

**REPORT OF THE INDIGENT DEFENSE ORGANIZATION  
OVERSIGHT COMMITTEE TO THE APPELLATE DIVISION  
FIRST DEPARTMENT FOR FISCAL YEARS 2010-2011**

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

The first Report of the Indigent Defense 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). 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 assess compliance with the First Department’s standards and identify issues that needed to be addressed at site visits.

In the current 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. In addition, the Committee once again invited a representative from the Office of the Criminal Justice Coordinator for the City of New York to meet informally with the Committee so that the Committee could better understand the perspective and concerns of that Office.

## **II. Summary of Conclusions**

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

In our report for FY 08-09, we noted that the problem of excessive caseloads at the trial level had been a central theme of every report this Committee has issued. We also expressed the hope that changes which had just begun as a combined result of legislative, administrative and court actions would enable us to report for FY 10-11 that substantial progress had been made toward ensuring that – in the words of the New York Court of Appeals – “*Gideon*’s mandate is being met in practice,”<sup>1</sup> not merely in theory.

We are pleased to report that substantial progress has, in fact, been made. During the FY 10-11 reporting period, case cap funds began flowing to indigent defense trial offices from the Office of Court Administration (“OCA”) – as a result of the legislation that effectively gave the First Department’s caseload caps the force of law in New York City. In addition, the City substantially restructured its contracts with the First Department’s indigent defense trial offices – including its contract with the Legal Aid Society, which had been criticized by this Committee for many years as unworkable and profoundly unfair to the City’s indigent. As a result of those changes, caseloads have already begun to decline significantly, and there is real reason to hope that compliance with the First Department’s caseload maximum will in fact be achieved soon after the case cap legislation’s April 1, 2014 effective date. In fact, one of the First Department’s providers – the Bronx Defenders – reports that it anticipates achieving full compliance well in advance of the effective date. The true measure of success, however, will be if reasonable caseload levels can be sustained and caseloads further reduced when necessary for quality of representation.

To be sure, areas of uncertainty and concern remain with respect to caseloads. At the Neighborhood Defender Service of Harlem, for example, a new multi-year City contract at long last provides financial stability and the much-needed ability to plan for the future, but it also requires NDS to take on a 300% increase in caseload with only a 60% increase in budget. We therefore express our concern on behalf of NDS and the community it serves that NDS may be forced to sacrifice its community-based holistic model in order to achieve compliance with caseload limits. Similarly, it is too soon to tell whether the relatively modest restructuring of the City’s contract with New York County Defender Services – in which the number of cases contracted for rose from 16,000 to 18,000 – will be sufficient to cure what had become a chronic pattern of NYCDS’s assigned arraignment shifts causing it to take on additional cases for no additional compensation.

Nonetheless, it is clear that the news overall for this reporting period with respect to caseloads is – for the first time since this Committee began to issue reports – remarkably

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<sup>1</sup> *Hurrell-Harring v. State of New York*, 15 N.Y. 3d 8, 15, 904 N.Y.S. 2d 296, 298 (2010).

positive. We take pride in the role that the First Department has played in that sea change, and we would be remiss if we did not take particular note of the important role played by the First Department's former presiding justice, now Chief Judge, Jonathan Lippman, in helping to ensure that the City's poor receive the kind of representation that the Constitution – and a civilized society – demand.

So what happens next? We expect, and very much look forward to the prospect of, reports that will no longer need to primarily focus on the crushing caseloads borne by the First Department's dedicated trial lawyers. But even as steps toward manageable caseloads continue, efforts will have to be made to sustain the progress thus far. And caseload monitoring is by no means the only concern of this Committee. In what we regard as a continuation of the First Department's leadership in the area of indigent defense services, the Court recently amended its indigent defense standards to give practical effect to the mandate of *Padilla v. Kentucky* by emphasizing the importance of identifying, assessing and counseling clients regarding the practical consequences of potential dispositions.

As amended, Section VIII.A of the First Department's standards – which delineates the performance standard for case management and quality control – now states:

Quality representation requires that defense organizations maintain adequate procedures for assessing responsibility for client matters when requested and for tracking and managing individual cases to ensure that quality is maintained at all stages and that all obligations to clients and the courts, *including the obligation to identify, assess and counsel clients regarding the practical consequences of potential dispositions*, are met.<sup>2</sup>

In addition, other conforming changes in Section VIII and its commentary stress the importance of ensuring that clients are made aware of the many – and steadily increasing – practical consequences of conviction on even modest charges.<sup>3</sup> The progress of each indigent defense provider in complying with those standards will be a particular focus for our Committee in the next reporting cycle.

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<sup>2</sup> <http://www.courts.state.ny.us/courts/ad1/Committees%26Programs/IndigentDefOrgOversightComm/general%20requirements.pdf> (emphasis added) (copy attached as Appendix 1 to this Report).

<sup>3</sup> *Id.* at VIII.B.1(e)(iii)(adding as an evaluation criteria the requirement of investigation and counseling on “the identifiable practical consequences of potential dispositions”); VIII.B.2(a) and (c) (adding to the evaluation criteria for appellate organizations the requirements of assignment lawyers with particular expertise, such as expertise in immigration law, to cases presenting a need for such expertise and conducting informed consultations with each client about the practical consequences of appellate outcomes); and VIII.C (adding to the Commentary the observation that: “The specific requirement that lawyers ‘identify, assess and counsel clients regarding the practical consequences of potential dispositions and communicate those to clients’ was added in recognition of an enormous increase in the practical consequences of criminal dispositions aside from the possibility of incarceration. These include, but are not limited to, immigration consequences for clients who are not U.S. citizens, limitations on eligibility for housing and other governmental programs, limitations on employability, and others.”)

We likewise expect to focus on several other areas that have concerned our Committee for some time. As we have noted repeatedly, the substantial number of guilty pleas entered at arraignment in the First Department – coupled with the broad array of potential consequences of a guilty plea – necessarily raise concern over whether each indigent person charged with a crime or offense is receiving sufficient legal counseling. A more rigorous review of arraignment practices is a natural complement to reviewing compliance with the First Department’s new standards for counseling on the practical consequences of conviction, and we hope to begin the process of undertaking such a review during the FY 12-13 reporting period.

We also expect to devote greater attention during FY 12-13 to the important area of investigative support. Each of the First Department’s trial offices have offered – either in their written reports to us or during site visits – compelling examples of the importance of adequate investigation of a client’s case. Yet, at every trial office except the Bronx Defenders, the percentage of cases that actually receive investigative support languishes in the single digits. We are confident that those troubling statistics are not the result of indifference by the dedicated staff of the trial offices, and we suspect instead that they are principally a function of inadequate resources. We therefore look forward to inquiring more deeply into the issue, both to document the extent of the problem and to discuss potential solutions.

Finally, we hope to work with the providers and the City’s Criminal Justice Coordinator to improve data collection and reporting procedures so that there is, in the years ahead, data for each office that is clear, consistent and reasonably complete.

## **B. The Appellate Offices**

As in past reporting periods, the caseloads of the First Department’s appellate offices were – in sharp contrast to the caseloads of their trial-level colleagues – within the maximum mandated by the First Department’s standards. In addition, and once again underscoring the importance of having indigent defense practitioners who are not struggling under the weight of Herculean caseloads, the appellate offices as a group were able to provide significant additional assistance to convicted defendants in the form of early screening and investigation of cases for wrongful conviction, energetic litigation of Drug Law Reform Act resentencing and post-release supervision cases, and the provision of support to clients who had completed their sentences and were re-entering society.

As in the prior reporting period, there was only one respect in which the news on the appellate front was unfortunate. The Office of the Appellate Defender (OAD), which suffered a severe reduction in its funding in FY 09, continued to be funded by the City at a level that reflected a clear rejection of OAD’s fundamental model – namely, one that seeks both to provide high-quality indigent defense services at the appellate level *and* to add to the ranks of highly proficient public interest attorneys by hiring relatively inexperienced attorneys and providing them with rigorous training and intensive supervision.

Notably – and ironically – as the FY 10-11 reporting period drew to a close, the New York State Bar Association singled out OAD for its exceptional achievements in ensuring quality representation for indigent defendants. This Committee fully concurs in the NYSBA’s endorsement of the value of OAD’s unique training model. We were therefore pleased to learn that the office of the Criminal Justice Coordinator recently agreed to a retroactive amendment of OAD’s FY 12 contract and renewed OAD’s FY 13-14 contract at increased funding levels. We applaud this significant step toward providing OAD with more adequate funding, and we hope for continued progress on that front.

### **III. Detailed Findings<sup>4</sup>**

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

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

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

The Legal Aid Society (LAS) is the largest and primary provider of public 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 Bronx and New York County indigent defendants. During the FY 10-11 reporting period, as in prior periods, LAS implemented a number of innovative programs for clients, including a special initiative to help clients charged with crimes who are themselves the victims of sex trafficking and a new program to deploy social workers in arraignments to provide early intervention and diversion services for clients with mental health needs.

LAS’s contract with the City historically has required LAS to represent eligible clients in the vast majority of criminal cases, without a cap on the number of cases, for a fixed sum. That contractual arrangement was again in effect for the majority of the FY 10-11 reporting period.

As a result, and as in prior reporting periods, LAS was required to handle all non-conflict indigent defense cases in its arraignment shifts, with financial penalties imposed upon LAS if its caseload fell below 88% of all non-conflict cases. Further still, and again as in prior reporting periods, that contractual arrangement resulted in the majority of LAS’s First Department trial attorneys – approximately 68-70% in the Bronx and 64-70% in Manhattan – carrying caseloads that were significantly in excess of the First Department’s caseload maximum.

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<sup>4</sup> This section of our report provides detailed findings with respect to each provider’s compliance with nine of the ten criteria specified in the First Department’s standards. 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, and no significant issues have arisen with respect to this criterion since the issuance of our prior reports.

This Committee has repeatedly urged that LAS's contract with the City be restructured so as to enable compliance with the First Department's caseload maximum. In addition, as we noted in our report for FY 08-09, the First Department's caseload caps have now been given the force of law in New York City, with full compliance effective no later than April 1, 2014.

We are therefore pleased to report that LAS's most recent contract with the City at long last no longer requires LAS to handle a potentially limitless number of cases for a fixed sum, but instead provides funding for a fixed annual caseload.<sup>5</sup> We are further pleased to report that LAS anticipates that its new contract will allow it to meet the First Department's (and now legislatively mandated) caseload maximum by the specified deadline of April 1, 2014. We applaud this long-overdue restructuring of LAS's contract, and we look forward in future years to being able to focus our reports on topics other than the crushing workload borne by the dedicated trial attorneys at LAS.

**(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. As in the past, LAS reports that it experienced no threats to its professional independence during the FY 10-11 period. In addition, as evidence of its professional independence, LAS notes that it continued to be active in enforcing the 24-hour rule for arrest to arraignment, and that it played an instrumental role in the expansion of weekend hours in arraignment courts in all four of the New York City counties for which LAS was the primary indigent defense provider.

**(ii) Qualifications of Lawyers**

Overall, LAS's hiring criteria and certification practices met the First Department performance standards during FY 10-11, and LAS affirmatively worked to create a diverse legal staff. Its hiring practices were 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 10-11 reporting period – most of whom were recent law school graduates – had not handled the number of matters mandated by the First Department's standards.

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<sup>5</sup> More specifically, the contract that went into effect on April 1, 2011 provides funding for a fixed annual caseload of 213,000 cases, with funding adjustments should LAS's caseload fall below or above that number. It should also be noted that there appears to be a relationship between the LAS caseload requirements under its new contract and pending litigation brought by local bar associations against the City to prevent the City from contracting with defense providers to handle conflict cases rather than relying upon 18-B attorneys. *See New York County Lawyers' Association v. Bloomberg*, 107216/10. LAS's new contract to handle 213,000 cases represents an effective reduction of approximately 17,000 from the 230,000 cases that LAS typically handled in prior years. Presumably, if the City prevails in the pending litigation, in which LAS has intervened as a party in support of the City's plan, an additional number of conflict cases will be contracted to LAS.

As to 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.

LAS reported that 29 of the misdemeanor attorneys in New York County and 12 in the Bronx did not meet this standard in the FY 10-11 reporting period. Those figures were an unwelcome increase for the Manhattan office from the last reporting period, when roughly half that number of misdemeanor attorneys lacked the experience mandated by the First Department's standards. In the Bronx office, however, the trend was just the opposite. The 12 misdemeanor attorneys who lacked the requisite experience represented a significant decrease from the 21 reported during the last reporting period.

While acknowledging that there is no exception to the First Department's standards for recent law school graduates, LAS stresses that the recent graduates it has hired have extensive experience in law school criminal justice clinics in which they represented clients in proceedings under the guidance of their law school clinical professors. In addition, LAS notes that these recent graduates also receive comprehensive training in their first months at LAS that includes 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 contends that particularly with the need to increase staffing in order to achieve compliance with case load 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. As a result, while we believe that LAS should strive to ensure that as many attorneys as possible have the experience mandated by the First Department's standards, we agree that there is less cause for concern when those who lack the specific experience mandated by those 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 be a need to hire more attorneys whose experience comes from law school clinics and training programs. That said, we encourage LAS to strive to ensure that any such new hires have experience that can truly be characterized as the functional equivalent of the experience mandated by the First Department's standards.

We further note that not all of the attorneys at LAS who lacked the requisite misdemeanor experience were recent law school graduates. Some were recent transfers from LAS's Parole Revocation Unit and others were permanent arraignment attorneys. LAS contends that "the nature of the responsibilities and caseloads of the permanent arraignment attorneys are different than the responsibilities and caseloads of [its] other criminal defense staff attorneys and therefore [the First

Department's] criteria cannot be applied to them.” But the Committee very much disagrees.

The First Department does not exempt “permanent arraignment attorneys” from its qualification standards. Nor should it. To the contrary, the Committee believes that, if anything, a permanent arraignment attorney arguably should have *greater* experience so that there can be confidence that cases which end with a guilty plea at arraignment do so because it is truly in the best interest of the client. It is our understanding that LAS implemented the use of permanent arraignment attorneys – a practice that is at odds with LAS’s overall commitment to vertical representation – to address the high number of arraignment shifts its staff attorneys were required to work under LAS’s prior contract. It is our further understanding that LAS hopes to diminish or even eliminate the use of permanent arraignment attorneys as it comes into compliance with case cap limitations. We share that hope, but stress that in the interim LAS should take the necessary steps to ensure that its arraignment attorneys meet the standards for misdemeanor representation and felony representation (if they engage in such).

As to 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.

The LAS attorneys who did not meet the First Department’s performance standards during the FY 10-11 reporting period numbered 19 in New York County and 14 in the Bronx. LAS reports that in addition to the factors discussed above in connection with misdemeanor certifications, a “lack of trial capacity in the New York City courts” led to the delay in attorneys obtaining the requisite experience to handle felony cases, and that many of those who did not have the requisite experience at the time of reporting have since been certified. In the Bronx, LAS also reports that the continuation of the court merger during the current reporting period had an especially pronounced impact on trial capacity and notes that the merger has recently been phased out in order to, among other reasons, address this problem.

We appreciate that trial capacity in the courts is a matter beyond LAS’s control. We are also encouraged to hear that the number of uncertified attorneys has been reduced, and that LAS is taking steps to address the issue. We reiterate, however, the importance of doing all that is possible to ensure that attorneys have the experience needed to handle cases effectively.

LAS reported a slight increase in racial diversity among staff attorneys between FY 10 and FY 11. Of 290 attorneys in Manhattan and the Bronx, 9.1% were African American in FY 10, and 10.3% in FY 11. Hispanic attorneys constituted 4.5% in FY 10 and 4.8 % in FY 11. Asian attorneys constituted approximately 7.5 % in both FY 10 and 11. LAS further reports

that more than half of LAS's City-wide criminal defense staff attorney class for October 2011 consisted of diverse hires, and that the City Bar recently recognized LAS's achievements in the area of diversity by giving it the Diversity Champion award.

**(iii) Training**

The training and continuing legal education provided by LAS's trial divisions during the FY 10-11 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. In the current period, LAS reported that it trained a total of 87 new attorneys in three separate intensive five-week new attorney training programs. The program covered substantive and practical skills training through a combination of lecture, workshop, shadowing and mentoring by supervisors and senior attorneys. LAS further reports that the training was more focused on problem-solving, simulations and small group exercises than on lectures. The five-week program was followed by intensive training in LAS's borough offices.

In 2009, LAS Criminal Practice, in conjunction with New York Law School, re-instituted its Trial Advocacy Program (TAP), which was again conducted in June 2010 and June 2011. TAP utilized case problems developed by the National Institute of Trial Advocacy (NITA) and included lecture, demonstration and small workshop and critique formats. LAS also initiated a new three-day NITA-based Suppression Training Program that was offered four times in FY 10-11.

Additionally, LAS's own training was regularly augmented through the use of outside providers. Thus, during the current reporting period, many LAS attorneys participated, at LAS expense, in programs offered by NITA, the New York City Bar Association, the New York County Lawyers' Association, the New York State Bar Association, the National Association of Criminal Defense Attorneys, and the New York State Defenders Association. It is also notable – and commendable – that LAS's training budget and actual expenditures increased over the course of the reporting period.

Supplementing its group training efforts, LAS also developed LASnet, using Microsoft SharePoint, to create an online repository of practice-oriented materials for LAS attorneys and professional staff. With regard to supervisor training, LAS reports that during the FY 2010-11 reporting period, it engaged a consultant to provide mandatory training for supervisors.

**(iv) Supervision**

LAS staff/supervisor attorney ratios in the current reporting period fluctuated from 8.4-to-1 in FY 10 (which represented a slight improvement over the prior period's ratios) to 10-to-1 in FY 11. As a result, LAS went from being comfortably in compliance with the First Department's mandated 10-to-1 ratio to just barely compliant. That is a source of concern to the

Committee, particularly in light of the substantial caseloads carried by supervisors during the FY 10-11 reporting period.

As staffing at LAS increases under its new contract, the Committee hopes and expects that supervisory staffing will also increase, and that the caseload for supervisors (currently at an average of 35.7 cases per supervisor) will in turn decrease.

(v) **Workloads**

For what we hope will be the final time, we once again report that the excessive caseloads of LAS's trial offices was the issue of most concern to the Committee with respect to LAS during the FY 10-11 reporting period. LAS reports that in FY 10, in both its New York and Bronx offices, no fewer than 70% of the staff attorneys carried a caseload above the First Department standard. Moreover, and even more disturbingly, many of those attorneys carried caseloads that were *far* in excess of the First Department maximum of 400 misdemeanor-equivalent cases per attorney. Indeed, LAS reported that certain of its attorneys had caseloads at or close to *twice* the First Department's maximum.

Collective caseloads in FY 11 were similar, but trending slightly downward with 68% and 64% of attorneys carrying an excessive caseload in the Bronx and Manhattan, respectively. Similarly, while the individual attorney caseloads improved and while the caseload of the office as a whole decreased notably (and presumably as a result of LAS's increased staffing), many trial attorneys still carried caseloads far in excess of the First Department maximum.

It is very much the Committee's hope that LAS's new and long-overdue contract with the City will bring a marked improvement in the caseloads carried by LAS's attorneys. With that restructured contract, together with additional funding from OCA, LAS plans "to allocate our additional staff each year to reduce proportionally attorney caseloads in each borough annually and achieve the average attorney caseload standard by the April 1, 2014 deadline set by the case cap law." The Committee looks forward to learning in the next reporting period about the progress of LAS's efforts to reduce caseloads.

In addition, as noted above in our Summary of Conclusions, the Committee will be 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. While the Committee recognizes, as it has in the past, that any particular guilty plea at arraignment may be the result of a variety of factors, the extremely high percentage of guilty pleas taken at arraignment in the FY 10-11 reporting period continues to leave us concerned that caseload management may have been playing a role in the process. We will therefore be interested to learn whether the reduction in caseloads also leads to a reduction in the percentage of guilty pleas at arraignment, and we look forward to beginning the process of examining in a more rigorous fashion each trial office's arraignment practices.

Finally, we note that at least some progress has been reported in solving the logistical problems created by the physical layout of the Bronx Hall of Justice – which substantially increases the amount of time required to cover cases and speak with clients. Specifically, a new video conferencing program that permits lawyers to communicate from their offices with clients incarcerated at Riker’s Island reportedly now allows attorneys to avoid the extreme delays associated with seeing clients at the Bronx Hall of Justice and facilitates access to clients. We will be interested to learn at the end of the FY 12-13 period whether, and to what extent, LAS’s new video conferencing program has succeeded in counteracting these logistical difficulties.

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

LAS reports that during FY 10-11, it required its attorneys to comply with published criteria that conform to First Department and National Legal Aid and Defender Association standards. LAS further required written evaluations of new attorneys after four, six and eight months. All other staff attorneys received an annual written performance evaluation, and supervisory attorneys received written evaluations semi-annually. Those practices complied with First Department requirements.

**(vii) Support Services**

Investigators, paralegals, and social workers constitute the LAS in-house support staff. For FY 10, LAS reported that it employed 20 investigators, 20 social workers and 53 paralegals. In FY 11, the support staff increased to 24 investigators, 26 social workers and 55 paralegals. As of June 30, 2011, there were 9.5 LAS investigators assigned to Bronx County with one vacant position, resulting in an attorney to investigator of 10.2-to-1. Similarly, the New York County LAS office had 14.5 investigators, with an attorney-to-investigator ratio of 9.2-to-1. In addition, those resources were supplemented by over 200 investigative interns.

Despite that increase in investigative services, however, 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. Nor, in the Committee’s judgment, is it a sound use of resources to have attorneys (who are at once more highly compensated *and* less expert in investigation than trained investigators) attempt to cover the investigative gap.

As we have noted in the past, the importance of having adequate investigative and support services cannot be overstated. Indeed, given the consistency with which this Committee

has heard from appellate providers that a significant number of cases warranted extra-record investigation, it is plain that increased investigative support is badly needed at the trial level. We therefore commend LAS's reported focus on that issue. We would also welcome any data that LAS can provide that would assist the Committee in determining whether current attorney-to-investigator ratios should be re-evaluated.

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. As noted above, LAS has recently begun deploying social work staff directly at arraignments to provide early intervention and diversion services – an initiative that is, in part, aimed at maximizing LAS's social work resources to target clients most in need of those critical services. We applaud that initiative, and we urge LAS to continue to assess and report whether current attorney-to-social worker ratios should be re-evaluated.

With respect to experts, LAS attorneys reports that it utilized expert services in only 0.01% of misdemeanors and 0.9% of felony cases. While those figures likewise represent some improvement over the previous reporting period, the percentages still remain extremely low. It is therefore 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**

In the prior reporting period, the LAS Criminal Practice upgraded its citywide Linux-based computer case management system to a Linux operating system running a Cache database. Apart from the interface infrastructure, however, the system has remained basically unchanged from its inception in 1991. In its report for the FY10-11 period, LAS notes that it is replacing its legacy case tracking system with a new case management system designed by Law Manager. That case management solution was deployed for the Civil Practice in September 2010, but its implementation was delayed for the Criminal Practice and did not become fully operational until January 2012. We look forward to hearing more about the new system in LAS's next report. In addition, because we believe that data regarding grand jury, hearing and motion practice is important in assessing the quality of services provided, we applaud LAS's anticipated enhancement of its tracking system to include such data.

LAS handled client complaints through a chain-of-command approach (from the office complex supervisor level to the borough attorney-in-charge to the Criminal Practice attorney-in-charge to the LAS attorney-in-chief). LAS reports that complaints regarding an attorney's lack of communication with a client were looked into quickly, and, if valid, the attorney was made

aware of the unacceptability of the reported conduct. Manhattan LAS Criminal Practice further reports that when any client complaint had merit, appropriate remedial steps were taken to make sure the mistake was not repeated. In addition, the annual staff attorney evaluation included detailed performance criteria regarding, among other things, client communication.

In its current report, LAS has also restated its long-standing commitment to vertical continuity of representation. In most instances, the LAS attorney who represented an individual at arraignment continued representation through the conclusion of the case. Moreover, when clients were re-arrested, it was LAS policy that the same attorney would handle the client's new case.

We note, however, that LAS also utilized eight "permanent misdemeanor arraignment attorney[s]," who were responsible for handling cases that were likely to be resolved at arraignment. When such cases could not be resolved at arraignment, the case was reassigned and continuity began only from that point. The Committee is concerned 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, and we were therefore pleased to learn that LAS plans to revisit the need for permanent arraignment attorneys as it's staff increases under its caseload reduction plan.

As has been the practice in the past, LAS attorneys are responsible for deadline management, and LAS supervisors oversee the handling of case deadlines. LAS reports that its new case management system has functionality that will alert staff to speedy trial dismissal and release dates as well as all motion, discovery, and post-conviction deadlines. As noted above, however, deployment of that system has been delayed until January 2012.

In our report for FY 08-09, we noted our concern that LAS did not have any formal mechanism for evaluating client satisfaction, and we recommended that LAS consider instituting such a system. We are encouraged that LAS has recently reported that, "[i]n an effort to further enhance our client services, we are in the process of developing, with staff and managers, a survey instrument which will be given to a statistically valid sampling of clients to assess client satisfaction." We hope and expect that LAS's survey mechanisms will become fully operational during the FY 12-13 reporting period.

**(ix) Reporting Obligations**

The LAS trial divisions met all reporting obligations to the City and this Committee during the FY 10-11 reporting period.

## **2. THE BRONX DEFENDERS**

### **(a) Overview**

The Bronx Defenders (“BXD”) has contracted with the City since 1997 to handle 12,500 cases per year, and the Office of the Criminal Justice Coordinator began to insist on strict compliance with the terms of that contract during FY 06-07. As we noted in our past two reports, the Criminal Justice Coordinator’s insistence on strict compliance resulted in individual and collective caseloads at BXD that were significantly out of compliance with the First Department’s maximum, and that trend persisted during the first year of the FY 10-11 reporting period. The Committee is pleased to report, however, that BXD’s new contract with the City, which took effect in the last quarter of FY11, promises to significantly reduce the percentage of attorneys out of compliance with the First Department’s caseload standard.

Under its new contract, BXD is now obligated to provide representation in 28,000 cases per year, but has also received an increase in funding that permitted BXD to hire 12 experienced lawyers in June 2011. That increase in personnel reduced the percent of attorneys out of caseload compliance in FY 11 to 24% from 70% the year before. In addition, since the close of the current reporting period, BXD has hired another four attorneys and anticipates a training class of 18 attorneys next fall. It is therefore the Committee’s hope that the next reporting period will find BXD fully in compliance with the First Department’s caseload standards.

As in past reporting periods, BXD has shown itself able – despite its heavy caseload – to devise and implement innovative responses to recurring issues in its practice. In the current reporting period, BXD initiated the Marijuana Arrest Project in response to the extraordinary number of arrests for simple marijuana possession each year. The project seeks to monitor and, where appropriate, challenge police practices that lead to such arrests. A full-time staff attorney directs the project’s work, and volunteer attorneys provide much of the representation. In addition, continuing a program begun in the FY 08-09 reporting period, BXD’s Bail Reform Project spearheaded a multi-stakeholder initiative to promote the appropriate use of alternative forms of bail other than cash.

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

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

BXD’s governing structure satisfied the First Department’s standards for ensuring professional independence, and BXD reports that it experienced no threats to its professional independence during the FY 10-11 reporting period.

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

BXD has consistently attracted highly qualified attorneys, and that pattern continued during the FY 10-11 reporting period. Indeed, aided by its increased funding from the City and

OCA, BXD hired 11 experienced lawyers in FY 11. BXD did report, however, that a total of 9 attorneys did not meet the First Department's qualification standards.

As to 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.

BXD reported that 7 of its misdemeanor attorneys did not meet this standard.

As to 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.

BXD reported that 2 of its felony attorneys did not meet the First Department's performance standards.

BXD further reports, however, that those lawyers out of compliance have a co-counsel supervisor at every trial until they have completed the requisite number of trials to meet the First Department's standards. In addition, BXD reports that all trials are co-counseled; even those lawyers who have conducted the requisite number of trials are paired with a more senior co-counsel, who while not necessarily the lawyer's assigned supervisor, takes on a supervisory role. And there is a trial chief who oversees the trial work of all lawyers.

BXD reports that in an effort to recruit attorneys of color, it participated in urban career fairs such as the Black Law Students Association Career Fair and the Equal Justice Work Career Fair. BXD further reports that it followed up with all attorneys of color with whom it met at those fairs to encourage them to apply. As in the past reporting period, those efforts yielded a substantial percentage of attorneys who were persons of color – 31% in FY 10 and 35% in FY 11. A substantial percentage of BXD's attorneys were also fluent in languages other than English, with 25 staff attorneys and 2 supervisors fluent in Spanish. However, while BXD was able to add a supervisor of color to its ranks in the current reporting period, the overall percentage of supervising attorneys of color remained low – 11% (or one out of nine supervisors).

**(iii) Training**

BXD's procedures for training its staff were well within the First Department's guidelines. BXD provided each of its attorneys with all recent decisions by the New York criminal courts and all United States Supreme Court decisions pertaining to criminal law. All BXD attorneys also had online

access to Westlaw and the New York Law Journal.

Moreover, while BXD did not become an accredited provider of Continuing Legal Education until the end of the prior reporting period, it nonetheless conducted an impressive series of training sessions during the FY 10-11 reporting period. 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. The CLE programs attended by BXD attorneys during the reporting period included Man vs. the Machine: Challenging the Breathalyzer in DWI Cases, NYSDA Basic Trial Skills Training, National Criminal Defense College (“NCDC”) Trial Practice Institute, NCDC Advanced Cross Examination, and NCDC Storytelling, Theories, Themes. 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.

Each new criminal defense attorney was put on a training team for the first year of practice. After four 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.

**(iv) Supervision**

BXD's staff/supervisor ratio continues to be well below the First Department's maximum of 10-to-1. The ratio was approximately 5-to-1 in FY 10, and 6-to-1 in FY 11. 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, and 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 were out of compliance with First Department's standards.

**(v) Workloads**

Although 70% of BXD's attorneys carried caseloads that exceeded the First Department's maximum in FY 10, BXD was able to reduce that percentage substantially in FY 11 through the addition of staff made possible by its new contract with the City and case cap funding from OCA. In addition, BXD reports that it hopes to achieve caseload compliance within the next fiscal year, well ahead of the case cap deadline of April 1, 2014.

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

BXD reports that 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. 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. It is therefore the Committee's hope that BXD's increased funding will enable it to reduce its supervisory caseloads.

**(vii) Support Services**

The support services provided to BXD's attorneys were within the First Department's standards during the FY 10-11 reporting period. Each attorney was assigned a cubicle, with a dedicated computer, email account, telephone, and filing space. Several conference rooms were available for private conferences.

Team administrators were available to provide office supplies and clerical needs as required. In addition, due to the significant number of Spanish speakers on staff, there appeared to be no difficulty obtaining translation as needed. BXD also maintained an adequate legal library, as well as an in-house database of motions and access to Westlaw for each attorney. In addition, as noted above, pertinent decisions were circulated to all attorneys.

Consistent with BXD's longstanding emphasis on holistic representation, staff attorneys were assigned to teams of six, with each team having its own social worker and investigator. There were five interdisciplinary teams of criminal defense lawyers, family defense lawyers, other civil lawyers, social workers and parent advocates, and investigators. In addition, BXD reports that all attorneys were trained with respect to client eligibility for diversionary programs and other alternatives to incarceration.

As we noted in our prior reports, BXD's Civil Action Project and Reentry Net Clearinghouse greatly enhanced the quality of criminal defense representation that BXD provided to its clients. Those resources and tools, in the Committee's view, significantly helped BXD defense teams address the issues arising from the collateral consequences of their clients' criminal convictions.

It also bears noting that there was a strong use of investigators and social workers at BXD. The ratio of attorneys to investigators and social workers was 5-to-1 during the FY 10-11 reporting period. As a result of that excellent ratio, investigations were done in 40% of all misdemeanors cases and 70% of all felonies. In addition, social workers were utilized in 25% of misdemeanor cases and 35% of felonies.

**(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. We note, however, that the system does not currently track grand jury practice, hearing practice or motion practice. Because we believe such data to be important in assessing the quality of services provided, we urge BXD to enhance its tracking system to include that data.

BXD reports that it conducted client satisfaction surveys each summer during the FY 10-11 reporting period, and that it is continuing the practice in the FY 12-13 reporting period. BXD's client satisfaction surveys assess, among other things, the clients' knowledge of services and the quality of communication with BXD personnel. The surveys also compare case disposition data with overall data from the Office of Court Administration. BXD further reports that it is in the midst of studying the impact and effect of its holistic services on clients' lives. The study is examining case dispositions and life outcomes of BXD clients compared to similar clients represented by traditional public defender offices. In that regard, BXD reports that preliminary findings indicate that holistic representation results in better dispositions and improved life outcomes. The Committee looks forward to hearing more about BXD's study in its next report.

**(ix) Reporting Obligations**

BXD met its reporting obligations to the City and to this Committee during the FY 10-11 reporting period.

**3. NEW YORK COUNTY DEFENDER SERVICES**

**(a) Overview**

Like the Bronx Defenders, 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 most of the FY 10-11 reporting period, as in past periods, NYCDS's contract with the City required it to provide representation in 16,000 criminal cases annually. In addition, NYCDS contracted to staff an Integrated Domestic Violence (IDV) part for an additional \$125,000 per year.

NYCDS receives case assignments by staffing set arraignment sessions each week. During both FY 10 and FY 11, NYCDS fulfilled its contractual commitment of staffing its assigned arraignment shifts. But, as in the past, staffing the assigned arraignment shifts resulted in NYCDS taking on more case assignments than its contract required. NYCDS reports that it exceeded its contractual obligations by 293 cases in FY 10 and 314 cases in FY 11. While this is

a significant improvement over the prior reporting period – during which NYCDS exceeded its contract by 3,000 cases in FY 08 and by 1,700 cases in FY 09 – NYCDS still reports that fully 100% of its attorneys and supervisors were out of compliance with the First Department’s caseload standards.

Under its most recent contract with the City – which went into effect during the last quarter of FY 11 – NYCDS contracted for an additional 2,000 cases per year, and it is in the process of hiring additional lawyers to handle the increased caseload. It is our hope that the agreed-upon increase to NYCDS’s contract, accompanied by additional funding, will prevent a recurrence of excessive caseloads caused by work that is above and beyond the contract and therefore effectively unfunded.

NYCDS reports that despite its heavy caseload, its staff attorneys have achieved many victories for their clients and have maintained an active and successful grand jury practice. The Committee does not doubt that NYCDS’ pride in its work is fully justified, and we encourage NYCDS to include in its next report further information about its grand jury practice and other noteworthy initiatives and successes.

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

**(i) Professional Independence**

NYCDS’s governing structure satisfied the First Department’s standards for ensuring professional independence, and NYCDS reports that it experienced no threats to its professional independence during the FY 10-11 reporting period.

**(ii) Qualifications of Lawyers**

NYCDS has a history of hiring and retaining a very experienced staff. As in the previous reporting period, more than 50% of the staff attorneys (23 out of 40) employed at any time during FY 10-11 had been admitted to practice at least 20 years, and less than 25% (9 out of 40) of the staff attorneys had been admitted less than 10 years.

In addition, a significant percentage of the staff attorneys employed during the FY 10-11 reporting period were persons of color (8 out of 33 in FY 10, and 8 of 36 in FY 11) and/or fluent in Spanish (5 out of 33 FY 10, and 6 out of 36 in FY11). Unfortunately, as in prior reporting periods, there continued to be no persons of color among the five managing and supervising attorneys. NYCDS notes, however, 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.

**(iii) Training**

NYCDS's training procedures were in keeping with First Department requirements during the FY 10-11 reporting period. NYCDS obtained CLE videotapes from an accredited provider on ethics and criminal law related issues. All attorneys could earn up to 12 credits of CLE through these tapes with all expenses paid by NYCDS. In addition, during FY 10-11 NYCDS sent attorneys to a wide range of relevant CLE programs offered by the New York State Association of Criminal Defense Attorneys, 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.

During the FY 10-11 reporting period, NYCDS also added 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.

In addition, NYCDS provided its attorneys with resources to keep abreast of developments in the law. All attorneys had access to the New York Law Journal, e-mail distributions of new decisions from all relevant Courts and the NYSDA's Public Defense Backup Center Report in print and online.

As in the past reporting period, there was no turnover in NYCDS's supervisory ranks, and its supervisors did not attend supervisory training programs during FY 10-11. While the Committee appreciates that a seasoned supervisor does not need training in basic supervisory skills, we nonetheless believe there to be a value in ongoing training even for seasoned supervisors, and we urge NYCDS to consider such training in the future.

**(iv) Supervision**

Although the ratio of staff to supervisors at NYCDS remained in compliance with First Department standards during the FY 10-11 reporting period, the ratio nonetheless increased. In FY 10, NYCDS staff consisted of 33 attorneys and four supervisors (plus a supervisory attorney for administrative matters), yielding a ratio of approximately 8-to-1. In FY 11, the addition of 4 staff attorneys with the same number of supervisors raised the ratio to 9-to-1. Moreover, each of the non-administrative 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 that NYCDS's staff is relatively senior, the fact remains that an

overburdened supervisor is less likely to be able to provide effective supervision. NYCDS began to address supervisor caseloads by reducing the number of arraignments worked by supervisors from six during the last reporting period to five during the FY 10-11 period. However, particularly with a rising staff to supervisor ratio, the Committee remains concerned that NYCDS's supervisory attorneys do not have adequate time available for supervision. In response, NYCDS reports that it is attentive to the issue and anticipates that its supervisory ranks will increase.

(v) **Workloads**

As in past reporting periods, NYCDS once again took on – for no additional compensation – a caseload in excess of the 16,000 cases required under its contract with the City. Moreover, while the excess intake was significantly lower during the current reporting period than in past periods – 190 cases in FY 10 and 493 cases in FY 11 – fully 100% of NYCDS's attorneys carried caseloads that exceeded the First Department's maximum.

NYCDS reports that it monitored individual workloads and adjusted caseloads through reduction of arraignment/intake responsibilities. But given that *all* of NYCDS's attorneys were overburdened during the reporting period, that response merely made the best of a bad situation. It did not – because it could not – solve the underlying caseload problem.

In its most recent contract with the City – which went into effect on April 1, 2011 – NYCDS contracted for an additional 2,000 cases with a commensurate increase in funding. It is our hope that this new contract will end what had become for NYCDS a pattern of effectively unfunded work, and that the additional attorneys made possible by the increased funding will enable NYCDS to bring its attorneys' caseloads into compliance with First Department standards.

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

Our prior reports have, on more than one occasion, criticized NYCDS for the lack of a formal evaluation system, with NYCDS responding that its small size, collegial atmosphere, and experienced staff obviate the need for more formal evaluation of its attorneys. In FY 09, however, NYCDS began a formal system of annual evaluation for all attorneys. Using the NLADA standards and evaluation form, NYCDS supervisors completed the first set of written and oral evaluations of each staff attorney in December 2009. Unfortunately, NYCDS did not conduct any further reviews during the FY10-11 reporting period.

NYCDS continues to rely on the high level of experience of most of their staff attorneys, their small size, and their collegiality to justify limiting the evaluation process to every other year. We note, however, that those justifications do not apply to the newer, less experienced attorneys who have joined the office during the FY 10-11 reporting period. In addition, as we have noted in prior reports, we believe that even experienced attorneys benefit from having

standards of practice that provide a consistent yardstick by which to measure their performance. We were therefore pleased to learn that NYCDS completed full evaluations of all attorneys during the summer of 2012, and it is our hope that NYCDS will at minimum evaluate its less experienced staff on an annual basis.

**(vii) Support Services**

The support services offered by NYCDS during the FY 10-11 reporting period were within First Department standards, although the percentage of cases that received investigative or social work support was troublingly low.

During FY 10-11, each attorney at NYCDS had computer or iPad access to, among other things, the Internet, Westlaw, and NYCDS's case management system. NYCDS also had on staff two MSW-credentialed social workers and two social work students who did their clinical internships at NYCDS, with additional social work support available as needed on a contractual basis. Nonetheless, those services were used in only 286 (or 1.8%) of NYCDS's cases in FY 10 and only 284 (or 1.7%) of its cases in FY 11. It is our understanding that NYCDS hired an additional social worker during the FY 11-12, and we look forward to hearing from NYCDS about the impact of that increase in staff.

With respect to investigative support, NYCDS employed two investigators (both of whom are Latino and fluent in Spanish) and a trial assistant during the FY 10-11 reporting period. In addition, through the NYCDS internship program six law student interns were available in each of the fall, spring, and summer semesters to assist with fact investigation and legal research. Yet, while NYCDS's staff attorneys reported great satisfaction with the work performed by NYCDS's investigators, the investigators were used in an extremely small number of NYCDS's cases – 144 cases (or less than 1%) of NYCDS's 16,190 cases during FY 10 and 218 (or 1.3%) of NYCDS's 16,493 cases during FY 11. NYCDS has advised us that the low percentages reflect underreporting of the work performed by its investigators, and that it has created a new reporting system to address the issue. We look forward to learning about what the new reporting system shows in the FY 12-13 reporting period.

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

During the FY 10-11 reporting period, NYCDS implemented a new case management system developed by the New York State Defenders Association. NYCDS reports that the system is far more efficient and accurate than their previous case tracking system.

The new case management system, while capable of greater analysis, still relies on the same protocol for data entry that NYCDS had used under the previous system. During the FY 10-11 reporting period, NYCDS tracked cases as they progressed and generated daily calendars for each attorney. The calendars were sent to the individual attorney and to the attorney's supervisor. The case management system was also accessible from the lawyers' and supervisors'

desktop computers. The system relied on individual attorneys' reporting adjournment dates and dispositions which were then input by the data entry clerks. It did not generate "ticklers" for filing deadlines or speedy trial time.

NYCDS reports that its attorneys are experienced professionals who regularly file motions and have never been precluded from filing motions because of a missed deadline. Nonetheless, as NYCDS itself recognizes, an enhanced case tracking system could provide more data and allow NYCDS to better manage cases and analyze quality.

During the FY 10-11 reporting period, NYCDS supervisors conducted periodic reviews and case conferences with the experienced staff attorneys. New attorneys were supervised with more formal and frequent reviews. All of their case files were reviewed after arraignment and each case was discussed and analyzed both before and after any trial or disposition. The procedures that have been described to the Committee by NYCDS meet the First Department standards for case management and quality control, largely because NYCDS has remained small enough for informal oversight. If the office becomes larger, it would be important for NYCDS to establish more formal and more frequent case file reviews.

**(ix) Reporting Obligations**

NYCDS met its reporting obligations to the City and to this Committee during the FY 10-11 reporting period.

**4. NEIGHBORHOOD DEFENDER SERVICE OF HARLEM**

**(a) Overview**

In the last months of FY 2011, and for the first time since its founding 20 years ago, the Neighborhood Defender Service of Harlem (NDS) as a community-based indigent defender was permitted to bid for, and received, a multiyear contract with the City. Previously, as our prior reports have noted, the uncertainty of NDS's funding stream had resulted in an inability to develop the long and short term development plans that are so vital for an institutional indigent service provider.

NDS's new contract, which nearly tripled its caseload while increasing funding by only 60%, has necessitated changes in the way NDS conducts business. And, not surprisingly, those changes were a work in progress as the FY 2010-11 reporting period drew to a close. However, NDS reports that its vision of being a holistic, community-based provider has not changed, and that it is in the process of making adjustments that will allow it to both maintain that model and fulfill its new contractual obligations with the City.

**(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 2010-11. NDS maintained a diverse Board that reflected the community it served. In addition, the new contract awarded to NDS during the last months of FY 2011 represented a critical step in providing financial stability and insuring ongoing professional independence.

**(ii) Qualifications of Lawyers**

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. Moreover, because NDS had continued success in retaining staff – with only two attorneys departing during the reporting period – the overall experience level of NDS trial attorneys remained high during the reporting period. As of the end of the FY 10-11 reporting period, only one trial attorney had less than two years' experience, nine attorneys had at least four years' experience (with a few of them significantly higher), and two attorneys had more than 20 years' experience. NDS's three criminal defense supervisors also had appropriate levels of criminal trial experience, with the most junior of the three having seven years' experience.

As in the past reporting period, NDS's overall staff is reasonably diverse, but its diversity would be considerably improved by the addition of Hispanic/Latino attorneys and staff – particularly given that Spanish speakers make up a significant percentage of the Harlem community. Over the years, NDS has maintained a sub-team of attorneys and support personnel (called defensaNDS) who are fluent in Spanish and who have received targeted training in immigration issues. Despite budgetary constraints, the team remained in place during FY 10-11, and NDS reports that it actively seeks Spanish and other foreign language speakers when interviewing for attorneys, support staff, interns and volunteers. The Committee is therefore confident that NDS recognizes the importance of having its staff reflect the diversity of the community it serves.

**(iii) Training**

During the FY 10-11 reporting period, NDS provided an appropriate level of training and orientation to newly hired attorneys and support staff, as well as continuing legal education to all of its attorneys. As in past reporting periods, training was provided either through formal group training, shadowing senior attorneys or a combination of both. NDS also became an accredited CLE provider during the FY 10-11 reporting period, 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.

NDS also maintained subscriptions to a number of legal publications, including the New York State Defender Association Back-up Center Report and the New York Law Journal. In addition, a NDS supervisor kept abreast of significant new criminal law decisions and e-mailed the staff regarding the same.

Moot courts were also used frequently as a training tool. During the 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.

At the end of the FY 10-11 reporting period, a new supervisor was added to NDS's ranks to replace a departed supervisor, and NDS reports that the new supervisor will be expected to attend management training seminars and conferences in the months ahead.

**(iv) Supervision**

During the FY 10-11 reporting period, as in past years, NDS structured the office around two criminal defense teams of 5 to 6 attorneys, each headed by a supervising attorney. As a result, staff/supervisor ratios were well within First Department standards, and no supervisor carried a caseload so high as to hinder his/her ability to render adequate supervision.

The system of supervision at NDS, while not as formal a process as the First Department's standards encourage, was sufficient (given the office structure and size) to ensure effective supervision of NDS's staff attorneys. As NDS grows, however, it will be important for NDS to consider instituting more formal methods of supervision so as to remain in substantial compliance with the First Department's standards.

**(v) Workloads**

During the last reporting period, NDS joined the ranks of the City's overburdened defense providers, with its caseload levels exceeding the permissible maximum for the first time since this Committee began receiving caseload data from NDS. Unfortunately, that trend continued and in fact worsened in the FY 10-11 reporting period, with fully 100% of NDS's attorneys handling a caseload in excess of the First Department's maximum.

It is very much our hope that NDS's new contract with the City – which brings a significant increase in funding and financial stability, but an even greater increase in workload – will not exacerbate the unfortunate trend of the past two reporting periods. Instead, we hope that the financial stability that has so long eluded NDS will enable it to augment its staff sufficiently to handle its increased caseload while remaining in compliance with the First Department's caseload maximum.

Toward that end, NDS reports that it in addition to planning for other staffing increases, it has already added an immigration attorney – thus enabling it better to assess the wisdom of pleas at arraignment – and will be creating two “NDS Fellowship” positions funded through the New York State caseload cap fund. We look forward to hearing in NDS’s next report about the effectiveness of those measures in helping NDS to meet the challenges of its new contract.

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

While the evaluation procedures at NDS during FY 10-11 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, the existing process appears to have served well to ensure quality representation. Going forward, however, with the increased number of staff and cases, casework oversight will be a topic to review.

**(vii) Support Services**

In our report for the FY 08-09 reporting period, we noted that there was a clear need for at least one additional investigator and social worker on staff. For most of FY 10-11, the investigative and social work support staff was still limited to a single investigator and social worker for each team of attorneys. At the end of FY 11, however, NDS was in fact able to hire an additional social worker and an additional investigator. The Committee is pleased to see that much-needed increase in staff.

In addition, we note that NDS did not provide data showing the percentage of cases in which investigative and social work support was utilized. Because of the indisputable importance of adequate investigative and social work support, it is important to know the extent to which such support was available and/or utilized, and the Committee therefore urges NDS to collect and provide that data in the next reporting period.

The remaining categories of support identified by the First Department standards – physical working conditions, availability of interpretive services, and access to legal research resources – all appear to have been adequate at NDS during the FY 10-11 reporting period. 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, in FY11, NDS also brought in a housing attorney as an Equal Justice Works Fellow 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 last reporting period, an upgrade of NDS's outdated DOS-based case management system was under way. At the time of our Committee's site visit for this reporting period, NDS was still in the process of transitioning to the Public Defense Case Management System. Particularly in light of NDS's increased caseload under its new contract with the City, it is very much our hope that the transition to NDS's new case management system will be completed in the near future.

We also note that, despite the indisputable importance of continuity of representation, NDS's case management structure continues to include a permanent arraignment attorney. While the Committee appreciates that NDS's new contract already imposes significant challenges for NDS, we nonetheless urge NDS to consider restructuring its staff so that progress is made toward achieving the goal of continuity of representation.

**(ix) Reporting Obligations**

NDS timely met all of its reporting obligations to the City and to this Committee during the FY 10-11 reporting period.

**B. The Appellate Offices**

**1. OFFICE OF THE APPELLATE DEFENDER**

**(a) Overview**

The Office of the Appellate Defender ("OAD") is a nonprofit corporation, established in 1988, to represent indigent defendants with criminal appeals in state court, as well as collateral proceedings in both federal and state courts. OAD's mission and model are unique among the appellate defender offices in the First Department. While each of the appellate defender organizations strives to provide – and, in the view of this Committee, succeeds in providing – quality appellate representation to the First Department's indigent defendants, OAD also strives to increase the ranks of qualified appellate practitioners by hiring relatively inexperienced attorneys and providing those attorneys with a two-year program of intensive training and supervision. As a result, OAD has historically devoted a significant amount of its resources to training.

For the first 21 years of its operation, OAD was funded through City Council appropriation – an arrangement that led to chronic uncertainty about whether, and to what extent, OAD would be funded from year to year. In 2009, having been encouraged to seek funding through the City's RFP 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 core mission. We further noted that we had no doubt that OAD's unique training model had proven to be of significant value to the First Department's indigent population, and we expressed the hope that the City would revisit – whether at the City Council level or through the Office of the Criminal Justice Coordinator – the level of funding awarded to OAD.

Unfortunately, the mission of OAD remained at risk throughout the FY10-11 reporting period. For each of FY 2010 and FY 2011, OAD's level of funding from the City remained at approximately \$1.6 million – a one-third reduction from the \$2.4 million that OAD received in its last year of funding through City Council appropriation. While OAD was able to obtain a relatively small additional amount in each year for work relating to the Sex Offender Registration Act and resentencing proceedings, OAD was nonetheless forced to forego hiring in 2010 and to reduce its workforce through attrition. Moreover, while OAD was able to resume hiring in the fall of 2011, its professional staff remained at a reduced level and its level of funding was insufficient to provide the intensive training and supervision that has historically distinguished OAD.

Our view of the value provided by OAD's historical model remains unchanged, and it is clear we are not alone in that view. As the FY 10-11 reporting period drew to a close, the New York State Bar Association's Committee to Ensure the Quality of Mandated Representation selected OAD as the recipient of its biannual Award for Outstanding Achievements in Promoting Standards of Excellence.

But OAD's outstanding achievements will not be possible in the future without adequate funding. We were therefore pleased to learn that the office of the Criminal Justice Coordinator recently agreed to a retroactive adjustment of OAD's FY 12 contract and renewed OAD's contract for FY 13-14 at increased funding levels. And it is very much our hope that our next report will bring news of a continuation of those steps toward restoring adequate funding for OAD's important mission.

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

OAD was in substantial compliance with all First Department performance standards throughout the FY 2010-11 reporting period.

**(i) Professional Independence**

Our prior reports have noted that professional independence requires a reasonable level of financial security. While OAD is, to be sure, no longer subject to the unpredictability created by year-to-year funding through City Council appropriation, its position has become anything but more secure. Instead, as noted above, the dramatically decreased level of funding awarded to

OAD through the RFP process poses no less serious a threat to OAD's professional independence. For the reasons discussed above, the Committee hopes that the City will continue the steps recently taken toward restoring a level of funding that will enable OAD to continue the level of attorney training that has served the City's indigent population so well for nearly 25 years.

**(ii) Qualifications of Lawyers**

The qualifications and quality of counsel at OAD continued to remain high during the FY 2010-11 reporting period. As noted above, OAD's mission is to hire attorneys with limited or no appellate experience, and then provide them with rigorous supervision and extensive training, with the goal of having them develop into highly qualified appellate lawyers.

Although inexperienced for the most part, the lawyers hired by OAD are motivated, and have demonstrated excellent skills in legal research and writing and a strong commitment to indigent defense work. OAD, however, recently rehired one of its former attorneys in January 2011 because it recognized the importance of having a number of senior attorneys who could handle OAD's more complicated cases.

As of June 30, 2011, there were 10 staff attorneys and 5 supervising attorneys. This highly favorable ratio between the number of staff attorneys and supervising attorneys allowed for the close supervision of staff attorneys. All OAD cases were double-teamed by a staff attorney and an experienced supervising attorney who was familiar with the case, including the complete appellate record. All new attorneys participated in a comprehensive training program, and all attorneys were required to participate in several moot arguments before every court appearance. In addition, beginning this September, new hires spent a month in the First Department observing the Court's operations, including watching oral arguments and meeting the Justices.

The First Department's guidelines provide that appellate lawyers briefing and arguing their own appellate cases should have experience in at least 10 criminal cases, including writing at least five appellate briefs and arguing at least five criminal appeals. While OAD was not in strict compliance with this guideline during the FY 2010-11 reporting period, it was in full compliance with the training, supervision and mooted requirements mandated by the First Department for assigning appellate cases to lawyers without the requisite experience. In fact, as noted above, it is OAD policy that all cases are double teamed and every case, whether by a new attorney or an experience attorney, be mooted before oral argument.

Newly hired attorneys are offered two year positions at OAD with the possibility of a third year. The relatively short tenure of employment guarantees a continuous turnover of lawyers from OAD into the pool of lawyers capable of handling criminal appeals and trial-level representation of indigent defendants. As noted in our prior reports, the limitation on the length of an attorney's employment at OAD, coupled with the relative inexperience of the staff

attorneys, tends to put OAD at a disadvantage when competing with other indigent defense organizations for a New York City contract. Nevertheless, and despite the funding cuts described above, the quality and overall morale of OAD's attorneys appears to have remained high during the reporting period.

OAD also reports that it is committed to promoting diversity in hiring by seeking out applicants associated with minority bar associations and law student organizations. And OAD success in that regard was apparent when Committee members visited OAD's office.

**(iii) Training**

As in previous years, OAD devoted a substantial portion of its resources to training. During FY 2010-11, OAD's training program consisted of nearly 40 formal sessions on an impressive array of topics, including all significant procedural and substantive areas of criminal law and appellate practice, as well as federal habeas corpus, representation of children, immigration issues, and social work assistance to clients and their families. Subjects covered also included oral advocacy skills, issue spotting, and brief writing.

Each session lasted two hours and was generally accompanied by extensive written materials. The written materials from these training sessions constituted OAD's Training Manual, which is updated annually. OAD also maintained a Legal Manual, which contains directions, sample forms, advice, and information on most appellate proceedings. Many of the offered courses were CLE credited, and OAD was an accredited provider of Continuing Legal Education (CLE) throughout the reporting period. Over the course of approximately six weeks, new attorneys were required to participate in the comprehensive training program described above.

An important component of OAD's training model was the requirement that for every case handled by a staff attorney, he or she was coupled with a more experienced supervising attorney who was familiar with the case. Throughout the life of the case, the supervising attorney would frequently conference the case with the staff attorney, discuss strategy, and review every written submission by the staff attorney.

Oral advocacy skills were honed by regular moot courts, in addition to the formal training sessions described above. All oral arguments were mooted before both the supervising attorney who was double teaming the case and other staff attorneys. New attorneys, or those with limited appellate experience, were required to participate in two to three moot arguments before they were permitted to argue before an appellate court. In addition, OAD continued a program, initiated in 2007, through which volunteer OAD Board members helped OAD attorneys moot their cases in preparation for arguing before the New York Court of Appeals or the Second Circuit.

As in past reporting periods, OAD also trained law students and attorneys outside its Organization. OAD once again conducted its Volunteer Appellate Defender Program, and two

of its supervisors taught a Criminal Appeals clinic at New York University School of Law. OAD also conducted a social work internship program for social work graduate students.

**(iv) Supervision**

An excellent 2-to-1 ratio between the number of staff and supervising attorneys allowed OAD to closely supervise its staff attorneys. A supervising attorney was paired with a staff attorney for each case that was assigned to that staff attorney. Caseloads for supervising attorneys (which consisted primarily of cases in which the supervisor had double-teamed with a staff attorney who had since left OAD) were kept intentionally light so that the supervisor's own work did not interfere with his or her ability to work closely with current staff attorneys. The double-teaming of staff and supervising attorneys for each case began when a case was first assigned to a staff attorney and continued throughout the life of the case. The double-teamed supervising attorney assisted the staff attorney with every aspect of the case from start to finish.

All appellate arguments were mooted by the staff attorney with his or her supervising attorney on the case. Other staff attorneys were also present at those moot courts, and the supervising attorney and staff attorneys critiqued the argument. The required number of moot court arguments depended on the complexity of the case and the experience level of the staff attorney, but there were always at least two moot arguments in preparation for each appellate argument.

**(v) Workloads**

As in prior reporting periods, OAD maintained a system for weighing and assigning cases in order to equitably apportion the workload among its attorneys and to ensure that the more complex cases were assigned to the more experienced attorneys. The average number of cases assigned to an attorney increased as that attorney gained more experience and training during his or her employment at OAD.

Although the number of case assignments varied from attorney to attorney at any given time, each attorney at OAD had a manageable workload, and none was required to handle more than 25 appeals in either year of the FY 2010-11 reporting period. Overall, OAD received 140 new First Department appeals in FY 2010 (including 21 homicide cases) and 181 new appeals in FY 2011 (including 17 homicide cases). In addition, OAD was assigned 23 Court of Appeals cases during the reporting period and performed significant work in other proceedings such as those brought under CPL Articles 440 or 78, Drug Law Reform Act resentencings, post-release supervision resentencings, federal habeas corpus petitions, parole or prison administrative proceedings and CPLR Article 78 proceedings.

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

Each staff attorney had a formal annual written evaluation during the reporting period, which was prepared jointly by all of the supervising attorneys familiar with that attorney's work performance and productivity. The written evaluation covered various performance areas, including research skills, writing, oral argument and client relations. Each staff attorney was provided with a copy of the written evaluation, and was given the opportunity to discuss it with his or her supervisors if they so chose. In addition to annual formal written evaluations, each staff attorney met quarterly with their supervising attorneys in order to review and discuss the quality of his or her work performance and productivity.

Supervising attorneys were provided annual performance reviews and staff attorneys were encouraged to anonymously submit their input regarding their supervising attorneys.

**(vii) Support Services**

During FY 2010-11, each OAD attorney had access to the various technologies and office equipment necessary to do his or her job. In addition, OAD maintained an extensive forms file, a brief bank, and a library with publications necessary for criminal appellate practice in New York. There was likewise adequate support staff at OAD during the FY 2010-11 reporting period. In all, OAD employed 4.5 FTE support staff, which included an administrative attorney, two administrative assistants, and a paralegal.

OAD's social work staff remained at the reduced level of a single full-time social worker, although OAD also utilized the services of social work interns during the reporting period. Through its Reentry Program (which commenced in 2001), OAD's social work staff provided assistance to incarcerated clients (in matters such as crisis intervention and preparation for parole board appearances) and post-release assistance to clients and their families (in connection with housing, medical and mental health needs, employment and job training, drug and alcohol rehabilitation, and obtaining government benefits). OAD social work staff also conducted a series of pre-release workshops in state prisons.

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

As in prior reporting periods, OAD used a custom-designed, computerized case-tracking database system that contained comprehensive information about every case in the office. The database tracked information about client contacts, case events, due dates and other information. All cases assigned to OAD were entered into the case tracking system. At quarterly meetings between supervising attorneys and staff attorneys, the information retrieved from the case-tracking system was used to determine an attorney's productivity and to assist that attorney in properly prioritizing his or her cases based upon their age and whether a client was incarcerated. Although OAD's case tracking system allowed for adequate case management and quality control, the system is nearly twenty years old and is unquestionably outdated. OAD had hoped

to have a new system fully operational by the end of FY 10, but that project was placed on hold due to budgetary constraints.

As part of OAD's case management and quality control, attorneys were required to keep their clients well informed about the progress of their appeals. To that end, attorneys were strongly encouraged to meet personally with their clients, including prison visits, which often required long-distance travel. OAD attorneys were also required to write to their clients in order to keep them informed about their pending appeals, and to contact the trial attorneys in order to gain a more informed understanding of the case and possible appellate issues. OAD reports that it was also receptive to accepting collect calls from their clients, and encouraged its clients to maintain contact in that way.

**(ix) Reporting Obligations**

OAD met all reporting obligations to New York City and to this Committee during the FY 2010-11 reporting period.

**2. LAS: CRIMINAL APPEALS BUREAU**

**a) Overview**

The Legal Aid Society'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 10-11 reporting period, CAB's collateral litigation efforts, which are often undertaken in conjunction with volunteer attorneys from private firms, yielded three victories in the Second Circuit and one in the New York Court of Appeals.

CAB also represented nearly one thousand clients in post-release resentencing proceedings throughout the five boroughs, continued its role as the State's leading defender in Sex Offender Registration Act cases (litigating at the trial level, in the intermediate appellate courts, and in the New York Court of Appeals) and initiated a Parole Release Advocacy Program, through which a team of CAB attorneys and student interns marshaled mitigating evidence and advocated before the parole board as incarcerated clients became eligible for release. CAB also continued to provide re-entry services to clients through its Social Work Re-Entry Program and to provide training to other criminal defense practitioners in programs on a wide variety of topics (including a two-day seminar organized by CAB on the use of scientific evidence in criminal cases).

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

CAB was in substantial compliance with all First Department performance standards throughout the FY 10-11 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 Governing 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 appellate attorneys and had an extremely low turnover rate. As of FY 10, all of CAB's staff appellate attorneys (with the exception of its heavily supervised externs) had been with CAB for at least eleven years, and the majority had been with CAB for more than 20 years. In addition, all of CAB's seven supervisory attorneys had worked at CAB for at least 16 years and had served as a supervisory attorney for at least 11 years.

**(iii) Training**

Although CAB has in the past utilized an elaborate and comprehensive mix of internal and external training programs to equip its appellate lawyers, it once again had no new class of appellate lawyers during the FY10-11 reporting period (with the exception of three externs) and thus did not engage in any new lawyer training. CAB instead offered periodic training programs for its existing appellate staff and trained its externs through a close mentoring relationship with CAB supervising attorneys.

**(iv) Supervision**

CAB had an excellent staff-supervisor ratio, particularly given the high experience level of its staff. For each of FY 10 and FY 11, the staff-supervisor ratio was 5.5-to-1. In addition, and as in past reporting periods, supervision at CAB appears to have been very thorough, consisting of 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 addressed both in the appellate brief and at oral argument, and, where appropriate, moot court sessions prior to oral argument. In addition, CAB attorneys were divided into appellate

“teams” that met weekly to discuss specific cases and general developments in their areas of practice.

(v) **Workloads**

As in prior reporting periods, caseloads for the vast majority of CAB’s attorneys during FY 10-11 were well within the First Department’s limit of 25 briefs per year. In addition, and again as in prior reporting periods, the attorneys whose caseloads exceeded that limit (four in FY 10 and three in FY 11) worked on specialized projects and thus cannot be regarded as having carried a standard appellate caseload. More specifically, one attorney supervised the Student Intern Project (under which law interns drafted *Anders* and excessive sentence appellate briefs) and the remaining attorneys participated in the Guilty Plea Project (under which a team of highly specialized attorneys drafted briefs raising excessive sentencing and other straightforward issues that may arise when a client pleads guilty).

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

During FY 10-11, CAB continued a commendable practice begun in the FY 06-07 reporting period 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 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.

CAB likewise continued its practice of having supervisors maintain a file of any complaints received from clients or judges and taking those complaints into consideration in the evaluation process.

(vii) **Support Services**

During the FY 10-11 reporting period, CAB maintained a support staff of seven paralegals (an increase of two from prior reporting periods), three word processors (a decrease of one from prior reporting periods), and a sentencing mitigation specialist who worked extensively on Drug Reform Act resentencing cases. CAB likewise continued to maintain a staff that was fluent in a wide variety of languages (including Spanish, Yiddish, Hebrew, Portuguese, Urdu, Punjabi, French, Italian and Japanese) and made use of outside interpreters as needed.

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

During FY 10-11, CAB continued to utilize a case tracking system known as “LAS CTS,” which essentially allowed it to generate pre-programmed letters, motions and additional documents, as well as track cases for which the record had yet to be received. In addition, the actual files for cases awaiting receipt of the record were maintained in the Managing Attorney’s office. After a complete record was received, it became the responsibility of the individual attorney assigned to the case to maintain the file. All closed files (with the exception of recently closed matters) were maintained off-site along with all of their pertinent orders, decisions, and briefs.

**(ix) Reporting Obligations**

CAB satisfied all reporting obligations to the City of New York and this Committee for FY 10-11.

**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 10 and 380 in FY 11. In addition, like the other two appellate providers in the First Department, CAL devoted a substantial amount of time and energy during the reporting period to representing prisoners in Drug Law Reform Act and post-release supervision resentencing litigation.

During the reporting period, CAL also continued and expanded its representation of clients in Sex Offender Registration Act hearings, and in its Justice First Project which both provides a substantial array of post-release services to CAL’s clients and conducts an early screening and investigation program for cases bearing the indicia of wrongful conviction. Through the efforts of the Justice First team, CAL has succeeded in obtaining reversal of some 50% of the cases accepted into the program during the reporting period.

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

CAL was in substantial compliance with all First Department performance standards throughout the FY 10-11 reporting period.

**(i) Professional Independence**

The majority of CAL corporate officers during the reporting period were appellate practitioners. CAL reports that, during this period, it was free to exercise its own professional judgment. It has never experienced any problems or interference with its professional independence.

**(ii) Qualification of Lawyers**

Most of the 13 CAL staff attorneys (11 full-time, 2 part-time) employed during the reporting period had substantial experience in criminal appellate representation. The only exceptions were two attorneys hired in 2010. However, one of the two new hires had prior clerking and law firm experience, and the other had worked at CAL as a fellow. The average tenure of CAL attorneys was nine years and the average level of criminal defense experience was fifteen years. Six of the attorneys on staff have been with the office since its inception in 1997. The office continues to experience relatively little staff turnover.

**(iii) Training**

CAL is an accredited New York State CLE provider, and it conducted 17 CLE sessions during the FY 2010-11 reporting period, frequently in conjunction with the other Second Department appellate defender offices. Training topics included: DLRA-3: Drafting the Motion for Resentence, Updates in Parole Advocacy & Prisoner Re-entry, Briefing Sufficiency/ Reasonable Doubt, and *Post-Padilla: A Primer on Collateral Proceedings in NYS Courts*. CAL also continued to encourage its lawyers, both staff and supervisors, to attend relevant CLE offerings of bar associations and criminal defense organizations. Tuition and/or registration fees for such programs were paid by CAL.

In addition to addressing its own staff training needs, CAL staff members participated in CLE programs for 18-B counsel and other defense providers. CAL 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.

CAL's training program for new attorneys was coordinated and conducted jointly with Appellate Advocates (also an accredited CLE Provider). Training sessions covered a wide range of topics relevant to appellate practice. CAL also maintained an extensive internal "Practice

Manual” setting forth office procedures and recommended practices with respect to issues ranging from initial client contact and issue spotting to oral argument and case closing. During an attorney’s first year of hire, all oral arguments were moot courted. After that, moots were done either at the attorney’s discretion or when the oral argument was to be in the New York Court of Appeals or the Second Circuit. 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.

**(iv) Supervision**

In addition to the Attorney-in-Charge, CAL had four (five for the first six months of FY 10) supervising attorneys during the FY 10-11 reporting period. CAL had an excellent ratio, 3-to-1, of staff attorneys to supervising attorneys, and an efficient system for meaningful supervisory review. All supervising attorneys had ample experience, time and capability to discharge their responsibilities, both supervisory and administrative.

All substantive staff attorney briefs were edited and reviewed by a supervising attorney, with the detail of review depending on the experience level of the staff attorney. For new attorneys, a supervisor read all records. Supervisors also oversaw caseload management and reviewed case development. All law graduates and law students (usually three or four at a time) working in various capacities in the office were closely and directly supervised by senior attorneys.

**(v) Workloads**

CAL was assigned 385 new Appellate Division cases in FY 10 and 380 in FY 11. Staff attorneys briefed on average approximately 14 substantive cases per year, a workload well within the First Department’s standards. Typically, each staff attorney was likely to be working on one trial brief, while having two briefing-ready cases behind it being prepped for briefing. Cases were assigned to an individual CAL attorney for briefing only after the complete appellate record had been received. Prior to assignment, a supervising attorney reviewed the completeness of the record as well as its length and complexity, including the complexity of the issues likely to be raised. Assignments were made with a view to matching the complexity of the case to the experience level of the attorney, and to varying the lengths and types of cases assigned. CAL supervisors carried a half caseload. Since CAL’s staff to supervisor ratio was low, supervisors had sufficient time and resources both to perform their supervisory duties and to remain working lawyers – this latter being an important part of CAL’s overall philosophy.

During the FY 10-11 reporting period, CAL also devoted a substantial amount of time and energy to the representation of 130 prisoners in Drug Law Reform Act and post-release supervision resentencing litigation. In addition, CAL continued and expanded its Justice First Project – a program that screens and investigates cases bearing the indicia of wrongful

conviction – and that also provides post-release support to CAL’s clients. By way of practical assistance, CAL provided a pamphlet of re-entry information to clients prior to their release and a resource handbook for clients and their families to assist with the re-entry process itself. CAL also continued its program of family outreach for clients nearing the completion of their sentence.

At the other end of the spectrum, CAL continued to review each case at intake to determine whether it should be referred to the Justice First coordinator for further review and investigation for evidence of wrongful conviction. Moreover, CAL notes that its Justice First screening program has continued to yield a high percentage of reversals of cases accepted into the program. It is noteworthy that the Michigan State Appellate Defender Office has now instituted a similar outreach program based upon CAL’s model.

CAL reports that its Special Projects – Justice First, Parole Advocacy/Prisoner Reentry, *Padilla* (protecting the rights of non-citizen clients), and The Federal Litigation Unit (enabling attorneys to effectively litigate complex habeas issues) – have not only yielded significant positive results on behalf of clients but have also helped invigorate office practice. These projects have provided diverse and creative ways for CAL attorneys to channel their energy and talents.

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

As in past reporting period, a staff attorney’s caseload management and productivity was reviewed monthly by the attorney’s immediate supervisor. 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 four times per year, overseen by the Attorney-in-Charge with input from the management staff. Quality of written work was noted when each brief was reviewed before filing, and then evaluated in writing and orally in July. The Attorney-in-Charge would discuss any disciplinary/remedial action at that time. The performance of supervising attorneys was reviewed on a yearly basis by the Attorney-in-Charge.

(vii) **Support Services**

The space occupied by CAL during the FY 10-11 reporting period was well-maintained and sufficient for housing CAL’s staff. The physical library was adequate and augmented by individual online access to extensive web-based resources. CAL also maintained a computerized brief and motion bank that was accessible through the office network.

The mailroom was fully equipped for the production of briefs and was staffed by three clerks (two full-time, one part-time). CAL also employed a paralegal who assembled the record on appeal and tracked the appeals prior to assignment, and an administrative assistant who answered the door and phone, did typing and performed data entry for CAL's MIS system. Spanish translation was available in-house; contract translators were available for other languages.

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

CAL's database management program provided detailed information on each case's history, progress, and outcome. Procedures were also in place to allow for timely and efficient transfer of cases due to a conflict of interest or substitution of retained counsel.

Requests for an enlarged briefing schedule were made only by the Attorney-in-Charge, thus providing a built-in "notice" mechanism for this eventuality. On average, CAL perfected its cases well within the required 120-day period. CAL office policy also required that if complaints arose from any source (judicial, client), they were to be brought to the attention of the Attorney-in-Charge for review and resolution.

When an appeal was exhausted and no additional relief was sought, the case file was returned to CAL's central file area; after four years, it was to be archived and moved off-site. Formal case-closing procedures included a file review by the paralegal and periodic audits by a supervising attorney. CAL has begun the process of converting its closed files to digital format.

**(ix) Reporting Obligations**

Under its contract with the City, CAL submitted quarterly programmatic and statistical reports and timely met all IDOOC reporting requirements.

## **ADDENDUM**

**to the**

### **Report of the Indigent Defense Organization Oversight Committee to the Appellate Division First Department for Fiscal Years 2010-2011**

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 10-11 in order to better assess the impact of the workloads carried by those offices. Unfortunately, differing data collection practices among the offices has continued to significantly affect 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 focus in the most recent contract process on the importance of maintaining uniform, accurate and complete statistics, and it is our hope that data collection and reporting methodologies will be more consistent in future reporting periods.

In the meantime, for the FY 10-11 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 2010		FY 2011	
<b>Total Staff<sup>1</sup></b>	<b>415</b>		<b>463</b>	
Staff Attorneys	262		290	
Supervising Attorneys	32		34	
Investigator/Paralegal/Social Worker	93		105	
Support Staff	28		34	
<b>Full-Time Equivalent Staff<sup>2</sup></b>				
Staff Attorneys	222.7		251.2	
Supervising Attorneys	26.8		24.8	
<b>Cases Contracted for<sup>3</sup></b>	N/A		N/A	
<b>Total Cases Assigned</b>	<b>113,028</b>		<b>106,253</b>	
Felony Cases	14,924	13%	13,568	13%
Misdemeanor Cases	85,738	76%	80,764	76%
Violation Cases	10,234	9%	9,493	9%
Other Cases (Including ROWs)	2,132	2%	2,428	2%
<b>Total Cases Disposed</b>	<b>92,815</b>		<b>84,237</b>	
Disposed by Plea	60,660	65%	53,594	64%
Disposed by Trial	246	0.3%	346	0.4%
Disposed by Dismissal / ACD	24,238	26%	22,090	26%
Relieved - Conflict	3,117	3%	3,170	4%
Relieved - Other	3,715	4%	2,980	4%
Other Dispositions	839	1%	2,057	2%
<b>Total Cases Assigned at Arraignment (Including ROWs)</b>	<b>112,309</b>		<b>105,484</b>	
Total Cases Disposed at Arraignment <sup>4</sup>	65,236	58%	56,658	54%
Total Cases Disposed at Arraignment by Plea	42,411	38%	35,677	34%
<b>Non-Felony Cases Assigned at Arraignment (Including ROWs)</b>	<b>97,597</b>		<b>92,094</b>	
Non-Felony Cases Disposed at Arraignment	62,532	64%	54,051	59%
Non-Felony Cases Disposed at Arraignment by Plea	42,032	43%	35,524	39%
<b>Percent of Individual Attorneys with Caseloads Above First Department Maximum as of Fiscal Year End</b>	<b>70%</b>		<b>66%</b>	
<b>Avg. Misd. Equiv. Cases Assigned per FTE Atty<sup>5</sup></b>	<b>600.5</b>		<b>498.1</b>	
<b>Percent Above / Below First Department Maximum</b> (400 Misd. Equiv. per FTE Atty)	<b>+ 50%</b>		<b>+ 25%</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> Under LAS's contract with New York City, LAS was required to accept all non-conflict indigent defense cases in the arraignment shifts to which it was assigned with a financial penalty to be assessed if the percentage of cases assigned fell below 88% of all non-conflict indigent defense cases. As of the final quarter of FY 2011, LAS's contract was restructured to provide that LAS would handle 213,000 cases annually.

<sup>4</sup> Total Cases Disposed at Arraignment and Non-Felony Cases Disposed at Arraignment include cases disposed by Plea, ACD and Dismissal.

<sup>5</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 2010		FY 2011	
<b>Total Staff<sup>1</sup></b>	<b>63</b>		<b>94</b>	
Staff Attorneys	31		53	
Supervising Attorneys	6		9	
Investigator/Paralegal/Social Worker	18		23	
Support Staff	8		9	
<b>Full-Time Equivalent Staff<sup>2</sup></b>				
Staff Attorneys	33.8		42.6	
Supervising Attorneys	5.0		8.4	
<b>Cases Contracted for<sup>3</sup></b>	<b>12,500</b>		<b>16,375</b>	
<b>Total Cases Assigned</b>	<b>12,101</b>		<b>13,823</b>	
Felony Cases	2,131	18%	2,157	16%
Misdemeanor Cases	9,314	77%	10,733	78%
Violation Cases	251	2%	376	3%
Other Cases (Including ROWs)	405	3%	557	4%
<b>Total Cases Disposed</b>	<b>12,835</b>		<b>12,571</b>	
Disposed by Plea	7,674	60%	6,797	54%
Disposed by Trial	69	0.5%	54	0.4%
Disposed by Dismissal / ACD	4,047	32%	4,479	36%
Relieved - Conflict	409	3%	920	7%
Relieved - Other	636	5%	321	3%
Other Dispositions	---	---	---	---
<b>Total Cases Assigned at Arraignment (Including ROWs)</b>	<b>10,240</b>		<b>9,186</b>	
Total Cases Disposed at Arraignment <sup>4</sup>	6,079	59%	5,354	58%
Total Cases Disposed at Arraignment by Plea	4,142	40%	3,470	38%
<b>Non-Felony Cases Assigned at Arraignment (Including ROWs)</b>	<b>8,130</b>		<b>7,514</b>	
Non-Felony Cases Disposed at Arraignment	6,064	75%	5,335	71%
Non-Felony Cases Disposed at Arraignment by Plea	4,131	51%	3,458	46%
<b>Percent of Individual Attorneys with Caseloads Above First Department Maximum as of Fiscal Year End</b>	<b>70%</b>		<b>24%</b>	
<b>Avg. Misd. Equiv. Cases Assigned per FTE Atty<sup>5</sup></b>	<b>441.1</b>		<b>381.5</b>	
<b>Percent Above / Below First Department Maximum (400 Misd. Equiv. per FTE Atty)</b>	<b>+ 10%</b>		<b>- 5%</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> The Bronx Defenders' new contract for 28,000 cases per Fiscal Year went into effect during the final quarter of FY 2011.

<sup>4</sup> Total Cases Disposed at Arraignment and Non-Felony Cases Disposed at Arraignment include cases disposed by Plea, ACD and Dismissal.

<sup>5</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 2010		FY 2011	
<b>Total Staff<sup>1</sup></b>	<b>45</b>		<b>46</b>	
Staff Attorneys	16		24	
Supervising Attorneys	2		3	
Investigator/Paralegal/Social Worker	10		11	
Support Staff	17		8	
<b>Full-Time Equivalent Staff<sup>2</sup></b>				
Staff Attorneys	10		16	
Supervising Attorneys	2		2	
<b>Cases Contracted for<sup>3</sup></b>	<b>3,750</b>		<b>4,875</b>	
<b>Total Cases Assigned</b>	<b>3,929</b>		<b>6,458</b>	
Felony Cases	443	11%	581	9%
Misdemeanor Cases <sup>4</sup>	3,486	89%	5,877	91%
Violation Cases	---	---	---	---
Other Cases (Including ROWs)	---	---	---	---
<b>Total Cases Disposed</b>	<b>3,697</b>		<b>6,621</b>	
Disposed by Plea	1,717	46%	3,500	53%
Disposed by Trial	18	0.5%	10	0.2%
Disposed by Dismissal / ACD	1,755	47%	3,111	47%
Relieved - Conflict <sup>5</sup>	207	6%	0	0%
Relieved - Other	---	---	---	---
Other Dispositions	---	---	---	---
<b>Total Cases Assigned at Arraignment (Including ROWs)</b>	<b>3,929</b>		<b>6,458</b>	
Total Cases Disposed at Arraignment <sup>6</sup>	1,392	35%	3,209	50%
Total Cases Disposed at Arraignment by Plea	986	25%	2,044	32%
<b>Non-Felony Cases Assigned at Arraignment (Including ROWs)</b>	<b>3,486</b>		<b>5,877</b>	
Non-Felony Cases Disposed at Arraignment	1,392	40%	3,204	55%
Non-Felony Cases Disposed at Arraignment by Plea	986	28%	2,041	35%
<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>7</sup></b>	<b>448.5</b>		<b>456.8</b>	
<b>Percent Above / Below First Department Maximum (400 Misd. Equiv. per FTE Atty)</b>	<b>+ 12%</b>		<b>+ 14%</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> Neighborhood Defender Service of Harlem's new contract for 10,000 cases per Fiscal Year went into effect during the final quarter of FY 2011.

<sup>4</sup> NDS of Harlem reported violation level cases assigned with the misdemeanor cases assigned.

<sup>5</sup> NDS of Harlem only provided the total number of cases where they were relieved from assignment without specifying the reason.

<sup>6</sup> Total Cases Disposed at Arraignment and Non-Felony Cases Disposed at Arraignment include cases disposed by Plea, ACD and Dismissal.

<sup>7</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 2010		FY 2011	
<b>Total Staff<sup>1</sup></b>	<b>50</b>		<b>53</b>	
Staff Attorneys	33		36	
Supervising Attorneys	5		5	
Investigator/Paralegal/Social Worker	5		5	
Support Staff	7		7	
<b>Full-Time Equivalent Staff<sup>2</sup></b>				
Staff Attorneys	34.6		37.4	
Supervising Attorneys	4.0		4.0	
<b>Cases Contracted for<sup>3</sup></b>	<b>16,000</b>		<b>16,500</b>	
<b>Total Cases Assigned</b>	<b>16,190</b>		<b>16,493</b>	
Felony Cases	2,359	15%	2,318	14%
Misdemeanor Cases	7,066	44%	7,465	45%
Violation Cases <sup>4</sup>	1,698	10%	5,704	35%
Other Cases (Including ROWs)	5,067	31%	1,006	6%
<b>Total Cases Disposed</b>	<b>16,060</b>		<b>17,307</b>	
Disposed by Plea	7,385	46%	7,760	45%
Disposed by Trial	38	0.2%	44	0.3%
Disposed by Dismissal / ACD	2,459	15%	5,215	30%
Relieved - Conflict	20	0.1%	6	0.0%
Relieved - Other	1,384	19%	1,346	17%
Other Dispositions	4,774	30%	2,936	17%
<b>Total Cases Assigned at Arraignment (Including ROWs)</b>	<b>15,734</b>		<b>15,988</b>	
Total Cases Disposed at Arraignment <sup>5</sup>	5,323	34%	5,393	34%
Total Cases Disposed at Arraignment by Plea	4,354	28%	4,080	26%
<b>Non-Felony Cases Assigned at Arraignment (Including ROWs)</b>	<b>13,410</b>		<b>13,759</b>	
Non-Felony Cases Disposed at Arraignment	5,281	39%	5,317	39%
Non-Felony Cases Disposed at Arraignment by Plea	4,313	32%	4,011	29%
<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>6</sup></b>	<b>428.9</b>		<b>511.2</b>	
<b>Percent Above / Below First Department Maximum (400 Misd. Equiv. per FTE Atty)</b>	<b>+ 7%</b>		<b>+ 28%</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> New York County Defender Services' new contract for 18,000 cases per Fiscal Year went into effect during the final quarter of FY 2011.

<sup>4</sup> NYCDS upgraded its case tracking system in FY 2011, and the more precise coding that accompanied that upgrade resulted in the reclassification of a substantial number of cases from the category of "Other" to the category of "Violation."

<sup>5</sup> Total Cases Disposed at Arraignment and Non-Felony Cases Disposed at Arraignment include cases disposed by Plea, ACD and Dismissal.

<sup>6</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.