, the Committee has issued periodic reports addressing the degree to which those institutional providers have complied with the standards promulgated by the First Department in 1996 (amended in 1997 and again in 2011). For the first twelve years of its operation, it was the Committee’s practice to collect data from each provider through a lengthy questionnaire. That questionnaire was, however, revamped for the FY 06-07 reporting period to solicit most information in short form questions and charts so that Committee members could more effectively address compliance with the First Department’s standards and identify issues that needed to be addressed at site visits.

In the FY 12-13 reporting period, the Committee once again used its revamped questionnaire and sought additional data regarding the handling and disposition of cases assigned to the trial offices in order to better assess the impact of the workloads carried by those offices. Although differing data collection practices among the offices seriously affected the quality and consistency of the data that the offices were able to provide to the Committee, certain portions of that data – with a caveat regarding the use to which the data can fairly be put – appear as an addendum to this report and are referred to at various points in the report.

In order to produce the detailed findings that appear in Section III of this report, two Committee members visited each provider office and followed up, as necessary, with additional inquiries.

**II. Summary of Conclusions**

**A. The Trial Offices**

For virtually all of this Committee’s existence, the excessive caseloads carried by the First Department’s indigent defense trial-level providers have been our most pressing concern. Simply put, even the most talented and dedicated attorneys only have so many hours in their work day, and if there are too many clients competing for those hours, the quality of service provided to those clients necessarily will suffer.

Nearly twenty years ago, this Committee proposed – and the First Department adopted – standards of representation that incorporated caseload caps designed to state the minimum of what a civilized society should offer its indigent facing criminal charges. For many years, those caseload caps were no more than an aspiration. But, more recently, the New York State legislature gave the First Department’s caseload caps the force of law, with full implementation to be achieved by April 1, 2014.

We noted in our report for FY 10-11 that the City and its dedicated trial-level providers were already at work to achieve full compliance with those caseload caps well ahead of the legislatively mandated schedule. Unfortunately, the path toward full compliance has proved to be challenging, and many of the First Department’s trial-level providers still struggled under the weight of excessive caseloads during FY 12-13. Our concerns in that regard are detailed below, but it remains our hope that the reports for FY 14-15 will show that all of the First Department’s trial-level providers made real strides toward ensuring that the phrase “public defender” is no longer synonymous with “overburdened defender.”

Particularly if that proves to be the case, we believe that the next priority should be ensuring that the First Department’s indigent defense providers have adequate support for their work. As we have noted in prior reports, the support services provided by investigators and social workers are nothing short of critical to an effective defense. Indeed, in virtually every report issued by this Committee, we have cited anecdotal evidence of the profound impact that early and effective investigative or social work support can yield, and we have expressed concern about how thinly stretched those precious resources are in the First Department’s indigent defense organizations.

To date, the First Department’s indigent defense standards have refrained from specifying a maximum attorney/investigator or attorney/social worker ratio, but we believe the time has come to do so. Moreover, while a 10-to-1 ratio has long been treated in the First Department as the operative maximum, we believe that ratio is far too high.

Until recently, no effort had been made to analyze with rigor the level of investigative and social work support needed to provide an effective defense. But beginning in the FY 12-13 reporting period, and continuing into FY 15, The Legal Aid Society (“LAS”) and the law firm Davis Polk & Wardwell LLP (“DPW”) undertook that task.

The result of the LAS/DPW partnership was a remarkable study, which we have appended to this report, that: (a) documents – with painstaking specificity – the important functions performed by investigators and social workers in each of the type of cases handled by providers in the First Department; (b) calculates the number and type of cases that would benefit from such services; (c) further calculates the amount of time that performance of those functions has historically taken and therefore can reasonably be expected to take if all cases requiring investigative or social work services in fact received such services; and (d) extrapolates from those calculations the attorney/investigator and attorney/social worker ratios needed to ensure that the First Department’s indigent defense organizations are in a position to provide their clients with an effective defense.

As evidenced by the fact that the Committee has appended the LAS/DPW Study to this report, we regard the quality of the Study's analysis to be first rate. In addition, we regard it to be beyond serious dispute that the LAS/DPW Study is correct in concluding that the currently existing ratios of attorneys to investigators and social workers are far too high.

Accordingly, in keeping with the First Department's leadership role in the promulgation of standards for the provision of indigent defense services, the Committee intends to recommend that the First Department amend its standards to: (a) adopt, as a minimum standard, the approximate ratios identified in the LAS/DPW Study – namely, an attorney/investigator ratio and attorney/social worker ratio of no more than 3-to-1; and (b) state that indigent defense organizations should calculate and seek the funds needed to achieve at least that maximum ratio.<sup>1</sup> The Committee invites, from all interested parties, comment on its proposed recommendation, and we request that any comments be submitted to the Committee's Executive Director by June 30, 2016.

The Committee will discuss those comments and any amendment to the First Department's Standards in its report for FY 14-15. The Committee will also continue to examine and report on other issues bearing on the provision of effective criminal defense services to the First Department's indigent population. As detailed below, the issues that were of particular interest to the Committee in FY 12-13 – and that will be examined further as part of the Committee's work for the FY 14-15 reporting cycle – include: progress toward full compliance with New York's caseload caps; the qualifications and experience of staff and supervisory attorneys; arraignment practices (particularly with respect to clients having no prior criminal record); conditions in the First Department's arraignment courts (with particular focus on the impact of those conditions on the ability of attorneys to fulfill their ethical obligations under New York's Code of Professional Responsibility); and efforts to improve and/or expand quantitative and qualitative data collection so as to permit meaningful evaluation of the quality of services being provided and the identification of any areas in need of improvement.

## **B. The Appellate Offices**

As in past reporting periods, the First Department's appellate offices serve as a reminder of the considerable societal good that can be done by the simple expedient of ensuring that indigent defense practitioners are not overburdened or lacking in adequate support. Each of the First Department's appellate offices continued in FY 12-13 to provide first-rate representation to the First Department's indigent population facing criminal charges – both through representation of existing clients and through programmatic initiatives designed to benefit existing and future clients.

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<sup>1</sup> In that regard, we note that, as the LAS/DPW Study reflects, a maximum ratio of approximately 3-to-1 is premised on the existing number of cases that survive arraignment. If, as it is hoped, additional attorney resources were to result in an increase of cases surviving arraignment, even a 3-to-1 ratio might not be sufficient to ensure that attorneys are in a position to provide their clients with an effective defense. As a result, and in keeping with the First Department's general approach to its standards, the proposed ratio would be stated as a maximum.

Our Committee’s only concern with respect to the First Department’s appellate offices was the continuing precariousness of funding for the Office of the Appellate Defender (“OAD”) – an office that pioneered the model of providing high-quality indigent defense services to existing clients while simultaneously seeking, through the hiring and training of relatively recent law school graduates, to add to the ranks of experienced appellate practitioners. Our Committee’s view of the value of OAD’s model remains unchanged, and we note that each of the First Department’s other two appellate providers have impliedly endorsed the value of that model by themselves hiring one or more practitioners during FY 12-13 whose potential exceeded their experience. We accordingly reiterate our hope that the City and the Office of the Criminal Justice Coordinator will work to ensure an adequate and stable level of funding for OAD’s important work.

### **III. Detailed Findings<sup>2</sup>**

#### **A. The Trial Offices**

##### **1. LAS: NEW YORK AND BRONX COUNTY CRIMINAL TRIAL OFFICES**

###### **(a) Overview**

LAS is the largest and primary provider of indigent defense services in New York City. LAS’s Criminal Practice has trial offices in all five boroughs, and the criminal defense trial offices in the First Department play a leading role in the provision of criminal defense services to indigent individuals charged with offenses in Bronx and Manhattan.

As in the prior reporting period, LAS’s contract with the City for FY 12-13 permitted it to obtain additional funding if caseloads exceeded specified levels, and the Committee is pleased that the longstanding practice of requiring LAS to represent, for a fixed sum, a percentage of all indigent clients with no cap on the number of cases is now well in the past.

In addition, there were various other developments at LAS during FY 12-13 that are worthy of particular note and commendation:

- LAS made early and significant progress toward meeting the caseload caps long mandated by the First Department (and, as of April 2014, by the New York State legislature);
- LAS likewise made significant progress toward fully realizing its longstanding commitment to vertical representation by sharply reducing the utilization of “arraignment-only” attorneys;

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<sup>2</sup> This section of our report provides detailed findings with respect to compliance with the criteria specified in the First Department’s standards. Nine of the ten criteria are discussed for all providers. With respect to the 10<sup>th</sup> criterion – compliance with standards of professional responsibility – we note that each provider is in compliance with this criterion, but we also include a discussion of factors that have the potential to impact the ability of trial-level providers to comply with standards of professional responsibility.

- LAS expanded two of its initiatives to all five boroughs: the Trafficking Victims Advocacy Project (TVAP), designed to address the needs of victims of human trafficking who are arrested and prosecuted for prostitution, and LAS's program to deploy social workers in arraignments to provide early intervention and diversion services for clients with mental health needs; and
- In a project that occupied much time and energy during the FY 12-13 reporting period and that was finalized in FY 15, LAS partnered with Davis Polk & Wardwell LLP to provide a detailed and rigorous analysis of investigative and social work services that has contributed to the Committee's decision to recommend the promulgation of new standards for such services in the First Department.

In short, although the report below notes some areas for improvement and/or further examination, LAS can and should take enormous pride in its achievements during FY 12-13.

**(b) Compliance with First Department Performance Standards**

**(i) Professional Independence**

LAS's governing structure with an independent Board of Directors complied with the First Department's standards for promoting professional independence. In addition, as in the past, LAS reported that it experienced no threats to its professional independence during the FY 12-13 reporting period.

**(ii) Qualifications of Lawyers**

Overall, LAS's hiring criteria and certification practices met the First Department standards during FY 12-13, and LAS affirmatively and successfully worked to create a diverse legal staff.<sup>3</sup> Its hiring practices were likewise effective in attracting legal staff committed to zealous advocacy, many coming from some of the most prestigious law schools in the country.

However, as in the past, a significant number of trial attorneys during the FY 12-13 reporting period – most of whom were recent law school graduates – had not handled the number of matters mandated by the First Department's standards. More specifically, LAS reported that eight of its attorneys in New York County and 21 in Bronx County did not meet the First Department's qualification standards for handling misdemeanor cases.<sup>4</sup> Those figures were an

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<sup>3</sup> LAS reported a continuing increase in racial diversity among staff attorneys in the FY 12-13 reporting period. Of 322 attorneys in Manhattan and the Bronx, 11.5% were African American in FY 12 and 14% in FY 13 (compared to 9.1% in FY 10, and 10.3% in FY 11). The representation of Hispanic attorneys rose slightly to 5% in FY 12 and 5.7% in FY 13 (compared with 4.5% in FY 10 and 4.8 % in FY 11). The percentage of Asian attorneys increased to 9.6% in FY 12 and 9.4% in FY 13 (compared to 7.5 % in both FY 10 and 11). In addition, LAS reported that its 2012 incoming attorney class was 26% African American, 12% Asian, 9% Hispanic and 4% two races or more.

<sup>4</sup> For attorneys representing clients charged with misdemeanor crimes, the First Department's standards require experience as lead, sole or co-counsel to an experienced criminal law practitioner in at least five criminal cases during the previous three years involving: (1) at least three non-trial dispositions; (2) one litigated motion in which oral testimony was taken and a decision was rendered; and (3) one trial that proceeded to verdict.

unwelcome increase for the Bronx office from the previous reporting period, when 12 misdemeanor attorneys lacked the experience mandated by the First Department's standards. In the New York County office, however, the trend was just the opposite. The eight misdemeanor attorneys who lacked the requisite experience represented a significant decrease from the 29 reported during the previous period.

While acknowledging that there is no exception to the First Department's standards for recent law school graduates, LAS stressed in its report to the Committee that the recent graduates it had hired had extensive experience in law school criminal justice clinics in which they had represented clients in proceedings under the guidance of their law school clinical professors. In addition, LAS noted that those recent graduates had also received comprehensive training in their first months at LAS that included conducting a mock suppression hearing in LAS's innovative suppression hearing training program and conducting a mock trial in LAS's Trial Advocacy Program. LAS further contended that particularly with the need to increase staffing in order to achieve compliance with caseload caps, providers should not be discouraged from hiring recent graduates who have shown a clear commitment to indigent defense work.

The Committee regards LAS's various points about recent graduates to be fair ones, and we note that in other areas the Committee has from time to time recognized that certain practices represent "substantial compliance" with the First Department's standards. In that regard, we agree that there is less cause for concern when those who lack the specific experience mandated by the First Department's standards are shown to have other substantially equivalent experience. We also appreciate that in the years leading up to the case cap legislation's 2014 effective date, there may well have been a need to hire more attorneys whose experience came from law school clinics and training programs. That said, we encourage LAS to continue to strive to ensure that any new hires have experience that meets the First Department's standards. In addition, we look forward to hearing more during the FY 14-15 reporting cycle about the initiatives that we understand LAS to have undertaken to enable newly hired attorneys to meet the standards more quickly and to receive enhanced trial supervision in the interim.

With respect to attorneys representing clients charged with felony crimes, the number of LAS attorneys who did not meet the First Department's qualification standards declined in Bronx County, but doubled in New York County.<sup>5</sup> More specifically, the number of felony attorneys in LAS's Bronx County office who lacked the experience mandated by the First Department declined from 19 in FY 10-11 to 13 in FY 12-13. Conversely, and troublingly, the number of felony attorneys in LAS's New York County office who lacked the requisite

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<sup>5</sup> For attorneys representing clients charged with felony crimes, the First Department's standards require experience in at least 30 criminal cases during the previous five years involving: (1) at least 15 non-trial dispositions (at least five of which occurred post arraignment); (2) five hearings in which oral testimony was taken and a decision was rendered; and (3) two post-indictment jury trials that proceeded to verdict in which the attorney was lead counsel; or experience in at least 10 criminal cases during the previous five years as lead or sole counsel and at least 20 noncriminal cases including at least five jury trials as lead or sole counsel.

experience rose from 14 in FY 10-11 to 28 in FY 12-13. However, every attorney assigned to handle homicide cases without supervision met the First Department's qualification standards.<sup>6</sup>

In its report to the Committee for FY 12-13, LAS offered a number of explanations as to why 41 of its felony attorneys lacked the experience mandated by the First Department. Those explanations included: assignment to specialty courts that rarely provide the requisite trial experience; recent transfer from arraignment-only assignments; recent certification for felony practice; and backlog in the Bronx Supreme Court. While the Committee fully appreciates that the factors cited by LAS undoubtedly increased the challenge of ensuring that LAS's felony attorneys possessed the requisite experience, we remain troubled by the statistics reported. As we understand, it, LAS has already taken steps designed to remedy this significant issue, and we look forward to hearing of any progress on that front in LAS's report for FY 14-15.

With respect to supervisory attorneys, LAS reported that 16 of its supervising attorneys (five in New York County and 11 in Bronx County) did not meet the First Department's qualification standards in FY 12-13.<sup>7</sup> In that regard, LAS contended that full compliance was not feasible because the First Department's maximum supervisor caseload is 10% of the maximum staff attorney caseload. In addition, LAS reported that all supervisors, with the exception of arraignment supervisors, engaged in trial preparation and work by second seating misdemeanor and felony trials and co-counseling with senior attorneys. The Committee appreciates the points made by LAS, but urges LAS to give thought to ways of ensuring and documenting that its supervisors have, at minimum, the experience specified in the First Department's standards. The Committee, in turn, will review the First Department's standards for supervisors during the next reporting cycle to determine whether any aspect of those standards warrants a recommended adjustment.

### **(iii) Training**

The training and continuing legal education provided by LAS's trial divisions during the FY 12-13 reporting period fully complied with the First Department's performance standards. As the City's largest institutional provider, LAS was once again tasked with training the majority of the young criminal defense attorneys entering public defense work there. For the FY 12-13 period, LAS reported that it trained a total of 106 new attorneys (57 in the First Department) in two intensive 5-6 week attorney training programs. In addition, beginning in 2012, LAS introduced a new approach by providing each new attorney with seven sample misdemeanor cases, which provided an evolving and realistic laboratory for group discussion and workshops. The central training program was followed by intensive training in LAS's borough offices, which

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<sup>6</sup> For attorneys representing clients charged with homicide, the First Department's standards require: (1) court experience in at least 60 criminal cases during the previous five years involving at least 30 non-trial dispositions; (2) 15 hearings at which oral testimony was taken and a decision was rendered; (3) five post-indictment jury trials that proceeded to verdict in which the attorney was lead or sole counsel; and (4) cross-examination of at least four of the following types of expert witnesses: police officers, undercover agents, medical experts, ballistic experts, laboratory technicians, psychiatrists or psychologist, fingerprint experts, and serological experts.

<sup>7</sup> With respect to supervisors, the First Department's standards do not expressly mandate a particular quantum of recent experience, but define the evaluative criteria to be whether the provider "require[s] that the trial supervising lawyers meet all qualifications for trial lawyers who handle felony cases and have sufficient experience, temperament and capability to discharge supervisory responsibilities."

offered a combination of lecture, workshop/skills training, shadowing, mentoring, and close supervision within each complex or cluster of 20-30 attorneys. First trials for all new attorneys were second-seated by supervising trial attorneys.

LAS also hosted numerous in-house lunch and law programs on a diverse array of topics and regularly augmented its own training through the use of outside providers. Thus, during the FY 12-13 reporting period, many LAS attorneys participated, at LAS expense, in programs offered by the National Institute of Trial Advocacy, the New York City Bar Association, the New York County Lawyers' Association, the New York State Bar Association, the National Association of Criminal Defense Lawyers, and the New York State Defenders Association. LAS also sent seven attorneys to the highly regarded summer trial college program offered by the National Criminal Defense College.

Although LAS had in the past engaged a consultant to provide mandatory training for supervisors, the Committee was pleased to learn that LAS had developed its own supervisor training program during the FY 12-13 reporting period for use going forward. Under that program, all existing and new supervisors are required to attend a three-day training that covers, for example, leadership and motivation, managing conflict, evaluating staff performance, and how to address non-performing staff.

**(iv) Supervision**

LAS's staff/supervisor attorney ratio complied with the First Department's 10-to-1 maximum in each of FY 12 and FY 13. In addition, and commendably, LAS was able to decrease the staff/supervisor ratio during the reporting period from 9.6-to-1 to 8.52-to-1. LAS has also significantly (and, again, commendably) improved supervisory caseloads. The average daily caseload for supervising attorneys in both boroughs was 16.9 in the FY 12-13 reporting period (compared to 35.7 in the last reporting period).

**(v) Workloads**

During the FY 12-13 reporting period, as LAS and other providers prepared for the 2014 effective date of legislated caseload caps, LAS made significant progress in reducing attorney workloads, though the progress was not perfectly linear. At the beginning of the FY 12-13 reporting period, fully 70% of LAS's staff attorneys carried caseloads above the First Department's maximum of 400 misdemeanor-equivalents. In FY 12, that percentage dropped to 33.33% in New York County and 15.61% in Bronx County. In FY 13, the percentage continued to drop in Bronx County (falling to an impressive 7.3%), but ticked back up in New York County, with 49.9% of staff attorneys carrying a caseload above the First Department maximum. In its report to the Committee, LAS explained that the uptick was an anomaly caused by a combination of, among other things, unexpected vacancies and fluctuations in caseload during FY 13, and LAS predicted that it would achieve full compliance with the caseload caps by the legislation's effective date. The Committee commends LAS for the significant progress it has made, and we hope that LAS's report for 14-15 will show that its optimism was well-founded.

In addition, as noted in our report for FY 10-11, the Committee remains very interested in exploring with all of the trial offices – including LAS – the reasons underlying the high percentage of guilty pleas that are taken at arraignment, and we will be particularly interested to see whether full implementation of the case cap legislation leads to a reduction in the percentage of guilty pleas at arraignment.

**(vi) Evaluation, Performance and Discipline**

During the FY 12-13 reporting period, LAS required its attorneys to comply with published criteria that conform to First Department and National Legal Aid and Defender Association standards as well as to the ABA’s Ten Principles of a Public Defense Provider System. LAS further required two written evaluations of new attorneys in their first year. All other staff attorneys, as well as supervisory attorneys, investigators and social workers, received an annual written performance evaluation. LAS further reported that it continued to maintain a central file of serious complaints from judges and the receipt and resolution of oral or written complaints to supervisors from clients.

Those practices were sufficient to satisfy the First Department’s standards for evaluation, performance and discipline.

**(vii) Support Services**

As discussed in our Summary of Conclusions, the Committee has placed special emphasis in this report on the important support services provided by investigators and social workers. In addition, on the basis of the superb LAS/DPW Study, the Committee has announced its intent to recommend promulgation of a standard specifying a maximum 3-to-1 ratio both for attorneys to investigators and for attorneys to social workers. In the interim, and in the spirit of documenting the progress that has already been made and the additional assistance that each organization is likely to need to achieve the proposed ratios, we note the following with respect to LAS’s access to, and utilization of, investigators and social workers during FY 12-13.

At the close of FY 13, there were 15 investigators assigned to LAS’s Bronx County trial office (up from 9.5 at the close of the prior reporting period), resulting in an attorney/investigator ratio of 9-to-1 (compared to 10.2-to-1 in the prior reporting period). LAS’s New York County trial office had 17.5 investigators (up from 14.5 investigators at the end of the prior reporting period), with an attorney-to-investigator ratio of 9.2-to-1 (the same ratio as in the prior reporting period). In addition, those resources were supplemented by 119 investigative interns (down from 200 in the prior reporting period).

LAS was also able to raise the percentage of cases in which investigations took place – from 7% in the prior reporting period to 12% in the FY 12-13 period. But while this increase is notable and commendable, the Committee agrees with LAS’s assessment that the percentage of cases in which investigation was used remained far too low. Attorneys were still being left to conduct their own investigations – to the extent they were able – in many other cases.

With respect to social workers, at the close of FY 12-13, there were 16 social workers assigned to LAS’s Bronx County trial office, resulting in an attorney/social worker ratio of 8.5-

to-1 (compared to 9.7-to-1 in the prior reporting period). LAS's New York County trial office had 16 social workers, resulting in a ratio of 8.4-to-1 – which was approximately the same ratio as in the prior reporting period. Those ratios yielded use of social workers in 1.8% of misdemeanor cases (compared to 0.8% in the prior reporting period) and 5.2% of felony cases (down from 5.6% in the last reporting period). While those percentages are disappointingly low (and therefore provide further evidence of the need for a more favorable attorney/social worker ratio), the Committee notes that LAS continued to deploy social work staff directly at arraignments to provide early intervention and diversion services – an initiative that was, in part, aimed at maximizing LAS's social work resources to target clients most in need of those critical services.

With respect to experts, LAS reported that for FY 12-13 its attorneys utilized expert services in only 0.07% of misdemeanors (compared to 0.01% in the prior reporting period) and 0.57% of felony cases (compared to 0.9% in the prior reporting period). To state the obvious, those figures remain stubbornly low, and as the Committee has previously stated, it is our hope that as LAS's caseloads come into compliance with the case cap legislation, LAS's attorneys will have the time and resources needed to make greater use of expert support.

**(viii) Case Management and Quality Control**

During FY 12-13, LAS fully implemented the long-awaited LawManager system, which integrates LAS's three practice areas – Criminal, Juvenile Rights and Civil – on a single platform that is now a repository for all of LAS's case data. LAS reported that this system has greatly enhanced its practice by allowing for auto-generation of calendaring, notifications of new cases or warrants, identification of conflicts, and the creation of case-related merged documents. The comprehensive database provides easy access to case and client information to improve communications with clients and supervisors and also enables easy reporting of data for quality control purposes and to obtain an accurate view of case assignments and individual workloads.

As a result of the implementation of its new system, LAS was for the first time able to respond to this Committee's requests for data on suppression hearings held and written motions filed. And it is our hope that LAS's data collection system will be further refined and developed so that LAS can in the future provide data on, for example, the utilization of investigative or social work services prior to arraignment and at arraignment, and the extent to which guilty pleas by clients without a criminal record occurred or were avoided at arraignment.

LAS is also to be commended for having engaged in a sustained and complex effort to critically assess its own practice by partnering with Davis Polk & Wardwell LLP to evaluate LAS's current standards of practice. As discussed above, that internal review process has already and productively focused on whether LAS and other providers are adequately equipped to provide effective defense services based on the current investigator and social work staffing levels. The Committee encourages LAS to continue such efforts. And, with that in mind, the Committee looks forward to future reports of continued progress on LAS's effort to develop a meaningful methodology for evaluating client satisfaction.

LAS's report for FY 12-13 also demonstrated that it has instituted multiple methods to address collateral consequences of convictions. Through extensive training, development of practice guides, revision of case files, advancing litigation to mitigate collateral consequences, and collaboration with the Society's Juvenile Rights and Civil divisions, LAS has placed an impressive emphasis on this critical piece of the Criminal Defense Practice. In addition, as documented in LAS's report to the Committee, LAS has an impressive array of specialty units – adolescent diversion, mental health, immigration and DNA, to name only a few – that provide expertise through mentoring attorneys and support staff, providing trainings, and developing written guidance.

LAS further reported that it has implemented a Bail Advocacy Project that has trained staff attorneys on alternatives to cash or bond bail that have not been utilized by the Court, but could provide indigent clients with a pathway to liberty pending resolution of their cases. The Committee looks forward to learning more about this project in LAS's FY 14-15 report, including the data LAS is collecting on this issue.

With respect to the issue of vertical representation, LAS's report for FY 12-13 restated its long-standing commitment to vertical continuity of representation, and in most instances the LAS attorney who represented an individual at arraignment continued representation through the conclusion of the case. In addition, when clients were re-arrested, it was LAS's policy that the same attorney would handle the client's new case.

We note, however, that LAS still utilized nine "permanent misdemeanor arraignment attorney[s]" in FY 12 and six such attorneys in FY 13. Those attorneys resolved approximately 80% of the cases they handled, with the remainder receiving continuity of representation only after arraignment. The Committee has in the past expressed concern that the institutionalization of misdemeanor arraignment attorneys could contribute to an assumption that a high number of cases are to be resolved by guilty plea at arraignment. As a result, the Committee was pleased to learn that LAS will be in a position to state in its next report that it has completely phased out all permanent arraignment staff in every borough, including Bronx and Manhattan.

**(ix) Compliance with Standards of Professional Responsibility**

In its questionnaire for the FY 12-13 reporting period, the Committee added a number of questions that were designed to assess the existence of possible impediments to the ability of trial-level providers to fulfill their responsibilities under New York's Rules of Professional Conduct. To be clear, the Committee made such inquiries not because it has any doubt about the commitment of those providers to adhere to the highest standards of conduct. Quite to the contrary, the Committee made its inquiries in order to support that commitment by assessing whether there were conditions that could not be changed by an individual attorney (or even an individual indigent defense organization) and that operated to impede the ability of the First Department's indigent defense providers to fulfill their ethical responsibilities.

The Committee's area of focus for the FY 12-13 reporting period was the existence of space adequate to protect client confidences during courthouse meetings, and the initial information gathered by the Committee both from the responses to its questionnaire and from

follow-up questions and observations during site visits suggests that there is genuine cause for concern in this regard.

In the Bronx, the attorney-client interview space provided by the Court at the arraignment stage was not private. As a result, it was at best difficult (and some would say impossible) for attorneys to protect client confidences. Attorney-client privileged communications were easily heard by police and corrections staff, as well as by other lawyers and clients in close proximity. In addition, while the new criminal courthouse in the Bronx did provide post-arraignment, private interview booths for attorney meetings with in-custody clients, there appeared to be an insufficient number of booths as well as insufficient courthouse personnel to staff the client-counsel area, resulting in an inordinate wait time to access this meeting space.

Similarly, in Manhattan, the attorney-client meeting facilities provided by the Court for arraignment purposes appeared to significantly impede the ability of attorneys to protect attorney-client confidences. In the meeting area behind one of the two arraignment courtrooms, there were two carrels that had no doors on the attorney side and only wire mesh on the client side – a configuration that permitted defendants in close proximity to easily overhear confidential communications by both attorneys and clients. The third interview area behind that courtroom, usually reserved for women, had a working door on the attorney side, but no door on the client's side, thus permitting other women in the cell to easily overhear attorney and client communications. The other courtroom had meeting booths, but doors on both the client and attorney side did not fully close and therefore offered only limited privacy.

Both arraignment courtrooms provided attorney-client meeting booths inside the courtroom that were reasonably sound proof, but the conspicuous location of the booths put what should be a private interview on public display. The meeting space provided by the Court for those clients in custody after arraignment had no private sound-proof individual meeting rooms. Instead, attorneys and clients were crowded into one room, with attorneys arrayed side by side in close proximity across from clients arrayed in the same manner.

While the Committee is reluctant to reach any final conclusions on the basis of limited inquiries in connection with a single reporting cycle, we regard the initial results of our inquiries with concern, and we urge LAS and the other indigent defense organizations to further assess this issue and any others that may suggest the existence of impediments to the ability of the First Department's indigent defenders to fully discharge their ethical obligations to their clients.

**(x) Reporting Obligations**

The LAS trial divisions met all reporting obligations to the City of New York and this Committee during the FY 12-13 reporting period.

## **2. THE BRONX DEFENDERS**

### **(a) Overview**

The Bronx Defenders (“BXD”) has contracted with the City to provide indigent defense services since 1997. Until FY 11, BXD’s contract obligated it to handle 12,500 cases per year. In the last quarter of FY 11, however, BXD entered into a new contract with the City that obligated BXD to provide representation in 28,000 cases per year, but also provided for an increase in funding that allowed BXD to hire additional attorneys.

In our report for FY 10-11, the Committee expressed the hope that BXD would be able to achieve full compliance with the First Department’s caseload maximum during the FY 12-13 reporting period. Unfortunately, that did not occur – apparently because BXD remained in a transition period resulting from its increased contractual responsibilities and its concomitant expansion. As a result, the Committee hopes that BXD’s next report will demonstrate that it has adjusted its staffing to accommodate its increased contractual responsibilities, and that caseloads have stabilized at levels within the First Department maximum and New York’s legislated case caps.

Overall, BXD continued during the FY 12-13 reporting period to exercise leadership in the indigent defense community, devising and implementing innovative responses to recurring issues in indigent defense practice, broadly sharing its materials, and providing training to other defender offices. In that regard, BXD focused on bail with a City-Wide Bail Initiative and the implementation of “The Bronx Freedom Fund.” The goal of the City-Wide Bail Initiative was to change the way judges set bail in New York, and the Bronx Freedom Fund posted up to \$2,000 bail for indigent South Bronx residents charged with misdemeanors.

BXD also significantly expanded its facilities during the FY 12-13 reporting period, with its new “Justice Campus” opening on February 27, 2013. The heart of the campus is a client reception center which is staffed with an Intake Team on weekdays from 9:00am to 6:00pm. In addition to taking walk-in clients, the “living room” offers a comfortable waiting area for clients, their families and witnesses. The expanded campus also includes a mock courtroom which BXD uses as a training facility and to prepare witnesses for courtroom testimony.

### **(b) Compliance with First Department Performance Standards**

#### **(i) Professional Independence**

BXD’s governing structure with an independent Board of Directors complied with the First Department’s standards for ensuring professional independence. In addition, BXD reported that it experienced no threats to its professional independence during the FY 12-13 reporting period.

#### **(ii) Qualifications of Lawyers**

BXD has consistently attracted highly qualified attorneys, and that pattern continued during the FY 12-13 reporting period. BXD hired eight new criminal defense attorneys in the

fall of 2012 after hiring 21 new criminal defense attorneys in the fall of 2011. Ten new criminal defense attorneys started with BXD's Fall 2013 Training Team.

Notably, a significant number of BXD's attorneys did not meet the First Department's qualification standards.<sup>8</sup> More specifically, BXD reported that 20 of its misdemeanor attorneys and 26 of its felony attorneys did not have the experience required by the First Department. BXD further reported, however, that: (a) any lawyer who had not yet achieved the requisite experience had a co-counsel supervisor at every trial; (b) all trials were in fact co-counseled so that even those lawyers who have conducted the requisite number of trials were paired with a more senior co-counsel; and (c) a trial chief oversaw the trial work of all lawyers.

The Committee recognizes that real-world exigencies sometimes require providers to find means of achieving substantial, rather than full, compliance with the First Department's standards, and we regard the co-counsel arrangement that was in place at BXD to be such a means with respect to the First Department's qualification standards. That said, and particularly with respect to its felony attorneys, the Committee urges BXD to continue to strive for full compliance with the First Department's standards.

With respect to the diversity of BXD's attorneys, the FY 12-13 reporting period unfortunately saw a decline in attorneys of color – dropping from 32% in FY 11 to 28% in FY 12 and 29% in FY 13. In addition, BXD continued to have a relatively low number of supervisors of color – 2 in FY 12 and 3 in FY 13. It is our understanding, however, that BXD will be in a position to report an improvement in those numbers for FY 14-15.

In addition, the Committee has no doubt that BXD appreciates the importance of a diverse staff and commends BXD for its continuing efforts to achieve that goal. In FY 12-13, those efforts included: early identification of applications from candidates who would enhance diversity; participating in urban career fairs such as the Northeastern Black Law Students Association Career Fair and the Equal Justice Work Career Fair; following up with all attorneys of color with whom it met at those fairs to encourage them to apply; and reaching out to attorneys from historically black law schools such as Howard University through alumni who were current employees. The Committee further notes and commends BXD for the fact that a substantial percentage of its attorneys were fluent in languages other than English, with more than 30 staff attorneys fluent in Spanish (32 in FY 12 and 34 in FY 13, plus four supervisors in each year) and more than 20 staff attorneys fluent in other languages (21 staff attorneys in FY 12 and 24 in FY 13).

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<sup>8</sup> As noted above, the First Department's qualification standards are as follows: For attorneys representing clients charged with misdemeanor crimes, the standards require experience as lead, sole or co-counsel to an experienced criminal law practitioner in at least five criminal cases during the previous three years involving: (1) at least three non-trial dispositions; (2) one litigated motion in which oral testimony was taken and a decision was rendered; and (3) one trial that proceeded to verdict. For attorneys representing clients charged with felony crimes, the standards require experience in at least 30 criminal cases during the previous five years involving: (1) at least 15 non-trial dispositions (at least five of which occurred post arraignment); (2) five hearings in which oral testimony was taken and a decision was rendered; and (3) two post-indictment jury trials that proceeded to verdict in which the attorney was lead counsel; or experience in at least 10 criminal cases during the previous five years as lead or sole counsel and at least 20 noncriminal cases including at least five jury trials as lead or sole counsel.

(iii) **Training**

BXD's procedures for training its staff during the FY 12-13 reporting period were well within the First Department's guidelines. BXD's legal director provided a monthly digest of recent decisions relevant to the Criminal Defense Practice and conducted regular legal trainings to review current developments in the law. In addition, having become an accredited CLE provider, BXD also conducted an impressive series of training sessions. The topics included evidence, trial skills training, handling child witnesses and mental health issues in criminal cases. BXD also paid for its attorneys to receive CLE credits from outside providers, and the programs attended by BXD attorneys included the National Criminal Defense College ("NCDC") Trial Practice Institute; Advanced Cross Examination (NCDC); Storytelling, Theories, Themes (NCDC); Avoiding Ineffective Assistance of Counsel Claims (Center for Appellate Litigation); Weapons for the Firefight (New York State Association of Criminal Defense Lawyers); Reasonable Doubt and Actual Innocence (National Association of Criminal Defense Lawyers); Forensics and the Law (New York State Bar Association); Annual Metropolitan New York Trainer (New York State Defenders Association); and Ethics in the Empire State (New York City Bar Association).

Each new criminal defense attorney was also put on a training team for the first year of practice. After six weeks devoted exclusively to in-house training, new attorneys were then permitted to handle misdemeanor cases under close supervision, with bi-monthly meetings held throughout the first year of practice. New attorneys also attended a week-long trial skills training session offsite, and BXD's new office space also includes a moot courtroom which enabled lawyers, clients, and witnesses to benefit from mootings in a real courtroom setting.

Finally, during the FY 12-13 reporting period, BXD hired a new Chief Operating Officer who, along with BXD's Deputy Director, created an in-house training program for new supervisors. The training covered topics such as appropriate and effective feedback, proper evaluation techniques of written and courtroom skills, as well as incorporating holistic defense into supervision and supporting a team-based model. In addition, BXD continued its practice of having supervising attorneys meet in small groups once a month with the Deputy Director on effective management of interdisciplinary team meetings and other supervision issues.

(iv) **Supervision**

BXD's staff/supervisor ratio during FY 12-13 continued to be well below the First Department's maximum of 10-to-1, with the ratio remaining at approximately 5-to-1 in each of FY 12 and FY 13. At the same time, however, each of BXD's supervisors continued to carry a very heavy caseload – a circumstance that is at odds with the First Department's standards,<sup>9</sup> and

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<sup>9</sup> The First Department's standards specify that "a supervising lawyer's personal caseload should not exceed 10% of the maximum caseload unless the ratio of staff lawyers to supervising lawyers is less than 10:1, in which case supervising lawyers' caseloads may be proportionally higher (e.g., 20% of the maximum if the staff lawyer to supervising lawyer ratio is 5:1)." Applied to BXD, the First Department's standards would yield a maximum supervisory caseload of 20% – or 80 misdemeanor-equivalent cases. In FY 12, however, four out of BXD's 13 supervisors handled more than 200 cases, and six handled more than 150 cases. In FY 13, 12 out of 15 supervisors handled more than 200 cases and three handled more than 150 cases.

that necessarily limits the amount of time available for supervision, feedback, and evaluation of less experienced attorneys. While the Committee appreciates that BXD's low staff/supervisor ratio may permit supervisors to carry higher caseloads and at the same time provide effective supervision, we nonetheless remain concerned about the degree to which BXD's supervisory caseloads have remained out of compliance with the First Department's standards. BXD, in turn, has urged the Committee to revisit the standards related to supervision, and (as we have noted in connection with our discussion of LAS) we anticipate reviewing various aspects of the supervisory standards as part of our work for the FY 14-15 reporting period.

(v) **Workloads**

BXD's caseload numbers showed significant improvement in FY 12 (as BXD and other providers prepared for the effective date of the case caps by increasing staff), but then demonstrated a worrisome increase in FY 13. In FY 12, only 16% of BXD's attorneys carried caseloads in excess of the First Department's maximum of 400 misdemeanor equivalents (down from 70% in FY 10), but in FY 13 the percentage rose back up to 44%. In addition, and unsurprisingly, several staff attorneys stated during the Committee's site visit to BXD that they felt overwhelmed by high caseloads.

Simply put, both because the First Department (and now the New York State legislature) require it, and because common sense confirms its importance, the Committee very much hopes that BXD's report for FY 14-15 will show full compliance with New York's caseload caps. In addition, we note that BXD has offered to discuss with the Committee additional metrics for assessing workload (such as pending caseload) and the external factors that impact those metrics (such as delay in resolution of cases), and we look forward to engaging in such discussions as part of our work for the FY 14-15 reporting period.

(vi) **Evaluation, Performance and Discipline**

BXD reports that during the FY 12-13 reporting period, new attorneys were formally reviewed both in writing and orally twice during their first year, that all attorneys received such review at least annually, and that contemporaneous feedback was given at all hearings and trials. BXD further reports that where problems were identified, supervisors and staff met to discuss the problems and develop a plan to remedy the situation. Strategies include targeted mentoring, case review, and shadowing. When remedial efforts failed, or when serious wrongdoing was identified, BXD's practice was to issue verbal and written reprimands, probation and, if necessary, termination.

As in the past reporting period, we note that BXD's plan, as formulated, provided an adequate mechanism for the evaluation, performance, and discipline of its attorneys. As in the past, however, the Committee remains concerned about the degree to which heavy supervisory caseloads affected BXD's ability to implement its supervisory plan. The Committee recognizes that BXD's commitment to a low staff/supervisor ratio is meant to enable supervisors to carry a higher caseload while still fulfilling their supervisory duties. Nonetheless, the degree to which supervisory caseloads remain significantly in excess of the First Department's maximum is a concern.

**(vii) Support Services**

As discussed in our Summary of Conclusions, the Committee has placed special emphasis in this report on the important support services provided by investigators and social workers. In addition, on the basis of the superb LAS/DPW Study, the Committee has announced its intent to recommend promulgation of a standard specifying a maximum 3-to-1 ratio both for attorneys to investigators and for attorneys to social workers. In the interim, and in the spirit of documenting the progress that has already been made and the additional assistance that each organization is likely to need to achieve the proposed ratios, we note the following with respect to BXD's access to, and utilization of, investigators and social workers during FY 12-13.

Consistent with BXD's longstanding emphasis on holistic representation, staff attorneys were assigned to teams, with each team having a dedicated social worker and investigator. As in prior reporting periods, the interdisciplinary teams in FY 12-13 consisted of criminal defense lawyers, family defense lawyers, other civil lawyers, social workers, parent advocates, and investigators. BXD maintained an attorney/investigator ratio of 8-to-1 and an attorney/social worker ratio of 9-to-1. While those ratios represented an increase from the prior reporting period, BXD explained that the increase was the temporary result of increased attorney hiring, and that future reports would show the hiring of additional investigators and social workers.

For FY 12-13, investigations were done in 35% of all misdemeanors cases and 70% of all felonies. In addition, social workers were utilized in 20% of misdemeanor cases and 35% of felonies. Consistent with its holistic approach to client representation, BXD trained its lawyers to use a checklist it has developed to identify substance abuse, mental health and other client needs during the initial interview. In addition, BXD reported continued emphasis on training for all attorneys with respect to client eligibility for diversionary programs and other alternatives to incarceration.

In addition, BXD continued its practice of developing projects designed to enhance the quality of criminal defense representation that it provides to its clients. Among the innovations BXD reported during the FY 12-13 period was the opening of its expanded "Justice Campus" with a welcoming "living room" staffed by a specialized Intake Team, an information center, library, children's play area, and comfortable waiting area. During the evening and weekend hours when the Intake Team was not available, BXD also staffed a 24-hour hotline.

Advocacy projects included: an Adolescent Defense Project designed to focus on the unique legal and social service needs of clients charged as juvenile offenders or facing multiple cases; the City-Wide Bail Initiative organized to educate judges and defenders on alternative forms of bail; and the Forensic Practice Group developed to specially train a group of lawyers on eyewitness identification, DNA, and ballistics so that they can be resources for all staff. Those resources and tools, in the Committee's view, significantly helped BXD defense teams serve the community's needs and address the issues arising in their clients' cases.

**(viii) Case Management and Quality Control**

BXD's system for case management and quality control during the reporting period complied with the First Department's standards.

BXD used a web-based case management system called PIKA, which maintained a complete list of all open and closed cases for each attorney, tracked upcoming court appearances for each case, and allowed for centralized access to any case information provided by the attorney or the team's social worker. BXD had all attorneys complete, at arraignment, a checklist designed to identify potential collateral consequences of each client's criminal justice involvement. The data from the checklist was then entered into the case management system after arraignments allowing BXD to ensure that appropriate referrals were made. Unfortunately, the system did not track grand jury practice, hearing practice or motion practice. As we have previously noted, we believe such data is important in assessing the quality of services provided, and we again urge BXD to enhance its tracking system to include that data.

BXD also continued – commendably – to conduct client satisfaction surveys each summer during the FY 12-13 reporting period. BXD's client satisfaction surveys assessed, among other things, the clients' knowledge of services and the quality of communication with BXD personnel. In addition, BXD continued to track life outcomes such as how often BXD's Civil Action Practice was able to prevent evictions, reunite children with parents, prevent deportation, and/or obtain public benefits for clients.

**(ix) Compliance with Standards of Professional Responsibility**

The Committee's Questionnaire for FY 12-13 included questions intended to assess whether conditions existed that might operate to impede the ability of indigent defense providers to protect client confidences during courthouse meetings prior to and after arraignment. In that regard, BXD confirmed the difficulty of conducting confidential interviews in the arraignment booths in the newly constructed Hall of Justice courthouse because the booths are not sound proof. BXD further reported that it has responded to the situation to the best of its ability – namely, by training attorneys to inform their clients that they should not disclose any confidential information during those interviews, by making regular trips to the jail to see incarcerated clients, and/or or by having clients produced for video conferences where confidences can be protected.

As detailed above in our discussion of LAS, the limitations imposed by the physical conditions and staffing levels in the relevant courthouses – and the importance of confidential courthouse communications to effective representation – cause this Committee to believe that further examination of this issue is warranted both by the indigent defense service providers themselves, by this Committee, and by those in a position to effect improvements in existing conditions.

**(x) Reporting Obligations**

BXD met its reporting obligations to the City of New York and to this Committee during the FY 12-13 reporting period.

### **3. NEW YORK COUNTY DEFENDER SERVICES**

#### **(a) Overview**

The New York County Defender Services (“NYCDS”) has contracted with the City of New York since 1997 to provide representation to indigent defendants in a fixed number of criminal cases. During the FY 12-13 reporting period, NYCDS’s contract with the City required it to provide representation in 18,000 criminal cases annually (up from 16,000 during the previous reporting period). In addition, NYCDS contracted to staff an Integrated Domestic Violence (IDV) Part for an additional \$125,000 per year.

NYCDS received case assignments by staffing set arraignment sessions each week. During both FY 12 and FY 13, NYCDS fulfilled its contractual commitment to staff its assigned arraignment shifts. But, as in the past, this resulted in NYCDS taking on more case assignments than its contract required. Although NYCDS had made progress during the previous reporting period to reduce the number of cases exceeding its contract, that number shot back up significantly in FY 12-13. By way of comparison, NYCDS exceeded its contractual obligations by 293 cases in FY 10 and by 314 cases in FY 11. In FY 12-13, those numbers rose to 1,611 excess cases in FY 12 and 2,050 excess cases in FY 13. Moreover, as was true in the previous reporting period, fully 100% of NYCDS’s attorneys and supervisors carried caseloads during FY 12-13 that were in excess of the maximum mandated by the First Department’s standards.

While NYCDS’s attorneys are exceptionally experienced, the fact remains that even highly experienced and highly dedicated attorneys are hard-pressed to provide an effective defense when they are struggling under the weight of excessive caseloads. As a result, NYCDS’s progress in reducing its caseload will be the area of most interest to the Committee in the FY 14-15 reporting period.

That said, it bears emphasis that there is much to admire in the services provided by NYCDS’s dedicated attorneys. NYCDS was early and has been steadfast in its commitment to true vertical representation. NYCDS has also, commendably, sought to give real force to *Padilla* by hiring dedicated immigration attorneys who carry no independent caseload and whose sole and critical function is to serve as a resource for NYCDS attorneys whose clients have immigration issues.

Indeed, it precisely because NYCDS has demonstrated its commitment to quality representation that the Committee believes so strongly that NYCDS’s contractual structure and/or intake practices must be altered so that NYCDS’s attorneys have the time needed to do good for their clients.

#### **(b) Compliance with First Department Performance Standards**

##### **(i) Professional Independence**

NYCDS’s governing structure with an independent Board of Directors complied with the First Department’s standards for ensuring professional independence. In addition, NYCDS

reported that it experienced no threats to its professional independence during the FY 12-13 reporting period.

**(ii) Qualifications of Lawyers**

NYCDS has a history of hiring and retaining a very experienced staff. All attorneys assigned to handle felony matters during FY 12-13 had the requisite level of experience required by the First Department standards. Two attorneys assigned to handle misdemeanors, however, did not meet the standards.<sup>10</sup>

The percentage of staff attorneys of color and those fluent in Spanish likewise remained stable and substantial. During FY 10, nearly 25% of NYCDS's staff attorneys were persons of color. That figure declined slightly to 22% in FY 11 (as staff attorney ranks increased from 33 to 36), but then steadily rose again in FY 12-13 (as new hiring continued), and at the end of the reporting period the figure was once again near the 25% mark (9 out of 40 attorneys). The percentage of staff attorneys fluent in Spanish – 15% in FY 12 and 16% in FY 13 – likewise remained stable.

Unfortunately, as in prior reporting periods, there continued to be no persons of color among the five managing and supervising attorneys. NYCDS has noted in the past that its supervisory staff are the same individuals who founded NYCDS, and that the importance of a diverse staff will be borne in mind when there is turnover or augmentation of supervisory ranks. And, in that regard, the Committee was very pleased to learn that NYCDS will be in a position to report for FY 14-15 that two of its three new supervisory attorneys – including its new Executive Director – are in fact persons of color.

**(iii) Training**

NYCDS's training procedures complied with First Department requirements during the FY 12-13 reporting period. NYCDS obtained CLE videotapes from an accredited provider on ethics and criminal law related issues. All attorneys were able to earn up to 12 credits of CLE through those tapes with all expenses paid by NYCDS. In addition, NYCDS sent attorneys to a wide range of relevant CLE programs offered by the New York State Association of Criminal Defense Lawyers, Brooklyn Law School, the New York State Defenders Association, the Association of the Bar of the City of New York, the National Institute of Trial Advocacy ("NITA"), The Legal Aid Society of New York, and the New York State Bar Association.

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<sup>10</sup> As noted above, the First Department's qualification standards are as follows: For attorneys representing clients charged with misdemeanor crimes, the standards require experience as lead, sole or co-counsel to an experienced criminal law practitioner in at least five criminal cases during the previous three years involving: (1) at least three non-trial dispositions; (2) one litigated motion in which oral testimony was taken and a decision was rendered; and (3) one trial that proceeded to verdict. For attorneys representing clients charged with felony crimes, the standards require experience in at least 30 criminal cases during the previous five years involving: (1) at least 15 non-trial dispositions (at least five of which occurred post arraignment); (2) five hearings in which oral testimony was taken and a decision was rendered; and (3) two post-indictment jury trials that proceeded to verdict in which the attorney was lead counsel; or experience in at least 10 criminal cases during the previous five years as lead or sole counsel and at least 20 noncriminal cases including at least five jury trials as lead or sole counsel.

During the FY 12-13 reporting period, NYCDS also maintained a comprehensive in-house training program for new hires. After the attorneys completed the program, they were accompanied to court by a supervisor for their initial court appearances and their files were reviewed regularly. The new attorneys continued to receive regular training in the form of NITA-style simulations focused on developing their trial skills. The supervisors and staff attorneys who conducted the trainings have long served as adjunct professors at nearby law schools and instructors in intensive trial advocacy and NITA programs.

As in the past two reporting periods, however, NYCDS's supervisors did not attend supervisory training programs during FY 12-13. NYCDS has since informed the Committee that it began providing supervisory training in FY 14, and the Committee looks forward to a description of that training in NYCDS's report for FY 14-15.

**(iv) Supervision**

NYCDS's attorney/supervisor ratio steadily increased over the course of the past two reporting cycles and, as of the end of FY 12-13, was just barely compliant with the First Department's 10-to-1 maximum. In the FY 10-11 reporting period, NYCDS added four new staff attorneys without any increase in supervisory staff, causing the attorney/supervisor ratio to increase from 8-to-1 to 9-to-1. In addition, NYCDS continued to hire new attorneys in the FY 12-13 reporting period while keeping the size of the supervisory staff the same – as a result of which NYCDS ended the period with a 10-to-1 ratio. Moreover, each of NYCDS's four supervisors continued to carry a substantial caseload that was well in excess of First Department standards.

While the Committee recognizes – as it has in the past – that there are benefits to having supervisors handle cases, and further recognizes that NYCDS's staff is relatively senior, the fact remains that an overburdened supervisor is less likely to be able to provide effective supervision. To address the caseload issue, NYCDS reduced the number of supervisor arraignment shifts per year from five in FY 11 to three in FY 13. However, particularly with a rising staff/supervisor ratio, the Committee remains concerned that NYCDS's supervisor attorneys did not have adequate time available for supervision in FY 12-13.

As we understand it, NYCDS's report for FY 14-15 will address the steps that have since been taken by NYCDS to improve staff/supervisor ratios and to moderate the workload of its supervisors. We look forward to learning more about how NYCDS has addressed those important issues.

**(v) Workloads**

As in past reporting periods, NYCDS in the FY 12-13 period once again took on – for no additional compensation – a caseload in excess of the 18,000 cases required under its contract with the City. And, in fact, the excess intake increased significantly. During the two years of the previous reporting period, NYCDS exceeded its contractual obligations by 293 cases (in FY 10) and 314 cases (in FY 11). In the FY 12-13 reporting period, NYCDS's excess intake was fully five to six times higher – rising to 1,611 excess cases in FY 12 and 2,050 excess cases in FY 13.

As a result, and unsurprisingly, fully 100% of NYCDS's attorneys carried caseloads that significantly exceeded the First Department's maximum throughout FY 12-13.

Although NYCDS has advised the Committee that, at least as of early FY 14, a significant reduction in caseload had been achieved, that report was coupled with a warning that significant additional funding would be needed to bring NYCDS into compliance with the impending caseload caps. NYCDS's caseload figures for FY 12-13 cannot be characterized as anything but gravely concerning, and NYCDS's figures for FY 14-15 will be an area of particular focus by the Committee.

**(vi) Evaluation, Performance and Discipline**

During FY 12-13, NYCDS instituted an attorney evaluation protocol pursuant to which attorneys are formally evaluated at least twice during their first year and at least annually thereafter. NYCDS further reported that it selected a form that is used by public defender offices across the country and that addresses roughly 100 detailed areas of practice. The Committee commends NYCDS for formalizing its attorney evaluation procedures and looks forward to hearing how the protocol functioned in FY 14-15.

The Committee also believes it is important for NYCDS to have a central file documenting receipt and resolution of complaints from judges and clients. Both historically and in FY 12-13 reporting period, NYCDS addressed such complaints on a case-by-case basis by speaking to the individual attorney, then issuing a verbal warning if necessary, which could escalate to a written warning if the conduct continued and further culminate in discharge, if necessary. While such a process can be effective for a relatively small organization, the Committee believes that as NYCDS continues to grow in size, it will be important for it to have a central complaint repository to alert supervisors to possible gaps in training or recurring problems and to allow for assessment of approaches to address such problems. As we understand it, NYCDS has begun the process of creating a central complaint repository, and we look forward to learning about the progress of those efforts in NYCDS's report for FY 14-15.

**(vii) Support Services**

As discussed in our Summary of Conclusions, the Committee has placed special emphasis in this report on the important support services provided by investigators and social workers. In addition, on the basis of the superb LAS/DPW Study, the Committee has announced its intent to recommend promulgation of a standard specifying a maximum 3-to-1 ratio both for attorneys to investigators and for attorneys to social workers. In the interim, and in the spirit of documenting the progress that has already been made and the additional assistance that each organization is likely to need to achieve the proposed ratios, we note the following with respect to NYCDS's access to, and utilization of, investigators and social workers during FY 12-13.

Even recognizing that no specific standard had yet been promulgated, the attorney/investigator and attorney/social worker ratios at NYCDS during FY 12-13 were troublingly high. In FY 12, the attorney/investigator ratio was 20-to-1, and the attorney/social

worker ratio was 13-to-1. Moreover, those ratios worsened further in FY 13, when four attorneys were added without an increase in investigative or social work resources.

Unsurprisingly, then, the use of investigative and social worker services in the cases handled by NYCDS remained the exception rather than the rule. Excluding requests for the service of subpoenas, investigators were utilized in only 1.94% of cases in FY 12 and in only 1.64% in FY 13. And even if subpoena requests are included, the percentages rose only to 3.1% and 3.36% in FY 12 and FY 13, respectively. As a result, to the extent investigative work was needed in any of the other cases NYCDS handled, the attorneys' only option was to attempt to do it themselves. Similarly, the use of social work services remained low and in fact declined during the FY 12-13 reporting period. Social workers were used in 1.8% of cases in FY 10 and 1.7% of cases in FY 11. In FY 12-13, however, usage went down to 1.53% (for FY 12) and 1.6% (for FY 13).

**(viii) Case Management and Quality Control**

There is both much to commend and room for improvement by NYCDS in the area of case management and quality control. Beginning with the positive, the Committee commends NYCDS for its use of immigration specialists. During FY 12-13, NYCDS had two immigration attorneys who carried no independent caseload and whose sole responsibility was to serve as a resource for attorneys whose clients have potential immigration issues. NYCDS's immigration specialists consulted with the attorneys, met with clients and took an active role in many cases. They also provided regular email memoranda to the staff on current developments in immigration law and practice.

In addition, the Committee notes and commends NYCDS's strict adherence to vertical representation and its consistent history of refraining from the utilization of arraignment-only attorneys or supervisors.

Unfortunately, the verdict on NYCDS's data collection during FY 12-13 is less positive. Despite commendable efforts to improve its systems, the case assignment and disposition data that NYCDS initially produced to the Committee was substantially incomplete and/or contradictory. In addition, NYCDS did not take any steps during the FY 12-13 reporting period (nor the previous period) to evaluate client satisfaction or any other aspect of the overall performance of its organization.

However, when those issues were pointed out to NYCDS's new Executive Director, he assured the Committee that NYCDS's new data collection systems were functioning well, and he personally oversaw the re-gathering and re-submission of assignment and disposition data for FY 12-13. NYCDS's new Executive Director further advised the Committee that NYCDS is in the process of developing a methodology for assessing client satisfaction.

As the Committee has previously noted, accurate and detailed data are an indispensable tool in the evaluation of an indigent defense organization's performance – both by the organization itself, and by those charged with its oversight. In addition, the collection of non-

numerical data – such as client surveys – likewise adds significantly to an organization’s ability to address any shortcomings and improve the quality of the services it provides. As a result, we commend NYCDS’s new Executive Director for his attention to those important issues, and we thank him for his assistance in obtaining complete and consistent assignment and disposition data for FY 12-13.

**(ix) Compliance with Standards of Professional Responsibility**

The Committee’s questionnaire for FY 12-13 included questions intended to assess whether conditions existed that might operate to impede the ability of indigent defense providers to protect client confidences during courthouse meetings prior to and after arraignment. In that regard, NYCDS reported that most of the interview spaces in the courthouse for attorney meetings with incarcerated clients do not permit its attorneys to protect attorney client confidences due to the lack of privacy provided by the physical space. In addition, NYCDS reported that it does not have office space within the courthouse, which hinders its ability to provide private space to protect client confidences during attorney meetings with clients at liberty.

As detailed above in our discussion of LAS and BXD, the limitations imposed by the physical conditions and staffing levels in the relevant courthouses – and the importance of confidential courthouse communications to effective representation – cause this Committee to believe that further examination of this issue is warranted both by the indigent defense providers themselves, by this Committee, and by those in a position to effect improvements in existing conditions. In addition, as an example of an interim measure that would assist at least one indigent defense provider, the Committee notes that NYCDS could be provided (as LAS already is) with office space within the courthouse for the purpose of conducting attorney meetings with clients who are at liberty pending resolution of their cases, and Committee recommends that consideration be given to doing so.

**(x) Reporting Obligations**

NYCDS met all of its reporting obligations to the City of New York and to this Committee during the FY 12-13 reporting period.

**4. NEIGHBORHOOD DEFENDER SERVICE OF HARLEM**

**(a) Overview**

During the FY 12-13 reporting period, the Neighborhood Defender Service of Harlem (“NDS”), a community-based public defender office, experienced a period of growth and stability unlike anything the organization had known since its founding more than twenty years ago. Over the course of the reporting period, the number of staff attorneys employed by NDS increased by more than 20%, and NDS had the security of a multiyear contract with the City rather than the ad hoc appropriations that had for so long been NDS’s only source of funding.

However, NDS's new contract also called for a significant increase in the number of cases to be handled by NDS – a circumstance that caused a high percentage of its attorneys to continue to carry caseloads that exceeded the First Department's maximum. NDS was able, commendably, to achieve a substantial reduction in the average caseload carried by its attorneys during the second year of the reporting period. Nonetheless, as the FY 12-13 reporting period ended, fully 90% of NDS's attorneys still carried excessive caseloads, and it is very much the Committee's hope that NDS's report for FY 14-15 will bring better news on that front.

The Committee has long commended NDS's model as a holistic, community-based provider, and we were heartened to hear during our site visit – from both NDS's management and its staff attorneys – that NDS is committed to maintaining that practice model even as its footprint in the indigent defense community expands. We accordingly hope that NDS will seek and receive the funding needed to make that possible.

**(b) Compliance with First Department Standards**

**(i) Professional Independence**

The governing structure for NDS was in compliance with First Department standards for ensuring professional independence during FY 12-13. NDS commendably maintained a diverse Board that reflected the community it served. In addition, the new contract awarded to NDS during the last reporting cycle represented another critical step in providing financial stability and insuring ongoing professional independence.

**(ii) Qualifications of Attorneys**

NDS had a certification system in place during the reporting period that conformed to the First Department's standards and was sufficient to ensure that attorneys were suitably qualified for the cases they were assigned. Indeed, all attorneys assigned to handle misdemeanor or felony cases met the qualification standards specified by the First Department.<sup>11</sup> Moreover, the overall experience level of NDS trial attorneys during the reporting period remained high.

NDS's overall staff in FY 12-13 was also commendably diverse with well over half of the staff listed as persons of color. In addition, for both FY 12 and FY 13, 50% of the staff attorneys were African-American, Latino or Asian. That said, the office's diversity would be improved by the further addition of Hispanic/Latino attorneys, particularly given that Spanish speakers comprise a significant percentage of NDS's clients.

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<sup>11</sup> As noted above, the First Department's qualification standards are as follows: For attorneys representing clients charged with misdemeanor crimes, the standards require experience as lead, sole or co-counsel to an experienced criminal law practitioner in at least five criminal cases during the previous three years involving: (1) at least three non-trial dispositions; (2) one litigated motion in which oral testimony was taken and a decision was rendered; and (3) one trial that proceeded to verdict. For attorneys representing clients charged with felony crimes, the standards require experience in at least 30 criminal cases during the previous five years involving: (1) at least 15 non-trial dispositions (at least five of which occurred post arraignment); (2) five hearings in which oral testimony was taken and a decision was rendered; and (3) two post-indictment jury trials that proceeded to verdict in which the attorney was lead counsel; or experience in at least 10 criminal cases during the previous five years as lead or sole counsel and at least 20 noncriminal cases including at least five jury trials as lead or sole counsel.

Over the years, NDS has maintained a sub-team of attorneys and support personnel (called *defensa*NDS) who are fluent in Spanish and who have received targeted training in immigration issues, and NDS reports that it actively seeks Spanish and other foreign language speakers when interviewing for attorneys, support staff, interns and volunteers. The Committee therefore remains confident that NDS is committed to having its staff reflect the diversity of the community it serves.

**(iii) Training**

During the FY 12-13 reporting period, NDS provided an appropriate level of training and orientation to newly hired attorneys and support staff, as well as CLE to all of its attorneys. In fact, NDS's CLE expenditures increased from \$10,605 in FY 12 to \$15,674 in FY 13. As in past reporting periods, training was provided either through formal group training, shadowing senior attorneys or a combination of both. NDS also is an accredited CLE provider, and its attorneys attended a broad array of both in-house and outside CLE programs during the reporting period – including the New York State Defenders Association Metropolitan Trainer program in New York City and the National Criminal Defense College two-week training program.

Moot courts were also used frequently as a training tool. During the FY 12-13 reporting period, there were several moot sessions on suppression hearings and full moot courts on all homicide cases. All levels of attorneys were encouraged to participate and/or attend.

**(iv) Supervision**

During the FY 12-13 reporting period, NDS continued to structure the office around two criminal defense teams, each headed by a supervising attorney. However, as the number of staff attorneys grew, there was not a corresponding increase in the number of supervisors. As a result, the staff/supervisor attorney ratio worsened during FY 12-13, rising from 8.25-to-1 to 10.5-to-1 – a ratio that is not in compliance with the First Department's 10-to-1 maximum.

In addition, while NDS's two supervisors admirably sought to carry a caseload to stay current with Criminal Court practice, the caseloads reported – approximately 30 cases comprising serious felonies and some misdemeanors – are in excess of the maximum permitted by the First Department's standards. To ensure that NDS's supervisors have the time needed to oversee its increasing ranks of staff attorneys, the Committee looks forward to seeing more supervisors and/or a reduction in the number and severity of cases carried by supervisors. And, in regard to the latter point, the Committee specifically reminds NDS that the maximum caseload for supervisors under the First Department's current standards is 10% of a staff attorney's maximum caseload – *i.e.*, 40 misdemeanor-equivalent cases.

NDS attorneys also supervised six to eight law students during the academic year as well as approximately twelve during the summer, and NDS used its Volunteer Attorney Project (“VAP”) to oversee the work of “dozens of attorneys from over a dozen law firms.” While there is undoubtedly a value added by the resources private law firms can provide to NDS's clients, it must be noted that the VAP attorneys were supervised by one of NDS's two supervisors, thereby raising additional concerns about supervisors being stretched too thin.

That said, it is important to note that NDS's office structure and team-based approach to client representation naturally operated to provide a heightened level of supervision. In addition to a supervising attorney, each team had a senior attorney and junior attorney(s) who worked collaboratively and shared responsibilities on cases, thereby providing valuable and client-situated mentoring and training for newer lawyers.

(v) **Caseloads**

At least in FY 12-13, the vast majority of NDS's attorneys – 88% in FY 12 and 90% in FY 13 – carried caseloads in excess of the First Department's maximum of 400 misdemeanor equivalents. Moreover, although NDS was able – commendably – to reduce its average attorney caseload from 599.7 in FY 12 to 525 in FY 13, the fact remains that the average caseload was still 31% above the First Department's maximum.

NDS has expressed the hope that its report to the Committee for FY 14-15 will demonstrate full compliance with the now legislatively mandated caseload caps, and the Committee very much hopes that NDS's optimism proves to be well-founded. In any event, NDS's caseloads will be an area of particular focus for the Committee when it reviews information for the FY 14-15 reporting period.

(vi) **Evaluation, Promotion and Discipline**

While the evaluation procedures used at NDS during FY 12-13 were relatively informal, they were based upon written standards that were, in the Committee's judgment, appropriate and sufficient in light of the relatively small size of the office. New attorneys had formal caseload reviews twice during their first year. Thereafter, reflecting the structure of the office, cases were discussed by team members and supervisors on a regular basis. If a problem developed, supervisors could arrange for a formal case review. NDS also had in place adequate disciplinary procedures to address any serious performance problems.

Because of the small size of the office, that process appears to have served well to ensure quality representation. Going forward, however, with the increased number of staff and cases, ongoing and regular casework oversight will be a topic to review.

(vii) **Support Services**

As discussed in our Summary of Conclusions, the Committee has placed special emphasis in this report on the important support services provided by investigators and social workers. In addition, on the basis of the superb LAS/DPW Study, the Committee has announced its intent to recommend promulgation of a standard specifying a maximum 3-to-1 ratio both for attorneys to investigators and for attorneys to social workers. In the interim, and in the spirit of documenting the progress that has already been made and the additional assistance that each organization is likely to need to achieve the proposed ratios, we note the following with respect to NDS's access to, and utilization of, investigators and social workers during FY 12-13.

For FY 12, NDS employed 3 investigators and 4 social workers, yielding an impressive attorney/investigator ratio of 5.5-to-1 and an attorney/social worker ratio of 8.25-to-1. For FY 13, NDS added an investigator but employed the same number of social workers, resulting in ratios of 5.25-to-1 and 10.5-to-1, respectively.

As for the utilization of investigators and social workers, NDS was not in a position to provide detailed data for FY 12-13, reporting simply that 19% of the cases that “survive” arraignments were felonies, and that 75% of those cases required investigative and/or social work support. Both because of the indisputable importance of adequate investigative and social work support, and because of the new standards that the Committee intends to recommend, it is important to know the extent to which such support was available and utilized, and the Committee therefore urges NDS to collect and provide that data in a more granular fashion in future reporting periods.

Finally, we also note that each team at NDS included an immigration attorney focused on preserving non-citizen clients’ rights and representing clients in removal proceedings. In addition, NDS also employed a housing attorney to train and advise staff attorneys on housing issues and to represent clients in Housing Court and at New York City Housing Authority (“NYCHA”) proceedings.

**(viii) Case Management and Quality Control**

At the close of the FY 10-11 reporting period, NDS was still in the process of transitioning to the Public Defense Case Management System (“PDCMS”) developed for public defender offices by the New York State Defenders Association. PDCMS became fully operational during the course of the FY 12-13 reporting period, and it promises to greatly enhance NDS’s ability to identify potential conflicts of interest, identify cases with the need for investigative or social work services, track clients’ cases across boroughs and courts, compile important data (including, for example, data concerning grand jury practice, motions filed, suppression hearings held, and utilization of investigator and social worker services), and generate reports that permit meaningful evaluation of the services provided by NDS. NDS is to be commended for taking this important step forward, and the Committee looks forward to reviewing the results of NDS’s enhanced ability to document and analyze its practice.

On a less positive note, we again observe that despite the indisputable importance of continuity of representation – and despite NDS’s commitment to that goal as evidenced in its team-approach to cases post-arraignment – NDS’s case management structure in FY 12-13 continued to include two permanent full-time arraignment attorneys. Although cases handled by those lawyers were quickly reassigned if they were adjourned past arraignment, the risk remained of issues falling through the cracks as a client moved from one attorney to the next. Further, the continued use of full-time arraignment attorneys raises questions about how cases were evaluated and the basis upon which certain cases were deemed to likely be “disposed” at arraignments. As NDS continues to grow, the goal of across-the-board pure vertical representation will become even more of a challenge, but the Committee nonetheless urges NDS

to consider restructuring its staff so that progress is made toward achieving the goal of continuity of representation starting at arraignments.

NDS likewise did not take any steps during the FY 12-13 reporting period (nor the previous period) to evaluate client satisfaction or any other aspect of the overall performance of its organization. Client surveys add significantly to an organization's ability to address any shortcomings and improve the quality of the services it provides. Particularly given NDS's significant growth, we urge NDS to make use of this important evaluative tool.

**ix) Compliance with Standards of Professional Responsibility**

The Committee's questionnaire for FY 12-13 included questions intended to assess whether conditions existed that might operate to impede the ability of indigent defense providers to protect client confidences during courthouse meetings prior to and after arraignment.

As detailed above in our discussion of the other trial-level providers, the limitations imposed by the physical conditions and staffing levels in the relevant courthouses – and the importance of confidential courthouse communications to effective representation – cause this Committee to believe that further examination of this issue is warranted both by the indigent service providers themselves, by this Committee, and by those in a position to effect improvements in existing conditions.

**(x) Compliance with Reporting Obligations**

NDS timely met all of its reporting obligations to the City of New York and to this Committee during the FY 12-13 reporting period.

**B. The Appellate Offices**

**1. OFFICE OF THE APPELLATE DEFENDER**

**(a) Overview**

Established in 1988, OAD is a nonprofit corporation representing indigent defendants with criminal appeals in state court, as well as collateral proceedings in both federal and state courts.

As our prior reports have consistently noted, OAD's mission and model have been unique among the appellate defender offices in the First Department because OAD seeks to increase the ranks of qualified appellate practitioners by offering relatively inexperienced attorneys a two-year program of intensive training and supervision. As our prior reports have also consistently noted, the uncertainty of OAD's funding has posed a significant challenge for that office.

For the first 21 years of its operation, OAD was funded through annual City Council appropriation – leaving OAD at risk each year of reduction or even elimination of its funding. In 2009, having been encouraged to seek funding through the City's Request for Proposal process, OAD sought and received a two-year contract – but at a drastically reduced level of funding.

In our report for the FY 08-09 period, we noted the irony that OAD’s laudable efforts to address the unpredictability of its year-to-year funding had resulted in a level of funding that threatened OAD’s unique and important mission, and we expressed the hope that the City would revisit – either at the City Council level or through the Office of the Criminal Justice Coordinator (“CJC”) – the level of funding awarded to OAD.

Since that time, the CJC has commendably taken measures to preserve OAD’s ability to continue its mission. Thus, as we noted in our report for the FY 10-11 period, the CJC retroactively adjusted OAD’s FY 12 contract and renewed OAD’s contract for FY 13-14 at increased funding levels. In addition, it appears from OAD’s responses to the Committee’s questionnaire for the FY 12-13 that the CJC remained extremely helpful in its administration of OAD’s contract during that reporting period, and that CJC was able to obtain funding to compensate OAD for previously unfunded work in Sex Offender Registration Act (“SORA”) and wrongful conviction cases.

The Committee’s view of OAD remains unchanged, and we once again commend the CJC for working to provide the financial stability that will ensure OAD’s continued ability to fulfill its unique and important mission. We also express the hope – again – that we will one day be in a position to report that OAD’s funding struggles are a relic of the past.

**(b) Compliance with First Department Performance Standards**

During the FY 12-13 reporting period, OAD was in substantial compliance with all First Department performance standards.

**(i) Professional Independence**

Although OAD reported no economic or other factors affecting its ability to exercise professional independence, we once again note that professional independence requires a reasonable level of financial security. We therefore once again note the importance of ensuring a stable and adequate level of funding for OAD.

**(ii) Qualifications of Lawyers**

As in prior reporting periods, OAD continued its model of hiring relatively inexperienced attorneys and providing them with intensive training and supervision with the dual goal of: (a) ensuring effective handling of the appeals assigned to those attorneys; and (b) augmenting the ranks of qualified appellate practitioners. As a result of that model, a significant number of OAD’s staff appellate attorneys during FY 12-13 lacked the prior experience prescribed by the First Department’s standards for the independent handling of appeals.<sup>12</sup> Nonetheless, OAD met the First Department’s qualification standards by ensuring that each of its newly hired attorneys completed a comprehensive training program on substantive and procedure law and by “double

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<sup>12</sup> The First Department’s standards require that before a lawyer is permitted to independently handle an appeal, he or she should have experience within the previous three years in at least 10 criminal cases, with that experience to include writing at least five appellate briefs and arguing at least five criminal appeals.

teaming” each appeal so that newly hired attorneys worked side by side with more experienced attorneys.<sup>13</sup> A further description of OAD’s training and supervision is provided below.

**(iii) Training**

During the FY 12-13 reporting period, entry-level attorneys at OAD participated in a series of approximately 40 training sessions over the course of six weeks. Sessions generally lasted two hours and covered a wide array of substantive and procedural criminal law topics, as well as advocacy skills. OAD also conducted bi-weekly appellate practice group meetings during which junior staff attorneys were designated to report on recent decisions in the New York state appellate courts and local federal courts. Training topics were routinely updated through OAD’s internal network – a web-based combination blog, forum, brief bank and office calendar. OAD attorneys also participated in regular collaborative meetings and conference calls with colleagues in other provider offices, such as The Legal Aid Society Criminal Appeals Bureau, Center for Appellate Litigation, New York State Defenders Association, and Center for Community Alternatives on topics such as drug law reform, post-release supervision and SORA hearings. In addition, during FY 12, OAD initiated an internship program under which its incoming attorneys could intern at the Appellate Division during the month of September prior to beginning their employment at OAD.

**(iv) Supervision**

As in prior reporting periods, OAD maintained an excellent staff-to supervisor ratio – 2-to-1 in FY 12 and 2.5-to-1 in FY 13 – which enabled OAD to adhere to its model of “double teaming” each appeal. Under that model, an OAD supervising attorney would read the entire appellate record and then strategize with the staff or volunteer attorney regarding the issues to be raised on appeal. Thereafter, the supervisor would oversee all aspects of the case by, among other things, conferring about the legal research to be performed, reviewing and editing the principal and reply briefs, and preparing the attorney for oral argument. All oral arguments were mooted, and particularly complex arguments were mooted more than once.

**(v) Workloads**

Workloads at OAD during FY 12-13 were, as in prior reporting periods, balanced through a system that weighted the case according to its complexity and assigned more complex appellate cases to more experienced staff attorneys. In addition, workloads remained well within the First Department’s maximum of 25 per attorney.

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<sup>13</sup> In that regard, the First Department’s standards permit a lawyer without the requisite experience to handle an appeal if the defense organization requires the lawyer:

- (i) to complete a comprehensive training program on substantive and procedural criminal law, as well as written and oral advocacy;
- (ii) to be supervised by an experienced lawyer who is familiar with the facts and issues in the case and who shall perform a detailed review of, and approve all substantive work performed by that lawyer until the lawyer satisfies the minimum experience requirements; and
- (iii) to moot the arguments prior to appearing before the court.

OAD's workload included a significant number of appeals from homicide convictions (14 in FY 12 and 18 in FY 13) and a significant number of Court of Appeals assignments (nine in FY 12 and 13 in FY 13). Overall, OAD received 122 new Appellate Division assignments in FY 12 and 130 in FY 13.

In addition, OAD continued to handle an extensive number of CPL Article 440 proceedings, CPLR Article 78 proceedings, Drug Law Reform Act re-sentencing proceedings, PRS re-sentencing proceedings, state and federal habeas corpus proceedings, SORA hearings, parole and prison disciplinary administrative appeals, and various other proceedings.

**(vi) Evaluation, Promotion, and Discipline**

Staff attorneys received formal written evaluations annually during the FY 12-13 reporting period. Those formal evaluations included input from all supervising attorneys familiar with the staff attorney's work, and each staff attorney was given the opportunity to discuss the review with his or her supervisors. In addition, staff attorneys met quarterly with their supervising attorneys in order to review and discuss work quality and productivity.

**(vii) Support Services**

Support services at OAD during FY 12-13 included traditional library and legal research resources as well as an internal network that contained a brief and motions bank (searchable by keyword and subject matter) and a blog and discussion forum. OAD attorneys also received regular email updates on recent decisions and legislative developments, and they were encouraged to post articles of interest and links to relevant websites on OAD's internal network.

OAD's social work staff remained at the reduced level of a single full-time social worker, with additional services provided by social work interns. In addition, during the FY 12-13 reporting period, OAD employed a part-time investigator to assist in the early identification of cases that carried indicia of wrongful conviction.

**(viii) Case Management and Quality Control**

In our report for FY 10-11, we noted that OAD had hoped to replace its 20-year-old computerized case tracking system, but had been forced to put the replacement on hold due to budgetary constraints. OAD was able to begin replacement of the system during FY 12-13 and also initiated a project to convert to digital file retention in order to make files more accessible, reduce storage costs, and benefit the environment. We look forward to hearing further about the progress of those initiatives in OAD's report for FY 14-15.

During FY 12-13, OAD also continued its practice of strongly encouraging attorneys to meet personally with their clients, even if doing so required long-distance travel to prisons, and encouraging clients to make collect calls. OAD likewise continued its practice of requiring all attorneys to write to their clients on a regular basis both to provide opportunity for meaningful input and to keep clients informed about the progress of their appeals.

(ix) **Reporting Obligations**

OAD met all reporting obligations to the City of New York and this Committee during the FY 12-13 reporting period.

2. **LAS: CRIMINAL APPEALS BUREAU**

(a) **Overview**

LAS's Criminal Appeals Bureau ("CAB") provides full post-conviction services to its clients by taking direct appeals to New York's intermediate appellate courts (First and Second Departments) and to the New York Court of Appeals. CAB also represents clients in state court habeas corpus proceedings, as well as in federal district courts and the United States Court of Appeals for the Second Circuit.

During the FY 12-13 reporting period, CAB litigated 25 cases in the New York Court of Appeals, prevailing in nine of them. CAB's successes before the Court of Appeals included establishing the importance of permitting expert witness testimony on the limitations of stranger-identification evidence (*People v. Edwin Santiago*); limiting intrusive police conduct following the stop of a vehicle for a traffic violation (*People v. Miguel Garcia*);, limiting the use of certain prior felonies for sentencing enhancement purposes (*People v. Gilberto Ramos*); and underscoring the importance of the constitutional right to counsel of choice (*People v. Anthony Griffin*).

In addition, CAB achieved a number of significant habeas victories for its clients, including a significant decision on when failure to disclose shortcomings in an investigation rises to a violation of the Confrontation Clause (*Alvarez v. Ercole*), and successfully concluded a wrongful conviction investigation that spanned nearly eight years (*People v. Johnnie O'Neal*). CAB also pursued a substantial amount of litigation related to the Sex Offender Registration Act ("SORA"), including 200 trial-level SORA hearings (challenging the reliability of the risk assessment system used to measure risk of re-offense); 75 SORA appeals (thereby playing a significant role in the law's development); and 40 petitions under Correction Law 168-o to reduce a client's risk level once the client has spent time in the community, utilizing for the lattermost the assistance of CAB's social work staff.

CAB also filed approximately 50 *Padilla* motions on behalf of non-citizens who had not been advised of the consequences of their guilty pleas (with a significant number of those motions negotiated to favorable dispositions); continued work on its Parole Advocacy Project (offering assistance to approximately 75 CAB clients who had an upcoming Parole Board appearance); filed more nearly 50 petitions for resentencing for clients impacted by the Rockefeller drug laws; and expanded its Notice of Appeal Project, designed to assist clients and trial attorneys alike in understanding the process of securing the assignment of appellate counsel.

**(b) Compliance with First Department Performance Standards**

CAB was in substantial compliance with all First Department performance standards through the FY 12-13 reporting period.

**(i) Professional Independence**

As noted above, LAS's governing structure satisfied the First Department's standards for promoting professional independence. LAS's management team reported on all operational and policy matters directly to an independent Board of Directors ("Board"), whose president served without compensation. The Board was responsible for the oversight of all practices within LAS, including CAB.

**(ii) Qualifications of Lawyers**

As in prior reporting periods, CAB maintained a staff of exceptionally well-qualified staff and supervisory attorneys. During FY 12, all of CAB's 39 staff attorneys (31 full-time and 38 part-time) had been with CAB for at least 13 years, and the majority had been with CAB for more than 20 years.

During FY 13, CAB hired, for the first time in many years, three new staff appellate attorneys. Two of those attorneys (one of whom had served as a full-time law firm extern at CAB for two years, and one of whom had worked three years with the Center for Appellate Litigation) had substantial criminal appellate experience, and the third new hire (who had worked with Neighborhood Defender Service for four years) had substantial criminal trial experience.

As a result, only two of CAB's 41 staff attorneys during FY 12-13 did not meet the experience criteria prescribed by the First Department's standards for the independent handling of appeals.<sup>14</sup> One of those attorneys was a long-time and highly experienced member of the CAB staff who, due to a period of time on disability and the nature of the assignments he received, had not argued the requisite five appeals within the past three years. The second attorney was one of CAB's three new hires, and that attorney received the enhanced training and supervision required to satisfy the First Department's qualification standards.<sup>15</sup>

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<sup>14</sup> The First Department's standards require that before a lawyer is permitted to independently handle an appeal, he or she should have experience within the previous three years in at least 10 criminal cases, with that experience to include writing at least five appellate briefs and arguing at least five criminal appeals.

<sup>15</sup> As noted above, the First Department's standards permit a lawyer without the requisite experience to handle an appeal if the defense organization requires the lawyer:

- (i) to complete a comprehensive training program on substantive and procedural criminal law, as well as written and oral advocacy;
- (ii) to be supervised by an experienced lawyer who is familiar with the facts and issues in the case and who shall perform a detailed review of, and approve all substantive work performed by that lawyer until the lawyer satisfies the minimum experience requirements; and
- (iii) to moot the arguments prior to appearing before the court.

**(iii) Training**

As noted above, CAB hired no new attorneys in FY 12 and only three in FY 13, two of whom already had substantial criminal appellate experience. As a result, in lieu of a formal new attorney training program, CAB trained its new hires through a one-on-one mentoring relationship with a CAB supervising attorney. For each new hire, the supervising attorney reviewed correspondence, read all transcripts, assisted in issue selection, reviewed drafts of both the main and reply brief, assisted in oral argument preparation, and consulted on the preparation of criminal leave applications and explored the availability of other post-conviction remedies.

All new hires were also assigned to attorney teams that met weekly at lunch to discuss their cases and recent developments. In addition, all CAB staff received regular emails containing the text of relevant criminal law decisions and a daily Criminal Practice-wide email summarizing all significant decisions. All CAB staff attorneys also participated in CAB-specific periodic training programs and were permitted to attend LAS Criminal Practice training programs.

**(iv) Supervision**

As in prior reporting periods, CAB maintained an excellent staff-supervisor ratio – 5.4-to-1 or less throughout FY 12-13. In addition, CAB continued its tradition of thorough supervision, with new hires receiving especially close supervision.

For CAB's more experienced attorneys, supervision included several levels of review of appellate briefs, routine and informal strategy sessions between staff and supervisory attorneys involving review of the record on appeal and the issues to be address in the appellate brief at oral argument. In addition, moot courts were required for all arguments before the New York Court of Appeals or where the complexity of the appeal warranted a formal moot court.

For CAB's new hires, as described above, supervision took the form of one-on-one mentoring and supervision by a CAB supervisory attorney.

**(v) Workloads**

As in prior reporting periods, caseloads for the vast majority of CAB's staff attorneys were within the First Department's maximum of 25 appeals per year during the FY 12-13 reporting period. In addition, and again as in prior reporting periods, the attorneys whose caseloads exceeded that limit (two in FY 12 and three in FY 13) worked on specialized projects and thus cannot be regarded as having carried a standard appellate caseload. More specifically, all of the attorneys in question were assigned to the Guilty Plea Project, under which a team of highly specialized attorneys assessed whether the case should be resolved through *Anders* briefs or stipulations to withdraw and/or drafted briefs raising excessive sentencing and other straightforward issues that arise when a client pleads guilty.

CAB's supervisory attorneys likewise maintained a workload that was well within the First Department's maximum, particularly when those caseloads were assessed in light of CAB's enhanced staff-to-supervisory attorney ratio.<sup>16</sup>

**(vi) Evaluation, Promotion, and Discipline**

During FY 12-13, CAB continued a commendable practice of providing each attorney with a written evaluation of his or her body of work for the entire year. As described to the Committee, the evaluations "rate[d] the attorney in all areas of the practice, including the quality of written work; legal analysis, research and oral arguments; meeting productivity and timeliness requirements; the quality of relations with clients, the courts and adversaries; and contribution to the work of the office as a whole." The written evaluations were then discussed by the attorney and his or her supervisor, and a plan of improvement was formulated to remedy any identified deficiency. In addition, CAB's three new hires were evaluated several times during their first year.

**(vii) Support Services**

In addition to having ready access to an extensive physical library (staffed by a highly experienced librarian) as well as on-line access to web-based legal research resources, all CAB attorneys received, as noted above, a daily email attaching the text of notable decisions and an analysis of recent decisions and developments in the law. CAB also had a staff fluent in a wide variety of languages (including Yiddish, Hebrew, Portuguese, Urdu, Punjabi, French, Spanish, Italian, and Japanese). Professional interpreters were available to the extent needed, and CAB sent any documents needing translation to or from Spanish to the staff employed in the Criminal Practice Language Services Program, which also provided Spanish language interpretation services to CAB as needed.

**(viii) Case Management and Quality Control**

CAB's cases were tracked during FY 12-13 through a customized version of the LAS-wide program LawManager. Initial review of the record for completeness was conducted by the Managing Attorney's Office, which also contacted court personnel to determine whether all necessary transcripts and documents had been ordered. After further screening for completeness and conflicts of interest, the case was assigned to a CAB staff attorney or supervisor for briefing, with all relevant events entered into LawManager. Monthly computer-generated reports were also circulated, enabling CAB staff and supervisory attorneys to review the status of each case and the filings of each attorney. In addition, the Managing Attorney circulated an "oldest cases" list monthly to remind the attorneys of cases that should be completed so that they would not be untimely filed.

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<sup>16</sup> As noted above, the First Department's standards specify that "a supervising lawyer's personal caseload should not exceed 10% of the maximum caseload unless the ratio of staff lawyers to supervising lawyers is less than 10:1, in which case supervising lawyers' caseloads may be proportionally higher (e.g., 20% of the maximum if the staff lawyer to supervising lawyer ratio is 5:1)." Applied to CAB (which had a 5.4:1 staff-supervisory ratio), the permissible caseload maximum for supervisors would be approximately 20% – or approximately 5 appeals per year (which is significantly less than the average figure of 3 reported by CAB).

During the pendency of an appeal, physical files were maintained on-site as active case files. Active case files were maintained in the office of the assigned attorneys in a manner permitting access by supervising attorneys. At the conclusion of a case, the files were returned to the Managing Attorney, which checked the files for completeness and transferred the files to the closed-case storage area (initially on-site and later off-site).

CAB's client consultation procedures during FY 12-13 required, *inter alia*, an initial communication with the client identifying the assigned attorney and inviting client input on issues to be raised on appeal or via collateral attack; a follow-up communication identifying the issues to be raised on appeal so as to provide the client with an opportunity to comment; and notification of potential opportunities for further avenues for relief in the event of an unsuccessful appeal

CAB's procedures likewise required consultation with the trial attorney in any case that was handled by LAS in the trial court and encouraged consultation in all other cases to discuss potential issues to raise on appeal and anything of significance that might not have been apparent in the trial record.

**(ix) Reporting Obligations**

CAB satisfied all reporting obligations to the City of New York and this Committee during the FY 12-13 reporting period.

**3. THE CENTER FOR APPELLATE LITIGATION**

**(a) Overview**

The Center for Appellate Litigation ("CAL") is a not-for-profit corporation providing criminal appellate and post-conviction representation to eligible clients in the First Department. CAL took in 385 new Appellate Division appeals in FY 12 and approximately 480 new Appellate Division appeals in FY 13 – the latter figure reflecting an adjustment of CAL's contractual maximum, with a commensurate adjustment in funding, to account for an increase in general caseload and added work in handling Sex Offender Registration Act ("SORA") hearings and other post-conviction matters.

In a trend that began in the previous reporting period and continued throughout FY 12-13, CAL augmented its ranks with a substantial number of relatively recent law school graduates who were typically hired as Staff Attorney Fellows for an initial two-year period, after which the Fellows could either move on to other providers or (if openings were available) remain with CAL. As a result, after many years of little turnover in its long-tenured appellate staff, CAL became during the FY 12-13 reporting period an office with a substantial number of relatively junior attorneys working closely with CAL's highly experienced supervisory staff. Should that trend continue, CAL will join OAD as a provider that is not only serving the needs of its existing clients, but also expanding the ranks of experienced appellate practitioners for the benefit of future clients, both in New York City and elsewhere.

During FY 12-13, CAL also continued and expanded various initiatives designed to broaden the array of services provided by CAL both to its own clients and to others in need of legal assistance. Those initiatives included: the Justice First Project (which provided a substantial array of post-release services to CAL's clients and conducted an early screening and investigation program for cases bearing the indicia of wrongful conviction); the In Forma Pauperis Project (which assisted individuals in obtaining assigned counsel after their initial efforts to do so had failed); a partnership with the Immigrant Defense Project (which assisted non-citizens who were without counsel and facing deportation as a consequence of New York State convictions); the Parole Advocacy/Client Reentry Project (which assisted clients with upcoming parole hearings and release dates by preparing them to return to their communities); and the Sex Trafficking Victim's Conviction-Vacatur Project (which assisted victims of sex trafficking in vacating prostitution and related offense convictions that had accrued as a result of their exploitation).

CAL takes justifiable pride in the innovativeness of those various initiatives and in the numerous positive results that were achieved during the FY 12-13 reporting period both for CAL's own clients and the broader community.

**(b) Compliance with First Department Performance Standards**

CAL was in substantial compliance with all First Department performance standards throughout the FY 12-13 reporting period.

**(i) Professional Independence**

All of CAL's corporate officers during the FY 12-13 reporting period were appellate practitioners. CAL reports that it was free to exercise its professional judgment, and that it has never experienced any problems or interference with its professional independence.

**(ii) Qualifications of Lawyers**

Beginning in the prior reporting period, and continuing into FY 12-13, CAL hired ten attorneys who were relatively recent law school graduates and thus lacked the experience required by the First Department's standards for the independent handling of appeals.<sup>17</sup> Those new hires were typically taken on as "Staff Attorney Fellows" for a two-year period, with the possibility of a third year or (space permitting) a permanent position with CAL. By the end of FY 13, as a result of that shift in CAL's hiring model, a substantial majority of CAL's staff attorneys (11 out of 16) required enhanced training and close supervision by more experienced attorneys in order to satisfy the First Department's qualification standards.<sup>18</sup>

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<sup>17</sup> As noted above, the First Department's standards require that before a lawyer is permitted to independently handle an appeal, he or she should have experience within the previous three years in at least 10 criminal cases, with that experience to include writing at least five appellate briefs and arguing at least five criminal appeals.

<sup>18</sup> As noted above, the First Department's standards permit a lawyer without the requisite experience to handle an appeal if the defense organization requires the lawyer:

CAL reports that it complied with the First Department's training and supervision standards for attorneys lacking the requisite minimum experience. And, in fact, the extensive experience of CAL's supervisory staff (who collectively have written nearly 1,000 briefs and argued more than 500 appeals) and CAL's excellent staff-to-supervisor ratio (which was 2.5-to-1 throughout the FY 12-13 reporting period) caused CAL to be well-positioned to provide the enhanced supervision required by the First Department's standards. In addition, as discussed below, CAL offered its new hires an array of training that was more than adequate to meet the First Department's standards.

**(iii) Training**

CAL is an accredited New York State CLE provider, and it conducted 28 CLE sessions during the FY 12-13 reporting period, frequently in conjunction with other defender officers. Training topics included: DLRA-3: Challenging Out-of-State Predicates; Padilla – Challenging Pleas; Avoiding Ineffective Assistance of Counsel Findings; Litigating SORA; and Post-Prison Civil Commitment. CAL also continued to encourage its lawyers, both staff and supervisors, to attend, at CAL's expense, relevant CLE offerings of bar associations and criminal defense organizations.

CAL's training program for new attorneys, which covered a wide range of topics relevant to appellate practice, was coordinated and conducted jointly with Appellate Advocates (who is also an accredited CLE provider). CAL also maintained an extensive internal Practice Manual setting out office procedures and recommended practices with respect to issues ranging from initial client contact and issue spotting to oral argument and case closing.

All oral arguments were mooted during an attorney's first year of hire. Thereafter, moots were done either at the attorney's request or when oral argument was to be in the New York Court of Appeals or the Second Circuit. In addition, weekly "team" meetings of a small group of attorneys with their assigned supervising attorney provided further opportunities to discuss complex or difficult case-related issues.

CAL also regularly distributed handouts of criminal decisions of the First and Second Department, significant Third and Fourth Department appellate decisions, all New York Court of Appeals decisions, and significant United States Supreme Court, federal circuit court, and district court decisions. All attorneys were expected to read and annotate their own handouts and maintain their own files.

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- (i) to complete a comprehensive training program on substantive and procedural criminal law, as well as written and oral advocacy;
  - (ii) to be supervised by an experienced lawyer who is familiar with the facts and issues in the case and who shall perform a detailed review of, and approve all substantive work performed by that lawyer until the lawyer satisfies the minimum experience requirements; and
  - (iii) to moot the arguments prior to appearing before the court.

**(iv) Supervision**

In addition to the Attorney-in-Charge, CAL had seven supervising attorneys during the FY 12-13 reporting period, which represented an increase of two from the previous reporting period. As noted above, CAL had an excellent ratio of staff-to-supervisory attorneys – 2.5-to-1 throughout FY 12-13 – and an effective system for meaningful supervisory review.

All substantive staff attorney briefs were edited and reviewed by a supervising attorney, with the degree of review dependent on the experience level of the staff attorneys. For newly hired attorneys, a supervisor read all records. Supervisors also oversaw caseload management and reviewed caseload development.

**(v) Workloads**

In FY 12, consistent with the terms of its contract, CAL was assigned 385 new Appellate Division appeals. For FY 13, CAL's contractual maximum was increased to 510 appeals, with provision for a commensurate increase in funding, and CAL was assigned approximately 480 new Appellate Division appeals that year.

Notwithstanding CAL's increased level of assignment in FY 13, CAL reported that its staff attorneys still briefed on average 14 cases per year (a figure that is well within the First Department's prescribed maximum of 25 cases per year), and that its supervisors carried a 50% caseload (a figure that likewise complied with the First Department standards when adjustments are made to reflect CAL's enhanced staff-to-supervisor ratio).<sup>19</sup>

That said, we note that the relative inexperience of a substantial percentage of CAL's staff attorneys in FY 12-13 necessarily required increased supervision of those attorneys. As a result, we anticipate looking closely at CAL's caseload and personnel data for FY 14-15 in order to ensure that CAL remains in substantial compliance with the First Department's workload maximums.

**(vi) Evaluation, Promotion, and Discipline**

As in past reporting periods, CAL's evaluation procedures during FY 12-13 included monthly review of a staff attorney's caseload management and productivity. Any shortfall was addressed orally at those times, and any disciplinary or remedial action was conveyed orally by the Attorney-in-Charge.

More formal productivity reviews were conducted quarterly, overseen by the Attorney-in-Charge with input from other supervisory attorneys. The quality of each staff attorney's written work was noted when briefs were reviewed before filing, and then evaluated in writing

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<sup>19</sup> As noted above, the First Department's standards specify that "a supervising lawyer's personal caseload should not exceed 10% of the maximum caseload unless the ratio of staff lawyers to supervising lawyers is less than 10:1 in which case supervising lawyers' caseloads may be proportionally higher (e.g., 20% of the maximum if the staff lawyer to supervising lawyer ratio is 5:1)." Applied to CAL (which had a 2.5:1 staff-supervisory ratio), the permissible caseload maximum for supervisors would be 40% – or approximately 10 appeals per year (which is significantly less than the average figure of 7 (50% of 14) reported by CAL).

and orally on an annual basis. The performance of supervisory attorneys was likewise reviewed on an annual basis.

**(vii) Support Services**

The space occupied by CAL during the FY 12-13 reporting period was well-maintained and sufficient for CAL's needs. The physical library was adequate and augmented by individual online access to extensive web-based resources. In addition, CAL maintained a computerized brief and motion bank that was accessible through the office network. Spanish translation was available in-house; contract translators were available for other languages.

**(viii) Case Management and Quality Control**

CAL's case management system, run on Microsoft Access 2013 during FY 12-13, provided detailed information on each case's history progress and outcome. Upon receipt of an appellate record, it was reviewed for completeness and then transmitted to the assigned attorney. When the appeal was complete, the file was transferred to the central file area, where it would be stored for approximately two years and then digitized.

CAL's client consultation procedures required, *inter alia*, an initial letter to the client inviting the suggestion of possible issues for appeal; a meaningful response to any client suggestions or concerns; an "issues letter" identifying the issues to be raised on appeal; and notification of the results of the appeal, with information about the availability of any further state or federal remedies. In addition, CAL required its staff attorneys to contact trial counsel at the initiation of the assignment and ask whether trial counsel had any information he would like to convey, either on or off the record.

CAL's procedures also required that any request for enlargement of the 120-day deadline for perfecting the appeal be accompanied by a letter from the Attorney-in-Charge to the Clerk of the Court explaining the reason for the delay. The purpose of that requirement was to ensure that the Attorney-in-Charge was aware of all cases in which the 120-day deadline was not met.

**(ix) Reporting Obligations**

CAL met all reporting obligations to the City of New York and this Committee during the FY 12-13 reporting period.

## **ADDENDUM**

**to the**

### **Report of the Indigent Defense Organization Oversight Committee to the Appellate Division First Department for Fiscal Years 2012-2013**

As it has in the past, the Indigent Defense Organization Oversight Committee (the “Committee”) sought a variety of statistical data from the trial offices for FY 12-13 in order to better assess the impact of the workloads carried by those offices. Unfortunately, differing data collection practices among the offices significantly affected the quality and consistency of the data they were able to report to the Committee.

As the 2006 Kaye Commission noted in its findings on the state of indigent defense services in New York, the absence of consistent and accurate statistics “significantly hampers the ability of policy makers and administrators to make informed judgments and plan meaningful improvements in the administration of indigent defense services.”<sup>1</sup> We therefore commend the Office of the New York City Criminal Justice Coordinator for its continuing focus in the contract process on the importance of maintaining uniform, accurate and complete statistics, and it is our hope that data collection and reporting methodologies will continue to improve in quality and consistency.

In the meantime, for the FY 12-13 period, this addendum reports certain data that the Committee was able to obtain from all or most of the trial offices, and it is our hope that the addendum will provide a helpful quantitative dimension to our evaluation of each office. In providing the addendum, however, we are mindful that no set of statistics ever tells a complete story. Each of the First Department’s trial offices has a different operating model, philosophy and contract with the City. Certain of the offices, for example, are committed to the provision of holistic representation and accordingly offer a substantial array of services that are not reflected in the statistics reported in this addendum. The Legal Aid Society, in turn, engages in a substantial amount of affirmative litigation that benefits all criminal defendants, and that is likewise not directly reflected in the data that follow. Thus, while we believe that this addendum will help to inform the discussion of the state of trial-level indigent defense services in the First Department, it cannot and should not be used as the sole basis for assessing the performance of any of the First Department’s trial offices.

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<sup>1</sup> Commission on the Future of Indigent Defense Services, Final Report to the Chief Judge of the State of New York (June 18, 2006), at 25.

**Staff and Workload Profile**  
**The Legal Aid Society - Manhattan and Bronx CDD**

	FY 2012		FY 2013	
<b>Total Staff<sup>1</sup></b>	<b>512</b>		<b>566</b>	
Staff Attorneys	322		351	
Supervising Attorneys	35		41	
Investigator/Paralegal/Social Worker	118		138	
Support Staff	37		36	
<b>Full-Time Equivalent Staff<sup>2</sup></b>				
Staff Attorneys	263.7		282.2	
Supervising Attorneys	32.3		33.0	
<b>Cases Contracted for (City-Wide)</b>	<b>207,996</b>		<b>207,996</b>	
<b>Total Cases Assigned (First Department Only)</b>	<b>102,047</b>		<b>98,932</b>	
Felony Cases	13,294	13%	11,502	12%
Misdemeanor Cases	75,580	74%	71,576	72%
Violation Cases	9,171	9%	10,863	11%
Other Cases (Including ROWs)	4,002	4%	4,991	5%
<b>Total Cases Disposed</b>	<b>94,497</b>		<b>90,417</b>	
Disposed by Plea	66,810	71%	55,082	61%
Disposed by Trial	364	0.4%	276	0.3%
Disposed by Dismissal / ACD	20,848	22%	28,476	31%
Relieved - Conflict	3,132	3%	3,101	3%
Relieved - Other	3,343	4%	3,482	4%
Other Dispositions	---	---	---	---
<b>Total Cases Assigned at Arraignment (Including ROWs)</b>	<b>96,176</b>		<b>99,262</b>	
Total Cases Disposed at Arraignment <sup>3</sup>	48,931	51%	51,576	52%
Total Cases Disposed at Arraignment by Plea	31,844	33%	23,979	24%
<b>Non-Felony Cases Assigned at Arraignment (Including ROWs)</b>	<b>84,019</b>		<b>87,196</b>	
Non-Felony Cases Disposed at Arraignment	48,844	58%	51,098	59%
Non-Felony Cases Disposed at Arraignment by Plea	31,844	38%	23,628	27%
<b>Percent of Individual Attorneys with Caseloads Above First Department Maximum as of Fiscal Year End</b>	<b>24%</b>		<b>29%</b>	
<b>Avg. Misd. Equiv. Cases Assigned per FTE Atty<sup>4</sup></b>	<b>448.8</b>		<b>395.2</b>	
<b>Percent Above / Below First Department Maximum</b> (400 Misd. Equiv. per FTE Atty)	<b>12%</b>		<b>-1%</b>	

<sup>1</sup> Staff numbers include all staff employed at any point during the Fiscal Year.

<sup>2</sup> Full-Time Equivalent ("FTE") staff numbers have been adjusted to reflect the effect of attorneys who worked less than full-time and/or less than a full year.

<sup>3</sup> Total Cases Disposed at Arraignment and Non-Felony Cases Disposed at Arraignment include cases disposed by Plea, ACD and Dismissal.

<sup>4</sup> The statistics reported in these columns calculate the average caseload of the office as a whole, using the weighting specified by the First Department's standards (i.e., weighting a felony as the equivalent of 2.66 misdemeanors) and factoring in the permissible level of caseloads for supervisors (i.e., a percentage caseload that corresponds to the staff-supervisor ratio). While the First Department standards do not specify the weight to be accorded a violation, the Committee believes that violations should (particularly in light of the potential collateral consequences they carry) be accorded the same weight as misdemeanors, and the statistics reported above reflect that weighting. In addition, while the Committee believes that cases classified as "Other" should not be disregarded in assessing caseload, those cases have not been included in the calculation reported above.

**Staff and Workload Profile  
The Bronx Defenders**

	FY 2012		FY 2013	
<b>Total Staff<sup>1</sup></b>	<b>125</b>		<b>133</b>	
Staff Attorneys	76		79	
Supervising Attorneys	11		15	
Investigator/Paralegal/Social Worker	19		21	
Support Staff	19		18	
<b>Full-Time Equivalent Staff<sup>2</sup></b>				
Staff Attorneys	68.7		72.6	
Supervising Attorneys	10.3		13.5	
<b>Cases Contracted for</b>	<b>28,000</b>		<b>28,000</b>	
<b>Total Cases Assigned</b>	<b>21,924</b>		<b>28,270</b>	
Felony Cases	2,837	13%	2,942	10%
Misdemeanor Cases	16,831	77%	22,159	78%
Violation Cases	548	2%	1,055	4%
Other Cases (Including ROWs)	1,708	8%	2,114	7%
<b>Total Cases Disposed</b>	<b>20,105</b>		<b>25,954</b>	
Disposed by Plea	10,881	54%	14,035	54%
Disposed by Trial	64	0.3%	72	0.3%
Disposed by Dismissal / ACD	7,524	37%	10,117	39%
Relieved - Conflict	1,167	6%	1,375	5%
Relieved - Other	469	2%	355	1%
Other Dispositions	---	---	---	---
<b>Total Cases Assigned at Arraignment (Including ROWs)</b>	<b>20,818</b>		<b>27,143</b>	
Total Cases Disposed at Arraignment <sup>3</sup>	10,272	49%	14,377	53%
Total Cases Disposed at Arraignment by Plea	6,417	31%	8,659	32%
<b>Non-Felony Cases Assigned at Arraignment (Including ROWs)</b>	<b>18,253</b>		<b>24,432</b>	
Non-Felony Cases Disposed at Arraignment	10,272	56%	14,377	59%
Non-Felony Cases Disposed at Arraignment by Plea	6,417	35%	8,659	35%
<b>Percent of Individual Attorneys with Caseloads Above First Department Maximum as of Fiscal Year End</b>	<b>16%</b>		<b>44%</b>	
<b>Avg. Misd. Equiv. Cases Assigned per FTE Atty<sup>4</sup></b>	<b>355.8</b>		<b>415.5</b>	
<b>Percent Above / Below First Department Maximum (400 Misd. Equiv. per FTE Atty)</b>	<b>-11%</b>		<b>4%</b>	

<sup>1</sup> Staff numbers include all staff employed at any point during the Fiscal Year.

<sup>2</sup> Full-Time Equivalent ("FTE") staff numbers have been adjusted to reflect the effect of attorneys who worked less than full-time and/or less than a full year.

<sup>3</sup> Total Cases Disposed at Arraignment and Non-Felony Cases Disposed at Arraignment include cases disposed by Plea, ACD and Dismissal.

<sup>4</sup> The statistics reported in these columns calculate the average caseload of the office as a whole, using the weighting specified by the First Department's standards (i.e., weighting a felony as the equivalent of 2.66 misdemeanors) and factoring in the permissible level of caseloads for supervisors (i.e., a percentage caseload that corresponds to the staff-supervisor ratio). While the First Department standards do not specify the weight to be accorded a violation, the Committee believes that violations should (particularly in light of the potential collateral consequences they carry) be accorded the same weight as misdemeanors, and the statistics reported above reflect that weighting. In addition, while the Committee believes that cases classified as "Other" should not be disregarded in assessing caseload, those cases have not been included in the calculation reported above.

**Staff and Workload Profile  
New York County Defender Services**

	FY 2012		FY 2013	
<b>Total Staff<sup>1</sup></b>	<b>56</b>		<b>60</b>	
Staff Attorneys	40		44	
Supervising Attorneys	4		4	
Investigator/Paralegal/Social Worker	5		5	
Support Staff	7		7	
<b>Full-Time Equivalent Staff<sup>2</sup></b>				
Staff Attorneys	36.5		42.2	
Supervising Attorneys	4.0		4.0	
<b>Cases Contracted for</b>	<b>18,000</b>		<b>18,000</b>	
<b>Total Cases Assigned</b>	<b>19,611</b>		<b>20,050</b>	
Felony Cases	2,301	12%	1,949	10%
Misdemeanor Cases	9,914	51%	10,939	55%
Violation Cases	2,388	12%	2,429	12%
Other Cases (Including ROWs)	5,008	26%	4,733	24%
<b>Total Cases Disposed</b>	<b>18,769</b>		<b>19,906</b>	
Disposed by Plea	9,419	50%	10,187	51%
Disposed by Trial	44	0.2%	48	0.2%
Disposed by Dismissal / ACD	6,885	37%	7,189	36%
Relieved - Conflict	9	0%	12	0%
Relieved - Other	1,402	7%	1,328	7%
Other Dispositions	1,010	5%	1,142	6%
<b>Total Cases Assigned at Arraignment (Including ROWs)</b>	<b>19,050</b>		<b>19,542</b>	
Total Cases Disposed at Arraignment <sup>3</sup>	11,265	59%	12,175	62%
Total Cases Disposed at Arraignment by Plea	6,023	32%	6,569	34%
<b>Non-Felony Cases Assigned at Arraignment (Including ROWs)</b>	<b>16,813</b>		<b>17,645</b>	
Non-Felony Cases Disposed at Arraignment	11,265	67%	12,175	69%
Non-Felony Cases Disposed at Arraignment by Plea	6,023	36%	6,569	37%
<b>Percent of Individual Attorneys with Caseloads Above First Department Maximum as of Fiscal Year End</b>	<b>100%</b>		<b>100%</b>	
<b>Avg. Misd. Equiv. Cases Assigned per FTE Atty<sup>4</sup></b>	<b>498.7</b>		<b>435.7</b>	
<b>Percent Above / Below First Department Maximum (400 Misd. Equiv. per FTE Atty)</b>	<b>21%</b>		<b>9%</b>	

<sup>1</sup> Staff numbers are stated as of the last day of the Fiscal Year.

<sup>2</sup> Full-Time Equivalent ("FTE") staff numbers have been adjusted to reflect the effect of attorneys who worked less than full-time and/or less than a full year.

<sup>3</sup> Total Cases Disposed at Arraignment and Non-Felony Cases Disposed at Arraignment include cases disposed by Plea, ACD and Dismissal.

<sup>4</sup> The statistics reported in these columns calculate the average caseload of the office as a whole, using the weighting specified by the First Department's standards (i.e., weighting a felony as the equivalent of 2.66 misdemeanors) and factoring in the permissible level of caseloads for supervisors (i.e., a percentage caseload that corresponds to the staff-supervisor ratio). While the First Department standards do not specify the weight to be accorded a violation, the Committee believes that violations should (particularly in light of the potential collateral consequences they carry) be accorded the same weight as misdemeanors, and the statistics reported above reflect that weighting. In addition, while the Committee believes that cases classified as "Other" should not be disregarded in assessing caseload, those cases have not been included in the calculation reported above.

**Staff and Workload Profile**  
**Neighborhood Defender Service of Harlem**

	FY 2012		FY 2013	
<b>Total Staff<sup>1</sup></b>	<b>47</b>		<b>50</b>	
Staff Attorneys	19		25	
Supervising Attorneys	2		2	
Investigator/Paralegal/Social Worker	13		14	
Support Staff	13		9	
<b>Full-Time Equivalent Staff<sup>2</sup></b>				
Staff Attorneys	18.6		21.1	
Supervising Attorneys	2.0		2.0	
<b>Cases Contracted for</b>	<b>9,504</b>		<b>9,504</b>	
<b>Total Cases Assigned</b>	<b>9,862</b>		<b>9,752</b>	
Felony Cases	956	10%	923	9%
Misdemeanor Cases	5,425	55%	6,703	69%
Violation Cases	3,318	34%	2,023	21%
Other Cases (Including ROWs)	163	2%	103	1%
<b>Total Cases Disposed</b>	<b>6,453</b>		<b>8,887</b>	
Disposed by Plea	3,479	54%	4,187	47%
Disposed by Trial	18	0.3%	19	0.2%
Disposed by Dismissal / ACD	2,441	38%	4,107	46%
Relieved - Conflict	10	0%	15	0%
Relieved - Other	505	8%	559	6%
Other Dispositions	---	---	---	---
<b>Total Cases Assigned at Arraignment (Including ROWs)</b>	<b>9,313</b>		<b>8,937</b>	
Total Cases Disposed at Arraignment <sup>3</sup>	4,875	52%	5,099	57%
Total Cases Disposed at Arraignment by Plea	2,873	31%	2,401	27%
<b>Non-Felony Cases Assigned at Arraignment (Including ROWs)</b>	<b>8,419</b>		<b>8,210</b>	
Non-Felony Cases Disposed at Arraignment	4,860	58%	5,091	62%
Non-Felony Cases Disposed at Arraignment by Plea	2,866	34%	2,393	29%
<b>Percent of Individual Attorneys with Caseloads Above First Department Maximum as of Fiscal Year End</b>	<b>88%</b>		<b>90%</b>	
<b>Avg. Misd. Equiv. Cases Assigned per FTE Atty<sup>4</sup></b>	<b>599.7</b>		<b>525.0</b>	
<b>Percent Above / Below First Department Maximum</b> (400 Misd. Equiv. per FTE Atty)	<b>50%</b>		<b>31%</b>	

<sup>1</sup> Staff numbers include all staff employed at any point during the Fiscal Year.

<sup>2</sup> Full-Time Equivalent ("FTE") staff numbers have been adjusted to reflect the effect of attorneys who worked less than full-time and/or less than a full year.

<sup>3</sup> Total Cases Disposed at Arraignment and Non-Felony Cases Disposed at Arraignment include cases disposed by Plea, ACD and Dismissal.

<sup>4</sup> The statistics reported in these columns calculate the average caseload of the office as a whole, using the weighting specified by the First Department's standards (i.e., weighting a felony as the equivalent of 2.66 misdemeanors) and factoring in the permissible level of caseloads for supervisors (i.e., a percentage caseload that corresponds to the staff-supervisor ratio). While the First Department standards do not specify the weight to be accorded a violation, the Committee believes that violations should (particularly in light of the potential collateral consequences they carry) be accorded the same weight as misdemeanors, and the statistics reported above reflect that weighting. In addition, while the Committee believes that cases classified as "Other" should not be disregarded in assessing caseload, those cases have not been included in the calculation reported above.

# **APPENDIX**

**to the**

**Report of the Indigent Defense Organization Oversight Committee  
to the Appellate Division First Department for Fiscal Years 2012-2013**

**The Legal Aid Society:  
Analysis of Time and Resources Necessary for an Effective Defense**

**Investigator and Social Worker Support**

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## I. INTRODUCTION

As the United States Supreme Court said in the Gideon decision more than 50 years ago, “[f]rom the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law.”<sup>1</sup> “Because that noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him,” the Supreme Court held in Gideon that every state is obliged to assure that each indigent defendant is represented by counsel who can provide an “effective defense.”<sup>2</sup>

As this committee knows, consistent with the Gideon mandate, New York has enacted “case cap” legislation and adopted state budgets beginning in April 2009 that have provided substantial additional funding for indigent defense organizations in New York City. With that funding, the Legal Aid Society (“Legal Aid”) has hired substantial numbers of additional lawyers and significantly reduced caseloads, allowing each lawyer more time to provide an “effective defense” to each of Legal Aid’s clients. As a result, during fiscal year 2015, Legal Aid expects to—for the first time—come into compliance with the attorney workload standards that this committee (the “IDOOOC” or the “Committee”) adopted in 1996, 18 years ago.<sup>3</sup>

The new caseload standard adopted by the Chief Administrative Judge in 2010 pursuant to the “case cap” legislation—just as this Committee’s 1996 standard—provided that indigent defense lawyers should handle on average no more than 150 felonies per year, 400

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<sup>1</sup> Gideon v. Wainwright, 372 U.S. 335, 344 (1963).

<sup>2</sup> Id.

<sup>3</sup> Indigent Defense Organization Oversight Committee, General Requirements for All Organized Providers of Defense Services to Indigent Defendants, § V.B.2(a) (July 1996, as amended May 2011) [hereinafter the “IDOOOC Guidelines”], available at <http://www.courts.state.ny.us/courts/ad1/Committees&Programs/IndigentDefOrgOversightComm/general%20requirements.pdf> (last accessed Aug. 18, 2014).

misdemeanors per year, or a proportionate mix of the two. The Chief Administrative Judge adopted that standard after Legal Aid and Davis Polk & Wardwell LLP (“Davis Polk”) provided her with an analysis of the number of lawyers Legal Aid needed to provide an “effective defense” for each of its clients. That analysis, which supported a very substantial need for additional lawyers, was very similar in its approach to that provided herein as to Legal Aid’s need for additional investigators and social workers.<sup>4</sup>

While the limits placed by “case cap” legislation on the number of cases handled by each individual Legal Aid lawyer have significantly improved the quality of Legal Aid’s representation of its indigent clients, limiting attorney workloads alone cannot guarantee Legal Aid’s ability to provide an “effective defense” for its clients. As we know this Committee understands, for a defense to be “effective,” a lawyer representing an indigent defendant not only needs sufficient time to devote to his or her client, but also requires access to the necessary—often crucial—support services of investigators and social workers. There is no question that for a large number of Legal Aid’s clients, there cannot be an “effective defense” without an appropriately thorough investigation of the relevant facts and without the help of a trained professional’s understanding of the client’s background and current environment, and how those factors have shaped the often complex needs of the individual client. Such a thorough understanding is often required for effective advocacy in the context of a plea bargain, sentencing hearing, bail application, or application for an alternative to incarceration. The social worker’s understanding and assessment of the client has become ever more important as the

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<sup>4</sup> The report that Legal Aid prepared in 2009 in connection with the case-cap legislation was submitted to then-Chief Administrative Judge Ann Pfau, the Office of Court Administration, and the National Center for State Courts. In its 2009 report, Legal Aid also projected that it would need additional investigators and social workers in order to provide an “effective defense.”

numbers of individuals with mental illness in the criminal justice system has grown dramatically in recent years.<sup>5</sup> To ensure that necessary investigations are conducted and there is a sufficient understanding of client problems, it is essential that Legal Aid attorneys have the assistance of sufficient numbers of both trained investigators and social workers.

**A. The Crucial Role of Investigators and Social Workers**

**1. The Importance of Investigators to an Effective Defense**

As we believe this Committee well understands, when qualified investigators are deployed, their work often proves crucial. Their investigations regularly lead to the recovery of video surveillance footage that exonerates clients; the identification of important data from MetroCards, bank records, school sign-in sheets, and cellular phone positioning systems; and the location of witnesses who confirm client alibis, contradict complaining witnesses, and support client claims of developmental disabilities and mental illness. Also, the work of a Legal Aid investigator can result in the discovery of evidence of guilt that provides a sound basis for timely pleas.

The earlier an investigator can uncover facts that exculpate a client, the sooner the prosecution can determine that pursuing the case is not the best use of its resources. Similarly, the sooner a client is presented with facts that inculpate him or her, the earlier the client can make an informed decision about the wisdom of a plea. Specific examples of investigative successes are detailed in Exhibit 1.

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<sup>5</sup> See section IV.C and n.37 *infra*. See also Improving Outcomes for People with Mental Illnesses Involved with New York City's Criminal Court and Correction Systems, Council of State Governments, December 2012, available at [csgjusticecenter.org/wp-content/uploads/2013/05/CTBNYC-Court-Jail\\_7-cc.pdf](http://csgjusticecenter.org/wp-content/uploads/2013/05/CTBNYC-Court-Jail_7-cc.pdf) (last accessed Aug. 18, 2014) (one-third of detainees at the Rikers Island Correctional Facility were individuals suffering from mental illness; on average, mentally ill detainees stay incarcerated almost twice as long as detainees without mental health needs, even when detained on similar charges).

## **2. The Importance of Social Workers to an Effective Defense**

So too social workers provide critical professional services to clients that very often are central to an effective defense. Among other things, social workers identify mental health issues and substance-abuse problems, advocate for alternatives to incarceration, and elicit facts that are critical for mitigation at bail proceedings, in bargaining for pleas, and at sentencing. Such efforts can regularly improve case outcomes. When problems and potential solutions are identified early, the results are very often better for Legal Aid clients and their families. Specific examples of social work successes are detailed in Exhibit 2.

### **B. Current Practices as to the Provision of Investigative and Social Worker Support**

Although this Committee has recognized that investigators and social workers are integral to an effective defense,<sup>6</sup> the Committee's guidelines do not currently specifically prescribe ratios of investigators or social workers to attorneys. In the absence of such specific ratios, both the Committee and the provider organizations reporting to it, including Legal Aid, have employed a working standard of one investigator and one social worker for every ten attorneys. Thus, as set out in the table below, staffing levels at Legal Aid are set at approximately one investigator for every ten staff attorneys and one social worker for every ten staff attorneys across all five of its borough offices:

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<sup>6</sup> See IDOOC Guidelines, supra note 3, at VII(B)(2)(a) ("Lawyers should have access, as client needs require, to paralegals, experienced investigators, psychiatrists, forensic pathologists, social and mental health providers, interpreters and other professionals.").

<b>Staffing Totals for FY 2015 (Citywide)</b>	
Attorneys <sup>7</sup>	661.6
Investigators	66
Social Workers	66
<b>Investigator Ratio</b>	<b>10.0</b>
<b>SW Ratio</b>	<b>10.0</b>

Although Legal Aid is following this currently accepted practice, the prevailing ten-to-one ratios are not adequate to enable Legal Aid to conduct a sufficient number of investigations, or to provide social worker support for an appropriate number of clients. During fiscal years 2012 and 2013, there were enough investigators to conduct investigations in just 12 percent of the Legal Aid cases that survived arraignment, and enough social workers to provide assistance in only 5.2 percent of felony cases that survived arraignment and in fewer than 1.8 percent of misdemeanor cases that survived arraignment.<sup>8</sup> Although these percentages represent a slight

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<sup>7</sup> The attorney totals represent the number of litigators on staff.

<sup>8</sup> Social worker data is reported to this Committee on a biannual basis. See, e.g., Legal Aid Society, Response to the First Department’s Indigent Defense Oversight Committee Questionnaire for Monitoring Organized Providers of Defense Services to Indigent Defendants in FY 12-13, at 17 (Nov. 1, 2013) (social work assistance provided in 5.2 percent of felony cases and 1.8 percent of misdemeanor cases); Legal Aid Society, Response to the First Department’s Indigent Defense Oversight Committee Questionnaire for Monitoring Organized Providers of Defense Services to Indigent Defendants in FY 10-11, at 19 (Sept. 16, 2011) (social work assistance in 5.6 percent of felonies and 0.8 percent of misdemeanors); Legal Aid Society, Response to the First Department’s Indigent Defense Oversight Committee’s Questionnaire for Monitoring Organized Providers of Defense Services to Indigent Defendants in FY 08-09, at 17 (Feb. 5, 2010) (social work assistance in 3 percent of felonies and 1 percent of misdemeanors).

Investigator data is also reported to this Committee on a biannual basis. See, e.g., Legal Aid Society, Response to the First Department’s Indigent Defense Oversight Committee Questionnaire for Monitoring Organized Providers of Defense Services to Indigent Defendants in FY 12-13, at Ex. G-7 (Nov. 1, 2013) (12 percent of cases investigated); Legal Aid Society, Response to the First Department’s Indigent Defense Oversight Committee Questionnaire for Monitoring Organized Providers of Defense Services to Indigent Defendants in FY 10-11, at 19 (Sept. 16, 2011) (7 percent investigated); Legal Aid Society, Response to the First Department’s Indigent Defense Oversight Committee’s Questionnaire for Monitoring Organized Providers of Defense Services to Indigent Defendants in FY 08-09, at Ex. G-7 (Feb. 5, 2010) (6 percent of cases investigated).

improvement over prior years, they remain so low that there can be no doubt that the hiring of substantial numbers of additional investigators and social workers is essential if Legal Aid is to provide an “effective defense” for its clients.

In its recent reports, the Committee has accordingly recognized the need for additional investigators and social workers. In response to a Legal Aid report in which Legal Aid stated that it employed approximately one investigator for every 11.5 staff attorneys during fiscal years 2008 and 2009, the Committee stated that more investigative support was needed at indigent defense organizations such as Legal Aid:

[A]dditional investigative support is sorely needed . . . , and . . . the current investigator-attorney ratio should be enhanced. . . . [Moreover,] [g]iven the consistency with which the Committee heard from appellate-level providers that a significant number of cases on appeal warranted extra-record investigation, we believe that the importance of adequate investigative support at the trial level cannot be overstated.<sup>9</sup>

The Committee reached a similar conclusion with respect to social workers:

The social worker to attorney ratio as of June 30, 2009 was 1-to-12.4 in Bronx County and 1-to-8.8 in New York County, with social workers used in 1% of misdemeanor cases and 3% of felony cases. . . . The low percentage of cases in which social workers . . . were used suggests that additional support would be beneficial in these areas as well.<sup>10</sup>

The Committee reiterated these opinions after reviewing the reported data for fiscal years 2010 and 2011, explaining that far too few investigations were being conducted:

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These data pertain to the offices of Legal Aid’s Criminal Practice that are located in the geographic region covered by the Appellate Division, First Department—Manhattan and the Bronx. Legal Aid does not have reason to believe that these two boroughs are unrepresentative of investigative or social worker trends in the other borough offices.

<sup>9</sup> See IDOOC, Report of the Indigent Defense Organization Oversight Committee to the Appellate Division First Department for Fiscal Years 2008-2009, at 12 (2010).

<sup>10</sup> See id.

Despite [a reported] increase in investigative services [to an attorney-to-investigator ratio of 10.2-to-1 in Bronx County and 9.2-to-1 in New York County], the high caseloads carried by LAS meant that investigators were able to conduct investigations in no more than 7% of all cases. As a result, attorneys were left to conduct their own investigations – to the extent they could – in many other cases. With the additional attorney hiring made possible by LAS’s new contract and case cap funding from the Office of Court Administration, individual attorney caseloads can and should diminish significantly. But unless investigative staffing is likewise augmented, the number of cases in which LAS’s investigators can be deployed will likely remain low.<sup>11</sup>

The Committee also repeated its concerns with respect to social workers:

LAS reported an attorney-social worker ratio of 9.7-to-1 in the Bronx and 8.3-to-1 in Manhattan, which yielded a use of social workers in 0.8% of misdemeanor cases and 5.6% of felony cases. While those figures represent a moderate increase from the previous reporting period – during which social workers were used in no more than 3% of felony cases – it is fair to assume that there remain many more cases that would benefit, if resources permitted, from the assistance of social workers.<sup>12</sup>

The evident serious shortfall in the number of investigators and social workers is starkly inconsistent with both the constitutional mandate that a state provide sufficient funding for “effective defense,” and the requirement in Article 18-B of the County Law that the City of New York implement a plan for the representation of indigent defendants that includes “investigative, expert, and other services necessary for [the client’s] defense.”<sup>13</sup> It is also inconsistent with the reality of the criminal justice system today, where there are serious collateral consequences to any conviction, including convictions for misdemeanor offenses. Such collateral consequences

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<sup>11</sup> IDOOC, Report of the Indigent Defense Organization Oversight Committee to the Appellate Division First Department for Fiscal Years 2010-2011, at 11 (2012).

<sup>12</sup> See id. at 12.

<sup>13</sup> N.Y. County Law § 722-b.

include loss of government benefits, loss of public housing, loss of employment, and deportation.<sup>14</sup>

### **C. Other Jurisdictions Provide Substantially More Funding for Investigators and Social Workers**

Public defense providers in many jurisdictions hire social workers and investigators at a level that better reflects the vital importance of their work.<sup>15</sup> Colorado, Connecticut, New Hampshire, New Jersey, Vermont, and Washington State maintain or prescribe ratios of at least one investigator for every four attorneys.<sup>16</sup> Indiana requires indigent defense providers to fill three support staff positions for every four staff attorneys, at least one of whom should be an investigator.<sup>17</sup> Delaware, Iowa, Minnesota, Rhode Island, Virginia, and Washington D.C.

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<sup>14</sup> For example, a pending misdemeanor case, including a non-final adjournment in contemplation of dismissal (“ACD”), will disqualify a client from entry into military service and can result in loss of a professional license. A client’s home health aide license will be suspended for an arrest based on a misdemeanor, and additional advocacy to gain reinstatement of the suspended license is often required even after a favorable disposition. A public housing resident arrested for a misdemeanor risks eviction or exclusion from his or her housing, and a public housing tenant risks eviction of his or her entire household if any person under the tenant’s control engages in criminal drug activity. Students currently enrolled in college and receiving federal student loans can lose eligibility for those loans following a conviction for a misdemeanor marijuana offense. Legal Permanent Residents routinely risk deportation as a result of misdemeanor offenses.

<sup>15</sup> Certain of the ratios referenced herein are formal ratios adopted by legislatures, courts, state commissions, or public defense organizations; others are de facto ratios based on the amount of funding available or on actual hires made. Unless otherwise noted, all data referenced herein regarding the ratios of attorneys to investigators are from U.S. Dep’t of Justice, Bureau of Justice Statistics, State Public Defender Programs, 2007 (Sept. 2010) [hereinafter “2010 DOJ Report”].

<sup>16</sup> See 2010 DOJ Report, at 15-16; see also Washington State Bar Ass’n, Standards for Indigent Defense Services, Standard 6 (approved by the Board of Governors on June 3, 2011), available at [http://www.wsba.org/~media/Files/Legal%20Community/Committees\\_Boards\\_Panels/Council%20on%20Public%20Defense/Standards%20for%20Indigent%20Defense%20Services%20%282011%29.ashx](http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/Council%20on%20Public%20Defense/Standards%20for%20Indigent%20Defense%20Services%20%282011%29.ashx) (last accessed Aug. 18, 2014).

<sup>17</sup> See Indiana Public Defender Comm’n, Standards for Indigent Defense Services in Non-Capital Cases, Standard J (June 19, 2013), available at <http://www.in.gov/judiciary/pdc/files/indigent-defense-non-cap.pdf> (last accessed Aug. 18, 2014). For every four full-time attorneys at the trial level, there should be one secretary/paralegal, one investigator/paralegal, and one staff member providing “other litigation support,” such as a social worker or mitigation investigator. Under Standard J, an attorney who does not have adequate support staff under these guidelines should be assigned a reduced caseload.

maintain or prescribe a ratio of at least one investigator for every six attorneys.<sup>18</sup> And Arkansas, Kentucky, Massachusetts, Montana, and Wisconsin maintain or prescribe a ratio of better than one investigator for every eight attorneys.<sup>19</sup>

A number of jurisdictions also have ratios of attorneys to social workers that are much better than ten to one. Connecticut maintains a ratio of approximately 4.5 to 1; Delaware maintains a ratio of approximately 5.0 to 1; and Rhode Island maintains a ratio of approximately 6.7 to 1.<sup>20</sup> As discussed above, Indiana requires indigent defense providers to fill three staff support positions for every four staff attorneys, one of whom should provide “other litigation support,” such as a social work or mitigation investigation.<sup>21</sup>

The crucial question is, therefore, not whether substantial additional investigator and social worker support services are needed but how many investigators and social workers Legal Aid should have to satisfy the Gideon mandate. To answer that question, consistent with the analysis it provided with respect to the number of lawyers needed, Legal Aid has convened two

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<sup>18</sup> See 2010 DOJ Report, supra note 15 at 15-16; see also Public Defender Service for the District of Columbia, Fiscal Year 2015 Congressional Budget Justification, at 17 n.36 (Mar. 10, 2014), available at <http://www.pdsdc.org/Resources/Publication/PDS%20FY%202015%20Congressional%20Budget%20Justification%20--%20FINAL.pdf> (last accessed Aug. 18, 2014); Order Setting Hearing Date and Deadline for Submitting Written Comments, ADM 10-8002 (Minn. Oct. 31, 2012), available at [http://www.mncourts.gov/Documents/0/Public/Clerks\\_Office/2012\\_11\\_07\\_Public\\_Defense\\_Hearing.pdf](http://www.mncourts.gov/Documents/0/Public/Clerks_Office/2012_11_07_Public_Defense_Hearing.pdf) (last accessed Aug. 18, 2014).

<sup>19</sup> See 2010 DOJ Report, supra note 15 at 15-16. In addition, an indigent defense task force in Texas has recommended a ratio of one investigator for every five attorneys and a Public Advocacy Commission in Kentucky has recommended a ratio of one investigator for every six attorneys. See Texas Task Force on Indigent Defense, Blueprint for Creating a Public Defender Office in Texas 46 (2d ed.), available at <http://www.courts.state.tx.us/tidc/pdf/2008revisedblueprintfinal.pdf> (last accessed Aug. 18, 2014); Kentucky Public Advocacy Comm’n, Justice Jeopardized Final Report at 2 (Sept. 2005), available at [http://www.e-archives.ky.gov/pubs/Public\\_Adv/justicejeopardized.pdf](http://www.e-archives.ky.gov/pubs/Public_Adv/justicejeopardized.pdf) (last accessed Aug. 18, 2014).

<sup>20</sup> See 2010 DOJ Report, supra note 15 at 15-16.

<sup>21</sup> See supra note 17.

task forces and worked over more than two years to analyze the need for investigators and social workers. The results of their analyses are set forth below.

## **II. THE LEGAL AID INVESTIGATOR AND SOCIAL WORKER TASK FORCES**

To examine the extent of the support-staff shortfall, the two task forces (the “Task Forces”) were convened in 2011. The first task force was comprised of experienced investigators and lawyers (the “Investigator Task Force”), who were tasked with estimating the number of investigators required to allow Legal Aid to provide its clients with an effective defense. The second task force was comprised of experienced social workers and lawyers (the “Social Worker Task Force”), who sought to estimate the number of social workers Legal Aid would need if it is to provide an effective defense for each of its clients.

### **A. Composition of the Task Forces**

#### **1. The Investigator Task Force**

The Investigator Task Force included investigators and attorneys from the Bronx, Brooklyn, Manhattan, and Queens borough offices.<sup>22</sup> Before they joined Legal Aid, the investigators on that task force worked as police officers, detectives, corrections officers, probation officers, investigators for various state and local agencies, and private investigators. Together, they have over 70 years of experience as Legal Aid investigators.

Eight Legal Aid attorneys joined the Investigator Task Force: the Attorney-in-Charge of the Criminal Practice; the Deputy Attorney-in-Charge of the Criminal Practice; the Director of the Special Litigation Unit; the Attorneys-in-Charge of the Bronx, Brooklyn, Manhattan, and Queens borough offices; and a staff attorney in the Special Litigation Unit.

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<sup>22</sup> Legal Aid opened its Staten Island borough office on April 4, 2011, while the work of the Task Forces was ongoing. To properly account for Staten Island, the Task Forces and Davis Polk routinely consulted with investigators and lawyers from the Staten Island office. Staten Island personnel also participated in the data collection efforts described in more detail herein.

## **2. The Social Worker Task Force**

The Social Worker Task Force included social workers and attorneys from the Bronx, Brooklyn, Manhattan, Queens, and Staten Island borough offices. The social workers on that task force are Licensed Master Social Workers, which means that they have received a Master's degree in social work and have met New York state licensing requirements. Together, they have worked at Legal Aid for over 30 years.

Nine Legal Aid attorneys joined the Social Worker Task Force: the Attorney-in-Charge of the Criminal Practice; the Deputy Attorney-in-Charge of the Criminal Practice; the Director of the Special Litigation Unit; the Attorneys-in-Charge of the Bronx, Brooklyn, Manhattan, Queens, and Staten Island borough offices; and a staff attorney in the Special Litigation Unit.

## **3. Supplemental Assistance from Legal Aid Staff**

The work of the Task Forces was supplemented with input from other members of the Legal Aid staff. Additional staff attorneys and supervisors from various borough offices were invited to attend some Task Force meetings and participated in conference calls relating to the work of the Task Force. Importantly, both Task Forces sought significant additional information through surveys of investigators, social workers, and attorneys who were not members of the Task Forces.

### **B. Task Force Meetings**

From February 2011 through October 2013, the Investigator Task Force convened 22 times, for a total of more than 65 hours, to consider the support that investigators should provide to Legal Aid clients and to estimate the number of investigative hours per annum that would be required to satisfy the constitutional mandate for effective representation.

From July 2011 to October 2013, the Social Worker Task Force convened 14 times, for a total of over 40 hours, to perform a similar analysis relating to social workers at Legal Aid.

Task Force meetings were supplemented with numerous phone calls, which involved varying combinations of lawyers, social workers, and investigators, and important work by ten two-person social worker/attorney teams.<sup>23</sup>

### **III. THE NUMBER OF INVESTIGATORS NEEDED**

#### **A. Investigator Task Force Methodology**

To arrive at its estimate, the Investigator Task Force took the following steps.

First, the members catalogued the tasks that investigators regularly undertake when gathering facts in criminal cases from arrest through final disposition. The full catalog of those tasks is described in detail below and is set forth in Exhibit 3.

Second, the members of the Investigator Task Force identified the types of cases in which an investigation should be conducted. In doing so, they concluded that the analysis should encompass only the approximately 46 percent of Legal Aid cases that survive arraignment. Altogether, Legal Aid handled 208,223 criminal cases in fiscal year 2013, with 95,061 cases surviving arraignment. Although some members of the Investigator Task Force believe that the overall estimate as to need should include cases that are disposed of at arraignment, the Task Force as a whole concluded that limiting the analysis to cases that survive arraignment was appropriate. That was principally because: (1) Legal Aid staff attorneys who see a need at arraignment for further investigation should not recommend a plea at arraignment; and (2) it

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<sup>23</sup> The methodology employed by the Task Forces differed and was continually tailored to best account for the nature of the work performed by investigators and social workers, respectively. That methodology is explained in detail in the analysis that follows.

would at this time be too speculative to base an estimate on the possibility that additional cases will go past arraignment as Legal Aid's resources increase.<sup>24</sup>

Third, the Investigator Task Force grouped the cases that survive arraignment into charge categories so that, where crimes charged require very similar steps in an investigation, they could be considered together for the purpose of developing reliable and consistent estimates of the time required.<sup>25</sup> Thus, for example, the Investigator Task Force grouped together twelve different charges that all involve drug sale or possession because they all require very similar investigations. Likewise, the charges of prostitution and patronizing a prostitute were grouped together for the purpose of arriving at time estimates. That was done because both charges often involve undercover law enforcement operations and few civilian witnesses. Overall, the Investigator Task Force grouped charges into twenty-four categories, which collectively account for over 91 percent of the Legal Aid cases that survive arraignment. The specific charges included in each of the twenty-four charge categories are listed in the footnotes to Exhibit 3 and in Exhibit 3A.<sup>26</sup>

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<sup>24</sup> Despite the potentially serious collateral consequences, some Legal Aid clients do reject Legal Aid's advice and take pleas to misdemeanors at arraignment. That pattern is a significant concern and it may change as awareness of collateral consequences spreads, with additional cases surviving arraignment as a result. If additional cases were to survive arraignment, more investigators would be needed. Although Legal Aid believes that it would be speculative to adjust the recommended standard to encompass cases now resolved at arraignment, Exhibit 8 illustrates how the recommended standard would change were there to be an increase in the number of post-arraignment cases.

<sup>25</sup> In grouping the charges, the Investigator Task Force used the "top charge" for each case as indication of the type of case. The "top charge" is typically the most serious charge faced by the client.

<sup>26</sup> Although investigations may be necessary in the remaining 9 percent of cases, time estimates for the investigation of those remaining cases are not included in the overall calculation because those cases involve dozens of different top charges, each of which arises infrequently. Because the Investigator Task Force believed that it had insufficient information to analyze the charges, and because it viewed the exclusion of this additional time as both a reasonable and a conservative approach, the Task Force declined to assign time estimates to the remaining 9 percent of cases.

Importantly, in developing the charge categories, the Task Force grouped similar felonies and misdemeanors together. The Task Force took that approach because: (1) under current law, very serious collateral consequences—including loss of government benefits, loss of public housing, loss of employment, and deportation—can arise from a misdemeanor conviction and make such charges exceptionally serious for the client; (2) misdemeanors that survive arraignment often require a significant defense commitment; and (3) in their experience, the scope of an investigation depends on the nature of the case, not on the specific charge.

Fourth, members of the Investigator Task Force developed estimates of the percentage of cases in each charge category in which investigations should be performed. Those estimates are set out in detail in Exhibit 2.

For half of the charge categories, the Task Force concluded that cases that survive arraignment should have an investigator assigned promptly, because a prompt investigation affords, at a minimum, a high likelihood of finding relevant witnesses and recovering video surveillance footage. Nevertheless, to be conservative, the Task Force included in its overall estimate only 90 percent of the cases in those charge categories as cases that should be investigated.

The Investigator Task Force discounted certain frequency estimates in light of the realities of the criminal practice. For example, because approximately 10 percent of the Legal Aid clients in cases in the “Drug Offenses” category are, for good reasons, immediately diverted for drug treatment, the Investigator Task Force concluded that investigations would not be necessary in those cases. Investigations were considered necessary in the remaining 90 percent of drug cases that survive arraignment.

The Task Force estimated that investigations would occur less frequently in other charge categories. For example, it estimated that investigations should be required in only 25 percent of the prison contraband cases because the principal witnesses in such cases typically are law enforcement officers who are not likely to speak with Legal Aid investigators, so that in many cases an investigation is unlikely to yield useable information.

Taking this charge-category-by-charge-category approach, in the aggregate the Investigator Task Force concluded that an investigator should be assigned in approximately 83 percent of the Legal Aid cases that survive arraignment, or approximately 34 percent of all cases assigned to Legal Aid.

Finally, after having catalogued the tasks and determined the frequency with which each task should be undertaken, members of the Investigator Task Force proceeded to develop estimates of the amount of time typically required for each task, not including travel time, which was estimated separately.

As time estimates for each charge category were developed, the Investigator Task Force recognized that certain tasks should be undertaken in only a small percentage of cases within particular charge categories. For example, for the “Drug Offenses” category, it decided that because eyewitnesses are less likely to cooperate with investigators, interviews of such witnesses would not be frequent and therefore should not always be included in the estimates. As a result, the Investigator Task Force concluded that additional witnesses would be available for interviews in only 15 percent of the cases in that charge category.

In other charge categories, the Investigator Task Force grouped together multiple tasks to more accurately reflect the course of an actual investigation. For example, while for many charge categories, the time required for canvassing the scene and witness interviews was

estimated separately, for the “Robbery” category these tasks were analyzed together, because most witness interviews in robbery cases occur at the scene of the alleged crime, not as follow-up interviews, making it impractical to separate the tasks.

As the Investigator Task Force progressed with its work, initial estimates were regularly reanalyzed and modified to ensure that the estimates were accurate, conservative, and consistent across case categories. The method of estimating time that the Task Force employed was superior to time tracking because time tracking can only accurately capture and project based on what is being done, not what should be done when resources are sufficient. Instead, the Task Force arrived at its conclusions based on long and thoughtful analysis by experienced professionals as to the basic tasks that should be performed in each type of case and how long they should take.

The time estimates resulting from this review are set out in Section III-B below and in Exhibit 3.

#### **B. Investigator Tasks Considered in the Analysis**

In conducting its analysis, the Investigator Task Force concluded that the principal tasks to be performed by investigators in connection with criminal cases would be:

- preparing for the investigation;
- canvassing the scene of the alleged crime and interviewing witnesses;
- analyzing facts learned at the scene and discussing those facts with attorneys;
- viewing property and physical evidence; and
- conducting additional investigative work in connection with pre-trial hearings and trial.

The Investigator Task Force identified certain additional tasks performed by investigators, such as securing the assistance of interpreters, spending time in court, traveling in furtherance of the investigation, serving subpoenas, and attending training. Time for those tasks was not estimated on a charge-by-charge basis, but an aggregate estimate was arrived at separately.

The tasks are described below and the associated time estimates for the performance of each task are detailed in Exhibit 3.

### **1. Case Preparation**

In every case requiring an investigation, the investigator must first prepare for the investigation. Case preparation involves reviewing the attorney's request for investigator assistance and the contents of a client's case file and having an initial conversation with the referring attorney to identify and clarify the goals of the investigation. Preparation also involves conducting preliminary research to locate a crime scene or to obtain background information on a particular location or a potential witness.

Mindful of the differences among cases, the Investigator Task Force estimated that case preparation should take an average of fifteen minutes per case in sixteen of the twenty-four charge categories. In the remaining charge categories, the Investigator Task Force determined that additional preparation time is typically required, raising the estimate of total preparation time to thirty minutes in three charge categories (second-degree aggravated harassment, forgery, and first-degree prison contraband), and sixty minutes in the remaining five charge categories (second-degree attempted murder or first-degree or second-degree assault; first-degree or second-degree rape or sexual abuse; second-degree attempted assault; third-degree rape; and third-degree or lower assault).

## **2. Visiting the Scene of the Alleged Crime and Additional Time with Witnesses**

Where an investigation is required, the investigator will typically: (a) visit the scene of the alleged crime; and (b) endeavor to locate and interview witnesses. The amount of time needed for these tasks depends on the nature of the charge, the likelihood that witnesses can be located, and the accessibility, type and extent of the crime scene.

### **(a) Visiting the Scene of the Alleged Crime**

Visiting the scene enables the investigator to gather important information about the alleged crime. When investigators visit the scene, they usually undertake some or all of the following: (i) creating a diagram or map of the scene; (ii) driving or walking around relevant areas to determine the plausibility of a version of events; (iii) taking photographs of the scene; (iv) finding and obtaining video surveillance footage; and (v) canvassing the scene for potential witnesses and interviewing those witnesses.

#### **(i) Mapping the Scene**

Creating a diagram or map of a crime scene involves sketching the physical and geographic components of an identified location. Structural, transportation, and traffic elements are noted on the diagram or map, and a measuring wheel is often used to record dimensions and distances. This information enables an attorney to visualize the setting of an alleged crime and to understand the distances covered during the chain of events related to the incident. The diagram or map also enables the attorney to determine whether assistance from a cartographer is required, such as in cases where distances may be relevant to an asserted defense.

#### **(ii) Driving or Walking Around the Relevant Areas**

By driving or walking at the scene, investigators seek to understand precisely what may have happened before, during, and after an alleged incident, and how long it takes to navigate a

prescribed route. That information is often important for the evaluation of a criminal complaint. Are the alleged facts consistent or are there contradictions? Is the alleged chronology realistic? Similar efforts are employed to assess a client's alibi.

### **(iii) Photographing the Scene**

Taking photographs of a crime scene enables an investigator to memorialize and understand key features of the scene. Each borough office has a Nikon 35 millimeter Digital Single Lens Reflex camera, which is capable of taking high-definition photographs and recording actual conditions essentially as they were at the time of the alleged crime. For example, if an alleged crime took place after dusk, photos taken with this camera would depict actual night-time conditions and convey a sense of what might or might not have been visible. Additionally, each investigator is equipped with one Sony Cyber-shot 10 megapixel camera, which takes still photographs and video recordings.

### **(iv) Searching for Video Cameras and Obtaining Video Surveillance Footage**

Investigators routinely—and importantly—canvass the scene of an alleged crime to find video cameras. Thousands of surveillance cameras are located in various places throughout the five boroughs, including in stores, ATMs, schools, parks, subways, public housing complexes, and private residences. Video surveillance footage is especially valuable, because it may establish a client's innocence or guilt or may confirm a witness' account of the events. Because this evidence often will be erased if not obtained promptly—some businesses record over their surveillance footage on a weekly basis—timely investigations focused on video surveillance footage is particularly important.

When canvassing for video evidence, investigators often visit stores that line the street where a crime allegedly occurred and ask merchants if they have surveillance cameras that face

toward the sidewalk and street. Investigators may also knock on doors of private homes or apartments and talk to individuals encountered on the street to ask about the location of nearby surveillance cameras.

After identifying the location of surveillance cameras, an investigator will talk to merchants, landlords, or others who have access to the surveillance camera equipment in an attempt to retrieve the video footage. Each borough office is equipped with a “go bag,” which contains a laptop computer, cables, and adaptors—the equipment needed to watch and retrieve surveillance footage. When the investigator returns to the office, he or she will transfer the footage to a DVD for the attorney to review.

**(v) Interviewing Witnesses at the Scene and General Observations**

While canvassing the scene, the investigator asks individuals in the vicinity of an alleged incident whether they were in a particular area when the incident is said to have occurred, whether they witnessed or heard anything about the incident, or whether they know anyone who may have knowledge of the incident. The investigator also tries to secure address or biographical information for those individuals identified as potential witnesses or sources of relevant information. An investigator may also try to obtain a written statement from a witness. Any information gained during an interview will help an investigator assess the witness’ character and role, if any, in the alleged incident.

Additionally, the investigator will observe a crime scene to obtain information that would not necessarily be reflected in a photograph, a diagram, or surveillance footage. For example, is there substantial foot or vehicle traffic at the time of day when the crime was allegedly committed? Is a particular intersection part of a high-crime area?

**(b) Additional Witness Interviews**

Although witness interviews can be and frequently are conducted at the scene of the alleged crime, additional interviews are often necessary. Interviews of witnesses that are separate from those conducted during the initial canvass of the scene typically fall into two categories. First, investigators will re-interview witnesses to further probe their account of the events. Second, investigators will interview witnesses who have been identified by the client or were identified during the canvass of the scene. When a potential witness has been contacted, the investigator will try to elicit information concerning the alleged crime, the individual's relationship to the client and the complaining witness, and other information relating to the individual's knowledge and veracity.

An investigator will often try to identify witnesses and uncover information about known witnesses by using the internet. Investigators use Google, Facebook, YouTube, and other social networking sites to access publicly available identity and address information. Investigators can also search DMV records to obtain vehicle information, address information, and phone numbers; Coles, which links phone numbers to addresses; and ClearWest, which provides biographical information.

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For the categories of "Attempted Murder and Assault 1 & 2," "Rape 1, Rape 2, and Sexual Abuse," and "Attempted Assault 2," visiting the scene and interviewing witnesses typically involve a significant expenditure of time. The Investigator Task Force estimated that these tasks take an average of fifteen hours, fourteen hours, and thirteen hours for those respective charge categories. In such cases, the "scene" may encompass multiple locations and larger public spaces; there is a greater likelihood of locating and interviewing witnesses because

the crimes charged tend to occur in public; and witnesses typically are more likely to speak with investigators when they have observed incidents resulting in bodily harm. By contrast, for the categories of “Evading Cigarette Tax” and “Unlicensed General Vendor,” much less time is required. On average, the Investigator Task Force estimated that investigators should spend fifteen or thirty minutes, respectively, visiting the scene and conducting additional witness interviews in these charge categories. For such categories, the scene is limited and known, and typically there are few, if any, witnesses available.

### **3. At the Office**

After traveling to the scene of the alleged crime and speaking to potential witnesses, an investigator will return to the office, where he or she will analyze the facts learned and will communicate those facts to the staff attorney in charge of the case. These steps are described in greater detail below.

#### **(a) Processing Photographs and Other Visuals**

Investigators use computer equipment in their offices to process photographs. Investigators upload digital photos onto office computers, review them, and create descriptions of each photo for the attorney. Diagrams, maps, and video surveillance footage are also formalized or otherwise processed to facilitate discussions with the attorney and to memorialize what the investigator learned or observed during the investigation.

#### **(b) Discussions with Attorney**

Once an investigator has obtained and processed crime scene information, he or she will discuss the findings with the attorney. This is an opportunity for the investigator to communicate factual information that could bolster or undermine witness accounts, alibis, or potential defenses. Investigators and staff attorneys will also discuss case strategy.

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The Investigator Task Force estimates that such steps will take an average of forty-five minutes per case in eighteen of the twenty-four case categories, and that the amount of time required for these steps will be one hour and forty-five minutes for two charge categories (first-degree and second-degree rape and sexual abuse; third-degree rape).

#### **4. Locating and Evaluating Property and Physical Evidence**

In many cases, including those involving the unlawful possession of property, an investigator will need to photograph and examine evidence in various government offices. Property may be held in a police precinct, by the property clerk, at the District Attorney's office, or at another location. When the investigator arrives at the appropriate location, he or she will observe the condition and functionality of what remains of the property. Is a gravity knife operational? How does a weapon discharge during a ballistics test? The investigator usually will photograph the property to document its condition and appearance. Finally, the investigator will try to determine whether the chain of custody for the property has been maintained.

These steps are undertaken most frequently in connection with crimes that involve bodily injuries or weapons possession, but may also occur in cases where, for example, the identification of the client is at issue and the client's clothing has been held as evidence. The Task Force estimates that the examination of physical property should take place in three of the twenty-four charge categories; in two charge categories, one hour is typically required for this task; and in the remaining charge category, thirty minutes is typically necessary.

#### **5. Investigations Immediately Prior to or During Trial**

In cases where a trial is anticipated in the near future, investigators will conduct follow-up investigations, often accompanying the attorney to the scene of the alleged crime. In addition,

investigators will re-interview witnesses to confirm their previous account of the events. Finally, investigators will conduct investigations during pre-trial hearings or during trial to test the accuracy of the live testimony.

To arrive at reliable estimates, members of the Investigator Task Force initially determined the percentage of cases that would need to be prepared for trial. According to Legal Aid data, Legal Aid attorneys tried approximately 370 cases in calendar year 2012. In addition, it is estimated that for every case tried in 2012, approximately three additional cases required substantial pre-trial preparation before an ultimate disposition on the eve of trial.<sup>27</sup> Based on these figures, the Task Force estimated that approximately 1,600 cases were prepared for trial in 2012, or approximately 1.7 percent of cases that survived arraignment.

The percentage of cases prepared for trial is thus relatively small, and, in some cases, the time required to prepare for a trial is also relatively limited. For example, the Investigator Task Force estimated that an investigator would spend three additional hours investigating “Robbery” and “Burglary and Criminal Trespass” cases, two additional hours investigating “Drug” cases, and one additional hour investigating “Grand Larceny” and “Evidence Tampering” cases. In addition, the Investigator Task Force estimated that no time should be spent on this task in certain charge categories because there was little risk of changing witness accounts, developments at the scene, or the discovery of new evidence.

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<sup>27</sup> The Task Force estimated that for every case tried in the Bronx, Brooklyn, Queens, and Staten Island, an average of three additional cases involved substantial pre-trial preparation before a resolution just prior to trial. The Task Force similarly estimated that, for every case tried in Supreme Court in Manhattan, three additional cases involved substantial pre-trial preparation. However, the Task Force reported that Manhattan has active bench trial parts in Criminal Court. As a result, the Task Force estimated that for every case that reached a bench trial in Criminal Court, four additional cases would be prepared for trial because of the increased likelihood that a judge in these parts would order a bench trial to commence at any given time. Based on a blending of these estimates, the Task Force concluded that, for every case actually tried citywide, approximately 3.2 additional cases should have pre-trial investigations conducted by investigators.

## **6. Other Tasks**

In addition to the tasks described above, investigators engage in other activities, such as securing translation assistance, spending time in court, traveling, serving subpoenas, and attending training. Because time spent on these tasks is not easily estimated as related to specific categories of cases, the Investigator Task Force instead developed estimates on a per-year basis.

### **(a) Use of Interpreters in Witness Interviews**

When an investigator does not speak the same language as a potential witness, he or she must obtain the assistance of an interpreter to have a meaningful discussion. The need for interpretation arises very frequently, in multiple languages. The fact that interpreters are often needed is consistent with United States census data, which indicate that 36.9 percent of New York City residents reported that they were foreign-born and 48.7 percent of New York City residents reported that they lived in a home where a language other than English was spoken.<sup>28</sup> Investigations that involve non-English speakers require more time to complete, even if an investigator is fluent in a language other than English. Reasons for the additional expenditure of time include: the investigator must return from the scene to the office upon learning that a witness does not speak English; the investigator must secure the services of an interpreter; the investigator may return to interview a witness additional times with the interpreter; and the interviews themselves take longer.

Although such interviews and investigations involving non-English speakers do take longer, following extensive discussion, members of the Investigator Task Force concluded that they could not develop reliable time estimates for the additional time required based on existing

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<sup>28</sup> See U.S. Census Bureau, State & County QuickFacts, available at <http://quickfacts.census.gov/qfd/states/36/3651000.html> (last visited Aug. 18, 2014) (2008-2012 data).

Legal Aid data or prospective data collection. Given that, and in the interest of being conservative, no additional time for working with interpreters is included in this analysis. Although the additional time is not included, if each investigator were to spend only 30 additional minutes per week with non-English speaking witnesses beyond the overall estimates discussed above, Legal Aid would need approximately three additional investigators, and if each investigator were to spend one additional hour per week with non-English speaking witnesses, Legal Aid would need approximately six more investigators than estimated.

**(b) In-Court Time**

Investigators may be required to appear in court to testify based on their investigation. An investigator may, for example, testify to the admissibility of photographs taken at the scene, or an investigator's testimony may be used to impeach a witness that the investigator previously interviewed. When an investigator acts as a fact witness, he or she will spend time with a staff attorney preparing to testify. In addition, the investigator will spend time on the witness stand and often must wait for extended periods in the courthouse prior to testifying.

As a final step in estimating in-court time, approximately twenty investigators, including the members of the Investigator Task Force, reviewed their records from 2011 and 2012 and developed best estimates of the number of times that they were prepared to testify in court and the number of times that they in fact testified. Based on this review, the Investigator Task Force estimated that they testify an average of one time per year and are prepared by a lawyer to testify three additional times per year. In addition, the Investigator Task Force estimated that waiting time and in-court time associated with being a witness takes an average of two hours and fifteen minutes for the typical case, with an average of one hour spent on preparation and an average of seventy-five minutes spent testifying and waiting in court.

**(c) Travel Time**

Investigators must travel to various locations associated with their investigations, including the scene of the alleged crime and the residences of potential witnesses. To determine the amount of time investigators spend traveling, sixteen investigators agreed to track the amount of time spent each day traveling for the purpose of conducting investigations. The sixteen investigators included members of the Task Force and other Legal Aid investigators, and they hailed from each of Legal Aid's five borough offices. The investigators conducted and repeated this study in January, February, April, May, June, July, August, and December of 2012, together tracking approximately 750 hours of travel time over approximately 520 days. Based on this data, the Investigator Task Force estimated that approximately 1 hour and 25 minutes per day is usually required for travel, or approximately 368 hours per year per investigator.

**(d) Service of Subpoenas**

Legal Aid investigators frequently serve subpoenas to further their investigations. Subpoenas may be served for video surveillance footage; for records from municipal and state agencies such as the Metropolitan Transportation Authority, the New York City Department of Education, the New York City Department of Correction, and the New York City Housing Authority; and for hospital records.

In 2011, the New York City Department of Consumer Affairs promulgated rules that regulate service of subpoenas.<sup>29</sup> These rules relate to licensing of process servers, creation and maintenance of records, and posting of surety bonds, and increase the amount of time spent on service. To determine the amount of time required to serve subpoenas (excluding travel time and time spent with witnesses, tasks that are otherwise accounted for in the analysis), certain

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<sup>29</sup> See R.C.N.Y. §§ 2-231 *et seq.* (2012).

members of the Task Force logged the amount of time required to serve a subpoena in a fashion that complies with these new regulations. After reviewing this data and reducing their estimates to address the likely effect of future efficiencies, the Investigator Task Force concluded that compliance takes, on average, 15 minutes per subpoena.

Based on Legal Aid data from June 2013, the Task Force concluded that investigators in Queens or Staten Island each serve approximately 60 subpoenas per month, or 720 subpoenas per year per borough, and investigators in Brooklyn, the Bronx, or Manhattan each serve approximately 50 subpoenas per month, or 600 subpoenas per year per borough. Citywide, investigators serve, on average, 3,200 subpoenas per year.<sup>30</sup> Accordingly, the service of subpoenas in compliance with the process server regulations is estimated to require 800 hours of investigator time per year.

If additional investigators are added, the number of subpoenas served per year is likely to increase. However, to be conservative, the potential for additional investigator time due to service of additional subpoenas is not included in the analysis.<sup>31</sup>

#### **(e) Training Time**

Investigators must attend training sessions, similar to Continuing Legal Education for attorneys, to keep apprised of crucial developments in the field. Typical courses address changing technology, evolving investigative techniques, and pertinent legal developments. Last year, investigators attended classes concerning the proper method of taking witness statements,

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<sup>30</sup> In recent months, Legal Aid has made changes to the way it assigns requests for the service of a subpoena. Each borough now has two qualified investigators designated for the service of subpoenas. It is not anticipated that this practice change will change the total amount of time required for the service of subpoenas.

<sup>31</sup> On the other hand, Legal Aid is presently considering whether to retain an outside vendor to handle subpoena service. Although we have included time for service of subpoenas in the calculations, removing all subpoena time from the calculations would have no more than a de minimis effect on the ratio (which would remain at approximately 2.9:1).

data collection from cellular phones, issues arising in narcotics cases, and ethical issues related to investigations.

To develop an estimate, the Investigator Task Force reviewed the time investigators spent on training in recent years. Newly hired investigators typically undergo full-time training for eight weeks, which involves shadowing an experienced investigator four days per week and attending a full day of lectures one day per week. Experienced investigators spend more than twelve hours per year on training, but the Investigator Task Force concluded that twelve hours per year—the amount of time attorneys in New York must spend on Continuing Legal Education each year—represented a conservative estimate of the minimum time required for training for each investigator for each year.

#### **7. Total Available Time Per Year**

Finally, for the purposes of its overall analysis, the Investigator Task Force developed an estimate of the approximate number of hours an individual investigator is expected to work on average each year. All told, it was estimated that investigators will work 1,820 hours per year, or 35 hours per week over the course of 52 weeks. This estimate is the same as was used for attorneys in 2009, when the 2009 task force analyzed the need for additional Legal Aid lawyers to provide an effective defense. To be conservative, the estimate assumes no vacation time or sick leave, and one hour for lunch during each eight-hour day.

### **C. Determination of the Number of Investigators Needed to Provide an Effective Defense**

#### **1. Total Based on the Task Force's Analysis**

Based on the various estimates discussed above and Legal Aid's current post-arraignment caseload, the Investigator Task Force took the following steps to estimate the total number of

investigators Legal Aid should have to meet its constitutional mandate. These steps also are reflected in Exhibits 3 and 4 hereto.

First, the Investigator Task Force arrived at a total for the amount of time required for the investigation of a case within each charge category. That total was then weighted by the number of cases in the charge category that survive arraignment and by the frequency with which post-arraignment investigations are necessary in the charge category. The totals for all charge categories were added together and then, in turn, the time needed per year for service of subpoenas was added to that total. The resulting figure was identified as “Total Case-Related Time.”

Next, the Investigator Task Force calculated the total time an investigator has available per year to devote to investigations. To accomplish this, it started with the total available time (1,820 hours per year), and then subtracted all time that is not available for case-specific tasks, specifically travel time, in-court time, and training time. The resulting total was identified as “Total Available Time For Case-Specific Tasks.”

Then the Investigator Task Force calculated the average time needed for each investigation. This average was calculated by dividing the “Total Case-Related Time” by the total number of cases in calendar year 2011 that should have been investigated. Using these figures, the total number of cases that each investigator should be able to investigate in a year was calculated.

Finally, to determine the total number of investigators that Legal Aid needs, the total number of cases that should have been investigated was divided by the average number of cases that each investigator can investigate per year.

To perform all the work that the Investigator Task Force determined is required for an “effective defense,” Legal Aid needs to hire far more investigators than are currently on staff. Specifically, Legal Aid would need to hire at least 176 additional investigators, and decrease its ratio of attorneys to investigators from 10.1 attorneys per investigator to at most 2.9 attorneys per investigator.<sup>32</sup> Even providing investigator assistance in just half the number of cases where the Task Force determined it is necessary would require Legal Aid to decrease the ratio to 5.8 attorneys per investigator. The details of the calculation are set forth in Exhibit 4.

## **2. Total Based on Ratios in Other Jurisdictions**

As discussed above, various jurisdictions in the United States maintain lower ratios of lawyers to investigators than Legal Aid. If Legal Aid were operating in those jurisdictions, it would have a significantly greater number of investigators:<sup>33</sup>

- If Legal Aid operated in a jurisdiction with a 4:1 attorney-to-investigator ratio, Legal Aid would need to employ 165 investigators, or 99 investigators in addition to its fiscal year 2015 staff;
- If Legal Aid operated in a jurisdiction with a 5:1 attorney-to-investigator ratio, Legal Aid would need to employ 132 investigators, or 66 investigators in addition to its fiscal year 2015 staff;
- If Legal Aid operated in a jurisdiction with a 6:1 attorney-to-investigator ratio, Legal Aid would need to employ 110 investigators, or 44 investigators in addition to its fiscal year 2015 staff.

### **D. Maximizing the Impact of Legal Aid’s Investigators**

Whereas given the shortage of resources investigators are often employed only relatively late in a case, having an adequate number of investigators on staff would allow Legal Aid to

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<sup>32</sup> As noted, Legal Aid expects to come into compliance with the 400-case standard during fiscal year 2015, reaching a projected attorney staffing level of 661.6. In calculating necessary attorney-to-investigator ratios in this memorandum, this projected attorney number has been used.

<sup>33</sup> Ratios based on a projected staffing level of 661.6 attorneys.

begin investigations immediately after arrest. It would also allow Legal Aid to institute an “on call” system for investigators during arraignment shifts, so that investigators could more often begin their necessary investigations immediately after arrest. With sufficient investigators on staff, Legal Aid could consider moving toward a “team approach,” whereby a lawyer would meet with his or her designated investigator following every arraignment shift attended by the lawyer, allowing for early and frequent discussion between investigators and lawyers, to maximize the investigators’ ability to contribute to an effective defense.

#### **IV. THE NUMBER OF SOCIAL WORKERS NEEDED**

##### **A. The Importance of Social Workers to an Effective Defense**

Social workers are often critically important to an effective defense. When a Legal Aid client has been arrested and is incarcerated, the involvement of a social worker can materially increase the likelihood that the client will benefit from an appropriate plea offer or improved sentence. Interviews conducted by an experienced social worker with the client and with other individuals, such as the client’s family members, treatment providers, friends, and colleagues, can yield factual information that is crucial for mitigation arguments. Social workers can very often provide important assistance in advocating for alternatives to incarceration, by identifying substance-abuse problems, informing the court about the client’s relevant history, and locating possible treatment programs that address the client’s needs. By identifying clients for whom placement in a program is appropriate, Legal Aid not only benefits individual clients, but also decreases the heavy costs borne by the state associated with incarceration.

When a Legal Aid client has developmental disabilities or mental health issues, social workers—when available—are often able to identify such problems at an early stage in a case, and to explain them to staff attorneys, the prosecutor, and the judge. By supporting Legal Aid

lawyers, social workers can enable them to communicate and work with the client more effectively. Through appropriate education and advocacy, social workers can also help the prosecutor and the court respond to the client in an appropriate fashion.

Social worker intervention can decrease recidivism by more effectively addressing a client's life issues, which may have contributed to his or her criminal behavior. In the domestic violence context, social worker involvement can dramatically improve client outcomes outside of the courtroom.

It is important that social workers are specifically trained and bring skills that other involved professionals can either not provide at all or cannot provide as effectively.

**B. Under the Ten-to-One Ratio, There Are Too Few Social Workers on Staff at Legal Aid**

Notwithstanding the evident benefits from their services, as of June 30, 2013, Legal Aid employs only one social worker for every ten attorneys. At that level of staffing, approximately 56 social workers assist approximately 537 attorneys—one social worker for every 1,700 post-arraignment cases handled by Legal Aid.<sup>34</sup> This ratio is inadequate: in recent years social workers have been able to help clients in only approximately 5 percent of post-arraignment cases.

Appreciating the importance of social work to an effective defense, other jurisdictions have recognized that such a ratio of ten attorneys to one social worker is inadequate. They instead require or encourage public defenders to employ a much greater number of social workers per attorney.<sup>35</sup>

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<sup>34</sup> Based on an annual caseload of 95,061 post-arraignment cases.

<sup>35</sup> See Section I.C supra.

If the Committee improved the current ratio of attorneys to social workers, Legal Aid could not only utilize social workers in a larger number of cases, but it could also maximize the social workers' impact by using their services earlier in its cases. Given the current scarcity of social workers, lawyers will often wait to refer cases to social workers until relatively late in the process, thinking it best not to expend very scarce social worker resources except at the most crucial times. If more social workers were available, attorneys could make more timely referrals, which would enable social workers to identify problems and potential solutions early, guiding the lawyer's approach and affecting the way a case is defended from beginning to end. That would likely make it possible to achieve good results in many cases sooner, both improving the quality of the process and reducing the overall time expended by both the defense and prosecution. Currently, there are far too few social workers on staff at Legal Aid to do that.

### **C. Social Worker Task Force Methodology**

The Social Worker Task Force has arrived at an estimate of the number of social workers needed for an effective defense by first determining in how many cases social worker involvement would be warranted if sufficient numbers of social workers were available, then what type of social worker involvement would be warranted in specific cases, and finally the amount of time required to provide the particular types of social work assistance needed in such cases. To arrive at those estimates, the Social Worker Task Force engaged in group discussion, a thorough review of pending cases, and analysis of other data.

At the outset, the members of the Social Worker Task Force identified the following types of contributions by social workers as being the most important to the effective defense of Legal Aid's clients: (1) advocacy in connection with a pre-pleading submission; (2) advocacy in connection with a Clayton motion; (3) advocacy in connection with a pre-sentencing report; (4)

placement of clients in programs that address substance-abuse or other problems; and (5) advocacy in connection with a bail application. In those efforts, the social worker plays a pivotal role in advocating for the dismissal of criminal charges, the imposition of shorter sentences, the availability of drug treatment alternatives to incarceration, and/or the release from jail pending trial. As discussed in further detail in Section IV.D.7 below, social workers in Legal Aid's criminal practice provide a wide array of services in addition to the five identified for purposes of arriving at an estimate, but the Social Worker Task Force reached the considered decision that these five categories were most critical to an effective defense.

After identifying the five principal categories of work, the Social Worker Task Force conducted an in-depth analysis of a representative sample of cases to determine the percentage of clients that would benefit from social worker assistance in at least one of the five areas, considering the individual characteristics of the given client, including age, the presence or absence of mental health or substance-abuse issues, facts relating to the client's family and community, the crime charged, and the client's record of criminal conduct, if any. The Task Force concluded that this holistic assessment was more appropriate than focusing exclusively on the charge type and/or uniformly differentiating between clients charged with felonies and clients charged with misdemeanors.<sup>36</sup>

To conduct that analysis, experienced social workers each paired with one staff attorney to form ten social worker/attorney teams. These teams were located in all five borough offices and had a variety of experience and seniority. Some of the team members participated in the Social Worker Task Force or in the attorney task force in 2009, whereas others were new to the

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<sup>36</sup> Consistent with the discussion above, the Task Force views clients charged with misdemeanors as critically important, and—all other things equal—deserving of the same social work services, particularly in light of the potential collateral consequences, which are of significant concern to many of Legal Aid's clients.

process. Once the teams were established, each one reviewed the open cases assigned at the time of the review to the attorney on the team. Together, the social worker and attorney in each pairing assessed whether the client in each case assigned to each attorney would have benefited from at least one of the key categories of social worker assistance had a sufficient number of social workers been available, often meeting multiple times over the course of multiple days. Most of these teams also repeated their analysis several months later, when the attorney's mix of pending cases had changed.

The ten lawyer/social worker pairs together reviewed nearly 1,000 open post-arraignment cases. Relying on the results of those caseload reviews, the Social Worker Task Force determined that, had they been available, the assistance of social workers would have been important to an effective defense in approximately 38 percent of the Legal Aid cases that survived arraignment.<sup>37</sup> In addition, the Social Worker Task Force reviewed each of the five key

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<sup>37</sup> Legal Aid is not taking the position that the only clients who need social worker assistance are those who suffer from mental health or substance-abuse problems, nor is it taking the position that all individuals in those groups require social worker assistance to receive an effective defense. However, there is a credible argument that many such persons could benefit from social worker assistance. For that reason, we think it is helpful to compare the Task Force's estimates to published data.

Such data clarify the extent to which mental health and substance-abuse problems remain pervasive. For example, recent data from the Department of Justice show that 56 percent of state inmates suffer from mental health problems, and 80 percent of state inmates suffer from mental health and/or substance-abuse problems. Doris J. James & Lauren E. Glaze, U.S. Dep't of Justice Bureau of Justice Statistics, NCJ 213600, Mental Health Problems of Prison and Jail Inmates (Sept. 2006). A study conducted in Vermont found that approximately 55 percent of male public defender clients between the ages of 13 and 19 and 54 percent of female public defender clients in that age group had received services from a community mental health center in the past year. Anna E. Saxman, The President's Column, Vt. B.J. at 3 (Spring 2004). In a similar study among adult public defender clients (aged 16 and above) in Vermont, 41 percent had previously received prior mental health services. Id. One recent study of individuals awaiting arraignment in Brooklyn concluded that 55 percent have mental-health problems, substance-abuse problems, or both. Nahama Broner, Stacy S. Lamon, et al., Arrested Adults Awaiting Arraignment: Mental Health, Substance Abuse, and Criminal Justice Characteristics and Needs, 30 *Fordham Urban L.J.* 663, 709 (2002). Other New York City data show that 36 percent of inmates in New York City exhibit some form of mental illness. See Mayor Bloomberg Announces New Mental Health Initiative to Provide Intervention and Resources for Court-Involved New Yorkers as They Return to the Community (Dec. 23, 2012), available at [http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor\\_press\\_release&catID=1194&doc\\_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2012b%2Fpr488-12.html&cc=unused1978&rc=1194&ndi=1](http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2012b%2Fpr488-12.html&cc=unused1978&rc=1194&ndi=1) (last accessed Aug. 8, 2014).

types of social worker involvement and for four of the categories—not including advocacy in support of bail applications—developed reasoned estimates of the average amount of time required to complete the various tasks.

The task force then calculated the total number of social worker hours needed per annum by multiplying the hours required for necessary tasks by the number of cases in which social worker contributions would be necessary. Importantly, to be conservative, the final calculation only included the time associated with one of the five tasks for any given case, even though there will be cases in which more than one type of social worker involvement would be necessary. In considering only one type of activity, the Task Force included only that activity that was estimated to include the fewest social worker hours. Among other things, this eliminated the need to account for the likely overlap in necessary steps for the different categories.

Thus, for example, where a caseload review team concluded that for a particular case social worker assistance in both program placement and a pre-pleading submission would likely be required for an effective defense, that case was included only in the program placement column because program placement would require less social worker time than a pre-pleading submission.

The following table reflects the varying time estimates for each type of work:

<b>Category</b>	<b>Average Time Included Per Case</b>
Program placement	6 hours, 35 minutes*
Bail application	7 hours, 25 minutes
Pre-pleading submission	17 hours, 5 minutes*
Pre-sentencing submission	24 hours, 45 minutes
Clayton submission	33 hours, 35 minutes
<i>* Alternative, higher time estimate calculated but excluded from calculations</i>	

The final overall calculation is set forth below and in Exhibit 7.

#### **D. Supplemental Assistance from Social Workers**

The five most important categories of social worker assistance are described in detail below, along with the time estimates for each area of work other than advocacy for bail applications as to which the conclusion was that a final estimate should not be included in the overall calculation.

##### **1. Advocacy in Connection with Pre-Pleading Submissions**

It is often the case that a pre-pleading submission prepared by a social worker will persuade a prosecutor or judge to make a more attractive plea offer rather than proceed to trial. In preparing the submission, experienced social workers draw on a client's records and life history to present a narrative as to the client's family, the client's educational background, and/or any social, psychological, or medical challenges faced by the client. The submission might focus on a client's mental impairment to explain why the client—perhaps a first-time offender—came into contact with the criminal justice system. The pre-pleading submission could also provide context or resolve doubts about the client's behavior or conduct, or it might outline steps taken by the client to make changes in his or her life. Such advocacy at the plea stage is especially critical, because the plea stage itself is so critical. As the Supreme Court of the United States has said in 2012, “[c]riminal justice today is for the most part a system of pleas, not a system of trials.”<sup>38</sup>

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<sup>38</sup> See Lafler v. Cooper, 132 S. Ct. 1376, 1388 (2012); see also Missouri v. Frye, 132 S. Ct. 1399, 1407 (2012) (“The reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages. Because ours is for the most part a system of pleas, not a system of trials, it is insufficient simply to point to the guarantee of a fair trial as a backstop that inoculates any errors in the pretrial process.”) (internal citation and quotation marks omitted).

The pre-pleading submission typically takes one of two forms. It may be drafted as a lengthy memorandum that is submitted to the court, often referencing the social worker’s research and/or relevant records. Other times, a Legal Aid lawyer will determine that in the circumstances—the prosecutor and judge involved, the amount of time available, or the nature of the case—a shorter submission letter is more appropriate. Such “pre-pleading advocacy letters” may take less time to prepare. When analyzing pre-pleading submissions, the Social Worker Task Force also discussed psychosocial reports, which can be helpful or required in many contexts. Although psychosocial reports are not specifically prepared in connection with plea negotiations, the Social Worker Task Force concluded that the underlying work is identical to that required for a pre-pleading submission.

Given that the time estimates associated with these three forms of work product differ, to be conservative, whenever the Social Worker Task Force concluded that a pre-pleading submission or psychosocial report was required and should be included in the overall calculation, it included only the shorter amount of time typically required for the pre-pleading advocacy letter.

**(a) How Often Social Workers Should Be Involved**

For purposes of the overall calculation, the caseload review teams determined that preparing a pre-pleading submission was a necessary task, and the least time-intensive task necessary, in 13 percent of post-arraignment cases. Accordingly, the Task Force estimated that, if they were available, social workers should have prepared approximately 12,600 pre-pleading submissions each year. As discussed below, this number includes both short pre-pleading advocacy letters and longer pre-pleading memoranda or psychosocial reports.

**(b) Estimate of Time Required**

The Social Worker Task Force determined that there are six categories of work required to prepare a pre-pleading submission. The individual tasks, with the Task Force's estimates of the amount of time required for each, are discussed below.

**(i) Case Opening, Closing, and Other Administrative Tasks**

Upon referral of a case to a social worker, the social worker sets up a case file for the client and organizes available documentation in the file. Throughout the course of the representation, the social worker regularly reviews and updates the case file and engages in recordkeeping. At the conclusion of the case, the social worker is required to close the client file. This involves recording the details of the disposition of the case and filing the records.

In the context of pre-pleading submissions, the Social Worker Task Force estimates that a social worker spends an average of 55 minutes on these administrative tasks, which includes an average of 20 minutes for opening and organizing the case file at the opening of the case, an average of 15 minutes for closing the case file, and an average of 20 minutes for review and updates during the life of the case.

**(ii) Interviews with the Client and Others**

Shortly after a case is referred to a social worker, the social worker will typically conduct an initial interview with the client. During this interview, the social worker will evaluate the client's mental health status and will ask questions about the client's social environment, employment and family status, and substance-abuse issues (if any), all of which are essential to the social worker's ability to contribute to the effective defense of the client. The Social Worker Task Force estimates that the initial client interview takes an average of 90 minutes.

After the initial interview with the client, the social worker typically conducts one or more additional interviews. These shorter interviews may be with the client or with individuals close to the client, such as a parent or spouse, or, on occasion, a friend or co-worker (“collaterals”). Overall, for a pre-pleading submission, the Social Worker Task Force concluded that the social worker will typically conduct: two more interviews with the client, each lasting approximately one hour; at least one one-hour interview with a parent or spouse of the client; and multiple shorter interviews with other individuals close to the client. The Social Worker Task Force estimates that a social worker preparing a pre-pleading submission will spend an average of 5 hours and 30 minutes on interviews, including an average of 3.5 hours with the client and 2 hours with collaterals.

### **(iii) Records Requests, Review, and Analysis**

In connection with a pre-pleading submission, a social worker will typically request a variety of records, including criminal records, medical records, records from substance-abuse treatment programs, and school records. To make the records requests, the social worker has to identify, complete, and submit the applicable forms. The Social Worker Task Force estimates that a social worker will spend an average of 40 minutes on this task.

Information contained in these records is often of great importance in the preparation of pre-pleading submissions, and social workers spend a significant amount of time on review and analysis of such records. While the volume of records available to the social worker will vary greatly from case to case, the Social Worker Task Force estimates that, on average, a social worker will spend 5 hours reviewing and analyzing records.

In cases where a pre-pleading advocacy letter will be submitted in lieu of a longer pre-pleading memorandum or psychosocial report, this task may take less time. Specifically,

advocacy letters may be prepared because time does not allow for a longer submission. In such situations, the social worker may not receive the requested records by the time the submission is due. Taking this into account, the Task Force estimates that a social worker will spend an average of 4 hours reviewing records in connection with pre-pleading advocacy letters.

In sum, the Social Worker Task Force estimates that the average amount required for requesting, reviewing, and analyzing records is 5 hours and 40 minutes when preparing a pre-pleading memorandum or psychosocial report, or 4 hours and 40 minutes when preparing a pre-pleading advocacy letter.

#### **(iv) Program Research and Outreach**

In connection with a pre-pleading submission, a social worker will often seek out programs that may be able to provide appropriate treatment to the client, as well as to programs in which the client may previously have been placed. While researching and contacting available programs can be a very time consuming process, it is not required in every case involving a pre-pleading memorandum. When program placement is an issue, on average, the Social Worker Task Force estimates that a social worker will spend approximately one hour on program placement and outreach in connection with the preparation of a pre-pleading submission.

#### **(v) Planning, Drafting, and Revising of Submission**

The Social Worker Task Force estimates that the average amount of time spent by a social worker on planning, drafting, and revising the pre-pleading memorandum or psychosocial report itself is on average 12 hours. The Task Force also estimates that social workers spend approximately 4 hours preparing pre-pleading advocacy letters.

**(vi) Discussions with Attorney**

Discussions between an attorney and a social worker when preparing a pre-pleading submission are frequent. To prepare the submission, the attorney and social worker need to communicate about facts and strategy. The Social Worker Task Force estimates that a social worker will spend approximately 90 minutes communicating with attorneys in connection with pre-pleading memoranda and psychosocial reports, or 60 minutes in connection with pre-pleading advocacy letters.

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In total, the Social Worker Task Force estimated that a social worker will spend an average of 26 hours and 35 minutes preparing a pre-pleading memorandum or psychosocial report and 17 hours and 5 minutes preparing a pre-pleading advocacy letter. As noted above, to provide a conservative estimate, in calculating the overall social worker time required, the Social Worker Task Force used the lower estimate—17 hours and 5 minutes—as the estimated average time required per pre-pleading submission.

**2. Advocacy in Connection with Clayton Motions**

When compelling circumstances such as serious illness or infirmity demand the dismissal of a case in the interest of justice, Legal Aid attorneys make what is known as a Clayton motion. In ruling on such a motion, a court has discretion to dismiss a case if it determines that the “ends of justice would be served by the termination of the prosecution. Indeed, it has been stated that [this determination depends] only on principles of justice, not on the legal or factual merits of the charge or even on the guilt or innocence of the defendant.”<sup>39</sup> In support of a Clayton motion, the attorney will often file an affidavit or report prepared by a social worker, in which the social

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<sup>39</sup> People v. Clayton, 41 A.D.2d 204, 206 (2d Dep’t 1973) (internal citation omitted).

worker sets forth the facts in support of the argument that the case should be dismissed. In the affidavit or report, the social worker will typically examine the client's medical history and outline the circumstances that mandate dismissal.

**(a) How Often Social Workers Should Be Involved**

The caseload review teams determined that social worker involvement in connection with a Clayton motion was a necessary task, and the least time-intensive task necessary, in 0.4 percent of all cases surviving arraignment, or in connection with approximately 400 Clayton motions per year.

**(b) Estimate of Time Required**

The Social Worker Task Force determined that the tasks undertaken by a social worker in connection with a Clayton motion are similar to the tasks performed in connection with a pre-pleading submission. Because a successful Clayton motion requires a thorough understanding of the client's health (including mental health) and his or her personality and environment, a social worker assigned to work on a Clayton motion will generally spend more time conducting interviews and reviewing records than in other contexts.

**(i) Case Opening, Closing, and Other Administrative Tasks**

As in other contexts, the social worker assigned to work on a Clayton motion will spend an average of 20 minutes opening and organizing a case file for the client and 15 minutes closing the file at the conclusion of the case. Over the duration of the case, the social worker will update the case file. Because Clayton motions typically involve large volumes of records, the Social Worker Task Force estimates that a social worker spends an average of 30 minutes updating the case file over the life of the case, for a total of 65 minutes spent on administrative tasks.

**(ii) Interviews with the Client and Others**

As with other efforts, a social worker will typically conduct one initial interview with the client and two follow-up interviews. Compared with client interviews in the contexts discussed earlier, interviews in the context of Clayton motions are generally longer; they often require in-depth discussion and evaluation of the client's medical or mental health status. The Task Force estimates that, on average, social workers will spend 4 hours and 30 minutes on client interviews, consisting of three client interviews, each of which lasts approximately 90 minutes.

Interviews with individuals other than the client also require more time in the context of a Clayton submission. The social worker will typically conduct one interview with a spouse or parent of one hour in length, and multiple interviews with additional individuals close to the client. Because in-depth discussion of health-related topics is typically required, these interviews tend to be time-intensive. The Task Force determined that the social worker will spend an average of 3 hours conducting additional interviews.

**(iii) Records Requests, Review, and Analysis**

In preparing a Clayton submission, social workers rely heavily on records received from hospitals, doctors, treatment programs, and schools. The Social Worker Task Force estimates that a social worker will spend an average of 90 minutes requesting the appropriate records.

A social worker will also request additional records and will engage in follow-up conversations with the organizations and institutions that maintained the records. The Social Worker Task Force estimates that, in connection with a Clayton motion, a social worker will spend 10 hours on average reviewing and analyzing records.

**(iv) Program Research and Outreach**

Because Clayton motions are often brought on behalf of gravely ill clients, the social worker ordinarily will not seek to place the client in a treatment program. While there may be situations where a social worker will attempt to make a program placement in connection with a Clayton motion, to be conservative, the Social Worker Task Force has not included any time spent on this task in its overall estimate of the time required.

**(v) Planning, Drafting, and Revising of Submission**

The Social Worker Task Force estimates that the average amount of time spent by a social worker on planning, drafting, and revising a Clayton submission is identical to the time required in the context of a pre-pleading memorandum or psychosocial report: 12 hours.

**(vi) Discussions with Attorney**

Clayton motions generally require close collaboration between a social worker and an attorney. The Social Worker Task Force estimates that, in preparing a Clayton motion, the social worker will spend an average of 90 minutes engaging in discussions with the attorney.

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In sum, the average amount of time required by a social worker in connection with a Clayton motion is 33 hours and 35 minutes.

**3. Advocacy in Connection with Pre-Sentencing Memoranda**

Just as pre-pleading memoranda help Legal Aid lawyers advocate for a favorable plea offer for their clients, pre-sentencing memoranda help staff attorneys advocate at sentencing hearings, where the goal is to secure a shorter sentence. Pre-sentencing memoranda often are an effective vehicle to present mitigating facts to the sentencing judge, and advocacy by

experienced social workers is very often a key component of a successful pre-sentencing memorandum.

**(a) How Often Social Workers Should Be Involved**

The caseload review teams determined that preparing a pre-sentencing memorandum was a necessary task, and the least time-intensive task necessary, in 1.1 percent of all cases surviving arraignment. Based on this analysis, social workers should prepare approximately 1,100 pre-sentencing memoranda per year.

**(b) Estimate of Time Required**

The Social Worker Task Force determined that a social worker's tasks in connection with the preparation of a pre-sentencing memorandum are comparable to those undertaken in the context of a pre-pleading memorandum. At the pre-sentencing stage, however, there is often more time pressure due to court-ordered deadlines. As a result, the social worker may not be able to secure as many records, and may spend less time reviewing records and conducting interviews.

**(i) Case Opening, Closing, and Other Administrative Tasks**

Once again, the social worker will spend an average of 20 minutes opening and organizing a case file and 15 minutes closing the file at the conclusion of the case. The remaining administrative tasks in the context of a pre-sentencing memorandum require more of a social worker's time than in other contexts, because the social worker will typically have to review key excerpts of the trial transcripts relating to the client's case. Review of these excerpts and periodic updating of the case file requires an average of 60 minutes over the life of the case. The Social Worker Task Force estimates that social workers will spend approximately 95 minutes on administrative tasks in connection with pre-sentencing memoranda.

**(ii) Interviews with the Client and Others**

As in other contexts, the social worker will typically conduct one initial 90-minute interview with the client when preparing a pre-sentencing memorandum. This interview will typically be followed by one additional one-hour interview with the client, or, if the client is incarcerated, two additional interviews of 30 minutes, usually via video-conference.

Interviews with individuals other than the client will also be conducted. In this context, the social worker will typically conduct one one-hour interview with the client's spouse or parent and a number of shorter interviews with other individuals. The average estimated time required for additional interviews is 2 hours.

**(iii) Records Requests, Review, and Analysis**

The social worker will typically make the same kinds of record requests as when working on a pre-pleading submission, and will spend an average of 40 minutes on this task.

Because a social worker must comply with short, court-ordered deadlines, requested records may not arrive in advance of the submission deadline. Compared to the pre-pleading stage, a social worker will, as a result, frequently have fewer records at his or her disposal at the pre-sentencing stage. Accordingly, the Social Worker Task Force estimates that the amount of time spent on review and analysis of records will generally be 4 hours, somewhat less than in the context of pre-pleading submissions.

**(iv) Program Research and Outreach**

The Social Worker Task Force estimates that a social worker will spend approximately 30 minutes on program placement and outreach in connection with the preparation of a pre-sentencing memorandum. In this context, the social worker will focus primarily on the client's prior program placements, often for the purpose of establishing that successful reentry is likely.

**(v) Planning, Drafting, and Revising of Submission**

The Social Worker Task Force estimates that the average amount of time spent by a social worker planning, drafting, and revising a pre-sentencing memorandum is 12 hours, the same as needed to prepare a pre-pleading memorandum or psychosocial report.

**(vi) Discussions with Attorney**

As in the context of pre-pleading submissions or Clayton motions, the Social Worker Task Force estimates that the social worker will spend an average of 90 minutes discussing pre-sentencing submissions with the attorney.

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In total, the Social Worker Task Force estimated that a social worker will spend an average of 24 hours and 45 minutes preparing a pre-sentencing memorandum.

**4. Program Placement**

Clients who suffer from substance-abuse problems can often benefit greatly from programs that offer alternatives to incarceration. Social workers can help detect substance-abuse problems, and can advocate before the court or in meetings with the prosecutor for program placement in lieu of a prison sentence. Such advocacy can be the central feature of an effective defense.

**(a) How Often Social Workers Should Be Involved**

The caseload review teams determined that program placement was a necessary task, and the least time-intensive task necessary, in 23 percent of post-arraignment cases.

**(b) Estimate of Time Required**

The Social Worker Task Force emphasized that program placements come in many forms. In some cases, program placements are straightforward and require limited investment of

time by a social worker. In other cases, however, program placements can be very complex and time-consuming. In the Task Force’s opinion, the main factor distinguishing between “straightforward” and “complex” program placements is whether the client is to be placed in a court-based program (such as TASC, the Fortune Society, CASES, and Andrew Glover) or in a non-court-based program. In estimating the time required for program placements, the Task Force discussed court-based and non-court-based program placements separately. To be conservative, the Social Worker Task Force used the lower of the two estimates when calculating the time required for social worker assistance in connection with program placements.

**(i) Case Opening, Closing, and Other Administrative Tasks**

As in the contexts described above, the social worker will spend an average of 20 minutes and 15 minutes, respectively, on the opening and closing of the case file, regardless of the type of program placement. The Social Worker Task Force estimates that the social worker will also spend an average of 20 minutes on additional administrative tasks.

**(ii) Interviews with the Client and Others**

The social worker will typically conduct one initial interview with the client, which lasts 90 minutes on average. When working on a placement in a court-based program, additional interviews with the client are typically not required, and the social worker will not spend any time on this task. In the context of non-court-based program placements, however, the Social Worker Task Force estimates that the social worker will typically conduct one follow-up interview of one hour in length (or two half-hour interviews by video-conference if the client is incarcerated).

Regardless of the type of program placement, the social worker will generally conduct an interview with a spouse or parent to obtain additional information and to build the rapport that is

frequently required to make a successful program placement. The Social Worker Task Force estimates that the interview of any collaterals will last one hour on average, and that all interviews will last 2 hours and 30 minutes when placing the client in a court-based program, or 3 hours and 30 minutes when the client is to be placed in a non-court-based program.

### **(iii) Records Requests, Review, and Analysis**

How much time the social worker spends on requesting records depends on the type of program placement. When the client is to be placed in a court-based program, few records are typically required. In this context, the social worker will typically request discharge-planning records and a limited number of additional records, spending an average of 25 minutes on requesting the records and 30 minutes on review and analysis of the records. For non-court-based programs, more records are typically required. In this context, the Social Worker Task Force estimates that the social worker will spend an average of 60 minutes requesting records and 4 hours reviewing and analyzing records.

### **(iv) Program Research and Outreach**

Program research and outreach involves evaluating program offerings and intake criteria, making inquiries regarding availability and insurance-coverage issues, scheduling an intake interview, placing follow-up calls to verify intake and attendance, and participating in discharge planning. The amount of time required for research and outreach also varies significantly based on the type of program placement.

The Social Worker Task Force estimates that, when placing a client in a court-based program, the social worker will spend an average of 30 minutes on this task. When placing the client in a non-court-based program, however, more research is typically required and the average time required for this task increases to an average of 4 hours.

**(v) Advocacy**

After a client has secured a program placement, the social worker will often engage in advocacy with the program (*e.g.*, when a client does not return after a weekend leave or tests positive for drug usage) and in advocacy with the court (*e.g.*, to prevent removal from the program or a finding of failure to comply). Such advocacy can take the form of a letter to the court, a lengthier memorandum addressed to the court, or a detailed internal memorandum for use by the attorney. The Social Worker Task Force estimates that this advocacy takes an average of 90 minutes in the case of court-based programs, or 2 hours in the case of non-court-based programs.

**(vi) Updating of Progress Notes**

When placing a client in a non-court-based program, the Social Worker Task Force estimates that the social worker will spend an average of 30 minutes documenting the programs contacted.

**(vii) Discussions with Attorney**

The Social Worker Task Force estimates that, when placing a client in a program, the social worker will communicate with the attorney for an average of 15 minutes in the context of a court-based program, or for 90 minutes in the context of a non-court-based program.

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In sum, the total amount of time required in connection with a program placement is 6 hours and 35 minutes when the client is placed in a court-based program, or 16 hours and 25 minutes when the client is placed in a non-court-based program. To be conservative, the Social Worker Task Force used the lower estimate—6 hours and 35 minutes—as the estimated average time required for all program placements.

## **5. Advocacy in Connection with Bail Applications**

Clients who are released on bail generally have better case outcomes and fewer disruptions in their work or family lives than clients who are not. Social workers can often increase the likelihood that a client will be released on bail by bringing their expertise to bear in preparing for bail hearings. They can often gather information about the client that can persuade a court to grant bail, such as details about the client's mental state and the client's ties to family and to the community. In such situations, the social worker assists by expertly interviewing the client, the client's family members, and other individuals close to the client. In addition, social workers can secure needed housing for a client, or placement in an appropriate program, which, among other things, may convince a court that bail or release on recognizance should be granted.

### **(a) How Often Social Workers Should Be Involved**

The caseload review teams sought to analyze the frequency with which social workers should be involved in bail applications. However, unlike the four other categories of social work, the Social Worker Task Force determined that a review of pending cases by the caseload review teams was an imperfect method for arriving at an estimate of the number of bail applications per year in which social workers should be involved.

The Social Worker Task Force identified two principal problems with the use of caseload reviews in this context. First, Legal Aid currently does not have enough social workers to allow them to be involved in bail applications on a regular basis. As a consequence, many of Legal Aid's social workers have too little familiarity with bail applications to arrive at a defensible estimate of whether a case would benefit from their involvement. Second, whether a bail application is made depends on both charging decisions and judicial rulings, over which Legal Aid attorneys and social workers have little control. For these reasons, the Social Worker Task

Force decided not to use a caseload-review-based approach in estimating the frequency with which social workers should assist with bail applications.

As a possible alternative means of arriving at an estimate, the Social Worker Task Force reviewed data with respect to bail applications to determine how many are currently made on behalf of Legal Aid clients and the extent of social worker involvement. Considering solely post-arraignment bail applications, approximately 26,500 applications were made in 2012 and social workers were involved in fewer than 5 percent of those applications.<sup>40</sup> After reviewing the data, the Social Worker Task Force reconfirmed its earlier conclusion that, were social workers available, they would participate in more bail applications. However, as with the caseload reviews, the Social Worker Task Force concluded that the data did not provide a sound basis for estimating the number of bail applications in which social workers should participate.

**(b) Estimate of Time Required**

Bail applications are typically made on an expedited schedule. While social workers providing assistance in connection with a bail application will often engage in the same tasks as those described above with respect to the other categories, the amount of time spent on some of those tasks is often, by necessity, limited. In total, the average amount of time a social worker spends on a bail application is estimated to be 7 hours and 15 minutes.

Because the Social Worker Task Force elected to exclude the time associated with bail applications from its calculations, the amount of time associated with individual tasks is not fully

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<sup>40</sup> Data from Brooklyn and the Bronx show that social workers assisted with between 4 and 5 percent of all bail applications; data from the other boroughs were incomplete. The Social Worker Task Force could not conclude whether the data from the two boroughs accurately reflected the current practice citywide, nor could the Task Force reach a defensible estimate of the number or percentage of bail applications in which social workers should be involved.

described in the text below. However, the Social Worker Task Force discussed its estimates in equal depth, and they are set forth in Exhibit 5.

Briefly summarized, in connection with bail applications, the Social Worker Task Force concluded that a social worker must spend time: (1) on administrative tasks, such as opening and organizing the case file at the opening of the case, reviewing and updating the file throughout the case, and closing the case file at the end of the case; (2) conducting an initial interview with the client, and a limited number of additional interviews, including one that is typically with a parent or spouse; (3) often seeking to place the client into a treatment program, which includes researching and contacting available programs; (4) reviewing records provided by the client, his or her family, and/or the prosecutor; (5) drafting an advocacy letter in support of a bail application; (6) often engaging in oral advocacy in connection with the application; and (7) communicating with the attorney about the client and the case.

## **6. Other Tasks**

In addition to tasks performed in connection with the five key efforts described above, social workers undertake a number of other tasks, both to assist Legal Aid's clients and to further their professional development. These tasks often enable social workers to provide their services to Legal Aid clients.

### **(a) Meetings, Supervision, and Training**

Social workers are required to attend regular meetings and to report to superiors, supervise subordinates, and to keep co-workers apprised of their activities. In addition, social workers are required to attend professional training sessions to maintain and broaden their knowledge. The Social Worker Task Force estimates that each social worker spends an average

of 1.5 hours per month in team meetings, 2 hours per month in meetings with supervisors, and 3.5 hours per month in either internal or external training sessions.

**(b) Oral Advocacy and Court Time**

Social workers often attend court proceedings, where they may advocate on a client's behalf or observe proceedings involving the client. The Social Worker Task Force estimates that social workers spend approximately one hour per month in court (excluding time already accounted for in connection with bail applications).

**(c) Waiting Time**

The Social Worker Task Force recognizes that speaking to incarcerated clients frequently involves time spent waiting in correctional facilities, in courthouse pens, or for access to corrections videoconferencing. The Task Force estimates that each social worker spends an average of 6 hours per month waiting.

**(d) Travel Time**

Social workers also spend time traveling, including to meet with clients at the courthouse, at their homes, or in correctional facilities. Travel can also be required to obtain client records. The Social Worker Task Force estimates that each social worker will spend an average of 9 hours per month traveling as part of their work with Legal Aid clients. Approximately two-thirds of this time (6 hours per month) is spent on travel to and from Rikers Island, while the other third (3 hours per month) is spent on travel to other destinations.

**7. Other Things Social Workers Do That Provide Important Societal Benefits**

The Social Worker Task Force identified other tasks that they regularly perform for the benefit of their clients, the client's family, or to reduce the risk of recidivism. Because these

tasks, although important, are arguably not central to an effective defense, they are not included in Legal Aid's ultimate calculations.

**(a) General Assessments**

Social workers often received referrals from attorneys for a general assessment, which may include an assessment of a client's competency. In response, a social worker will interview the client to determine whether the client is competent and/or whether further social work involvement is necessary. The Social Worker Task Force estimates that social workers spend approximately one hour per month conducting general assessments.

**(b) Counseling**

In addition to meeting with clients for interviews in connection with the key efforts described above, social workers will often meet with clients or their families to provide supportive contact or advice. This counseling often includes advice about what the client should expect during plea negotiations, at a hearing or trial, or at sentencing. It may also include more general advice about how to prepare mentally for upcoming developments in the case and/or collateral issues such as the loss of a job or government benefits. The Social Worker Task Force estimates that the average time required for counseling is 2 hours per month.

**(c) Ongoing Monitoring**

Social workers often continue to monitor clients who have been placed in treatment programs or who have received conditional sentences, such as an ACD or deferred sentence. This monitoring includes making calls and/or visits to the client and/or to the program in multiple cases. The Social Worker Task Force estimates that social workers spend an average of 1.5 hours per month on monitoring efforts.

**(d) Administrative Tasks**

Social workers are required to account for their time by client and by task, which they do by using a data entry system called Law Manager. Legal Aid uses the statistics collected through Law Manager to assess how clients are being served and to determine whether resources are being used efficiently. The Social Worker Task Force determined that each social worker typically spends about 45 minutes per month maintaining Law Manager statistics.

**(e) Housing Assistance and Shelter Referrals**

Many of Legal Aid's clients need help securing housing and social workers play a significant role in this process. Housing referrals generally take place outside of the context of program placement, often in connection with orders of protection or upon a removal from public housing. Social workers often assist clients with placement in temporary housing, by discussing options with the client and placing phone calls to shelters to determine availability. For clients seeking more permanent supportive housing, the social worker will prepare an HRA 2010E application for the client, synthesizing information from psychosocial analyses and other records.

The Task Force estimates that social workers at Legal Aid spend an average of one hour per month on shelter placement or other temporary housing placement and 7 hours on applications for permanent supportive housing. This time estimate does not include the time required to make record requests and to gather other types of information. The Task Force estimates that the social worker will spend an additional 8 hours per month making phone calls and setting up interviews for clients after their permanent housing applications have been approved.

## **8. Total Available Time Per Year**

The Social Worker Task Force developed an estimate of the approximate number of hours a social worker is expected to work on average each year. Using the same analysis as was used for investigators, it was estimated that social workers will work 1,820 hours per year, or 35 hours per week over the course of 52 weeks. As for investigators, the estimate assumes no vacation time or sick leave, and one hour for lunch during each eight-hour day. After subtracting the 276 hours required for travel, training, in-court time, and waiting time, the total available time is 1,544 hours per year per social worker.

### **E. Calculation of the Number of Social Workers Needed to Provide Clients with an Effective Defense**

As set out in the table below, the Social Worker Task Force estimates that, without including a number for bail applications, the number of social worker hours per year necessary for Legal Aid to provide its clients with an effective defense would be at least 399,500.<sup>41</sup> To arrive at this estimate, the Task Force used the results of the caseload studies to determine the percentage of cases that required specific types of social work assistance. Where caseload review teams concluded that two or more categories of work was warranted, the case was only included in the least time-intensive category for the purpose of determining frequency. The Task Force then estimated the number of cases per year in which this assistance would be provided by weighting Legal Aid's annual estimated post-arraignment caseload by the frequency estimates. Finally, this estimate was multiplied by the average time per case, using only the lesser of the

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<sup>41</sup> These calculations are based on current levels of post-arraignment cases. As discussed above, it is unclear whether greater numbers of staff will increase the number of cases that survive arraignment on an annual basis. If the number of post-arraignment cases were to increase, this analysis would show that more social workers would be needed. Exhibit 8 illustrates how the recommended standard would change with increased numbers of post-arraignment cases.

time estimates where the Task Force had two discrete estimates within a given category (e.g., pre-pleading advocacy letters and pre-pleading memoranda).

<b>Category</b>	<b>Percentage of Cases<sup>42</sup></b>	<b>Number of Cases<sup>43</sup></b>	<b>Average Time per Case</b>	<b>Social Worker Hours</b>
Pre-pleading submission	13.3%	12,655	17 hours, 5 minutes	216,000 hours
<u>Clayton</u> submission	0.4%	392	33 hours, 35 minutes	13,000 hours
Pre-sentencing submission	1.1%	1,079	24 hours, 45 minutes	26,500 hours
Program placement	23.0%	21,877	6 hours, 35 minutes	144,000 hours
<b>Total</b>	<b>37.8%</b>	<b>36,003</b>		<b>399,500 hours</b>

To perform all the work that the Social Worker Task Force determined is required for an “effective defense,” Legal Aid needs a significant improvement in the number of social workers on staff. To provide social worker assistance in all cases where the Social Worker Task Force determined it is necessary, Legal Aid would need to hire at least 203 additional social workers, and decrease its ratio of attorneys to social workers from 10.0 attorneys to one social worker to at most 2.6 attorneys to one social worker. Even providing social worker assistance in just half the number of cases where the Social Worker Task Force determined it is necessary would require Legal Aid to decrease the ratio to 5.1 attorneys to one social worker. The details of the calculation are provided in Exhibit 7.

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<sup>42</sup> Where caseload review teams concluded that two or more categories of work was warranted, the case was only included in the less time-intensive category for the frequency estimates referenced herein.

<sup>43</sup> Based on an annual caseload of 95,061.

As discussed above, indigent defense providers in a number of jurisdictions in the United States maintain lower ratios of lawyers to social workers than Legal Aid. If Legal Aid were operating in those jurisdictions, it would have a significantly greater number of social workers:<sup>44</sup>

- If Legal Aid operated in a jurisdiction with a 4:1 attorney to social worker ratio, Legal Aid would need to employ 165 social workers, or 99 social workers in addition to its fiscal year 2015 staff;
- If Legal Aid operated in a jurisdiction with a 5:1 attorney to social worker ratio, Legal Aid would need to employ 132 social workers, or 66 social workers in addition to its fiscal year 2015 staff;
- If Legal Aid operated in a jurisdiction with a 6:1 attorney to social worker ratio, Legal Aid would need to employ 110 social workers, or 44 social workers in addition to its fiscal year 2015 staff.

As with the investigators, these ratios would represent a marked improvement, but, as indicated by the analyses above, they would not solve the problem.

#### **F. Ongoing Initiatives to Maximize the Impact of Legal Aid’s Current Staff of Social Workers**

Although under the existing standard, Legal Aid does not employ a sufficient number of social workers, it strives to maximize the reach of its existing staff. For example, Legal Aid has developed a cutting-edge program in which social workers are present during arraignment shifts. Through this program, social workers are able to identify clients who would benefit from social work assistance at the earliest stage of the case. Legal Aid also offers joint training to social workers and lawyers, to keep both groups of professionals apprised of developments in criminal defense and social work. However, without additional social workers, the effect of these initiatives cannot be maximized.

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<sup>44</sup> Ratios based on a projected staffing level of 661.6 attorneys.

With additional social workers, Legal Aid could work creatively to assist more clients. For example, staff attorneys could make earlier referrals, enabling social workers to identify substance-abuse and mental health problems, developmental disabilities, and other issues early on in each client's case, allowing lawyers to advance the most effective legal defense. Legal Aid might also employ a "team approach" to social worker referrals that would include scheduling regular post-arraignment meetings between the attorney who staffed the arraignment shift and a social worker partner, or a meeting between the attorney who staffed the arraignment shift and an on-duty social worker, or other similar arrangements. Such an approach would allow social workers to intervene at the earliest stages of a case, maximizing their impact on the lawyer's handling of the case. Legal Aid could also increase the assignment of designated social workers to specialized practices, such as trafficking or domestic violence, which is something that Legal Aid already does with a handful of the social workers in its Criminal Practice. Specialized social workers could offer targeted assistance as required by Legal Aid's clients. Legal Aid's talented staff in the social work department could implement these or other creative measures to help more clients. Were Legal Aid to assign a social worker to each arraignment shift and specialized area, it would need to hire additional social workers beyond the estimates above.

## **V. CONCLUSION**

This report represents a summary of a lengthy, intensive, and reasoned effort to assist the Committee in recommending an appropriate standard for the number of investigators and social workers needed to provide an effective defense for each of Legal Aid's clients. Legal Aid welcomes the opportunity to discuss the methodology, estimates, and conclusions set forth in this report.

Dated: New York, New York  
August 29, 2014

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## **Exhibit 1: Case-Related Accomplishments of Legal Aid Investigators**

Members of the Investigator Task Force identified examples of cases in which the involvement of an investigator significantly improved a client's defense. Some of these examples are set forth below.

- In a case involving a charge of first-degree robbery, the complaining witnesses reported that the client robbed three men at gunpoint in front of a building in a public housing complex. The investigator went to the building hoping to access surveillance footage and speak to witnesses. The investigator met the building superintendent, who explained that he possessed surveillance footage that reflected the client's involvement in the crime. The superintendent also introduced the investigator to the three complaining witnesses, who explained to the investigator that they were certain that the client was the young man in the red hooded sweatshirt who brandished the gun during the course of the robbery. The investigator then viewed the surveillance footage, but the face of the young man in the red hooded sweatshirt was not visible; however, the investigator was able to see the man in the red hooded sweatshirt walk into a nearby bodega. The investigator then went to the bodega hoping to secure additional surveillance footage. After a number of discussions with the owner of the bodega, the investigator and the three complaining witnesses viewed the footage from the bodega, which showed the young man in the red hooded sweatshirt remove the hood. After clearly observing the young man's face, the complaining witnesses realized that they had identified the wrong person. The complaining witnesses went to the precinct, reported that they were incorrect, and the charges were subsequently dropped against the client.
- In another case, the prosecution alleged that a client opened a bank account and was depositing forged checks into the account and withdrawing the money. The prosecution had the account information, including a copy of a New Jersey driver's license purporting to be the client's, copies of the checks with signatures, and a video of the person they claimed was the client withdrawing money from an ATM. Our client informed her attorney that she had lost her wallet months earlier and that she was picking up her child from day care at the time of her purported ATM withdrawal. Through investigation and subpoena practice, the attorney and an investigator obtained relevant bank records, including the signature cards, the video, and the driver's license, as well as the day-care records and the client's signatures on preexisting documents from day care. The team also tracked down other addresses used in connection with the bank account and the driver's license, and found other victims of similar identification theft. In this case, Legal Aid also retained the services of a handwriting expert, a polygraph expert, and a biometrics expert. The handwriting expert confirmed that the signature cards for the bank account and the check signatures matched, but neither matched the client's

signature. The polygrapher found the client to be truthful in her denial of the crime. The biometrics expert confirmed that the photographs from the New Jersey driver's license and from the ATM video did not match the client. With this extensive information, Legal Aid established that the client was a victim of identity theft. When presented with this exculpatory evidence, the prosecution dismissed the indictment.

- In another case, Legal Aid represented a 17-year-old high-school student with no prior criminal record who was charged with the armed robbery of an off-duty police officer and her mother. The armed gunman fled into a nearby housing project. Although the client's mother resided in that development, our client lived several miles away with his grandmother and great aunt. On the date of the robbery, our client had attended church with his grandmother and spent the rest of the day at her home. The investigator located alibi witnesses who later testified at trial. That testimony was critical in helping to secure an acquittal for the client.
- A client with a lengthy criminal record was charged with attempted murder. The attorney sent investigative staff to the crime scene, where they interviewed people in the neighborhood and located witnesses who corroborated the client's version of the events. As a result, the attorney was able to present witnesses to the grand jury who corroborated his client's alibi, explained why the complaining witness's identification was incorrect, and detailed impropriety on the part of the police officers. The grand jury refused to indict the client because of the results of the investigation.
- An adult client lived with his mother and grandmother in a public housing project and was charged with assaulting his grandmother. After investigating and asking a series of questions about the client's medications, schooling, and past psychiatric treatment, the investigator learned that the client suffered from some form of mental illness and mental retardation. As a result, this staff attorney was able to obtain proper psychiatric treatment for the client, rather than agreeing to a criminal disposition.
- In a case involving the sale of drugs, the lawyer and investigator went to an observation post where the police officers claimed to have viewed the alleged drug sales. Once there, the lawyer and investigator realized that, without magnification, it would be impossible to see an object as small as a bag of drugs with the naked eye. The investigator took photos with different levels of magnification, which allowed the lawyer to demonstrate that what the police claimed they saw was impossible.
- In a case involving a late-night robbery at a supermarket, an investigator visited the supermarket, spoke to employees, and learned that the incident had been captured by video, with loss-prevention workers watching the entire time. The investigator obtained the footage, which showed that the client had been involved. During the client's consultation with his Legal Aid attorney, the lawyer informed

the client that surveillance footage existed. In that way, the investigator's work helped the attorney better counsel the client in connection with plea negotiations.

- A 67-year-old man with a distant criminal history was charged with criminal possession of a weapon. An anonymous 911 caller reported that an older man had stashed a gun in the trunk of a black jeep. After a search of the vehicle revealed no weapon, the police received a second call stating that the gun was in the front seat. The police searched the vehicle a second time, and located a gun and drugs near the front seat. Later, the investigator canvassed the neighborhood and identified a number of homes that had surveillance cameras. One neighbor turned over footage from a surveillance camera, which demonstrated that another man had broken into the jeep, stashed a bag in the jeep, and then slashed the tires of the jeep so that it could not be driven away. After the surveillance footage was located, the grand jury voted no true bill and the case was dismissed.
- A client was accused of burglary; however, the client, who was illiterate and undocumented, gave the arresting officer an incorrect date of birth, which made him 24 years old and eligible for prosecution as an adult. In addition, because of the client's unique dialect (from rural Mexico) and other communication deficiencies, the investigator found it very difficult to understand him. With assistance from others, the investigator was able to determine the client's hometown and obtain a copy of his birth certificate, which revealed that the client was just 15 years old. Because of this evidence, the child was released from an adult correctional facility and the case was dismissed. Although the client was immediately rearrested, he was then prosecuted as a juvenile.
- In a case involving a client charged with felony assault at the jewelry store where the client worked, an investigator first attempted to interview civilian witnesses, but those witnesses were unwilling to speak because the incident was perceived to be gang-related. The investigator then retrieved surveillance video with the help of Legal Aid's information technology personnel. The video showed that the complaining witnesses had instigated the incident and attacked the client. Additionally, the video showed that the client did not have a knife, as the complaint alleged. After showing the video to the Assistant District Attorney, the prosecutor reduced his plea offer from a Class D Felony (which would have resulted in two years' imprisonment and two years' post-release supervision) to disorderly conduct (and time served), an offer that the client accepted.
- In a case concerning an alleged burglary, the complaining witness said that she observed a man walking out of the front door of her home with a safe that contained her jewelry. The investigator went to the complainant's home to determine how the intruder gained entry and concluded that the intruder must have entered through a window from which the air conditioning unit and surrounding cage had been removed. The investigator then interviewed several neighbors who explained that they had recently seen the complaining witness herself remove the air conditioning unit and cage from the window. Further

investigation revealed that no burglary had occurred; rather, the complaining witness had attempted to engage in insurance fraud. In light of the newly discovered facts, the case against the client was dismissed.

- In another case, the complaining witness had described the clothing, skin tone, height, and weight of the perpetrator. Except for his clothes, the client did not match this description. The investigator then spoke with the complaining witness about his recollection of the perpetrator, and the complaining witness repeated his earlier description. The complaining witness also explained that the lineup procedure seemed odd—the client and the fillers were all seated, he was located at least 20 yards from the lineup, and it was hard to observe the individuals. The complaining witness attended a later court conference and explained on the record that the client was not the individual who committed the crime. As a result, the case was dismissed.
- In a case involving an alleged drug deal on the front porch of a home, the deal was purportedly observed by an officer at an observation post atop a nearby six-story building. Using this information, the investigator went to the observation post and took photographs illustrating that elevated train tracks wholly obscured the front porch, meaning that the officer could not have observed the purported drug deal from the post. The investigator later testified and authenticated the photographs. The client was ultimately acquitted.
- In a robbery case, using a triangulation technique, the investigator was able to use the client's cell phone records to pinpoint the client's exact location at the time of the robbery. That information showed that the client was not at the scene of the crime. As a result, the charges were dismissed.
- In a case involving a young client who was charged with criminal possession of a weapon, a police officer claimed that he had seen the client with a gun. However, the officer did not arrest the client until one week later and no gun was ever recovered. To determine the client's location on the date of the incident, the investigator gathered the client's MetroCards, which showed when the client went to school, left school, and otherwise traveled during the times at issue. The investigator then used the data to construct a timeline showing that the client could not have been the individual who had been observed with a gun. As a result, the charges were dismissed.
- In a case where the client was charged with assaulting a store employee, the staff attorney collected a video surveillance tape in a timely fashion and observed that it was the employee who, in fact, assaulted the client without provocation. The staff attorney invited the Assistant District Attorney to view this tape, and as a result, the charges were dropped.

## **Exhibit 2: Case-Related Accomplishments of Legal Aid Social Workers**

Members of the Social Work Task Force identified examples of cases in which a social worker made a material difference in a client's case. Many of these examples are set forth below.

- A social worker and staff attorney represented a client charged with an assault on a police officer and felony-weight drug case. The prosecutor had been insisting that the lowest plea offer the client would receive was a felony and probation. The social worker wrote a pre-pleading report outlining the many challenges the client had faced in his life and the impressive steps he had taken to surmount a drug addiction. At the next court date, the prosecutor acknowledged the social worker's pre-pleading report on the record and changed the offer to a TASC (Treatment Alternative to Street Crime) plea. The client pled to a felony and misdemeanor with dismissal of the felony on completion of drug treatment.
- A Brooklyn client was charged with cashing his recently deceased mother's government checks to keep a roof over his head and food in his stomach. The criminal case finally was dismissed on speedy trial grounds, and Legal Aid managed to avoid even a disorderly conduct and confession of judgment because of the assessment of the client's circumstances. At the age of 52, the client had deteriorated recently from being a man with stable employment with the Board of Education into a somewhat helpless man, barely hanging on, with developing mental health issues. The client was at risk of losing his home, his job, and his own pension, and having difficulty with getting benefits and daily coping, but social work intervention helped keep opportunities open for the client and created new avenues in life for him. The client now has a home, help with benefits, renewed family support, and renewed hope.
- A predicate Manhattan client was facing prison time. The staff attorney determined that it was a weak trial case, that DTAP (Drug Treatment Alternative to Prison) would be the best outcome, and referred the case to a social worker. The social worker spent hours speaking with this challenging client and writing a superior pre-pleading memorandum. The ADA was persuaded to offer the client DTAP, and the staff attorney commented on this outcome, "I am so pleased with the result and especially for [the social worker's] wonderful work, which made my job so much less stressful . . . her follow through and constant contact with me was priceless."
- A 17-year-old client, who was a green card holder from the Dominican Republic, was charged with a string of very serious knife-point robberies. After a Manhattan social worker prepared an excellent pre-pleading memorandum, the ADA agreed to a DTAP-type disposition. Still, the ADA insisted on an excessive plea, requiring a sentence of either between 5-10 years in jail if the client left his

12-18 month program or was re-arrested, or YO treatment and a conditional discharge with completion. The client pled, completed almost one year of the program, and then relapsed, left the program, and was re-arrested for selling prescription drugs. This time, the social worker wrote an excellent pre-sentence report for the judge requesting a second chance at drug treatment or YO treatment and a state sentence of up to 1 1/3-4 years. The social worker focused on everything the client had accomplished, and the staff attorney added information in the report about the immigration consequences of a definite sentence without YO treatment. Over the ADA's objection, the judge sentenced client to YO treatment and 1 1/3-4 years. As a result of social work intervention, Legal Aid's client will not be deported.

- A Brooklyn staff attorney referred a developmentally disabled client to a social worker. The client had been incarcerated for failure to complete his community service. On a moment's notice, the social worker interviewed the young man, wrote a letter to the judge, and was instrumental in convincing the judge at a hearing that the young man should be released. The staff attorney reported, "I could never have done this alone. The judge made it quite clear that he wanted my arguments supplemented by an expert, and [the social worker] provided that expertise. In addition, [the social worker] is working towards providing the young man with a psychological/social/educational evaluation from an effective source that can be used in any future problems with law enforcement. This work is invaluable and demonstrates [the social worker's] broad sense of advocacy."
- One Brooklyn social worker helped secure a disposition on a converted domestic violence case that got the client out of jail and into a 28-day MICA (Mentally Ill, Chemically Addicted) detox program, with the option for him to return upon successful completion and change his plea into a violation. The attorney reported, "[the social worker's] knowledge in this area is so impressive and she guided both myself and the client through the entire process, helping us avoid many potential pitfalls."
- A Manhattan social worker had three victories in one week. In one client's case, due to the social worker's report, the client was permitted to plead guilty with a promise of probation, provided he continues in the programs he was already enrolled in. The staff attorney on the case stated, "I doubt that we would have been able to achieve this very favorable result without [the social worker's] outstanding contribution." On a second case, with the social worker's hard work and well-thought-out pre-pleading memorandum, the judge was convinced to give the client a deferred sentence on a serious Central Park robbery case. The staff attorney on the case concluded, "this sentence would absolutely not have been possible without this Pre Pleading Memorandum from [the social worker]. The judge's decision rested solely on the Pre Pleading Memorandum." On the third case, a Legal Aid client was charged with possessing an unloaded firearm in his backpack at the African-American Day Parade. Based on the pre-pleading report written by the social worker, the judge decided to sentence the defendant to four

months of weekends in jail, rather than a regular jail sentence, so that the defendant could maintain his job, continue in school, and attend to his girlfriend, who was pregnant, factors which were all brought to light in the social worker's report.

- A 16-year-old client had been in jail since his arrest. He was charged with two robberies, made full confessions, was identified, and had some of the complaining witness' property on him when arrested. He had pointed "what appeared to be a firearm" (i.e., a BB gun) at the head of the complaining witness. The DA's offer was 5 years. The staff attorney thought the client might have mental health issues and referred the client to a Brooklyn social work intern. As a result of the social work intern's assessment and referral to a psychologist, and a well-written pre-pleading report, the judge agreed that the client had in the past fell through the cracks, and the judge, at sidebar, ignored the Prosecution, turned to the attorney and asked whether the client would take a "six month split with YO." Because of the social work intern, the client will be home with his family once he is sentenced.
- A Brooklyn social worker had a very successful outcome with a 75-year-old man who suffers from multiple serious medical conditions. The client was accused of hitting a man in the head at an OTB and was indicted for Assault 2. The ADA was offering a misdemeanor and a conditional discharge, but the client lived in public housing; losing his apartment would be devastating. The social worker obtained the client's medical records and wrote a very sympathetic affidavit in support of a Clayton motion. The DA called and said that he agreed with Legal Aid and took it to his supervisors, who were willing to offer a violation.
- One social worker greatly helped procure a non-jail sentence in a dog neglect case with grave facts. The social worker met with the client and made an effort to understand who he was and the circumstances surrounding the case. The social worker got the client into a community service program and counseling, so that the staff attorney was able to show the judge that the client was capable of and interested in a probationary sentence with various conditions. The social worker's sentencing letter to the court was well-organized, and it touched on all the people in the client's life who "know him best," in order to convey to the court that the client was not an abusive person, although he committed an abusive act. The social worker pinpointed to the court what was wrong with the client that allowed him to commit the crime. He convinced the court that the client needed to make amends and that it would be fulfilled through community service.
- One client was a thirty-year-old male who was facing two cases stemming from an onset of bipolar disease, and his addiction to his prescription medication. The client used these medications to alleviate the extreme pain of an improperly performed surgery which had in turn led to multiple reconstructive surgeries. He was charged with a burglary in one case and with grand larceny and identity theft in a second case. A Legal Aid social worker prepared a letter to the court

explaining the extreme circumstances—the client’s inability to properly control his actions due to the bipolar illness and accompanying substance abuse, and his need for competent community treatment for his illnesses. He was offered a non-jail misdemeanor disposition and the opportunity to continue to engage in outpatient mental health treatment.

- The MICA project in Queens worked with a 50-year-old woman with a history of mental illness and substance abuse, facing a harsh sentence on a charge of driving while impaired by drugs. The presiding judge directed that the client be evaluated by the MICA Project with the possibility of a conditional mental health treatment plea. The client had a significant history of physical and sexual trauma, which had never been properly addressed. A social worker enrolled her in appropriate treatment services and began providing her with ancillary supportive counseling services to help to resolve her legal case. One of the conditions of the plea agreement was that the client wear an ankle bracelet for the first three months of her treatment, but the social worker knew that she had been bound by the ankles and traumatized several times during her childhood and explained to the court and DA’s office that the ankle bracelet might cause re-traumatization. While the court did not agree to dispense with the ankle-bracelet requirement, the client was granted a two-month adjournment to allow the social worker to prepare her for the ankle bracelet. The client worked hard to address her traumatic history in treatment, attained sobriety, and ultimately successfully completed court-mandated treatment.
- The MICA Project social workers’ abilities to intervene in emergency situations were evident in a case involving a middle-aged Hasidic man, who was arrested for the first time during a psychotic episode. His community ACT (Assertive Community Treatment) team called 911 seeking emergency assistance, but an alleged altercation occurred between the responding police and the client. He was arrested and brought to the Bellevue Hospital forensic ward, where he remained for weeks without being arraigned. The family and community case manager were desperate for assistance, and, failing to understand how their father was held in custody without the required court appearances, reached out to the Legal Aid Society for help. A combined team effort by the Society’s Enhanced Defense MICA project, the Special Litigation Unit, and an arraignment supervisor brought attention to the case, thereby forcing the hospital and DA to produce the client for arraignment. The MICA team coordinated with all parties and appeared in court to support the family and client. The family was comforted that their father’s attorney and social worker were experienced in working with mental illness. At one o’clock in the morning, the court released the client, and all arrangements for his community-based treatment were in place. The client avoided a lengthy jail sentence and received treatment in the community.
- In Brooklyn, a forensic social worker worked closely with a 19-year-old client to achieve a non-criminal outcome. The client had been charged with a vehicular felony, wanted to join the military, but would not be able to do so with a criminal

record. Legal Aid wanted to transfer the client's case to the treatment court and get him into an inpatient treatment program. The social worker searched for a treatment program that would either accept clients with no medical coverage or assist them in obtaining Medicaid coverage. The client was accepted to the Counseling Services of the Eastern District of New York. Due to the challenges of his opiate dependence, he became noncompliant and was later discharged from this program. A second search was quickly initiated. The social worker met with the client and escorted him to the Medicaid office, obtained a temporary Medicaid card and connected him with Odyssey House. The client was admitted into the program and acclimated well to the program.

- An example of the social work department's expertise and court credibility shines in a case in which the presiding judge wrote a published decision, People v. F.E., 2006 WL 718980 (Crim. Ct. Kings Co.) (Nadelson, J.). The case involved a client charged with allegedly damaging the front glass window of a pharmacy. At arraignment, bail was set at \$1,000 cash over \$1,000 bond. The client could not make bail, and a hearing was scheduled for the prosecution to convert the complaint to an information, or to have the client released on his own recognizance pursuant to § 170.70 of the CPL. The client suffered from bipolar disorder, and during his time in jail waiting for the hearing, he was not permitted to take his medications. At the morning session of court, the client displayed aggressive and abusive behavior. At the request of his Legal Aid attorney, the matter was adjourned to the afternoon session so that the client could be evaluated by the Director of the MICA project, as well as by a senior Legal Aid counsel. The client indicated to the Legal Aid representatives that he understood the nature of the proceedings, but also stated that he did not believe in the ability of any court to judge his actions. Further, he continued to display aggressive behavior, and after the interview, he attempted to commit suicide. The MICA team educated the court and the ADA of the power of the court under the Mental Hygiene Law to order this defendant to a psychiatric hospital for evaluation and appropriate treatment. When court reconvened, the ADA agreed with the Legal Aid team's request that the client be sent to a mental institution for evaluation and assistance and that the charges be dismissed. As a result, the court dismissed the charges and ordered the client admitted to the hospital for immediate observation under § 9.43 of the Mental Hygiene Law. The court decided to prepare a detailed written decision because the issue was one of first impression under Mental Hygiene Law § 9.43. Both the client and the court system benefited from the expert intervention of the MICA team.

**Exhibit 3: Summary of Investigator Time per Charge Category**

Charge Category	Percentage of All Legal Aid Cases Surviving Arraign. <sup>45</sup>	Cases Surviving Arraign. <sup>46</sup> (FY 2013)	Investigation Time (Excluding Pre-Trial and Trial Investigations) (in minutes)				Pre-Trial and Trial Investigation		Total Investigator Hours Per Annum		
			Case Preparation	Visiting the Scene	Additional Time with Witnesses	At the Office	Evaluating Property	Total of Individual Investigative Tasks (in Hours)		Percentage of Cases Surviving Arraignment Prepared for Trial	Add'l Time Needed for Investigation to Prepare for Trial (in Hours)
<b>Attempted Murder 2, Assault 1 &amp; 2</b>	1.94%	1,844	60	180	720	75	60	18.25	1.6%	5.0	30,427
<b>Rape 1, Rape 2 and Sexual Abuse<sup>47</sup></b>	0.16%	150	60	120	720	105	0	16.75	1.6%	2.0	2,264
<b>Attempted Assault 2</b>	0.11%	105	60	180	600	45	60	15.75	1.6%	5.0	1,498
<b>Rape 3</b>	0.04%	41	60	60	720	105	0	15.75	1.6%	2.0	581
<b>Assault 3 and Below<sup>48</sup></b>	17.04%	16,203	60	180	360	45	0	10.75	1.6%	3.0	157,461

<sup>45</sup> Actual data for the calendar year of 2011.

<sup>46</sup> Projected data for the fiscal year of 2013, based on 2013 case numbers and 2011 charge-category breakdowns.

<sup>47</sup> Includes charges of: Rape in the First Degree; Rape in the Second Degree; Sexual Abuse; and Criminal Sexual Act in the First Degree.

<sup>48</sup> Includes charges of: Third Degree Assault; Third Degree Attempted Assault; Second and Third Degree Menacing, Second Degree Reckless Endangerment; and False Personation.

Charge Category	Percentage of All Legal Aid Cases Surviving Arraignment. <sup>45</sup>	Cases Surviving Arraignment. <sup>46</sup> (FY 2013)	Percentage of Cases Surviving Arraignment to Be Investigated	Investigation Time (Excluding Pre-Trial and Trial Investigations) (in minutes)					Pre-Trial and Trial Investigation		Total Investigator Hours Per Annum	
				Case Preparation	Visiting the Scene	Additional Time with Witnesses	At the Office	Evaluating Property	Total of Individual Investigative Tasks (in Hours)	Percentage of Cases Surviving Arraignment Prepared for Trial		Add'l Time Needed for Investigation to Prepare for Trial (in Hours)
<b>Burglary and Criminal Trespass<sup>49</sup></b>	4.77%	4,532	90%	15	60	60 x 80% = 48	45	0	2.80	1.6%	3.0	<b>11,616</b>
<b>Weapons Possession<sup>50</sup></b>	4.48%	4,259	90%	15	60	45 x 15% = 6.75	45	30	2.61	1.6%	0	<b>10,005</b>
<b>Drugs<sup>51</sup></b>	19.65%	18,678	90%	15	60	45 x 15% = 6.75	45	0	2.11	1.6%	2.0	<b>36,007</b>

<sup>49</sup> Includes charges of: Burglary in the First, Second, and Third Degrees; Attempted Burglary in the Second and Third Degrees; and Criminal Trespass in the Second and Third Degrees.

<sup>50</sup> Includes charges of: Second, Third, and Fourth Degree Criminal Possession of a Weapon; Second and Third Degree Attempted Criminal Possession of a Weapon; and Unlawful Possession of a Knife.

<sup>51</sup> Includes charges of: Criminal Sale of a Controlled Substance in the Third, Fourth, and Fifth Degrees; Criminal Sale of a Controlled Substance Near a School; Criminal Possession of a Controlled Substance in the Third, Fourth, Fifth, and Seventh Degrees; Unlawful Possession of Marijuana; Criminal Possession of Marijuana in the Fifth Degree; Criminal Sale of Marijuana in the Fourth Degree; and Imitation Controlled Substance.

Charge Category	Percentage of All Legal Aid Cases Surviving Arraignment. <sup>45</sup>	Cases Surviving Arraignment. (FY 2013) <sup>46</sup>	Percentage of Cases Surviving Arraignment to Be Investigated	Investigation Time (Excluding Pre-Trial and Trial Investigations) (in minutes)				Pre-Trial and Trial Investigation		Total Investigator Hours Per Annum		
				Case Preparation	Visiting the Scene	Additional Time with Witnesses	At the Office	Evaluating Property	Total of Individual Investigative Tasks (in Hours)		Percentage of Cases Surviving Arraignment Prepared for Trial	Add'l Time Needed for Investigation to Prepare for Trial (in Hours)
Disorderly Conduct <sup>52</sup>	5.82%	5,535	90%	15	30	30	45	0	2.00	1.6%	0	9,963
Criminal Mischief <sup>53</sup>	3.42%	3,252	90%	15	30	60	45	0	2.5	1.6%	0	7,317
Robbery <sup>54</sup>	2.52%	2,400	90%	15	180		45	0	4.00	1.6%	3.0	8,744
Grand Larceny/ Criminal Possession of Stolen Property <sup>55</sup>	12.95%	12,313	90%	15	120		45	0	3.00	1.6%	1.0	33,423
Loitering for Prostitution	0.34%	326	80%	15	30	30	45	0	2.00	1.6%	1.0	526

<sup>52</sup> Includes charges of: Disorderly Conduct; Obstructing Governmental Administration in the Second Degree; Resisting Arrest; and Open Container.

<sup>53</sup> Includes charges of: Criminal Mischief in the Second, Third, and Fourth Degrees; and Making Graffiti.

<sup>54</sup> Includes charges of: Robbery in the First, Second, and Third Degrees; and Attempted Robbery in the First, Second, and Third Degrees.

<sup>55</sup> Includes charges of: Grand Larceny in the Third and Fourth Degrees; Attempted Grand Larceny; Criminal Possession of Stolen Property in the Third, Fourth, and Fifth Degrees; Petit Larceny; and Auto Stripping.

Charge Category	Percentage of All Legal Aid Cases Surviving Arraign. <sup>45</sup>	Cases Surviving Arraign. <sup>46</sup> (FY 2013)	Percentage of Cases Surviving Arraignment to Be Investigated	Investigation Time (Excluding Pre-Trial and Trial Investigations) (in minutes)				Pre-Trial and Trial Investigation		Total Investigator Hours Per Annum		
				Case Preparation	Visiting the Scene	Additional Time with Witnesses	At the Office	Evaluating Property	Total of Individual Investigative Tasks (in Hours)		Percentage of Cases Surviving Arraignment Prepared for Trial	Add'l Time Needed for Investigation to Prepare for Trial (in Hours)
<b>Criminal Contempt<sup>56</sup></b>	2.44%	2,321	80%	15	120	45	45	0	3.00	1.6%	1.0	5,601
<b>Aggravated Harassment 2</b>	1.79%	1,700	80%	30	90	45	45	0	2.75	1.6%	0	3,741
<b>Driving While Intoxicated</b>	2.47%	2,344	75%	15	60	45	60	0	3.00	1.6%	0	5,273
<b>Evidence Tampering<sup>57</sup></b>	0.31%	298	75%	15	60	45 x 15% = 6.75	45	0	2.11	1.6%	1.0	475
<b>Evading Cigarette Tax</b>	0.46%	433	75%	15	15	30	30	0	1.00	1.6%	0	325
<b>Forgery<sup>58</sup></b>	1.03%	981	70%	30	45	45	45	0	2.00	1.6%	0.5	1,379

<sup>56</sup> Includes charges of: Aggravated Criminal Contempt; and Criminal Contempt in the First and Second Degrees.

<sup>57</sup> Includes charges of: Evidence Tampering; and Attempted Evidence Tampering.

<sup>58</sup> Includes charges of: Forgery in the Second Degree; Criminal Possession of a Forged Instrument in the First and Third Degrees; and Identity Theft in the First Degree.

Charge Category	Percentage of All Legal Aid Cases Surviving Arraignment. <sup>45</sup>	Cases Surviving Arraignment. (FY 2013) <sup>46</sup>	Percentage of Cases Surviving Arraignment to Be Investigated	Investigation Time (Excluding Pre-Trial and Trial Investigations) (in minutes)				Pre-Trial and Trial Investigation		Total Investigator Hours Per Annum		
				Case Preparation	Visiting the Scene	Additional Time with Witnesses	At the Office	Evaluating Property	Total of Individual Investigative Tasks (in Hours)		Percentage of Cases Surviving Arraignment Prepared for Trial	Add'l Time Needed for Investigation to Prepare for Trial (in Hours)
<b>Trademark Counterfeiting 2 and 3<sup>59</sup></b>	0.99%	938	50%	15	20	0	30	0	1.08	1.6%	0	507
<b>Unlicensed General Vendor</b>	1.22%	1,156	50%	15	30	30	30	0	1.25	1.6%	0	723
<b>Prostitution and Patronizing a Prostitute 3</b>	1.24%	1,181	40%	15	15	15	45	0	1.5	1.6%	0	708
<b>Prison Contraband 1</b>	0.15%	144	25%	30	180	0	45	0	4.25	1.6%	0	153
<b>Theft of Services</b>	5.77%	5,488	25%	15	20	45	45	0	1.33	1.6%	0	1,825

<sup>59</sup> Includes charges of: Trademark Counterfeiting in the Second and Third Degrees; and Failure to Disclose the Origin of a Recording.



**Exhibit 3A: Chart Categories**

	<b>Charge Category</b>	<b>Charges within Category</b>
1	Attempted Murder 2, Assault 1 & 2	<ul style="list-style-type: none"> <li>• Attempted Murder</li> <li>• First Degree Assault</li> <li>• Second Degree Assault</li> </ul>
2	Rape 1, Rape 2 and Sexual Abuse	<ul style="list-style-type: none"> <li>• First Degree Rape</li> <li>• Second Degree Rape</li> <li>• Sexual Abuse</li> <li>• Criminal Sexual Act in the First Degree</li> </ul>
3	Attempted Assault 2	<ul style="list-style-type: none"> <li>• Second Degree Attempted Assault</li> </ul>
4	Rape 3	<ul style="list-style-type: none"> <li>• Third Degree Rape</li> </ul>
5	Assault 3 and Below	<ul style="list-style-type: none"> <li>• Third Degree Assault</li> <li>• Third Degree Attempted Assault</li> <li>• Second Degree Menacing</li> <li>• Third Degree Menacing</li> <li>• Second Degree Reckless Endangerment</li> <li>• False Personation</li> </ul>
6	Burglary and Criminal Trespass	<ul style="list-style-type: none"> <li>• First Degree Burglary</li> <li>• Second Degree Burglary</li> <li>• Third Degree Burglary</li> <li>• Second Degree Attempted Burglary</li> <li>• Third Degree Attempted Burglary</li> <li>• Second Degree Criminal Trespass</li> <li>• Third Degree Criminal Trespass</li> </ul>

	<b>Charge Category</b>	<b>Charges within Category</b>
7	Weapons Possession	<ul style="list-style-type: none"> <li>• Second Degree Criminal Possession of a Weapon</li> <li>• Third Degree Criminal Possession of a Weapon</li> <li>• Fourth Degree Criminal Possession of a Weapon</li> <li>• Second Degree Attempted Criminal Possession of a Weapon</li> <li>• Third Degree Attempted Criminal Possession of a Weapon</li> <li>• Unlawful Possession of a Knife</li> </ul>
8	Drugs	<ul style="list-style-type: none"> <li>• Third Degree Criminal Sale of a Controlled Substance</li> <li>• Fourth Degree Criminal Sale of a Controlled Substance</li> <li>• Fifth Degree Criminal Sale of a Controlled Substance</li> <li>• Criminal Sale of a Controlled Substance Near a School</li> <li>• Third Degree Criminal Possession of a Controlled Substance</li> <li>• Fourth Degree Criminal Possession of a Controlled Substance</li> <li>• Fifth Degree Criminal Possession of a Controlled Substance</li> <li>• Seventh Degree Criminal Possession of a Controlled Substance</li> <li>• Unlawful Possession of Marijuana</li> <li>• Criminal Possession of Marijuana in the Fifth Degree</li> <li>• Criminal Sale of Marijuana in the Fourth Degree</li> <li>• Imitation Controlled Substance</li> </ul>
9	Disorderly Conduct	<ul style="list-style-type: none"> <li>• Disorderly Conduct</li> <li>• Second Degree Obstructing Governmental Administration</li> <li>• Resisting Arrest</li> <li>• Open Container</li> </ul>
10	Criminal Mischief	<ul style="list-style-type: none"> <li>• Second Degree Criminal Mischief</li> <li>• Third Degree Criminal Mischief</li> <li>• Fourth Degree Criminal Mischief</li> <li>• Making Graffiti</li> </ul>

	<b>Charge Category</b>	<b>Charges within Category</b>
11	Robbery	<ul style="list-style-type: none"> <li>• First Degree Robbery</li> <li>• Second Degree Robbery</li> <li>• Third Degree Robbery</li> <li>• First Degree Attempted Robbery</li> <li>• Second Degree Attempted Robbery</li> <li>• Third Degree Attempted Robbery</li> </ul>
12	Grand Larceny/ Criminal Possession of Stolen Property	<ul style="list-style-type: none"> <li>• Third Degree Grand Larceny</li> <li>• Fourth Degree Grand Larceny</li> <li>• Attempted Grand Larceny</li> <li>• Third Degree Criminal Possession of Stolen Property</li> <li>• Fourth Degree Criminal Possession of Stolen Property</li> <li>• Fifth Degree Criminal Possession of Stolen Property</li> <li>• Petit Larceny</li> <li>• Auto Stripping</li> </ul>
13	Loitering for Prostitution	<ul style="list-style-type: none"> <li>• Loitering for Prostitution</li> </ul>
14	Criminal Contempt	<ul style="list-style-type: none"> <li>• Aggravated Criminal Contempt</li> <li>• First Degree Criminal Contempt</li> <li>• Second Degree Criminal Contempt</li> </ul>
15	Aggravated Harassment 2	<ul style="list-style-type: none"> <li>• Second Degree Aggravated Harassment</li> </ul>
16	Driving While Intoxicated	<ul style="list-style-type: none"> <li>• Driving While Intoxicated</li> </ul>
17	Evidence Tampering	<ul style="list-style-type: none"> <li>• Evidence Tampering</li> <li>• Attempted Evidence Tampering</li> </ul>
18	Evading Cigarette Tax	<ul style="list-style-type: none"> <li>• Evading Cigarette Tax</li> </ul>

	<b>Charge Category</b>	<b>Charges within Category</b>
19	Forgery	<ul style="list-style-type: none"> <li>• Second Degree Forgery in the Second Degree</li> <li>• First Degree Criminal Possession of a Forged Instrument</li> <li>• Third Degree Criminal Possession of a Forged Instrument</li> <li>• First Degree Identity Theft</li> </ul>
20	Trademark Counterfeiting 2 and 3	<ul style="list-style-type: none"> <li>• Second Degree Trademark Counterfeiting</li> <li>• Third Degree Trademark Counterfeiting</li> <li>• Failure to Disclose the Origin of a Recording</li> </ul>
21	Unlicensed General Vendor	<ul style="list-style-type: none"> <li>• Unlicensed General Vendor</li> </ul>
22	Prostitution and Patronizing a Prostitute 3	<ul style="list-style-type: none"> <li>• Prostitution</li> <li>• Third Degree Patronizing a Prostitute</li> </ul>
23	Prison Contraband 1	<ul style="list-style-type: none"> <li>• First Degree Prison Contraband</li> </ul>
24	Theft of Services	<ul style="list-style-type: none"> <li>• Theft of Services</li> </ul>

### Exhibit 4: Investigator Time Calculation

Summary Calculations of Total Investigators Needed	
Calculation	Total Hours Needed
Total Time Associated with Investigation	330,540
Time Associated with Service of Subpoenas	+ 800
<b>Total Case-Related Time</b>	<b>331,340</b>
Total Available Time Per Year (per investigator)	1,820
Less Travel Time Per Year (per investigator)	- 368
Less In-Court Time Per Year (per investigator)	- 5
Less Training Time Per Year (per investigator)	- 12
<b>Total Available Time for Case-Specific Tasks (per Investigator)</b>	<b>1,435</b>
Number of Investigators Required by Legal Aid	231
Number of Lawyers Employed by Legal Aid	661.6
<b>EFFECTIVE ATTORNEY-TO-INVESTIGATOR RATIO</b>	<b>2.9 to 1</b>
Total Case-Related Time	331,340
Cases that should be investigated	71,779
<b>Average investigation time per assigned case</b>	<b>4.6 hours</b>
Total Available Investigation Time	1,435
Average investigation time per assigned case	4.6
<b>Number of cases per investigator per year</b>	<b>312</b>

**Exhibit 5: Time Estimates for Key Projects Requiring Social Worker Involvement**

<b>Category 1a: Pre-pleading Advocacy Letter</b>			
<b>Task</b>	<b>Stage</b>	<b>Time Estimate</b>	<b>Description</b>
Case opening	Intake	20 minutes	Set up and organize case file, create log
Administrative tasks	All	20 minutes	Review file and recordkeeping (including LawManager)
Initial interview with client	Intake	90 minutes	Initial interview and mental status evaluation
Records requests	Intake	40 minutes	Request records from courts, hospitals, doctors, programs, schools, etc.
Additional interviews with client	Fact development	2.0 hours	Two follow-up interviews (average: 1 hour each)
Interviews with collaterals	Fact development	2.0 hours	Interview with spouse or parent (average: 1 hour); multiple interviews with others
Program research and outreach	Fact development	1.0 hours	Research and communications about potential program placement and/or prior program placement(s)
Records review and analysis	Fact development	4.0 hours	Review and analyze various records; follow-up regarding same
Planning, drafting, and revising letter	Pre-pleading stage	4.0 hours	Outline and draft letter; input revisions from attorneys and social workers
Case closing	Case Closing	15 minutes	Close out file, including updating information concerning disposition and physically filing case file
Discussions with attorney	All	60 minutes	Communications throughout duration of process concerning facts, strategy, etc.
<b>Total Time</b>		<b>17 hours, 5 minutes</b>	

**Category 1b: Pre-pleading Memorandum,  
Pre-pleading Letter (Long Form), and/or Psychosocial (for Various Purposes)**

<b>Task</b>	<b>Stage</b>	<b>Time Estimate</b>	<b>Description</b>
Case opening	Intake	20 minutes	Set up and organize case file, create log
Administrative tasks	All	20 minutes	Review file and recordkeeping (including LawManager)
Initial interview with client	Intake	90 minutes	Initial interview and mental status evaluation
Records requests	Intake	40 minutes	Request records from courts, hospitals, doctors, programs, schools, etc.
Additional interviews with client	Fact development	2.0 hours	Two follow-up interviews (average: 1 hour each)
Interviews with collaterals	Fact development	2.0 hours	Interview with spouse or parent (average: 1 hour); multiple interviews with others
Records review and analysis	Fact development	5.0 hours	Review and analyze various records; follow-up regarding same
Program research and outreach	Fact development	1.0 hours	Research and communications about potential program placement and/or prior program placement(s)
Planning, drafting, and revising work product	Pre-pleading stage	12.0 hours	Outline and draft report; input revisions from attorneys and social workers
Case closing	Case Closing	15 minutes	Close out file, including updating information concerning disposition and physically filing case file
Discussion with attorney	All	90 minutes	Communications throughout duration of process concerning facts, strategy, etc.
<b>Total Time</b>		<b>26 hours, 35 minutes</b>	

<b>Category 2: Clayton Motions</b>			
<b>Task</b>	<b>Stage</b>	<b>Time Estimate</b>	<b>Description</b>
Case opening	Intake	20 minutes	Set up and organize case file, create log
Administrative tasks	All	30 minutes	Review file and recordkeeping (including LawManager); longer than in other contexts because need to manage a substantial volume of records
Initial interview with Client	Intake	90 minutes	Initial interview and mental status evaluation
Records requests	Intake	90 minutes	Request records from courts, hospitals, doctors, programs, schools, etc.; longer than in other contexts because a substantial number of medical records to be analyzed
Additional interviews with client	Fact development	3.0 hours	Two follow-up interviews (average: 1.5 hours each); longer than in other contexts because health status typically requires greater engagement
Interviews with collaterals	Fact development	3.0 hours	Interview with spouse or parent (average: 1 hour); multiple interviews with others; longer than in other contacts because more people to interview and more to discuss regarding health
Records review and analysis	Fact development	10.0 hours	Review and analyze various records; follow-up regarding same; more than in other contexts because of volume of records and key role that records play in the advocacy
Program research and outreach	Fact development	0 hours	Not applicable in context of seriously ill client
Planning, drafting, and revising work product	Motion to dismiss stage	12.0 hours	Outline and draft report; input revisions from attorneys and social workers; similar to work required for a PPM
Case closing	Case Closing	15 minutes	Close out file, including updating information concerning disposition and physically filing case file
Discussion with attorney	All	90 minutes	Communications throughout duration of process concerning facts, strategy, etc.
<b>Total Time</b>	<b>33 hours, 35 minutes</b>		

<b>Category 3: Pre-Sentencing Memoranda</b>			
<b>Task</b>	<b>Stage</b>	<b>Time Estimate</b>	<b>Description</b>
Case opening	Intake	20 minutes	Set up and organize case file, create log
Administrative tasks	All	60 minutes	Review file and recordkeeping (including LawManager); review trial transcripts
Initial interview with client	Intake	90 minutes	Initial interview and mental status evaluation
Records requests	Intake	40 minutes	Request records from courts, hospitals, doctors, programs, schools, etc.
Additional interviews with client	Fact development	1.0 hours	Follow-up interview(s) (one 1-hour interview or two videoconferences)
Interviews with collaterals	Fact development	2.0 hours	Interview with spouse or parent (average: 1 hour); multiple interviews with others
Records review and analysis	Fact development	4.0 hours	Review and analyze various records; follow-up regarding same; slightly less time than PPM in light of practical difficulties in securing records
Program research and outreach	Fact development	30 minutes	Research and communications about prior program placement(s); advocacy concerning why reentry will be successful
Planning, drafting, and revising work product	Pre-sentencing stage	12.0 hours	Outline and draft report; input revisions from attorneys and social workers; careful drafting concerning mitigation
Case closing	Case Closing	15 minutes	Close out file, including updating information concerning disposition and physically filing case file
Discussion with attorney	All	90 minutes	Communications throughout duration of process concerning facts, strategy, etc.
<b>Total Time</b>	<b>24 hours, 45 minutes</b>		

<b>Category 4a: Program Placement (Court-Based Programs/ATIs, e.g., TASC, Fortune Society, CASES, Andrew Glover)</b>			
<b>Task</b>	<b>Stage</b>	<b>Time Estimate</b>	<b>Description</b>
Case opening	Intake	20 minutes	Set up and organize case file, create log
Administrative tasks	All	20 minutes	Review file and recordkeeping (including LawManager)
Initial interview with client	Intake	90 minutes	Initial interview and mental status evaluation
Records requests	Intake	25 minutes	Request discharge planning records; perhaps request other records
Additional interviews with client	Fact development	0 hours	Not applicable
Interviews with collaterals	Fact development	1.0 hours	Interview with spouse or parent for information or to establish rapport
Records review and analysis	Fact development	30 minutes	Review and analyze various records
Research to find appropriate program, including internet research and contacting programs; follow-up with programs	Program Placement	30 minutes	Research regarding program criteria; telephone calls regarding availability, insurance coverage issues, scheduling interview; follow-up to verify intake, attendance; discharge planning
Advocacy with program or court	Program Placement	90 minutes	Advocacy where client does not return to program after weekend pass, client tests positive for substances, etc.; advocacy with program to prevent removal; advocacy with court that client action was not failure to comply; may entail short letter, detailed update to court, or detailed internal memorandum to attorney
Case closing	Case Closing	15 minutes	Close out file, including updating information concerning disposition and physically filing case file
Discussion with attorney	All	15 minutes	Communications throughout duration of process concerning facts, strategy, etc.
<b>Total Time</b>	<b>6 hours, 35 minutes</b>		

<b>Category 4b: Program Placement (Non-Court-Based Programs)</b>			
<b>Task</b>	<b>Stage</b>	<b>Time Estimate</b>	<b>Description</b>
Case opening	Intake	20 minutes	Set up and organize case file, create log
Administrative tasks	All	20 minutes	Review file and recordkeeping (including LawManager)
Initial interview with client	Intake	90 minutes	Initial interview and mental status evaluation
Records requests	Intake	60 minutes	Request records from courts, hospitals, doctors, programs, schools, etc.; client history is critical in this context
Additional interviews with client	Fact development	1.0 hours	Follow-up interview(s) (one 1-hour interview or two videoconferences)
Interviews with collaterals	Fact development	1.0 hours	Interview with spouse or parent for information or to establish rapport
Records review and analysis	Fact development	4.0 hours	Review and analyze various records
Research to find appropriate program, including internet research and contacting programs; follow-up with programs	Program Placement	3.0 hours	Research regarding program criteria; telephone calls regarding availability, insurance coverage issues, scheduling interview; follow-up to verify intake, attendance; discharge planning
Advocacy with program or court	Program Placement	2.0 hours	Advocacy where client does not return to program after weekend pass, client tests positive for substances, etc.; advocacy with program to prevent removal; advocacy with court that client action was not failure to comply; may entail short letter, detailed update to court, or detailed internal memorandum to attorney
Note taking/ updating progress notes	Program Placement	30 minutes	Clear documentation regarding why programs have rejected application
Case closing	Case Closing	15 minutes	Close out file, including updating information concerning disposition and physically filing case file
Discussion with attorney	All	90 minutes	Communications throughout duration of process concerning facts, strategy, etc.
<b>Total Time</b>	<b>16 hours, 25 minutes</b>		

<b>Category 5: Bail Application</b>			
<b>Task</b>	<b>Stage</b>	<b>Time Estimate</b>	<b>Description</b>
Case opening	Intake	20 minutes	Set up and organize case file, create log
Administrative tasks	All	20 minutes	Review file and recordkeeping (including LawManager)
Initial interview with Client	Intake	90 minutes	Initial interview and mental status evaluation
Additional interviews with client	Fact development	30 minutes	One follow-up interview via videoconference
Interviews with collaterals	Fact development	1.0 hours	Interview with spouse or parent; interviews with others
Program research and outreach	Fact development	30 minutes	Research and communications about potential program placement and/or prior program placement(s)
Records review and analysis	Fact development	30 minutes	Limited review of records in light of expedited time frame
Drafting and revising letter	Bail application	1.0 hours	Preparing written work product
Oral advocacy	Bail application	20 minutes	Advocacy with court and/or proffer sessions with assistant district attorneys
Case closing	Case Closing	15 minutes	Close out file, including updating information concerning disposition and physically filing case file
Discussions with attorney	All	60 minutes	Communications throughout duration of process concerning facts, strategy, etc.
<b>Total Time</b>	<b>7 hours, 15 minutes</b>		

**Less Frequent Tasks and Other Tasks Pertaining to  
Caseload Management and Professional Development**

<b>Task</b>	<b>Time Estimate</b>	<b>Description</b>
Meetings, supervision, and training	7.0 hours per month	One training meeting per month (average: 2.0 hours per meeting); one team meeting per month (average: 1.5 hours per meeting); multiple supervision meetings per month (average: 2.0 hours per month); four external training sessions per year (average: 4.5 hours per session).
Oral advocacy with court or district attorney and general court time	1.0 hours per month	Advocate in court proceedings or with ADA; observe hearings or trials in cases
Waiting/corrections time	6.0 hours per month	Waiting at Rikers, in courthouse pens, for videoconferencing (90 minutes per week)
Travel time	9.0 hours per month	6.0 hours Rikers-related travel; 3.0 hours non-Rikers-related travel ( <i>e.g.</i> , travel to speak to client, collaterals, attend hearings, gather documents or records)
General assessment	1.0 hours per month	Interview client in response to attorney referral; determine whether social work intervention is needed; identify competency, mental health, or substance-abuse issues
Counseling	2.0 hours per month	Provide supportive contact and advice to client, including regarding programs, pleas, what they might expect to see/experience at trial, how to prepare for court (mentally, clothing, demeanor)
Ongoing monitoring	1.5 hours per month	Phone calls to monitor clients in program placement, who received ACD, deferred sentence, or in other situations (20 “monitoring cases” or “compliance cases” per month)
General administrative tasks	45 minutes per month	Maintaining statistics (including month-end statistics)

**Less Frequent Tasks and Other Tasks Pertaining to  
Caseload Management and Professional Development**

<b>Task</b>	<b>Time Estimate</b>	<b>Description</b>
Housing assistance and shelter referrals	1.0 hours per month	Shelter referrals and housing placements not in connection with general program placement; occurs once every 3-4 months (in connection with orders of protection, loss of public housing, etc.)
Housing assistance: HRA 2010E (prepare application)	7.0 hours per month	Prepare HRA 2010E form to secure supportive housing for clients; process includes synthesizing and analyzing information from psychosocial, psychological evaluation, and other records into government application; excludes time for record requests, record review, interviews, and other fact development
Housing assistance: HRA 2010E (find housing placement)	8.0 hours per month	Secure housing for client whose HRA 2010E application has been approved; research, make phone calls, set up interviews

**Exhibit 6: Caseload Reviews Conducted by Attorney-Social Worker Teams**

Category	Reduced to eliminate double-counting		Average Time per Case <sup>63</sup>	Total Time Required
	Percentage of Cases <sup>61</sup>	Number of Cases <sup>62</sup>		
Pre-pleading submission	13.3%	12,655	17 hours, 5 minutes	216,000 hours
Clayton submission/motion to dismiss in the interest of justice	0.4%	392	33 hours, 35 minutes	13,000 hours
Pre-sentencing submission	1.1%	1,079	24 hours, 45 minutes	26,500 hours
Program placement	23.0%	21,877	6 hours, 35 minutes	144,000 hours
Bail application	--	--	7 hours, 25 minutes	-- <sup>64</sup>
<b>Total</b>	<b>37.8%</b>	<b>36,003</b>		<b>399,500 hours</b>

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<sup>61</sup> Where caseload review teams concluded that two or more categories of work was warranted, the case was only included in the less time-intensive category for (1) the frequency estimates referenced herein, and (2) adding the associated time to the total calculation.

<sup>62</sup> Based on an annual caseload of 95,061.

<sup>63</sup> Where a category included more time-intensive and less time-intensive variants, the Task Force included only the less time-intensive variant in its calculations.

<sup>64</sup> As discussed in section IV.D.5.a, the Social Worker Task Force concluded that the data did not provide a sound basis for estimating the number of bail applications in which social workers should participate. Post-arraignment bail applications were made in approximately 26,500 cases in 2012, and social workers were involved in fewer than 5 percent of those applications.

### Exhibit 7: Social Worker Time Calculation

Summary Calculations of Total Social Workers Needed	
Calculation	Total Hours Needed
<b>Total Social Worker Time Required</b>	<b>399,500</b>
Total Available Time Per Year (per social worker)	1,820
Less Travel Time Per Year (per social worker)	- 108
Less In-Court Time Per Year (per social worker)	- 12
Less Training Time Per Year (per social worker)	- 84
Less Waiting Time Per Year (per social worker)	- 72
<b>Total Available Time (per social worker)</b>	<b>1,544</b>
Number of Social Workers Required by Legal Aid	259
Number of Lawyers Employed by Legal Aid	661.6
<b>EFFECTIVE ATTORNEY-TO-SOCIAL-WORKER RATIO</b>	<b>2.6 to 1</b>
Total Social Worker Time	399,500
Divided by number of cases that require social work involvement	36,003
<b>Average social worker time per assigned case</b>	<b>11.1 hours</b>
Total Available Time	1,544
Divided by average social worker time per assigned cases	11.1
<b>Number of cases per social worker per year</b>	<b>139</b>

**Exhibit 8: Sensitivity Analysis – Recommended Staffing Ratios if the Number of Cases Surviving Arraignment Were to Increase**

**A. Investigators**

<b>Arrestment Scenario</b>	<b>Cases Requiring Investigation</b>	<b>Investigator Hours Needed</b>	<b>Number of Investigators Needed</b>	<b>Effective Attorney-to-Investigator Ratio</b>
<b>Current caseload</b>	86,622	330,540	231	2.9 to 1
<b>+ 1%</b>	87,489	333,846	233	2.8 to 1
<b>+ 5%</b>	90,954	347,067	242	2.7 to 1
<b>+ 10%</b>	95,285	363,594	254	2.6 to 1
<b>+ 20%</b>	103,947	396,648	277	2.4 to 1
<b>+ 30%</b>	112,609	429,702	300	2.2 to 1

**B. Social Workers**

<b>Arrestment Scenario</b>	<b>Cases Requiring Social Worker</b>	<b>Social Worker Hours Needed</b>	<b>Number of Social Workers Needed</b>	<b>Effective Attorney-to-Social Worker Ratio</b>
<b>Current caseload</b>	36,003	399,500	259	2.6 to 1
<b>+ 1%</b>	36,363	403,495	261	2.5 to 1
<b>+ 5%</b>	37,803	419,475	272	2.4 to 1
<b>+ 10%</b>	39,603	439,450	285	2.3 to 1
<b>+ 20%</b>	42,204	479,400	310	2.1 to 1
<b>+ 30%</b>	46,804	519,350	336	2.0 to 1