



Andrew M. Cuomo  
Governor

STATE OF NEW YORK  
**OFFICE OF INDIGENT LEGAL SERVICES**

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**Improving the Quality of Mandated Representation Throughout the State of New York**

**INDIGENT LEGAL SERVICES BOARD**

**AGENDA**

**April 21, 2017**

**Association of the Bar of the City of New York**

- I. **Approval of Minutes from December 9, 2016 Meeting**
- II. **Discussion of two years of *Hurrell-Harring* implementation and new statewide responsibilities under FY 2017-2018 State Budget (see attachment A)**
- III. **Consideration of Future Improvements in the Provision of Parental Representation**
- IV. **Report on Status of Counsel at First Appearance RFP #2**
- V. **Report on "Implementing Gideon's Promise" conference (April 7) (see attachment B)**
- VI. **Staffing Update:**
  - Assistant Grants Manager: Ronald Foster, starts May 1
  - Director of Appellate Representation: applications closed April 17
  - Statewide Chief Implementation Counsel: applications close on May 5
- VII. **Schedule of Remaining 2017 Board Meetings**
  - Friday June 9
  - Friday September 22
  - November/December meeting TBD

**Minutes for the Indigent Legal Services Board Meeting**  
December 9, 2016  
11:00 A.M.  
New York City Bar Association

**Board Members Present:** Chief Judge Janet DiFiore, Judge Sheila DiTullio, Vince Doyle (by phone), John Dunne, Joe Mareane, Lenny Noisette

**ILS Office Attendees:** Bill Leahy, Joseph Wierschem

**Invited Guest:** Suzette Melendez (by phone)

**I. Approval of minutes of September 23, 2016 meeting**

A motion to approve the minutes was made and seconded. The Board voted to approve the minutes.

(Vince Doyle joined on the phone at this point.)

**II. Governor signs the Off-Hours Arraignment Parts Bill, the Poor Person Status on Appeal Bill, and the amendment of County Law section 722-f(2)**

Bill Leahy reported that the passage of the Off-Hours Arraignment Parts bill was a huge accomplishment. The Office has been involved in advocating for the bill from the very beginning. The bill originated in the OCA Advisory Committee on Criminal Law and Procedure. The Office of Court Administration (OCA) has invited ILS to play a role in how the central arraignment parts are planned.

A board member asked how the off-hours arraignment parts will be funded. Bill noted that there are cost efficiencies involved due to the centralization process. For example, in one *Hurrell-Harring* county, there are 28 town and village courts. Lawyers must be available 24 hours a day for seven different locations. By centralizing arraignments to one or two locations, there can be significant cost savings.

A board member asked about the reaction of the magistrates to the legislation and what strategies ILS should employ to work effectively with them. Bill noted that some of the magistrates have immediately seen the benefit of centralized arraignment parts, while there has been some scattered resistance. OCA has been communicating with the magistrates through the Chief Administrative Judge. Notably, the State Magistrates' Association sent a letter last May in support of the legislation. In addition, the Office anticipates working cooperatively with the magistrates.

The Governor also signed the Poor Person Status on Appeal bill. Bill Leahy reported that this is an important bill that also originated in the Advisory Committee on Criminal Law and Procedure.

Finally, Bill reported that the County Law was amended so that counties will now file their annual financial reports with ILS rather than the Comptroller.

### **III. Implementation of the *Hurrell-Harring* Settlement Agreement**

The Office prepared 2016 updates to the “Implementing the Counsel at Arraignment Obligations in the *Hurrell-Harring v. The State of New York* Settlement” and the “Implementing the Quality Improvement Objectives in the *Hurrell-Harring v. The State of New York* Settlement” plans. These updates were delivered to the parties on November 10, 2016. Patricia Warth and her team prepared these updates.

A theme running through the reports was that almost all of the providers in the five counties were cooperative, with the exception of the Assigned Counsel Program in Onondaga County. Bill Leahy stated that ILS has been dissatisfied with the leadership in the program, but that the Executive Director of the Assigned Counsel Program has now resigned. Onondaga County is now seeking a new director and additional staff for the ACP program. ILS will have a voice in deciding who will be the new director. Bill emphasized that there is a lot at stake in Onondaga County, and transformative change requires a change in leadership.

A board member asked what the prospects are for Onondaga County getting a good candidate for Executive Director. Bill reported that there are excellent prospects, including some great criminal defense lawyers who are participating in the mentoring program.

The ILS Office’s determination of appropriate caseload standards for providers of mandated representation was delivered to the Governor’s office and the plaintiffs on December 8. The Office has not yet been authorized by the *Hurrell-Harring* parties to release the caseload standards report.

The report details the challenge of fulfilling the promise of *Gideon v. Wainwright* and concludes that the country and New York have failed to meet the standard in *Gideon*. The report also explains what New York has done since the Kaye Commission report. Legislation signed in 2009 went into effect in 2010, which imposed caseload limits on criminal defense providers in New York City. The standard is 400 misdemeanors or 150 felonies per year, and it became fully funded by the State by 2013-2014. In terms of the upstate counties, the ILS Office has managed to improve representation and reduce caseloads with little additional funding provided by the State. Lawyer staffing has increased by 16%, and non-attorney staff grew by 20%. Caseloads upstate were also reduced by 22%.

Bill stated that nevertheless, caseloads in the upstate counties remain very high. He emphasized that the national standard from 1973 is not appropriate for 2016. The 1973 standard was

implemented in the 2010 New York City caseload limits. The Office has recommended limits lower than the NYC standards. This will permit attorneys to devote more time to each case and improve the quality of representation for all defendants. Bill reports that the caseload standards determined by the Office now make it fiscally manageable to expand the *Hurrell-Harring* standards statewide.

A board member suggested that the entire ILS Board be supportive of the ILS Office's efforts to promote its new caseload standards, even though the caseload standards determination cannot be released at this time. Another board member asked whether the release of the caseload standards might create anxiety among the counties that are unable to meet those goals. Bill Leahy responded that the Office has been in communication with the counties. NYSAC is strongly supportive of the fiscal takeover bill – now called the Justice Equality Act. The counties and others are aware that ILS is not so zealous that it will ignore the fiscal consequences. ILS has reassured those involved that there will be a gradual transition.

#### **IV. Report on Regional Immigration Assistance Centers (RIAC) meeting on December 1, 2016**

The Regional Immigration Assistance Centers enable lawyers to gain expertise with respect to the immigration consequences of pleas. There are 25 employees for six centers throughout the state. The centers provide training, staff a hotline, and give assistance to defense attorneys. They serve a significant number of lawyers in each district. New York is the first state where providers of mandated representation have access to expert advice regarding their obligations under *Padilla v. Kentucky*.

Bill reported that Joanne Macri is providing inspiring leadership for the RIACs. Joanne recently held a meeting (December 1, 2016) at which each immigration center gave updates of their activities and trainings. Jorge Montalvo, the New York State Deputy Secretary of State, attended and stated that his office planned to provide pro bono legal assistance to those facing deportation.

#### **V. ILSB Fifth Annual Report**

Bill Leahy normally distributes the annual report in December but this year has been exceptionally busy. He will aim to distribute a draft report to the Board by mid-January. This was agreeable to everyone on the Board.

#### **VI. Schedule of Meetings for 2017**

A proposed schedule will be circulated. The same protocol for arranging meetings in the past will be replicated for 2017.

Lenny Noisette moved that the Board go into Executive Session, and the motion was seconded.

(Suzette Melendez signed off.)

At the conclusion of the Executive Session, no action was taken. A motion was made to adjourn the meeting, and the motion was seconded. The meeting was adjourned at 12:08 PM.

**FY 2017-18 Final Budget**  
**Office of Indigent Legal Services (ILS) (Office)**

	<b>FY 2016-17 Final Budget</b>	<b>Executive Budget Request</b>	<b>Senate Proposal</b>	<b>Assembly Proposal</b>	<b>Final Budget</b>
<b>State Operations</b>	\$3.2 million	\$4.83 million*	\$4.83 million	\$4.83 million	\$4.83 million
<b>Aid to Localities</b>	\$96.2 million	\$104.81 million	\$104.81 million	\$104.81 million	\$104.81million
<b>All Funds</b>	\$99.4 million	\$109.64 million	\$109.64 million	\$109.64 million	\$109.64 million

\*The Executive Aid to Localities proposal provided that "\$4,830,000 . . . shall be transferred to state operations."

**State Operations:**

- **Office Operations (A.3000-D/S.2000-D):**
  - Of the \$4.83 million State Ops appropriation in the FY 2017-18 Final Budget, \$2.31 million is allocated for general office operations; \$1.27 million for implementation of the *Hurrell-Harring* settlement; and \$1.25 million for implementation of plans for statewide expansion of *Hurrell-Harring* reforms.

**Aid to Localities:**

- **ILS Distributions and Grants/Hurrell-Harring Settlement (A.3003-D/S.2003-D):**
  - Of the \$104.81 million Aid to Localities appropriation in the FY 2017-18 Final Budget, \$81.0 million is allocated to fund ILS distributions and grants and \$23.81 million is allocated for implementation of the *Hurrell-Harring* settlement. The \$23.81 million for the *Hurrell-Harring* settlement is allocated as follows:
    - \$19.01 million for the five settlement counties to add staff and other resources needed to comply with caseload/workload standards determined by ILS.
    - \$2.0 million to further implement the written plan developed by ILS to improve the quality of indigent defense in the five settlement counties; and
    - \$2.8 million to further implement the written plan developed by ILS to provide in person representation of eligible defendants at all arraignments in the five settlement counties.

**Article VI language:**

- **Statewide Expansion of Hurrell-Harring Reforms (A.3009-C/S.2009-C, Part VVV, §5 11-13)**
  - The FY 2017-18 Final Budget language requires the Office to develop and complete written plans, no later than December 1, 2017, to extend *Hurrell-Harring* reforms statewide, with the "projected fiscal impact of the required appropriation for the implementation of such plan" subject to the approval of the Director of the Budget. The plans shall include interim steps for each county and city of New York for achieving compliance by April 1, 2023. County expenditures to implement these plans would be fully reimbursable by the state. The written plans are:
    - **Counsel at Arraignment.** This plan would ensure that each criminal defendant eligible for publicly funded legal representation is represented by counsel in person at his or her arraignment.
    - **Caseload Relief.** This plan would establish numerical caseload/workload standards for each provider of constitutionally mandated representation in criminal cases.
    - **Quality Initiatives.** This plan would improve the quality of constitutionally mandated publicly funded representation in criminal cases by ensuring, *inter alia*, effective supervision and training, adequate access to investigators and experts, and properly qualified and experienced attorneys.

S. 2009-C

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A. 2009-C

1 derive under the constitution of this state or of the United States, and  
 2 then also recognized him or her or the pictorial, photographic, elec-  
 3 tronic, filmed or video recorded reproduction of him or her as the same  
 4 person whom he or she had observed on the first or incriminating occa-  
 5 sion, may, in addition to making an identification of the respondent at  
 6 the delinquency proceeding on the basis of present recollection as the  
 7 person whom he or she observed on the first or incriminating occasion,  
 8 also describe his or her previous recognition of the respondent and  
 9 testify that the person whom he or she observed or whose pictorial,  
 10 photographic, electronic, filmed or video recorded reproduction he or  
 11 she observed on such second occasion is the same person whom he or she  
 12 had observed on the first or incriminating occasion. Such testimony and  
 13 such pictorial, photographic, electronic, filmed or video recorded  
 14 reproduction constitutes evidence in chief. For purposes of this  
 15 section, a "blind or blinded procedure" shall be as defined in paragraph  
 16 (c) of subdivision one of section 343.3 of this part.

17 § 9. Section 937 of the executive law is amended by adding a new  
 18 subdivision 21 to read as follows:

19 21. Promulgate a standardized and detailed written protocol that is  
 20 grounded in evidence-based principles for the administration of photo-  
 21 graphic array and live lineup identification procedures for police agen-  
 22 cies and standardized forms for use by such agencies in the reporting  
 23 and recording of such identification procedure. The protocol shall  
 24 address the following topics:

- 25 (a) the selection of photographic array and live lineup filler photo-  
 26 graphs or participants;
- 27 (b) instructions given to a witness before conducting a photographic  
 28 array or live lineup identification procedure;
- 29 (c) the documentation and preservation of results of a photographic  
 30 array or live lineup identification procedure;
- 31 (d) procedures for eliciting and documenting the witness's confidence  
 32 in his or her identification following a photographic array or live  
 33 lineup identification procedure, in the event that an identification is  
 34 made; and
- 35 (e) procedures for administering a photographic array or live lineup  
 36 identification procedure in a manner designed to prevent opportunities  
 37 to influence the witness.

38 § 10. Subdivision 4 of section 840 of the executive law is amended by  
 39 adding a new paragraph (c) to read as follows:

40 (c) Disseminate the written policies and procedures promulgated in  
 41 accordance with subdivision twenty-one of section eight hundred thirty-  
 42 seven of this article to all police departments in this state and imple-  
 43 ment a training program for all current and new police officers regard-  
 44 ing the policies and procedures established pursuant to such  
 45 subdivision.

46 § 11. Section 722-a of the county law, as added by chapter 878 of the  
 47 laws of 1965, is amended to read as follows:

48 § 722-a. Expenses. All expenses for providing counsel and services  
 49 other than counsel hereunder shall be a county charge or in the case of  
 50 a county wholly located within a city a city charge to be paid out of an  
 51 appropriation for such purposes. Provided, however, that any such addi-  
 52 tional expenses incurred for the provision of counsel and services as a  
 53 result of the implementation of a plan established pursuant to subdivi-  
 54 sion four of section eight hundred thirty-two of the executive law,  
 55 including any interim steps taken to implement such plan, shall be reim-  
 56 bursed by the state to the county or city providing such services. Such





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A. 3009--C

1 plans shall be submitted by the office of indigent legal services to the  
2 director of the division of budget for review and approval. However, the  
3 director's approval shall be limited solely to the plan's projected  
4 fiscal impact of the required appropriation for the implementation of  
5 such plan, and his or her approval shall not be unreasonably withheld.  
6 The state shall appropriate funds sufficient to provide for the  
7 reimbursement required by this section.

8 § 12. Section 832 of the executive law is amended by adding a new  
9 subdivision 4 to read as follows:

10 4. Additional duties and responsibilities. The office shall, in  
11 consultation with the indigent legal services board established pursuant  
12 to section eight hundred thirty-three of this article, have the follow-  
13 ing duties and responsibilities, and any plan developed pursuant to this  
14 subdivision shall be submitted by the office to the director of the  
15 division of budget for review and approval, provided, however that the  
16 director's approval shall be limited solely to the plan's projected  
17 fiscal impact of the required appropriation for the implementation of  
18 such plan and his or her approval shall not be unreasonably withheld:

19 (a) Counsel at arraignment. Develop and implement a written plan to  
20 ensure that each criminal defendant who is eligible for publicly funded  
21 legal representation is represented by counsel in person at his or her  
22 arraignment; provided, however, that a timely arraignment with counsel  
23 shall not be delayed pending a determination of a defendant's eligibil-  
24 ity.

25 (i) For the purposes of the plan developed pursuant to this subdivi-  
26 sion, the term "arraignment" shall mean the first appearance by a person  
27 charged with a crime before a judge or magistrate, with the exception of  
28 an appearance where no prosecutor appears and no action occurs other  
29 than the adjournment of the criminal process and the unconditional  
30 release of the person charged (in which event "arraignment" shall mean  
31 the person's next appearance before a judge or magistrate).

32 (ii) The written plan developed pursuant to this subdivision shall be  
33 completed by December first, two thousand seventeen and shall include  
34 interim steps for each county and the city of New York for achieving  
35 compliance with the plan.

36 (iii) Each county and the city of New York shall, in consultation with  
37 the office, undertake good faith efforts to implement the plan and such  
38 plan shall be fully implemented and adhered to in each county and the  
39 city of New York by April first, two thousand twenty-three. Pursuant to  
40 section seven hundred twenty-two-e of the county law, the state shall  
41 reimburse each county and the city of New York for any costs incurred as  
42 a result of implementing such plan.

43 (iv) The office shall, on an ongoing basis, monitor and periodically  
44 report on the implementation of, and compliance with, the plan in each  
45 county and the city of New York.

46 (b) Caseload relief. Develop and implement a written plan that estab-  
47 lishes numerical caseload/workload standards for each provider of  
48 constitutionally mandated publicly funded representation in criminal  
49 cases for people who are unable to afford counsel.

50 (i) Such standards shall apply to all providers whether public defen-  
51 der, legal aid society, assigned counsel program or conflict defender in  
52 each county and the city of New York.

53 (ii) The written plan developed pursuant to this subdivision shall be  
54 completed by December first, two thousand seventeen and shall include  
55 interim steps for each county and the city of New York for achieving  
56 compliance with the plan. Such plan shall include the number of attor-



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A. 3009--C

1 neys, investigators and other non-attorney staff and the amount of  
2 in-kind resources necessary for each provider of mandated representation  
3 to implement such plan.

4 (iii) Each county and the city of New York shall, in consultation  
5 with the office, undertake good faith efforts to implement the  
6 caseload/workload standards and such standards shall be fully imple-  
7 mented and adhered to in each county and the city of New York by April  
8 first, two thousand twenty-three. Pursuant to section seven hundred  
9 twenty-two-e of the county law, the state shall reimburse each county  
10 and the city of New York for any costs incurred as a result of imple-  
11 menting such plan.

12 (iv) The office shall, on an ongoing basis, monitor and periodically  
13 report on the implementation of, and compliance with, the plan in each  
14 county and the city of New York.

15 (c) Initiatives to improve the quality of indigent defense. (i) Devel-  
16 op and implement a written plan to improve the quality of constitu-  
17 tionally mandated publicly funded representation in criminal cases for  
18 people who are unable to afford counsel and ensure that attorneys  
19 providing such representation: (A) receive effective supervision and  
20 training; (B) have access to and appropriately utilize investigators,  
21 interpreters and expert witnesses on behalf of clients; (C) communicate  
22 effectively with their clients; (D) have the necessary qualifications  
23 and experience; and (E) in the case of assigned counsel attorneys, are  
24 assigned to cases in accordance with article eighteen-b of the county  
25 law and in a manner that accounts for the attorney's level of experience  
26 and caseload/workload.

27 (ii) The office shall, on an ongoing basis, monitor and periodically  
28 report on the implementation of, and compliance with, the plan in each  
29 county and the city of New York.

30 (iii) The written plan developed pursuant to this subdivision shall be  
31 completed by December first, two thousand seventeen and shall include  
32 interim steps for each county and the city of New York for achieving  
33 compliance with the plan.

34 (iv) Each county and the city of New York shall, in consultation with  
35 the office, undertake good faith efforts to implement the initiatives to  
36 improve the quality of indigent defense and such initiatives shall be  
37 fully implemented and adhered to in each county and the city of New York  
38 by April first, two thousand twenty-three. Pursuant to section seven  
39 hundred twenty-two-e of the county law, the state shall reimburse each  
40 county and the city of New York for any costs incurred as a result of  
41 implementing such plan.

42 (d) Appropriation of funds. In no event shall a county and a city of  
43 New York be obligated to undertake any steps to implement the written  
44 plans under paragraphs (a), (b) and (c) of this subdivision until funds  
45 have been appropriated by the state for such purpose.

46 § 12. This act shall take effect immediately; provided, however, that  
47 sections one and two of this act shall take effect April 1, 2018 and  
48 shall apply to confessions, admissions or statements made on or after  
49 such effective date; provided, further sections three through ten of  
50 this act shall take effect July 1, 2017.

51 PART NOW

52 Section 1. Section 1.20 of the criminal procedure law is amended by  
53 adding a new subdivision 44 to read as follows:

4/10/17

Dear Board members, colleagues and local government officials,

Less than six years ago, at a time when ILS consisted of no more than Joe Wierschem and Tammeka Freeman and me, we chose to place at the top of our office letterhead the words **Improving the Quality of Mandated Representation Throughout the State of New York**. To some that message might have seemed premature, bold, even quixotic. We couldn't know. What we did know is that it was our responsibility under section 832 of the Executive Law: and what we also knew is that we intended to take that responsibility literally and very seriously. We did not intend to rest until the mission had been accomplished. We set to work in cooperation with every provider of mandated representation, every county and New York City to gradually and irrevocably improve the quality of mandated representation for people who could not afford to retain counsel.

Today, we are at once thrilled and humbled to know that the fiscal year 2017-2018 state budget authorizes our Office and Board to prepare plans for every New York county, plans that replicate the pathbreaking right to counsel reforms in assigned criminal defense cases that are already being established in the five counties involved in the *Hurrell-Harring* settlement agreement. As stated in the April 7 Division of the Budget press release:

**"To ensure fair and equal representation for all accused individuals, the FY 2018 Budget includes resources to develop the framework through which the state will fund one hundred percent of the costs necessary to extend the reforms provided for in the *Hurrell-Harring* settlement to all 62 counties in New York."**

We are grateful to Governor Cuomo, Speaker Heastie, Majority Leader Flanagan and their staffs; to Assemblywoman Fahy and Senator DeFrancisco who have championed the cause of equal justice in the Legislature; to Jonathan Gradess and his NYSDA colleagues; to Mark Williams and the Chief Defenders Association of New York; to Steve Acquario and all NYSAC members and staff; to NYSBA's President Claire Gutekunst and staff, to all the local, state and national organizations who supported the vital principles of equal justice and public defense independence; to former ILSB Chair Jonathan Lippman, current Chair Janet DiFiore and members of the Board; and to many others too numerous to name.

This is big news. This is a huge responsibility; one that we cherish and one that we have already begun working to fulfill. When I communicated the news to a renowned national right to counsel leader, he immediately responded: "That's the news everyone has been waiting to hear....Just terrific news!"

We are in the process of advertising the position of chief statewide implementation counsel, and the convening of a statewide meeting to share information about the process by which we will prepare these plans by the December 1, 2017 deadline. We will have more information on these developments within the next couple of days. We appreciate your participation and we pledge our cooperation.

Finally, we do understand that these reforms, just as the lawsuit reforms, are limited to criminal defense representation. Parental representation is an equally significant component of legally mandated representation; but it is not part of the lawsuit settlement nor of this new grant of authority. To those who practice in this area or who have funding responsibility for it, let me assure you that we will not neglect our responsibility to improve the quality of representation in this aspect of mandated representation as well.

Our best to all,

Bill

William J. Leahy

*Sponsored by the Indiana Law Review*

**FRIDAY, APRIL 7, 2016**

**IMPLEMENTING GIDEON'S PROMISE:  
THE RIGHT TO COUNSEL IN THE NATION AND INDIANA**

- 8:45 am **Welcome and Introductions**  
*Andrew R. Klein, Dean, IU McKinney School of Law*
- 9:00 am **Will We Ever Succeed in Fulfilling Gideon's Promise?**  
*Norman Lefstein, Professor of Law and Dean Emeritus, IU McKinney School of Law*

10:00 am **Break**

10:15 am **Reforming Indiana's Public Defense System\***

**MODERATOR**

*Joel Schumm, '98, Clinical Professor of Law, IU McKinney School of Law*

**PANEL MEMBERS**

*Hon. Vicki Carmichael, Judge, Clark Circuit Court, Jeffersonville, IN*

*Michael Dvorak, former prosecutor and state representative, South Bend, IN*

*Monica Foster, '83, Chief Federal Defender, Indiana Federal Community Defenders, Indianapolis, IN*

*Marce Gonzalez, Jr., Lake County Chief Public Defender, Crown Point, IN*

*Larry Landis, '73, Executive Director, Indiana Public Defender Council, Indianapolis, IN*

*Lorinda Youngcourt, '88, Director, King County Department of Public Defense, Seattle, Washington*

*\*See Sixth Amendment Center, [The Right to Counsel in Indiana: An Assessment of Trial Level Indigent Defense Services](http://sixthamendment.org/indiana-report/) (October 2016), available at <http://sixthamendment.org/indiana-report/>.*

11:45 am **Lunch (provided in Atrium)**

1:00 pm **Transforming the Culture of Public Defense**  
*Professor Jonathan Rapping, Founder and President, Gideon's Promise, Atlanta, GA, Professor of Law, John Marshall Law School and Visiting Professor Harvard Law School (Winter 2017)*

1:50 pm **Litigation in Reforming Public Defense**

**MODERATOR**

*Lorinda Youngcourt, '88, Director, King County Department of Public Defense, Seattle, Washington*

**PANEL MEMBERS**

**The New Breed of Defender Workload Studies**

*Stephen Hanlon, General Counsel, National Association for Public Defense, Washington, D.C.*

**Bail Reform Litigation**

*Alec Karakatsanis, Founder & Executive Director, Civil Rights Corps, Washington, D.C.*

**Public Defense Litigation: The Big Picture**

*Professor Lauren Sudeall Lucas, Georgia State University College of Law, Atlanta, GA*

3:15 pm **Innovation and Reform in Public Defense**

**MODERATOR**

*Norman Lefstein, Professor of Law and Dean Emeritus, IU McKinney School of Law*

**PANEL MEMBERS**

**Public Defense Innovation in Texas**

*James Bethke, Executive Director, Texas Indigent Defense Commission, Austin, Texas*

**Reforming Public Defense in New York State**

*William J. Leahy, Director, New York State Office of Indigent Legal Services*

**Client Choice in Public Defense: Do Defendants Have a Right to Choose Their Own Lawyer?**

*Professor Janet Moore, University of Cincinnati College of Law*

4:30 pm **Adjournment & Reception**

## **Reforming Public Defense in New York State: Study, Litigation, Legislation, Agency Action**

### **Chronology**

**2006:** Kaye Commission report condemns New York's "fragmented system of county-operated and largely county-financed indigent defense services [that] fails to satisfy the state's constitutional and statutory obligations to protect the rights of the indigent accused." Recommends statewide public defender system, and state assumption of the cost of providing counsel.

**2007:** NYCLU files class action litigation *Hurrell-Harring v. The State of New York*.

**2009:** Legislation directs Chief Court Administrator to set weighted caseload standards for New York City only: 150 felony/400 misdemeanor limit (i.e., 1973 NAC standard) set in 2010, fully funded by 2014.

**2010:** Enactment of Executive Law sections 832, creating the Office of Indigent Legal Services (ILS) and section 833, the Indigent Legal Services Board (ILSB). Decision by NY Court of Appeals in *Hurrell-Harring*, 15 NY 3d 8 (2010) reverses lower court dismissal and allows case to proceed to trial on theory of constructive denial of the state's responsibility to provide counsel.

**2011:** ILS begins operations in February with hiring of its Director. Issues first distribution of quality improvement funding to counties and New York City.

**2012:** ILSB issues *Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest*, effective July 1 and extended to all trial level representation as of January 1, 2013.

**2013:** ILS contracts with 25 upstate counties to provide state-funded counsel at first appearance, and issues its first annual *Estimate of the Cost of Compliance with National Maximum Caseload Limits*.

**2014:** ILS contracts with 47 upstate counties to provide state-funded caseload relief and quality improvements. ILS Board adopts statewide weighted caseload of 367, contingent on state funding. Board approves ILS *Appellate Standards and Best Practices*, effective as of January 5, 2015

**2012-2015:** Average weighted caseload per attorney in the 57 upstate counties is reduced by 22%, from 719 in 2012 to 561 in 2015. Still far above NYC and NAC standards.

**2015:** The October, 2014 settlement of the *Hurrell-Harring* case ("HH") is approved by the Court and goes into effect. See **Stipulation and Order of Settlement** in your conference materials. Funds provided for ILS to create a Hurrell-Harring Implementation Unit.

ILS *Standards for Parental Representation in State Intervention Matters* are effective as of December 1, 2015.



The Brooklyn Study (Indigent Defense Reforms in Brooklyn, New York) demonstrates reduction of caseloads and improvements in representation in one NYC borough due to state-funded caseload relief.

**2016: April 1:** State budget includes \$10.4 million for caseload relief to help the five HH counties reach the ILSB standard of 367 weighted cases; and millions for counsel at arraignment and quality improvement initiatives in those counties.

**June 17:** NY Senate and Assembly pass Public Defense Mandate Relief Act aka Justice Equality Act by unanimous votes. The Act would expand HH reforms statewide at state expense, and would provide full state reimbursement for local cost of providing mandated representation.

**November 29:** Governor Cuomo signs into law Chapter 492, authorizing the creation of Centralized Arraignment Parts to facilitate the appearance of counsel at arraignment.

**December 8:** ILS delivers its caseload/workload standards to the parties pursuant to section IV (B) of the HH Settlement Agreement.

**December 31:** Governor Cuomo vetoes the Act, and vows to propose statewide application of *Hurrell-Harring* reforms in his January, 2017 Executive budget proposal.

**2017: January:** Executive budget proposal includes \$23.8 million for HH settlement costs in the five counties, including \$19 million for implementation of the new caseload limits established by ILS. Proposal also authorizes ILS to submit plans for extension of the HH caseload limits, counsel at arraignment and quality improvements statewide by December 1, 2017; and funds a new Statewide Implementation Unit for that purpose. Sticking point: Governor's proposal requires that ILS plans be approved by the Department of Budget (DOB).

**March:** Assembly and Senate budget proposals concur word for word with Governor's proposal, but delete provision for DOB approval.

ILS issues RFP for first-ever Model Upstate Parental Representation Office.

**April:** Governor and Legislature agree on a state budget that includes ILS creation of plans to extend HH reforms (counsel at arraignment, caseload relief and quality improvements) statewide. DOB approval restricted solely to the fiscal impact of the ILS plans, not their content.