APPENDIX 1(a)

CONFIDENTIAL

Questionnaire to 18-B Attorneys

1. When were you admitted to the Panel? (check one box)

(a)	1966-69	(a)	☐
(b)	1970-78	(b)	☐
(c)	1979-84	(c)	☐

2. Do you regard yourself as an active member of the 18-B panel? (check one box)

Yes	☐
No	☐

3.

If Yes to Question 2,	Yes	No
Do you accept assignments routinely	☐	☐
Do you accept assignments only infrequently	☐	☐

4. How much of your practice involves criminal law (include only cases for which a final judgment has not been entered)?

			Time	Case Load
(a)	Less than 5%	(a)	☐	☐
(b)	Over 5% less than 50%	(b)	☐	☐
(c)	Over 50%	(c)	☐	☐

5. What is your current active case load pending in Criminal Court (include only those cases for which a final judgment has not been entered)? [Enter Actual Number]

Felony	☐
Misdemeanor and Violation	☐

6. What is your current active case load pending in Supreme Court (include only those cases for which a final judgment has not been entered)? [Enter Actual Number]

Homicides	☐
Felonies	☐

7. Approximately how much of your current criminal practice (in terms of time and case load) is court-assigned work under the 18-B system?

			Time	Case Load
(a)	Less than 5%	(a)	☐	☐
(b)	Over 5% less than 50%	(b)	☐	☐
(c)	Over 50%	(c)	☐	☐

8. How would you evaluate the importance of the following factors in determining whether you would be willing to take more 18-B assignments? (check appropriate boxes)

			Essential	Helpful	Not Necessary
(a)	Secretarial Services	(a)	☐	☐	☐
(b)	Direct access to investigators	(b)	☐	☐	☐
(c)	Direct access to experts	(c)	☐	☐	☐
(d)	Direct access to paralegals	(d)	☐	☐	☐
(e)	Direct access to a brief bank	(e)	☐	☐	☐
(f)	Direct access to legal research services	(f)	☐	☐	☐
(g)	Direct access to a law advisory bureau	(g)	☐	☐	☐
(h)	Direct access to diversionary programs	(h)	☐	☐	☐

9. Would you be prepared to take more 18-B assignments than at present if:

			Yes	No
(a)	The rates of compensation were substantially increased	(a)	☐	☐
(b)	You were able, individually or as a member of a team, to enter into a fiscal contract with the City of New York for handling a set number of cases which permitted you to hire associates and support staff	(b)	☐	☐
(c)	The rate of compensation permitted reimbursement for time allotted to associates, paralegals, secretarial and support staff	(c)	☐	☐

10. If you are presently taking 18-B assignments what is your reason for doing so. (check one or more boxes)

(a)	It provides income	(a)	☐
(b)	I am building up a law practice	(b)	☐
(c)	Interest in criminal law	(c)	☐
(d)	Believe that every lawyer should do such work	(d)	☐
(e)	It is my firm's policy to do such work	(e)	☐

Other (please specify)

11. Are you satisfied with the information about a case that you are given by the Appellate Division when a case is assigned to you?

Yes	☐
No	☐

12. When a case is assigned to you, would it assist you if any of the following information was made available by the Appellate Division? (check one or more boxes)

(a)	A copy of the complaint/indictment were given	(a)	☐
(b)	The defendant's home address and telephone were provided	(b)	☐
(c)	A copy of the ROR sheet were provided	(c)	☐
(d)	The incarcerated defendant's book and case number (prison location) were provided	(d)	☐
(e)	Information about the defendant's physical and mental condition were provided	(e)	☐
(f)	You were told whether an interpreter would be needed	(f)	☐
(g)	A copy of the RAP sheet were provided	(g)	☐
(h)	A copy of all relevant documents filed by both sides was provided	(h)	☐
(i)	The time between assignment and next court date was increased	(i)	☐

13. In your opinion, are the levels of compensation

Fair	☐
Unfair	☐

14. If unfair, what are the problems (check one or more boxes).

			Yes	No
(a)	The overall caps ($1500 for Homicide, $750 for Felony, $500 misdemeanor) are too low	(a)	☐	☐
(b)	Out-of-court work rate is too low	(b)	☐	☐
(c)	In-court work rate is too low	(c)	☐	☐
(d)	Excessive delay in payment	(d)	☐	☐
(e)	The distinction between in-court and out-of-court compensation rates is not fair	(e)	☐	☐

15. In your 18-B work, do you use investigative or expert services?

Never	☐
Occasionally	☐
Regularly	☐

16. If Never or Occasionally to Question 15, what is the reason for this (check one or more boxes)

			Yes	No
(a)	Most cases don't require investigative expert services	(a)	☐	☐
(b)	It is difficult to get court consent	(b)	☐	☐
(c)	It is difficult to get adequate investigators or experts for the available rates	(c)	☐	☐

Other (please specify)

17. Prior to joining the 18-B Panel, did you have experience of any of the following:

			Yes	No
(a)	Clinical or Advocacy course at Law School	(a)	☐	☐
(b)	Criminal Procedure course at Law School	(b)	☐	☐
(c)	Course in Criminal Practice offered by a Continuing Legal Education or Bar Association Group	(c)	☐	☐
(d)	Handling criminal cases in the courts	(d)	☐	☐

18. Prior to joining the 18-B panel, was your experience in any of the following

			Yes	No
(a)	Working for Legal Aid Society/Public Defenders organization	(a)	☐	☐
(b)	Working for a District Attorney	(b)	☐	☐
(c)	Working as a Law Secretary or Clerk to a Judge	(c)	☐	☐
(d)	Working in private practice as a criminal practitioner	(d)	☐	☐
(e)	Working in private practice in the litigation of civil claims	(e)	☐	☐

19. When you applied to be put on the 18-B panel, what happened?

			Yes	No	Don't Recall
(a)	I was interviewed by an experienced lawyer	(a)	☐	☐	☐
(b)	I was asked to appear before the screening committee	(b)	☐	☐	☐
(c)	I was asked to attend an instruction course	(c)	☐	☐	☐
(d)	I was required to be co-counsel for a period of time	(d)	☐	☐	☐

20. Was your application to go on the 18-B panel processed

(a)	Without delay	(a)	☐
(b)	After a reasonable period	(b)	☐
(c)	Very slowly	(c)	☐
(d)	Don't recall	(d)	☐

21. Do you think that the procedures for admission to the 18-B panel are

(a)	Sound	(a)	☐
(b)	Unsound	(b)	☐
(c)	Capable of Improvement	(c)	☐

22. If Unsound or Capable of Improvement in what ways might they be improved:

(a)	Application should be processed more quickly	(a)	☐
(b)	Applicants should be more thoroughly screened	(b)	☐
(c)	The standards for admission should be higher	(c)	☐

Other (please specify)

23. Are you aware of any continuing education programs that would help in your 18-B practice?

Yes	☐
No	☐

24. If Yes, have you attended any of these programs within the last three years?

Yes	☐
No	☐

25. If Yes, did you find the programs

(a)	Helpful	(a)	☐
(b)	Helpful but could have been better	(b)	☐
(c)	Unhelpful	(c)	☐

26. If training programs or continuing education relevant to your practice were offered, would you participate?

	Yes	No
With reimbursement	☐	☐
Without reimbursement	☐	☐

27. What kind of training or continuing education would you like to have offered?

			Yes	No
(a)	Criminal Trial Advocacy	(a)	☐	☐
(b)	Lectures up-dating new legal developments	(b)	☐	☐
(c)	Regular newsletter digesting recent cases and statutory amendments	(c)	☐	☐

Other (please specify)

28. Which of the following best describes you?

(a)	Single practitioner	(a)	☐
(b)	Single practitioner who is often assisted by another attorney admitted to the 18-B panel	(b)	☐
(c)	Member of a firm, none of whose other members is on the 18-B panel, and who handles all 18-B work without assistance	(c)	☐
(d)	Member of a firm, none of whose other members is on the 18-B panel, but who is often assisted by another attorney who is admitted to the panel	(d)	☐
(e)	Member of a firm, with one or more other attorneys who are members of the 18-B panel	(e)	☐

29. Do you regard the existing vouchering system as satisfactory?

(a)	Satisfactory	(a)	☐
(b)	Unsatisfactory	(b)	☐

30. What is your view of the monthly reporting system?

(a)	Satisfactory	(a)	☐
(b)	Unsatisfactory	(b)	☐

31. Is it your intention to continue to take 18-B assignments

(a)	For the foreseeable future	(a)	☐
(b)	Only in the medium term	(b)	☐
(c)	For only a little while	(c)	☐

32. Do you ask for compensation in all cases for which you accept an assignment?

	Yes	☐
	No	☐

33. If No to Question 32, could you please indicate why you do not claim compensation (check one or more boxes)

(a)	the sum(s) involved is too inconsequential	(a)	☐
(b)	Given the paper work involved, I do not have a regular opportunity to file vouchers	(b)	☐
(c)	In some cases the representation required is inconsequential	(c)	☐
(d)	I sometimes find that another lawyer is already on the case and I am not therefore required although I have been assigned	(d)	☐
(e)	No representation may be required where the defendant has absconded	(e)	☐
(f)	I take some cases on a pro bono basis regardless of fee	(f)	☐
(g)	Other (please specify)		

34. In which Borough are you currently working? (check one box)

(a)	New York County (Manhattan)	(a)	☐
(b)	Bronx	(b)	☐
(c)	Kings	(c)	☐
(d)	Queens	(d)	☐
(e)	Richmond	(e)	☐

35. How old are you?

(a)	Below 25 years	(a)	☐
(b)	25 years below 30 years	(b)	☐
(c)	30 below 40 years	(c)	☐
(d)	40 below 50 years	(d)	☐
(e)	Over 50 years old	(e)	☐

36. Please indicate whether you are male or female:

Male	☐
Female	☐

37. Please indicate your race

White	☐
Black	☐
Hispanic	☐
Oriental	☐
Other	☐

38. If you have any comments on the system of indigent representation, please feel free to make them.

Note This questionnaire is confidential and anonymous. Please try to complete it expeditiously

APPENDIX 1(b)

CONFIDENTIAL

Questionnaire to Legal Aid Attorneys

1. How long have you been working in the Criminal Defense Division of the Legal Aid Society? (check one box)

(a)	Less than 1 year	(a)	☐
(b)	1 year less than 2	(b)	☐
(c)	2 years less than 4	(c)	☐
(d)	4 years less than 6	(d)	☐
(e)	6 years less than 10	(e)	☐
(f)	Over 10 years	(f)	☐

2. In which Borough are you currently working? (check one box)

(a)	New York County (Manhattan)	(a)	☐
(b)	Bronx	(b)	☐
(c)	Kings/Brooklyn	(c)	☐
(d)	Queens	(d)	☐
(e)	Richmond	(e)	☐

3. What was your reason for joining the Criminal Defense Division of the Legal Aid Society? (check one or more boxes)

(a)	It provides income	(a)	☐
(b)	I want to establish a reputation as a defense lawyer	(b)	☐
(c)	Interest in criminal law	(c)	☐
(d)	Believe every lawyer should do this sometime	(d)	☐
(e)	Other (please specify)		

4. Before joining the Criminal Defense Division of the Legal Aid Society, did you have experience of any of the following:

			Yes	No
(a)	Criminal Law course at Law School	(a)	☐	☐
(b)	Criminal Procedure course at Law School	(b)	☐	☐
(c)	Clinical Advocacy course at Law School	(c)	☐	☐
(d)	Internship with practitioner(s) of Criminal Law	(d)	☐	☐
(e)	Relevant trial or appellate experience in other Divisions of the Legal Aid Society	(e)	☐	☐
(f)	Handling criminal cases in the courts	(f)	☐	☐

5. Since joining the Criminal Defense Division of the Legal Aid Society, have you had the benefit of a training program provided by the Society? (check appropriate box)

Yes	No
☐	☐

6. In your Legal Aid practice, do you use investigative or expert services? (check one box)

(a)	Never	(a)	☐
(b)	Occasionally	(b)	☐
(c)	Very often	(c)	☐

7. If Never or Occasionally to Question 6, what is the reason for this?

Most cases do not require such investigation ☐

Other (please specify)

8. Do you have direct access to any of the following:

			Yes	No
(a)	The Law Advisory Bureau	(a)	☐	☐
(b)	Paralegal assistance	(b)	☐	☐
(c)	Experienced Criminal Trial Lawyers	(c)	☐	☐
(d)	Investigative Specialists	(d)	☐	☐
(e)	Legal Research Assistants	(e)	☐	☐

9. Have you attended within the last three years any of the following (check one or more boxes)

			Yes	No
(a)	Legal Aid training program	(a)	☐	☐
(b)	Training program sponsored by a Bar Association involved with the continuing legal education of attorneys	(b)	☐	☐

10. If Yes to any part of question 9, did you find the program

(a)	Helpful	(a)	☐	☐
(b)	Helpful but could have been better	(b)	☐	☐
(c)	Unhelpful	(c)	☐	☐

11. Is it your intention to continue to work for Legal Aid

(a)	For the foreseeable future	(a)	☐
(b)	Only in the medium term	(b)	☐
(c)	For only a little while	(c)	☐

12. How old are you?

(a)	Below 25 years	(a)	☐
(b)	25 below 30 years	(b)	☐
(c)	30 below 40 years	(c)	☐
(d)	40 below 50 years	(d)	☐
(e)	50 years old	(e)	☐

13. Please indicate whether you are male or female:

Male	☐
Female	☐

14. Please indicate your race

White	☐
Black	☐
Hispanic	☐
Oriental	☐
Other	☐

Note All answers to the above questions will be treated in complete confidence and your anonymity is guaranteed.

APPENDIX 1(c)

Original Legal Aid Society Questionnaire

(Not distributed to Legal Aid Society Staff Attorneys)

1. How long have you been working with Legal Aid?

Less than 1 year	☐
More than 1 year less than 2	☐
More than 2 years less than 4	☐
More than 4 years less than 6	☐
More than 6 years less than 10	☐
Over 10 years	☐

2. What was your reason for joining Legal Aid?

Interested in criminal law	☐
Wanted to help indigent dependants	☐
Believe every lawyer should do this sometime	☐
Wanted to establish a reputation	☐
Other (please specify)	

3. Before joining Legal Aid, did you have experience of any of the following:

	Yes	No
Criminal Law Course at Law School	☐	☐
Criminal Procedure course at Law School	☐	☐
Clinical course at Law School	☐	☐
Handling criminal cases in the courts	☐	☐

4. Is it your intention to continue to work for Legal Aid?

For the rest of your career	☐
Only in the medium term	☐
For only a little while	☐

5. Apart from multiple-defendant cases, when do you consider that you cannot represent a defendant because of a conflict of interest

	Yes	No
When defendant is complainant in another case	☐	☐
When defendant is witness in another case handled by Legal Aid	☐	☐
Other (please specify)		

6. In your Legal Aid practice, do you use investigative or expert services?

Never	☐
Occasionally	☐
Very Often	☐

7. If Never or Occasionally, what is the reason for this?

Most cases don't deserve such investigation	☐
Other (please specify)	

8. Do you have direct access to any of the following:

	Yes	No
Legal Research Services	☐	☐
Paralegal assistance	☐	☐
Experienced Criminal Trial Lawyers	☐	☐
Investigative Specialists	☐	☐

9. What, if any, problems do you think are created when there is no vertical representation (as where you have to handle all defendants in a multiple-defendant case at arraignment in the absence of an 18-B lawyer)

difficulty in making effective bail application	☐
delay in getting defendant's defense investigated	☐
lose opportunity to get favorable plea offer	☐
Other (please specify)	

10. What do you see as the systemic strengths of court-assignment of attorneys in New York?

11. What do you see as the systemic weaknesses of court-assignment of attorneys in New York?

12. What is your current case load?

	Felony	Misdemeanor	Violation
Less than 20	☐	☐	☐
Over 20 less than 40	☐	☐	☐
Over 40 less than 60	☐	☐	☐
Over 60 less than 80	☐	☐	☐
Over 80 less than 100	☐	☐	☐
Over 100	☐	☐	☐

13. When you applied for a job with the Legal Aid Society, what happened:

Nothing. I was just hired	☐
I was interviewed by an experienced lawyer	☐
I was asked to appear before an evaluator	☐
I was hired and required to attend an instruction course	☐

14. Are there available to you any continuing education program that would help in your Legal Aid practice

Yes	☐
No	☐

15. If Yes, have you attended any of these programs within the last three years?

Yes	☐
No	☐

16. If Yes, did you find the program

Helpful	☐
Unhelpful	☐

17. If training program or continuing education relevant to your practice were offered, would you participate?

Yes	☐
No	☐

APPENDIX 1(d)

18-B Control Cards Appellate Division First Department

Name_____

Address_____ Telephone No_____

Name of Defendant	Date of Assgt.	Court, Cnty. & Part	Name of Judge	Ind. or Doc. No.	Crime Charged	Voucher No. & Date	Fee

APPENDIX 1(e)

IN-COURT ACTIVITY FORM

Page ____ of ____ Pages

ATTORNEY'S NAME	ATTORNEY'S PAYEE NO. (2-9)	DEFENDANT'S NAME	ASSIGNMENT NO. (9-12)	COUNTY (13-14)

THIS FORM IS TO BE USED TO RECORD ALL IN-COURT ACTIVITIES. CHECK ALL APPLICABLE ITEMS UNDER THE DATE FOR EACH COURT APPEARANCE AND LIST THE TIME SPENT ON EACH APPEARANCE AT THE BOTTOM OF THE COLUMN. USE ADDITIONAL IN-COURT ACTIVITY FORMS IF NECESSARY.

	DATES: (15-20)	/ /	/ /	/ /	/ /	/ /	/ /
01	Arraignment	01___	01___	01___	01___	01___	01___
02	Preliminary Hearing	02___	02___	02___	02___	02___	02___
03	Trial Day	03___	03___	03___	03___	03___	03___
04	Guilty Plea Entered	04___	04___	04___	04___	04___	04___
05	Defendant Sentenced	05___	05___	05___	05___	05___	05___
06	Final Disp. by Other Than Plea or Trial	06___	06___	06___	06___	06___	06___
07	Bench Warrant (Issued or Stayed)	07___	07___	07___	07___	07___	07___
	MOTIONS ARGUED						
10	To Inspect & Dismiss	10___	10___	10___	10___	10___	10___
11	Bill of Particulars/Discovery	11___	11___	11___	11___	11___	11___
12	To Suppress Evidence	12___	12___	12___	12___	12___	12___
13	To Controvert Warrant	13___	13___	13___	13___	13___	13___
14	To Dismiss—Failure to Prosecute	14___	14___	14___	14___	14___	14___
15	To Dismiss—Interest of Justice (Clayton)	15___	15___	15___	15___	15___	15___
16	For Appointment of Expert	16___	16___	16___	16___	16___	16___
17	To Sever	17___	17___	17___	17___	17___	17___
18	To Suppress Defendant's Prior Convictions (Sandoval)	18___	18___	18___	18___	18___	18___
19	To Review Bail	19___	19___	19___	19___	19___	19___
20	Bail Application Before Other Than Trial Court	20___	20___	20___	20___	20___	20___
21	Withdraw Plea	21___	21___	21___	21___	21___	21___
22	Post Judgment Motions	22___	22___	22___	22___	22___	22___
23	Competency — Article 730	23___	23___	23___	23___	23___	23___
24	Article 78 Proceeding	24___	24___	24___	24___	24___	24___
29	Other (Specify)_____	29___	29___	29___	29___	29___	29___
	HEARINGS CONDUCTED (sworn testimony taken)						
30	Suppress Statements	30___	30___	30___	30___	30___	30___
31	Suppress Identification	31___	31___	31___	31___	31___	31___
32	Suppress Physical Evidence	32___	32___	32___	32___	32___	32___
33	Controvert Warrant	33___	33___	33___	33___	33___	33___
34	Competency	34___	34___	34___	34___	34___	34___
35	Suppress Defendant's Prior Convictions (Sandoval)	35___	35___	35___	35___	35___	35___
36	Persistent or Predicate Felon	36___	36___	36___	36___	36___	36___
39	Other (Specify)_____	39___	39___	39___	39___	39___	39___
	SPECIAL PROCEEDINGS						
50	Writ of Habeas Corpus	50___	50___	50___	50___	50___	50___
51	Resentencing	51___	51___	51___	51___	51___	51___
52	Violation of Probation Hearing	52___	52___	52___	52___	52___	52___
53	Extradition Proceedings	53___	53___	53___	53___	53___	53___
59	Other (Specify)_____	59___	59___	59___	59___	59___	59___
	ADJOURNMENTS						
60	Plea Negotiations	60___	60___	60___	60___	60___	60___
61	Request of Defense	61___	61___	61___	61___	61___	61___
62	Request of Co-Defendant	62___	62___	62___	62___	62___	62___
63	Request of People	63___	63___	63___	63___	63___	63___
64	Discovery Material not Provided by People	64___	64___	64___	64___	64___	64___
65	Part Not Available	65___	65___	65___	65___	65___	65___
66	By Court	66___	66___	66___	66___	66___	66___
67	Defendant Not Produced	67___	67___	67___	67___	67___	67___
68	Minutes Not Ready	68___	68___	68___	68___	68___	68___
69	Pre-Pleading Investigation Requested	69___	69___	69___	69___	69___	69___
70	P.P.I. Not Ready	70___	70___	70___	70___	70___	70___
71	Psychiatric Report Not Ready	71___	71___	71___	71___	71___	71___
72	Sentencing (Probation) Report Not Ready	72___	72___	72___	72___	72___	72___
73	For Progress Report	73___	73___	73___	73___	73___	73___
74	Waived to Grand Jury	74___	74___	74___	74___	74___	74___
80	Interview In Court Detention Facilities	80___	80___	80___	80___	80___	80___
	DAILY HOURS: (21-23)	___	___	___	___	___	___

CPD 52 **I. TOTAL IN-COURT HOURS:_____**

OUT-OF-COURT ACTIVITY FORM

Page____ of ____ Pages

ATTORNEY'S NAME	ATTORNEY'S PAYEE NO. (3-8)	DEFENDANT'S NAME	ASSIGNMENT NO. (9-12)	COUNTY (13-14)

THIS FORM IS TO BE USED TO RECORD ALL OUT-OF-COURT ACTIVITY. PLACE THE DATE OUT-OF-COURT ACTIVITY TOOK PLACE AT THE TOP OF THE COLUMN AND LIST THE TIME SPENT ON THE ACTIVITY NEXT TO THE APPLICABLE ITEM(S). A SUB-TOTAL OF HOURS EXPENDED SHOULD BE RECORDED AT THE BOTTOM OF EACH COLUMN. USE ADDITIONAL OUT-OF-COURT ACTIVITY FORMS IF NECESSARY.

	DATES (15-20)	/ /	/ /	/ /	/ /	/ /	/ /	/ /
	Out-of-Court Preparation							
01	Legal Research	01 __ hrs.	01 __ hrs.	01 __ hrs.	01 __ hrs.	01 __ hrs.	01 __ hrs.	01 __ hrs.
02	Trial Preparation	02 __ hrs.	02 __ hrs.	02 __ hrs.	02 __ hrs.	02 __ hrs.	02 __ hrs.	02 __ hrs.
03	Preparation of Legal Papers	03 __ hrs.	03 __ hrs.	03 __ hrs.	03 __ hrs.	03 __ hrs.	03 __ hrs.	03 __ hrs.
04	Written Motions Filed	04 __ hrs.	04 __ hrs.	04 __ hrs.	04 __ hrs.	04 __ hrs.	04 __ hrs.	04 __ hrs.
05	Correspondence	05 __ hrs.	05 __ hrs.	05 __ hrs.	05 __ hrs.	05 __ hrs.	05 __ hrs.	05 __ hrs.
06	Investigation	06 __ hrs.	06 __ hrs.	06 __ hrs.	06 __ hrs.	06 __ hrs.	06 __ hrs.	06 __ hrs.
07	Review of Reports or Discovery Material	07 __ hrs.	07 __ hrs.	07 __ hrs.	07 __ hrs.	07 __ hrs.	07 __ hrs.	07 __ hrs.
08	Visit Scene of Crime	08 __ hrs.	08 __ hrs.	08 __ hrs.	08 __ hrs.	08 __ hrs.	08 __ hrs.	08 __ hrs.
	Consultation With:							
09	Prosecuting Officials	09 __ hrs.	09 __ hrs.	09 __ hrs.	09 __ hrs.	09 __ hrs.	09 __ hrs.	09 __ hrs.
10	Co-Counsel	10 __ hrs.	10 __ hrs.	10 __ hrs.	10 __ hrs.	10 __ hrs.	10 __ hrs.	10 __ hrs.
11	Experts	11 __ hrs.	11 __ hrs.	11 __ hrs.	11 __ hrs.	11 __ hrs.	11 __ hrs.	11 __ hrs.
12	Probation Officials	12 __ hrs.	12 __ hrs.	12 __ hrs.	12 __ hrs.	12 __ hrs.	12 __ hrs.	12 __ hrs.
13	Diversion Programs	13 __ hrs.	13 __ hrs.	13 __ hrs.	13 __ hrs.	13 __ hrs.	13 __ hrs.	13 __ hrs.
	Interviews With:							
14	Defendant at Prison	14 __ hrs.	14 __ hrs.	14 __ hrs.	14 __ hrs.	14 __ hrs.	14 __ hrs.	14 __ hrs.
15	Defendant at Office	15 __ hrs.	15 __ hrs.	15 __ hrs.	15 __ hrs.	15 __ hrs.	15 __ hrs.	15 __ hrs.
16	Defendant's Family	16 __ hrs.	16 __ hrs.	16 __ hrs.	16 __ hrs.	16 __ hrs.	16 __ hrs.	16 __ hrs.
17	Witnesses	17 __ hrs.	17 __ hrs.	17 __ hrs.	17 __ hrs.	17 __ hrs.	17 __ hrs.	17 __ hrs.
	Miscellaneous:							
18	Line-Up Appearance	18 __ hrs.	18 __ hrs.	18 __ hrs.	18 __ hrs.	18 __ hrs.	18 __ hrs.	18 __ hrs.
19	Grand Jury Appearance	19 __ hrs.	19 __ hrs.	19 __ hrs.	19 __ hrs.	19 __ hrs.	19 __ hrs.	19 __ hrs.
20	Other (Specify):	20 __ hrs.	20 __ hrs.	20 __ hrs.	20 __ hrs.	20 __ hrs.	20 __ hrs.	20 __ hrs.
	DAILY HOURS: (21-23)							

II. TOTAL OUT-OF-COURT HOURS:_____

and vs

CASE DISPOSITION FORM

Page ____ of ____ Pages

ATTORNEY'S NAME	ATTORNEY'S PAYEE NO. (2-5)	DEFENDANT'S NAME	ASSIGNMENT NO. (9-12)	COUNTY (13-14)

How many Dockets (cases) are covered by this voucher including those initially assigned to you under the original order and those which were subsequently assigned during the course of representing the defendant(s)? Place the appropriate number of cases in the box(es) preceding the applicable categories of offenses (Homicide, Felony, Misdemeanor, or Violation) 15 through 24.

15–16 ☐ Homicide 17–18 ☐ Felony 19–20 ☐ Misdemeanor 21–22 ☐ Violation 23–24 ☐ Special Proceeding*

CHECK ONE: Final claim is hereby 25 ☐ made ☐ waived for compensation and expenses of representation

27 ☐ NOTICE OF APPEAL HAS BEEN FILED (Check if Applicable)

The following written motions were filed in relation to the above referenced case(s). (Check all applicable boxes 28 through 41):

28 ☐ To Suppress Evidence	31 ☐ To Sever	34 ☐ Sandoval	37 ☐ To Withdraw Plea
29 ☐ Bill of Particulars/Discovery	32 ☐ Dism.—Failure to Prosecute	35 ☐ To Controvert Warrant	38 ☐ Post Judgment Motions
30 ☐ To Inspect & Dismiss	33 ☐ For Appointment of Expert	36 ☐ To Review Bail	39 ☐ For Competency Hearing (Article 730)
			41 ☐ Other _____ (Specify)

DISPOSITIONS

*Special proceedings (extradition, violation of probation, habeas corpus, material witness hearings, line-up): Insert in box 42 the number of special proceedings which were terminated in favor of your client and in box 43 the number of special proceedings which were terminated adversely to the interests of your client 42 ☐ 43 ☐

Check Box 44, 45, 85, 90 or 95 to indicate means of disposition. If this voucher covers more than one case check as many of these boxes as are applicable.

How many dispositions listed below (01 through 44) apply to each category of offense (HOM. FEL. MIS. VIO.) covered by this voucher? Enter the correct number next to the type of disposition(s) and under the applicable category of offense(s). (The number of dispositions shown must equal the total number of cases covered by this voucher as reflected in 15 through 24 above.)

			Hom.	Fel.	Mis.	Vio.
44 ☐ JURY TRIAL or						
45 ☐ NON-JURY TRIAL	01	Acquittal	01			
	02	Conviction as Charged	02			
	03	Conviction Felony Less than Charged	03			
	04	Conviction Misdemeanor Less than Charged	04			
	05	Conviction Violation Less than Charged	05			
	06	Hung Jury	06			
	07	Other Mistrial	07			
	08	Dismissal After People's Case	08			
85 ☐ BY PLEA	11	Conviction as Charged	11			
	12	Conviction Felony Less than Charged	12			
	13	Conviction Misdemeanor Less than Charged	13			
	14	Conviction Violation Less than Charged	14			
90 ☐ OTHER DISPOSITIONS	21	Complaint Withdrawn	21			
	22	Dismissal Interest of Justice	22			
	23	Dismissal Covered by Other Case	23			
	24	Dismissal by Grand Jury	24			
	25	Dismissal after Motion to Suppress Granted	25			
	26	Dismissal—Defendant in CEP, Drug Program, etc.	26			
	27	Defendant Deceased	27			
	28	Dismissal by Court after Inspection of G.J. Minutes	28			
	29	ACD	29			
	30	Dismissal After Preliminary Hearing	30			
	31	Dismissal Failure to Prosecute	31			
	32	Defendant Absconded/Bench Warrant	32			
	33	Defendant Incompetent	33			
	34	Transferred to Family Court	34			
	35	Dismissal After Post Judgment Motions	35			
95 ☐ ATTORNEY RELIEVED (Indicate Primary Reason Only)	41	By Private Counsel	41			
	42	At Attorney's Request	42			
	43	At Defendant's Request	43			
	44	By Court Sua Sponte	44			
99 ☐ SENTENCE (Check if Applicable) How many sentences listed (51 through 59) apply to each category of offense (HOM. FEL. MIS. VIO.) covered by this voucher? Enter the correct number next to the type of sentence(s) and under the applicable category of offense(s).	51	Predicate Felony Offender	51			
	52	Y.O. Treatment Granted	52			
	53	Imprisonment	53			
	54	Time Served	54			
	55	Fine	55			
	56	Probation	56			
	57	Conditional Discharge	57			
	58	Unconditional Discharge	58			
	59	Participate in Drug or Other Program	59			

III. EXPENSES OF REPRESENTATION (Itemize): _____

TOTAL AMOUNT OF EXPENSES: $_____

IV. Has compensation for the above referenced case(s) heretofore been applied for or received? Yes____ No____ If yes, amount $_____

CLAIM		ALLOWANCE
		FOR COURT USE ONLY DO NOT WRITE IN THIS SPACE
Item I	No. of hrs.____ AT $25	I ____ hrs. at $ 25.00 per hr. $____
Item II	No. of hrs.____ AT $15	II ____ hrs. at $ 15.00 per hr. $____
Item III	Expenses $____	III ..... $____
		TOTAL ..... $____

The undersigned, as attorney-at-law of the State of New York, as assigned counsel for the defendant aforesaid, hereby affirms under penalty of perjury that the number of hours and the expenses set forth above are correct; that except as noted in IV above, no payment has been received; and that no other payment has been received or requested from the Comptroller of the City of New York in accordance with Article 18B of the County Law, for this or any other assigned case, which is duplicative of the time period or hours of the days covered by the voucher herewith submitted by me.

DATED: _____ 19____

_____ Attorney's Signature

_____ DATE Mo/Day/Yr.

_____ Justice of the Supreme Court of the State of New York OR Judge of the Criminal Court of the City of New York

Current _____ Tel.# _____

Address _____

APPENDIX 2(a)

CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

November 27, 1965

EXECUTIVE ORDER NO. 178

SUBJECT: FURNISHING OF COUNSEL TO INDIGENT CRIMINAL DEFENDANTS WITHIN THE CITY OF NEW YORK

1. Pursuant to the provisions of Article 18-B of the County Law (§§ 722-722e added by Chapter 878 of the Laws of 1965), I hereby designate the Legal Aid Society of the City of New York to furnish counsel to persons within the City of New York charged with a crime (as defined in County Law, §722-a) who are financially unable to obtain counsel within the meaning of County Law §722. The terms and conditions for the rendition of such services, subject to the provisions of the foregoing statute, shall be as provided in an agreement to be entered into by the Society and the City; provided, however, that for the services to be rendered by the Society during the period from December 1, 1965, up to and including June 30, 1966, the City shall pay such Society the sum of Three Hundred Thousand ($300,000) dollars, in such installments and at such times as shall be provided for in such agreement. This sum is in addition to the Four Hundred Thousand ($400,000) dollars heretofore paid by the City to the Society for the period from July 1, 1965 to June 30, 1966.

2. In those cases where by reason of a conflict of interest or other appropriate reason provided in the above-mentioned agreement, the Legal Aid Society declines to represent any such defendant, such defendant shall be represented by counsel furnished pursuant to the joint plan of the Association of the Bar of the City of New York and the New York County Lawyers' Association, as set forth in the communications by such bodies to the Mayor, dated November 11 and 12, 1965; provided that such joint plan is approved by the Judicial Conference of the State of New York; and provided, further, that any imposing or seeking to impose any expense or charge upon the City, other than as provided for by §§722-b and 722-c of the County Law, shall not be effective unless approved by the Mayor.

3. The Director of the Budget is hereby authorized to promulgate rules and regulations for the implementation of this executive order in conformity with applicable law.

4. The provisions of the foregoing plan for providing counsel through the Legal Aid Society may be terminated by the City acting by executive order of the Mayor, or by the Legal Aid Society, by giving sixty (60) days notice to the other party in such manner as shall be provided for in the above-mentioned agreement.

5. This executive order shall take effect December 1, 1965.

/s/ Robert F. Wagner
Mayor

APPENDIX 2(b)

Indigent Defendants Legal Panel

PLAN OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, BRONX COUNTY BAR ASSOCIATION, BROOKLYN BAR ASSOCIATION, NEW YORK COUNTY LAWYERS' ASSOCIATION, QUEENS COUNTY BAR ASSOCIATION AND RICHMOND COUNTY BAR ASSOCIATION

Adopted Pursuant to Article 18-B of the County Law

Approved by the Judicial Conference of the State of New York, April 23, 1966

Published by the Administrator of the First Department Plan

JANUARY 1, 1967

CONTENTS

Pursuant to the provisions of Article 18-B of the County Law (Ch. 878 of the Laws of 1963, approved July 16, 1963), The Association of the Bar of the City of New York, Bronx County Bar Association, Brooklyn Bar Association, New York County Lawyers' Association, Queens County Bar Association and Richmond County Bar Association hereby propose the following Plan for the adequate representation of persons charged with a crime as defined in Section 722-a of the County Law, who are financially unable to obtain counsel, and for the furnishing of investigative, expert and other services, as provided in Section 722-c thereof.

As provided in subparagraph (4) of Section 722 of the County Law this Plan combines representation by a private legal aid society and by private attorneys, the services of the latter being rotated (so far as practicable and feasible) and coordinated by an administrator.

The Legal Aid Society of The City of New York (Legal Aid Society) will be designated as the private legal aid society and The Association of the Bar of the City of New York and the five county bar associations within The City of New York will be designated as the bar associations which may prepare panels of attorneys to be rotated as above and coordinated by an administrator (Administrator) or administrators (Administrators).

I. THE LEGAL AID SOCIETY

Under this Plan, whenever a determination has been made by a court that a defendant is entitled to representation under Article 18-B of the County Law, the court shall designate and appoint the Attorney-in-Charge of the Criminal Courts Branch of the Legal Aid Society as the attorney of record for the defendant in all cases, unless:

(1) the court deems the assignment of other counsel to be required in the interest of justice because of either a conflict of interest or any other good cause, in which event the court shall appoint counsel to be designated by the appropriate Administrator from the appropriate panel as hereinafter provided: or

(2) the defendant in the case is charged with a crime punishable by death or life imprisonment, in which event application shall forthwith be made in the Supreme Court for the assignemnt of counsel, and in any such case the Supreme Court may, in its discretion name, assign and appoint one or more of the attorneys listed in the panel of trial attorneys available for service in the Supreme Court in the County.

II. PANEL OF ATTORNEYS

Each bar association shall prepare and certify to the appropriate Administrator not later than June 30, 1966, a list of attorneys who are admitted to practice in the State of New York and who, in the opinion of the bar associa-

tion, which shall consider their experience in criminal practice, are competent to give adequate representation to defendants under Article 18-B of the County Law. Such list shall include each attorney's name and address and telephone number, and shall be supplemented by a compilation consisting of a copy of the application, on the form attached hereto as Exhibit A, of each attorney listed.

1. Each attorney whose name is listed shall be designated by the bar association as available for service in either the Supreme Court or the Criminal Court or both; but his name shall not be listed at all unless he is designated as available for service in that court or both courts, as the case may be, in which in his application, as above mentioned, he has expressed his willingness to serve.

2. In the event that an attorney is not designated as available for the service he has expressed his willingness to render and accordingly his name is not listed, both the fact that he has made application and the contents of such application shall be kept and deemed in all respects private and confidential and shall not be disclosed except upon the written request of the applicant.

3. It shall not be regarded as an obligation of an attorney to express willingness to serve in the Supreme Court, even though he is fully qualified and competent to serve, should he prefer to restrict his service as assigned counsel to cases in the Criminal Court; nor shall it be regarded an obligation of an attorney to serve as assigned counsel in the Criminal Court should he prefer to restrict his service to the Supreme Court, provided, however, that an application for designation for service only in the Supreme Court must be deemed to include a consent to serve in the Criminal Court to the extent of representing a defendant at arraignments and at hearings to determine whether such defendant should be held for action by the Grand Jury, when such defendant is charged with a felony for which an indictment may be found and returned in the Supreme Court.

4. No attorney shall be designated by a bar association as available for service as trial counsel in the Supreme Court unless he shall have been at the Bar for a minimum of seven years and shall have had substantial experience in the trial of criminal cases, provided, however, that in exceptional circumstances when in the opinion of a bar association an attorney is especially well qualified by reason of demonstrated ability and experience the bar association may waive th requirment of the minimum of seven years at the Bar. In addition to or instead of designation of availability as trial counsel, an attorney may be designated as available for service on appeals in criminal cases.

5. Additions to and deletions from the panel or panels of attorneys, prepared as provided in Article III hereof, may be made from time to time by the bar associtions which submitted the original list and in accordance with the same principles observed by the bar association in initially certifying the list of attorneys to the Administrator or Administrators. In addition, the appropri-

ate Appellate Division may at any time make additions to or deletions from any bar association panel.

6. In order to permit all members of the bar in The City of New York to render service in their capacity as officers of the courts and in keeping with the high traditions of the legal profession, each bar associtions shall, in addition to recruiting the services of its own members, endeavor to enlist the services of any lawyer not a member of any of the County or City bar associations who is qualified to render service under Article 18-B of the County Law.

III. THE ADMINISTRATOR OR ADMINISTRATORS

1. In their discretion the Appellate Divisions of the First and Second Judicial Departments shall together appoint one Administrator for both Departments, or they each shall appoint an Administrator for their respective Departments. His or their salaries and administrative expenses, including salaries of assistants and clerical personnel to be appointed as required, shall be paid by The City of New York.

2. Upon receipt of the lists of attorneys certified by the bar associations pursuant to Article II hereof, the Administrator or Administrators shall prepare two panels of trial attorneys for each county from the lists provided by the bar associations, one panel for Supreme Court cases and one panel for Criminal Court cases. No attorney may be placed on the panels of more than one county. The Administrator or Administrators shall similarly prepare panels for appeals to the Appellate Terms and Appellate Divisions, First and Second Departments. No attorney may be placed on the appellate panels of more than one Department; but an attorney may be on both the trial panels of a county and the appellate panels of a Department.

3. The Administrator or Administrators shall prepare all panels in the following fashion: the names for each of the panels shall be drawn by lot and placed in the order drawn on a list, copies of which should then be available for distribution as provided by the appropriate Appellate Division. All assignments shall be rotated on each panel by the Administrator or Administrators in accordance with the listing of the panel until an attorney is reached who is available for service. Whenever the Supreme Court has exercised its discretion to appoint an attorney or attorneys from the Supreme Court panel in a case involving a crime punishable by death or life imprisonment (as provided in Article I and in paragraph A1 of Article IV hereof) and such attorney's name has not previously been reached in order on the list, such attorney shall thereafter be treated as if his name had been reached in regular rotational order. The Administrator or Administrators ahll maintain adequate records which will demonstrate compliance with a rotational procedure.

IV. APPOINTMENT OF COUNSEL

A. Appointments from trial panels.

1. After a determination by the court that a defendant or prospective defendant is entitled to representation under Article 18-B of the County Law and that the Legal Aid Society should not furnish counsel for any of the reasons set forth in Article I hereof, the court shall make an initial determination whether or not the case is such that the attorney to be appointed at that time should come from the Supereme Court panel or the Criminal Court panel, and shall so notify the appropriate Administrator. In the event that a case involves a crime punishable by death or life imprisonment, the Supreme Court may, in its discretion, request the appropriate Administrator to designate for appointment, without regard for rotation, one or more attorneys named by the Court who are listed on the Supreme Court panel to the extent such procedure is permitted by law. In cases where the court determines that justice requires the immediate presence of counsel, and counsel from the panel is not immediately available, the court may appoint other counsel, who shall not be compensated under this Plan, to advise the defendant until counsel from the panel can be assigned.

2. The appropriate Administrator shall designate an attorney from the appropriate county panel in accordance with the procedures set forth in paragraph 3 of Article III hereof. All designations of counsel by such Administrator shall be promptly reported to the clerk of the appropriate court and such counsel must be assigned by the court.

3. In cases involving more than one defendant, one or more attorneys may be appointed, as herein provided, to represent all defendants, but where circumstances warrant, such as conflicting interests of respective defendants, separate counsel shall be appointed, as herein provided, for each of the defendants or any one of them.

4. No defendant accepting representation under Article 18-B of the County Law shall be permitted to select his own counsel from the panel of attorneys.

5. Subject to paragraph B of this Article IV, whenever counsel has been appointed by the court such counsel shall continue to act for the defendant throughout the proceedings in the trial court and through appeal, unless or until he is relieved by the appellate court.

B. Duration and substitution of appointments.

1. As provided in Section 722 of the County Law, a defendant for whom counsel is appointed hereunder shall be represented at every stage of the proceedings, from his initial appearance before the judge or justice through appeal. If at any time after the appointment of counsel the court finds that the defendant is financially able to obtain counsel or to make partial payment for his representation, the court may terminate the appointment of counsel or it

may direct that payment be made to the appointed private counsel or to the City of New York, as authorized by Section 722-d of the County Law. Such payments shall be strictly controlled by the court, to the end that payments to appointed private counsel shall not exceed the maximum permitted by Section 722-b of the County Law.

2. The court may, in the interests of justice, substitute one appointed counsel from the panel for another, designated by the appropriate Administrator as herein provided, at any stage of the proceedings. Whenever an attorney who is not on the Supreme Court panel has been appointed by the Criminal Court to a case which results in an indictment, such attorney must withdraw from the case as soon as practicable and an attorney from the Supreme Court panel, whose name has been obtained and furnished by the appropriate Administrator as hereinabove provided, should be substituted by the Supreme Court. Whenever justice requires, however, the Supreme Court may appoint the original attorney to serve as co-counsel with the new attorney. In no event shall the total compensation to all appointed private counsel exceed the maximum permitted by Section 722-b of the County Law. Appointed counsel replaced by such substitution shall await the final disposition of the case before submitting his claim for compensation as prescribed hereinafter.

3. No counsel appointed hereunder shall seek or accept any fee for representing the defendant for whom he is appointed without approval of the court as hereinabove provided. If there should come to the knowledge of such counsel any information indicting that the defendant or someone on his behalf can make payment in whole or in part for legal services, it shall be his duty to report such information promptly to the court, so that appropriate action may be taken hereunder.

C. Appointments from appellate panels.

1. After the appellate court has made a determination that a defendant is entitled to representation under Article 18-B of the County Law and that the Legal Aid Society should not furnish counsel for any of the reasons detailed in Article I hereof, the appointment shall be made in the same manner as that prescribed in paragraph A of this Article IV. Counsel representing the defendant in the trial court shall, in appropriate cases and if a member of the appropriate appellate panel, be appointed by the appellate court to continue on appeal. The appointment of counsel on appeal shall be made within a reasonable time after the notice of appeal filed.

2. In appealed cases involving more than one defendant, one or more attorneys may be appointed to represent all appellants, but where circumstances warrant such as conflicting interests of respective appellants separate counsel shall be appointed for each of the appellants or any one of them.

3. The appellate court may, at any point in the appellate proceedings, substitute one appointed counsel from the panel for another, designated by the

appropriate Administrator as herein provided, in the same manner and under the same conditions as provided for in paragraph B of this Article IV.

4. No defendant accepting representation under Article 18-B of the County Law shall be permitted to select his own counsel from the panel of attorneys.

V. SERVICES OTHER THAN COUNSEL

Counsel (whether or not appointed under this Plan), other than the Legal Aid Society, for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in his case may request such services in an ex parte proceeding before a court. If, after appropriate inquiry, the court shall find that the services are necessary and that the defendant is financially unable to obtain them, it shall authorize defendant's counsel to obtain such services. Any such proceedings incident to the aforesaid inquiry shall remain privilieged and unavailable to the prosecution until the trial shall have been concluded. If the court should find that timely procurement of such services could not await prior authoriation, it may, in the interests of justice, ratify such services after they have been obtained, if it shall find that the defendnat is financially unable to pay for them.

VI. PAYMENT OF COUNSEL FEES AND FOR OTHER SERVICES

1. A private attorney appointed pursuant to this Plan shall be compensated upon the submission of his claim in accordance with the rules, regulations and forms promulgated by the Comptroller of the City of New York, and supported by a written statement in substantially the form attached hereto as Exhibit B, specifying the time expended, services rendered, expenses reasonably incurred and reimbursement or compensation applied for or received in the same case from any other source, while the case was pending in the court. Claims for expenses incurred for services under Article V hereof shall be supported by a sworn statement in substantially the form attached hereto as Exhibit C. Expenses reasonably incurred are limited to out-of-pocket expenses and shall not include any allocations for general officer overhead, such as rent, local telephone services or secretarial help. For representation on appeal, compensation and reimbursement shall be fixed by the appellate court. For all other representation, compensation and reimbursement shall be fixed by the court where judgment of conviction or acquittal or order of dismissal was entered. Unless good cause is shown, claims for attorney's fee, expenses and services shall be submitted to the court within 45 days after the court has finally disposed of the case.

2. Except as authorized or directed by the court, no appointed attorney furnishing representation under Article 18-B of the County Law shall seek or accept any payment or promise of payment from a defendant or on his behalf for his representation of said defendant or for reimbursement of any expenses incurred.

3. The clerk of the particular court shall forthwith forward all approved statements to the appropriate Administrator who shall then forward them to the comptroller of the City of New York for payment; provided that an application which is approved in an amount in excess of the limits provided in Section 722-b of the County Law because of extraordinary circumstances, and in order to provide for compensation for protected representation, shall be forwarded by the clerk to the Presiding Justice of the appropriate Appellate Division for his approval, dissapproval or modification prior to being forwarded to such Administrator.

VII. FORMS

In the event that forms are prepared and furnished by the Comptroller of the City of New York, they shall be used, where applicable, in all proceedings under this Plan. Any revisions of said forms or any additional forms that may be prescribed by the Comptroller of the City of New York shall likewise be used, where applicable, in all proceedings under this Plan.

VIII. RULES AND REPORTS

The Appellate Divisions of the First and Second Judicial Departments may promulgate such rules with respect to this Plan as they may deem necessary and the Administrative Board of the Judicial Conference may require such records to be kept by the Administrator or Administrators as will reflect the operation of the Plan.

APPENDIX 2(c)

AGREEMENT

This agreement made September 6, 1966 between the City of New York, hereinafter referred to as the City, acting by and through the Office of the Mayor, The Legal Aid Society, hereinafter referred to as the Society,

WITNESSETH:

WHEREAS the City has been vitally concerned with the necessity of assuring to all indigent defendants the assistance of counsel as a fundamental right essential to a fair trial; and

WHEREAS the City has been equally concerned with the necessity of assuring to all persons needing a lawyer's help and unable to pay for it the assistance of counsel, and to that end the City acting pursuant to County Law section 224(10) has in the past contributed to the costs of operation of the Legal Aid Society in civil and criminal matters; and

WHEREAS Article 18-B of the County Law (§§ 722-722-e added by Chapter 878 of the Laws of 1965 as amended by Chapter 761 of the Laws of 1966) requires the City to place in operation a plan for providing counsel to persons within the City of New York charged with a crime (as defined in County Law § 772-a) who are financially unable to obtain counsel within the meaning of County Law § 722; and

WHEREAS the Society is a membership corporation duly organized and authorized under the laws of the State of New York to serve as and perform the functions of a legal aid society in each of the five counties within the City of New York, wherein the Society is presently actively engaged in rendering such services and performing such functions; and

WHEREAS the Society has by communication dated October 28, 1965 submitted to the City a plan which sets forth the readiness and willingness of the Society to undertake the responsibility of providing counsel for persons who have been charged with a crime and lack financial resources to obtain such counsel; and

WHEREAS the City has by Executive Order No. 178, dated November 27, 1965, adopted a plan which designates the Society to furnish such counsel in all cases except whereby reason of conflict of interest or for other appropriate reasons the Society declines to represent a defendant; and

WHEREAS the City has contributed to the Society $300,000 as a contribution to its increased costs in performing services required by Article 18-B of the County Law during the period December 1, 1965, to and including June 30, 1966, and has appropriated funds for a contribution to the Society during the City's fiscal year commencing July 1, 1966, in accordance with an agreement to be entered into by the Society and the City;

NOW; therefore the parties hereto have agreed:

FIRST: The Society shall employ and provide for the services of attorneys and counselors at law, with appropriate clerical and investigative assistance in sufficient numbers to undertake, except as provided in paragraph "SECOND", the defense of all persons charged with a crime as defined in County Law § 722-a in the Courts of New York within the City of New York who are financially unable to obtain counsel. The Society will also provide expert services and all other services necessary for the defense of these cases. All such persons shall be employees of the Society, which shall alone be responsible for their work, and the direction thereof and their compensation. Nothing included in this agreement shall impose any liability or duty on the City to any person, firm or corporation engaged by the Society as expert, consultant, independent contractor, trainee, employee, servant or agent, nor shall the City be liable for the acts, omissions, liabilities or obligations of any such person, firm or corporation, or for taxes of any nature including but not limited to unemployment insurance, workmen's compensation, or social security.

SECOND: The Society shall not be required to furnish such representation in any case in which a determination has been made by a court that the Society is unable to furnish counsel because of a conflict of interest, or where in a case involving a crime punishable by death or life imprisonment, a court shall determine, in its discretion, that a defendant be represented by counsel furnished pursuant to the joint plan, as amended, of the Association of the Bar of the City of New York, Bronx County Bar Association, Brooklyn Bar Association, New York County Lawyers' Association, Queens County Bar Association and Richmond County Bar Association, said amended plan having been approved by the Judicial Conference by letter dated April 28, 1966.

THIRD: Staff attorneys of the Society's Criminal Courts Branch will be regularly assigned to all criminal parts of the Supreme Court in the first, second and eleventh judicial districts, and to all parts of the Criminal Court of the City of New York in which there is a substantial and regular need for their services, in sufficient numbers to meet promptly requests for their assistance in cases for which representation is required.

FOURTH: The Society will represent every defendant for whom its representation is required by this agreement at every stage of the proceeding from his initial appearance before a judge or justice through appeal and in post-appellate proceedings instituted in courts located in the City of New York, such as, but not limited to corum nobis and habeas corpus. It will, on request of an appellate court, also assure the availability of an appellate remedy for other eligible appellants in criminal cases originating within the City.

FIFTH: The Society will, during the terms of this contract and any future renewals thereof, at regular intervals, at least quarter-annually, and from time to time in addition thereto as may be requested by the Mayor of the City of New York, or by the Presiding Justice of either the Appellate Division, First Department, or the Appellate Division, Second Department, submit re-

ports to the Mayor and the respective Departmental Directors of Administration of the First and Second Judicial Departments concerning its operation hereunder. Such reports shall furnish such pertinent information concerning the Society's representation of indigent defendants, its fiscal operation and statistical records as may be required by the Mayor or the Departmental Directors of Administration.

SIXTH: The City, in consideration of the services to be rendered by the Society during the period from July 1, 1966 up to and including June 30, 1967, will pay the Society the sum of One million and no/100 ($1,000,000) Dollars, in four equal installments. Such payments are subject to audit and revision by the Comptroller in accordance with the provisions of Administrative Code § 93d-1.0. The first payment in the sum of Two hundred fifty thousand and no/100 ($250,000) Dollars shall be made on July 15, 1966; the second, third and fourth payments of an equal sum on October 15, 1966; January 15, 1967 and April 15, 1967. Future contributions by the City to the Society during the life of this agreement shall be determined upon the basis of written application by the Society made on or before December 1 of each year to the dsirector of the budget and such other officers as the City may request, including full information on the Society's expense budget for the following calendar year, the size of the Society's legal and clerical staff and its staff salaries, and such other information as the City may require.

SEVENTH: The Society agrees that it will, in accordance with any guidelines establshed by the City, as approved by the Presiding Justices of the Appellate Division, First Department and Second Department conduct an investigation so as to ascertain the financial ability of a defendant to retain private counsel or to make partial payments for representation or other services, which investigation shall include but not be limited to obtaining the completion of a financial questionaire, and shall thereafter make any report required by County Law § 722-d.

EIGHTH: It is understood and agreed by the parties hereto that no services to be rendered pursuant to, or in connection with this agreement, may be refused to any person because of his race, color or creed, country of origin, or political belief, and no persons shall be denied employment by the Society in violation of laws against discrimination in employment.

NINTH: The undersigned, as an officer of the Society expressly warrnats and represents that neither he nor any member, partner, director or officer of the Society, has, prior to the date of execution of this contract, been called before a Grand Jury to testify concerning any transaction or contract had with the State of New York, any political subdivision thereof, a public authority or with any public department, agency or official of the State of New York or of any political subdivision thereof, or of a public authority, or of any fire district, and refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

TENTH: In accordance with the provisions of sections 103 (a) and 103(b) of the General Municipal Law, as added by Chapter 605 of the Laws of 1950, as amended:

Upon refusal of the person or persons executing this contract for the Society or any other person who is a member, partner, officer or director of the Society, when called before a grand jury to testify concerning any transaction or contract had with the State of New York, any political subdivision thereof, a public authority, or with any public department, agency or official of the State of New York or of any political subdivision thereof, or of a public authority, or of any fire district, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract:

(a) the said person or persons and any firm, partnership or corporation of which he is or they are a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or fire district or any public department, agency or official thereof, for goods, work or services, for a period of five (5) years after such refusal and

(b) this contract and any and all other contracts made with any municipal corporation or any public department, agency or official thereof, or with any fire district or any agency or official thereof, by the said person or persons and by any firm, partnership or corporation of which he is or they are a member, partner, director or officer, may be cancelled or terminated by the municipal corporation or fire district without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the municipal corporation or fire district for goods delivered or work done prior to the cancellation or termination, shall be paid.

ELEVENTH: This agreement may be terminated by the City, acting by exceutive order of the Mayor, or by the Society, by service by certified mail of a notice of termination effective ninety (90) days after such service. A copy of such notice shall be sent to the Presiding Justice of the Appellate Divisions, First Department and Second Department. Any notice served by the Society shall be directed to the Mayor of the City of New York. The Society agrees that upon receipt of notice of termination pursuant to this paragraph or upon termination of this contract:

(a) It shall not incur any further obligations pursuant to this contract beyond the termination date. In no instance shall the City be liable for reimbursement for services to be rendered or expenses extending beyond the contract termination date, nor will the City be obligated to reimburse the Contractor for payment of salaries to employees of the Contractor for services rendered after the date of termination.

(b) It shall account for and refund to the City any unexpended and uncommitted funds which have been paid to it in accordance with this contract.

TWELFTH: The Society shall indemnify and hold harmless the City and

its officers, agents and employees from all claims, demands, causes of action, and judgments arising out of injuries or damage to person and property of whatsoever kind or nature as a result of the furnishing of the services provided for in this agreement.

THIRTEENTH: This agreement may not be assigned.

FOURTEENTH: This agreement shall become effective as of July 1, 1966, and shall continue in effect until terminated by either party as provided in paragraph ELEVENTH above, and provided the City has appropriated funds therefore.

IN WITNESS WHEREOF the parties hereto have duly executed this agreement the day and year first above written.

THE CITY OF NEW YORK

By_____

THE LEGAL AID SOCIETY

By_____
President

Approved as to form:

J. Lee Rankin
Corporation Counsel

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

On this 6th day of September, 1966, before me personally came JOHN V. LINDSAY, to me known to be the Mayor of the City of New York, the person described in and who, as such Mayor, executed the foregoing agreement and he duly acknowledged to me that he executed the same in behalf of the City of New York for the purposes therein mentioned.

/s/William J. Tierney
Notary Public

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

On this 1st day of September, 1966, before me personally came CARL W. PAINTER, to me known, who being by me duly sworn, did depose and say that he is President

THE LEGAL AID SOCIETY, a membership corporation described in and which executed the foregoing agreement; that the seal affixed to said agreement is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Notary Public

APPENDIX 3

TABLE 8-6 (cont.)

(c) ANALYSIS OF ATTORNEYS HANDLING 10-14 CASES

Total Cases in Session	Total Legal Aid Society Cases	Total Legal Aid Society Attorneys	Equitable Distribution	Actual Caseload of Fully Felony-certified Attorneys
76	62	3	20.7	10
53	53	3	17.7	10
58	58	3	19.3	12
58	58	3	19.3	13
66	49	3	16.3	13
49	39	3	13.0	10
58	39	3	13.0	10
57	44	3	14.7	13
43	43	3	14.3	13
55	33	3	11.0	10
38	38	3	12.7	12
55	33	3	11.0	11
34	29	3	9.7	10
71	31	3	10.3	11
55	33	3	11.0	12
33	26	3	8.7	10
42	30	3	10.0	12
33	26	3	8.7	11
33	28	3	9.3	12
34	29	3	9.7	14
94	55	4	13.75	10
55	54	4	13.5	11
62	57	4	14.25	12
62	57	4	14.25	12
79	49	4	12.25	10
73	49	4	12.25	10
66	48	4	12.0	10
75	63	4	15.75	14
48	45	4	11.25	10
73	49	4	12.25	11
79	49	4	12.25	11
60	52	4	13.0	12
57	49	4	12.25	12
59	44	4	11.0	11
36	36	4	9.0	10
53	52	4	13.0	14
58	44	4	11.0	12
56	47	4	11.75	13
42	35	4	8.75	10
58	46	4	11.5	13
70	46	4	11.5	13
42	33	4	8.25	10
45	40	4	10.0	12
41	31	4	7.75	10
48	41	4	10.25	13
38	30	4	7.25	10
45	36	4	9.0	12
73	49	4	12.25	16

Table 8(c) (continued)

Total Cases in Session	Total Legal Aid Society Cases	Total Legal Aid Society Attorneys	Equitable Distribution	Actual Caseload of Fully Felony-certified Attorneys
59	32	4	8.0	12
46	37	4	9.25	14
50	35	4	8.75	14
28	25	4	6.25	12
58	54	5	10.8	10
76	53	5	10.6	10
68	46	5	9.2	10
49	49	5	9.8	11
68	46	5	9.2	11
42	40	5	8.0	10
61	35	5	7.0	10
42	40	5	8.0	11
58	38	5	7.6	11
49	49	5	9.8	14
68	46	5	9.2	14
79	64	6	10.7	10
64	62	6	10.3	12
57	42	6	7.0	11

(d) ANALYSIS OF ATTORNEYS HANDLING 15-19 CASES

Total Cases in Session	Total Legal Aid Society Cases	Total Legal Aid Society Attorneys	Equitable Distribution	Actual Caseload of Fully Felony-certified Attorneys
72	63	3	21.0	16
72	63	3	21.0	17
61	61	3	20.3	17
63	63	3	21.0	18
56	51	3	17.0	15
60	60	3	20.0	19
47	47	3	15.7	15
57	47	3	15.7	15
56	51	3	17.0	17
85	50	3	16.7	17
58	43	3	14.3	15
66	49	3	16.3	18
40	40	3	13.3	16
40	38	3	12.7	16
57	44	3	14.7	19
40	40	3	13.3	18
108	76	4	19.0	17
74	64	4	16.0	17
94	55	4	13.75	15
74	64	4	16.0	18
60	52	4	13.0	15
57	49	4	12.25	15
64	57	4	14.25	17
68	58	4	14.5	18
48	45	4	11.25	15
64	57	4	14.25	18
65	48	4	12.0	16
65	48	4	12.0	16
85	55	4	13.75	18
55	46	4	11.5	17
57	49	4	12.25	18
48	41	4	10.25	17
73	62	5	12.4	16
73	62	5	12.4	16
80	67	5	13.4	18
73	56	5	11.2	16

(f) ANALYSIS OF ATTORNEYS HANDLING 25-29 CASES

Total Cases in Session	Total Legal Aid Society Cases	Total Legal Aid Society Attorneys	Equitable Distribution	Actual Caseload of Fully Felony-certified Attorneys
57	57	3	19.0	25
61	61	3	20.3	27
48	46	3	15.3	25

(g) ANALYSIS OF ATTORNEYS HANDLING 30-34 CASES

Total Cases in Session	Total Legal Aid Society Cases	Total Legal Aid Society Attorneys	Equitable Distribution	Actual Caseload of Fully Felony-certified Attorneys
58	56	3	18.7	32

APPENDIX 4

A SYSTEM IN CRISIS: THE ASSIGNED COUNSEL PLAN IN NEW YORK: AN EVALUATION AND RECOMMENDATIONS FOR CHANGE*

A REPORT OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, COMMITTEE ON CRIMINAL ADVOCACY

More than two years ago, the Committee on Criminal Advocacy of the Association of the Bar of the City of New York undertook, in conjunction with Professors Michael McConville and Chester Mirsky, to study the quality of representation provided under New York City's Assigned Counsel Plan. In order to make sense of the workings of the 18-B panel we found it necessary to consider the methods and practices of other actors within the criminal justice system, especially of the Legal Aid Society. The Committee held hearings at which representatives of the City of New York, the Legal Aid Society, the Criminal and Supreme courts, and other interested groups were invited to share their views with the Committee and with Professors McConville and Mirsky.

The issues were hotly debated, and a number of position papers were exchanged. Our Committee felt it unnecessary to resolve every issue that arose during the course of this debate, for we share a common view with respect to the central issues: what is wrong with the 18-B panel, and what should (and should not) be done about it. That view, in short, is this: The 18-B panel has handled approximately one-third of the most serious felony cases over the past five years, a trend which will continue into the foreseeable future. Panel representation will have cost the City some $30 million for fiscal year 1986-87. It was not in the contemplation of the panel's founders that it would carry so substantial a share of the caseload; moreover, the representation it provides is, on the whole, distressingly inadequate. The 18-B panel must, therefore, be replaced by an institutional defender system now.[1]

SUMMARY OF FINDINGS

The Committee made the following findings which are supported by the

* The excerpts reprinted here were drafted and edited for the Committee by Professor Barry C. Scheck, Director of Clinical Education at the Benjamin N. Cardozo School of Law. The "Findings" have been summarized, and the "Recommendations" condensed for the purposes of publication in the *Review of Law & Social Change*. The full report is available from the Committee on Criminal Advocacy of the Association of the Bar of the City of New York.

1. The Committee's findings are explained at greater length in its full report.

research of Professors McConville and Mirsky.[2]

1. The number of cases assigned to panel attorneys far exceeds the number that was originally projected; the panel's felony caseload is comparable in size to that of the Legal Aid Society.[3]

2. The 18-B panel of attorneys, as presently constituted and operated, cannot adequately handle the volume of cases to which its members are being assigned.[4]

a. The number of "active" panel attorneys available and qualified to handle the panel's present and projected caseload is inadequate.[5]

b. The manner in which cases are assigned to panel attorneys results in discontinuous representation, severely impeding the provision of effective representation to 18-B clients.[6]

c. Panel attorneys fail to perform essential lawyering tasks in a substantial proportion of the cases to which they are assigned.[7]

d. Under Article 18-B of the New York County Law and the Bar Association Plan,[8] panel attorneys are not provided the basic supportive services necessary to render effective representation.[9]

e. Panel attorneys are inadequately screened and supervised.[10]

f. The City will spend more than thirty million dollars ($30,000,000.00)[11] on the panel in fiscal year 1986-87, as a result of newly increased rates of hourly compensation.[12]

g. The higher compensation rates make 18-B represenation more ex-

2. The Committee had not reviewed *Criminal Defense of the Poor in New York City, supra*, at the time of submitting the present report. The views expressed in that Article should be regarded as solely those of its authors. However, the editors of the *Review of Law & Social Change* have provided *supra* citations to relevant portions of the above Article.

3. *See supra* note 399 and accompanying text; TABLE 5-17, at 739; TABLE 5-18, at 740; FIGURE 3, at 742; TABLE 7-2, at 782; TABLE 7-3, at 787; TABLE 7-4, at 788; *supra* text accompanying notes 980-81.

4. *See supra* pp. 818-20.

5. *See supra* TABLE 5-14, at 735; pp. 840-44.

6. *See supra* TABLE 6-1, at 752; pp. 750-57; note 825, TABLE.

7. *See supra* TABLE 6-2, at 759; TABLE 6-3, at 763; TABLE 6-6, at 767; TABLE 6-7, at 769; TABLE 6-8, at 769.

8. Plan of the Association of the Bar of the City of New York, Bronx County Bar Association, Brooklyn Bar Association, New York County Lawyer's Association, Queens County Bar Association and Richmond County Bar Association (approved by the Judicial Conference of the State of New York, Apr. 28, 1966) (adopted pursuant to Article 18-B of the County Law) [hereinafter 1966 Bar Association Plan] app. 2(b), at 923.

9. *See supra* notes 396, 415 and accompanying text.

10. *See supra* notes 596-99, 605-06, 784-88 and accompanying text.

11. Representatives of New York City's Office of Management and Budget and of its Coordinator of Criminal Justice cited a figure of $31 million to the Committee in late May of 1986. Ten months earlier, Kenneth Conboy, then-Coordinator of Criminal Justice, had projected an expenditure of $28.6 million.

12. N.Y. COUNTY LAW § 722-b (McKinney Supp. 1987), *amended by* 1985 N.Y. LAWS ch. 315, § 3.

pensive than Legal Aid representation on a per-case basis.[13]

This last finding requires some elaboration here. Using the former rates of panel compensation ($15 per hour for out-of-court time, and $25 per hour for in-court time), a "weighted" case analysis, and 1984 caseload statistics, Professors McConville and Mirsky found Legal Aid's "cost per weighted case" to be $1,162.21, as compared to $815.01 for the First Department panel and $909.55 for the Second Department panel.[14] The Society challenged the methodology of this cost comparison on a number of grounds,[15] and contended it cost less than 18-B. We need not take a position on this dispute, for if we accept as true the disputed cost comparison and simply adjust it to take account of the rise in 18-B compensation rates to $25 per hour out-of-court and $40 per hour in-court, we find that the cost per weighted case rises to $1,379.65 for the panel as a whole ($1,304.01 for the First Department panel and $1,455.28 for the Second).[16]

It is not surprising that 18-B representation is more costly than that of the institutional defender. Studies of other jurisdictions[17] have consistently found assigned counsel to be more expensive than institutional defenders. Here in New York City, the inordinately low statutory compensation rates which previously prevailed were surely the major reason for which 18-B appeared to cost less than the Society in the McConville-Mirsky report. The new rates, while still low relative to those of other major metropolitan areas such as Los Angeles and Chicago,[18] have significantly altered the fiscal balance be-

13. Professors McConville and Mirsky concluded that, under the former compensation rates, panel representation was less costly. *See supra* TABLE 11-9, at 873.

14. *See* McConville and Mirsky, Defense of the Poor in New York City: A Response to the Reply Memorandum of the Legal Aid Society (Nov. 7, 1985) [hereinafter 1985 Response].

15. The Society argued that Professors McConville and Mirsky's [original] case weights [contained in the Draft Report] were not based on sound estimates of actual workload, that its commitment to staffing every arraignment part was undervalued, and that trials, pleas and appeals were not distinguished when counting felony or misdemeanor dispositions. Legal Aid Society, Reply Memorandum to McConville and Mirsky Draft Report 48-49 (Oct. 1, 1985)[hereinafter 1985 Reply Memorandum]. In response to these criticisms, McConville and Mirsky made adjustments and calculated new cost comparisons, this time finding Legal Aid more expensive by even greater margins. *See supra* text accompanying note 14.

16. In-court payment has increased by a factor of 1.60, while out-of-court payment has increased by a factor of 1.66. If one applies the lower factor to the costs given by Professors McConville and Mirsky, our figures result. If one averages the increases and applies a factor of 1.63, the overall cost per weighted case rises to $1,405.52.

17. *See, e.g.*, Singer & Lynch, *Indigent Defense Systems: Characteristics and Costs*, in THE DEFENSE COUNSEL 103 (W. McDonald ed. 1983); Cohen, Semple & Crew, *Assigned Counsel Versus Public Defender Systems in Virginia: A Comparison of Relative Benefits*, in THE DEFENSE COUNSEL 127 (W. McDonald ed. 1983).

18. Compensation in California is determined by judges on a case-by-case basis; on average, attorneys receive $55 per hour, with considerably higher hourly rates paid in capital cases. *See* R. Wilson, Responses by Public Defender Office to Conflicts of Interest Arising from Representation of Multiple Defendants at Trial 13, 21 (Dec. 6, 1984) (unpublished manuscript presented at the 1984 NLADA conference) [hereinafter 1984 Wilson Responses].

In Illinois the statutory rate for assigned counsel is $30 per hour out of court and $40 in court, but judges have the discretion to exceed these limits. ILL. ANN. STAT. ch. 38, para. 113-3 (Smith-Hurd Supp. 1986). Members of the Chicago bar, judiciary and public defender's office

tween 18-B and Legal Aid.

THREE PROPOSALS FOR CHANGE

The findings of the Committee have led it to propose three alternative recommendations.

First, we recommend the establishment of a "mid-range defender," an independent non-profit organization that would be assigned to represent the second defendant in all multiple-defendant cases (including homicides) and all others whom the Legal Aid Society legitimately declined to represent. The Society would remain the first-line defender, pursuant to its contract with the City.[19] The remaining defendants would be handled by a small, upgraded 18-B panel organized along the lines of the federal panel.[20] The mid-range defender is by far the Committee's strongest preference.

Our distant second choice is the creation of a Legal Aid "Conflicts Unit," a segregated branch of the Legal Aid Society that would represent the second defendant in multiple-defendant cases in the same fashion as the mid-range defender.[21] The Conflicts Unit would build a "Chinese Wall" between itself and the rest of the Legal Aid Society that would extend at least through the Attorney-In-Charge of the Criminal Defense Division. The remaining defendants would be handled by a small 18-B panel organized along the lines of the federal panel.[22]

The last option we recommend is to upgrade the existing assigned counsel plan. This appears to be by far the most expensive option because it would require major overhaul of an already costly 18-B system. A band-aid approach — piecemeal adoption of different parts of our 18-B proposal — would be unacceptable and unsuccessful. Able attorneys must be attracted to join the panel, and inadequate practitioners must be removed. That cannot happen unless the system is changed from top to bottom.

In short, because we believe this is a problem of crisis proportions, the City must act now. We cannot afford to spend $30,000,000 on a system that is thoroughly discredited and unworkable in its current form. For the same money or less we could do much better. Nor can we, in good conscience, continue to deprive so many defendants of a decent defense by assigning them counsel from an 18-B panel that fails them miserably every day.

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have informed this Committee that the statutory rate is frequently exceeded, particularly in capital cases.

19. Agreement Between the City of New York and the Legal Aid Society (Aug. 6, 1966) [hereinafter 1966 Agreement] app. 2(c), at 932.

20. *See* U.S. DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK, REVISED PLAN FOR FURNISHING REPRESENTATION PURSUANT TO THE CRIMINAL JUSTICE ACT OF 1964, 18 U.S.C. § 3006A at 1-3 (approved by the U.S. Court of Appeals for the Second Circuit, May 3, 1985) [hereinafter Revised Plan for Furnishing Representation].

21. The Association's Committee on Professional Ethics would have to review any specific plan for a Legal Aid Conflicts Unit that the Society might formulate and the City consider.

22. *See* Revised Plan for Furnishing Representation, *supra* note 20, at 1-3.

The urgent need we perceive to create a second-tier defender organization in New York reflects a nationwide trend, visible in Los Angeles, Chicago, the San Francisco Bay Area, San Mateo, and Phoenix, and the states of Florida, Colorado and Kentucky.[23] The Committee found the responses of other jurisdictions to this crisis instructive. Los Angeles County has formed an Alternate Defense Counsel, an independent non-profit defender organization that resembles our recommendation for a mid-range defender.[24] In Chicago, the courts have formed a Multiple Defendant Division ("MUDD") within the Cook County Public Defender's Office.[25] This response approximates our recommendation that a Legal Aid Conflicts Unit be created. In Maricopa County (Phoenix) and Contra Costa County, assigned counsel plans administered by local bar associations have been overhauled in much the same way that we recommend in our third option.[26]

The time to transform the 18-B panel has arrived, if only for purposes of fiscal accountability. The first two of our three proposals will cost no more, and probably less, than the current Bar Association Plan. Yet, the overriding moral question which instigated our inquiry remains unanswered: will a serious effort be made to raise the level of representation of clients who are now being so badly served?

With these considerations in mind, we elaborate on the three proposals summarized above.

1. Mid-Range Defender (MRD)

The MRD should have the following characteristics:

a. *MRD should be an independent, non-profit corporation and not a public defender.*

For a number of reasons we feel the MRD must be an independent, non-profit organization and not a public defender.

First, a non-profit corporation has a much greater degree of political in-

23. 1984 Wilson Responses, *supra* note 18, at 12-13, 21. Conversations with administrators of assigned counsel plans and defender organizations in Chicago, Los Angeles, and the San Francisco Bay Area confirm this trend.

24. The situation in Los Angeles had attracted great public attention owing to the comparatively high compensation rates for assigned counsel ($40 per hour). *See* SCIENTIFIC APPLICATIONS, INC., A COMPARATIVE ANALYSIS OF INDIGENT DEFENSE SERVICES PROVIDED BY ALTERNATE DEFENSE COUNSEL ("ADC") PILOT PROGRAM AND CONTRACT SERVICE SYSTEMS AT POMONA, CITRUS, AND RIO HONDO COURTS 21 (1985) (analysing the first year of the ADC's operation). The creation of the Alternate Defense Counsel (ADC) in 1984 was a direct response to this problem. *Id.* at 14, 17-18; 1984 Wilson Responses, *supra* note 18, at 21.

25. The MUDD was created five years ago, primarily as a means of cutting costs. 1984 Wilson Responses, *supra* note 18, at 21. At that time, Cook County reimbursed assigned counsel at the rate of $60 per hour in conflict cases. ILL. ANN. STAT. ch. 38, para. 113-3 (Smith-Hurd Supp. 1986).

26. Interviews with Professor Shelvin Singer, drafter of Maricopa plan, and Andrew Schwartz, drafter of Contra Costa plan (Feb. 1986). *See also* Albert-Goldberg & Hartman, *The Public Defender in America*, in THE DEFENSE COUNSEL 67 (W. McDonald ed. 1983) (surveys and discusses bar-administered assigned counsel plans).

dependence than an appointed public defender, whether the mayor, the City Council, or even the Presiding Justices of the Appellate Division make the appointment. The public defender's office is a creature of the state, directly subservient to state officials; inevitably, if a public defender fulfills its role vigorously, it will come into conflict with those very state officials.

Moreover, in a city where issues of criminal justice have always been politically volatile and racially explosive, the integrity of a defender entity and the appearance of its independence are values that cannot be overemphasized. An independent, non-profit organization with strong ties to the private bar and no formal political affiliations enjoys the best chance of creating a countervailing force in support of the most despised and least powerful interest group in the system — poor people charged with crimes. The Legal Aid Society has demonstrated the importance of its independence by its successful lawsuits against the city and state. The Legal Services Corporation, on the other hand, illustrates the great danger of direct dependence on the government one must sometimes sue. An independent MRD would only add strength to the Society and the assorted other private groups that support the legal rights of the poor.

Second, an independent defender organization will have a better chance than a public defender of implementing creative and efficient management schemes than a public defender encumbered by the City's "lines" and bureaucratic procedures. The MRD has a tremendous opportunity to become an organization reasonably liberated from a bureaucratic, "civil service" mindset; it could incorporate some "professional" methods and incentives from private-sector lawyering, and still maintain the finest traditions of public-interest practice.[27]

Third, if the MRD is set up as an independent organization, "competition" between the Legal Aid Society and MRD should be healthy for both organizations, and for the criminal justice system as a whole. The Society and the MRD would compete where it counts most: in the recruitment of the best lawyers, the provision of the best training, the achievement of a superior reputation for quality work, in offering better working conditions and salaries, and in having the best supervisors and managers.[28] The goals of both organiza-

27. There are a number of different ways in which this could be accomplished and we cite just a few for purposes of illustration only: (a) the MRD could have both a minimum commitment period for staff (three years), and a maximum (six years), thereby preventing "burn-out" while still insuring against losing the organization's "investment" in an attorney; (b) the MRD might differentiate its pay scale on the basis of prior experience, merit, or achievement, not seniority; (c) the MRD could require some of its trial attorneys to do a certain number of appeals each year; (d) the MRD could use bonuses instead of traditional pension plans; (e) the MRD could restrict its hiring to attorneys with at least two years of practice and establish a high average salary scale, with few extremes at the top or bottom; (f) the MRD's supervisors could carry caseloads; or (g) the MRD could create "visiting" trial counsel positions for outstanding members of the private bar, or defenders from other jurisdictions.

28. The existence of comparable caseload caps and the right to declare unavailability would provide a built-in check against manipulations by short-sighted City budget negotiators aimed at bringing the MRD and the Legal Aid Society into competition with one another in regard to the disposition of more cases.

tions and their staffs would be the same — the best lawyering for their clients.

If the MRD were set up as a public defender, however, it is unlikely that the competition between defender organizations would be either healthy or on the merits. The Legal Aid Society would quite properly fear that a City administration angry about a lawsuit concerning jail conditions or other aggressive legal actions could quickly replace the Society as the primary defender by simply expanding a public defender's office composed of appointed personnel more to its liking. A comparable scenario could easily arise if the Presiding Justices appointed the public defender. Thus, creating the MRD as a public defender would undermine the independence of the Legal Aid Society, which has always been one of the Society's great strengths.

b. *MRD should staff arraignment parts and adhere to the principle of vertical representation.*

The discontinuity which results when 18-B lawyers staff arraignment parts and "dump" the cases (First Department), or build up huge caseloads that bottleneck in the Supreme Court (Second Department), has become one of the most disruptive forces in the court system. An MRD that adheres to a vertical principle from arraignment on will make the whole system, literally, stay "on track" and run more efficiently.

Indeed, the vertical principle is critical to quality representation. A return to the old "horizontal" system, where clients were shuffled from lawyer to lawyer at each new stage of the case, will doom us to repeat the same mistakes of years past.

This does not mean that modifications of the vertical principle through the use of lawyer teams, or other arrangements, should be eschewed. On this issue and others, the MRD would write on a clean slate. We hope that it will find more creative solutions than the Society and the Association of Legal Aid Attorneys have over the years.

c. *MRD should become a model of defender organization management through the development of caseload weighting systems and superior methods of data collection that could advance understanding of the entire system.*

The MRD could be used as a management laboratory. To the extent that the Legal Aid Society has difficulty implementing management reforms due to its size and the contractual obligations it owes the union, the MRD would at least start out being a smaller, more flexible institution.

d. *MRD should have caseload caps and the right to declare itself unavailable.*[29]

e. *The initial size, cost and management structure of the MRD.*

Our estimate of the initial size and cost of the MRD is necessarily imprecise because of our limited data. A conservative estimate is that the MRD would require as many as 190 lawyers citywide, including supervisors, and would cost around $21 million. This figure also includes support staff and

29. *See infra* text accompanying notes 58-65 ("Systemic Recommendations").

other personnel services.[30] If 18-B were to cost the City, as estimated, $30 million in 1986, the MRD would have to pick up only 66% of the present 18-B caseload for the City to break even. In fact, we believe that the MRD would take close to 80% of 18-B's current caseload: the second defendant in all multiple-defendant cases,[31] either the first or the second defendant in homicide cases (depending on whether the Society or the MRD is considered the primary defender for homicides), and all the cases Legal Aid legitimately declines to represent that the MRD can ethically accept.

While we do not pretend that our estimate of the size and cost of MRD is in any way precise, it is undoubtedly conservative to suggest that a first-rate MRD program would cost no more than the current 18-B program and deliver far better representation. Moreover, it should be emphasized that in both Los Angeles and Chicago, second-tier defense organizations akin to the proposed MRD appear to have resulted in significant savings.[32]

Finally, the MRD could be phased in by county or by judicial department, thereby allowing careful assessment of its impact.[33] If MRD is to be phased in, we recommend that it begin in the First Department. The special problems associated with New York County would provide the toughest test for the organization, and Bronx County would serve as a good "control."

2. *Legal Aid Conflicts Unit*

a. *There do not appear to be constitutional or ethical prohibitions on the creation of a Conflicts Unit.*

In *Holloway v. Arkansas*[34] the Court found that a defendant's sixth amendment right to effective assistance of counsel was violated by a trial

30. We offer this estimate simply to demonstrate the overall feasibility of an MRD, not as a precise blueprint. The estimate is based on the following considerations: First, we calculated that 130 attorneys would be required if each arraignment part in each county were to be staffed with one lawyer, who would go into arraignment 2.5 times per month with a two month vacation; second, we allocated seventeen supervisors, one for every eight lawyers (a generous ratio), who we assumed would have no case-handling responsibilities (though we believe that supervisors should handle *some* cases); third, we postulated 20 attorneys with no case-handling responsibilities who would run training programs, hire personnel, administer the budget, and implement management systems (such as caseload weighting); fourth, we gave ourselves a cushion of 23 extra lawyers. Finally, we estimated that each attorney would cost, on average, $110,000 (including attorney salaries, salaries of support personnel, non-personnel services, rent, office equipment, supplies, etc.), and miscellaneous expenses). We took the figure of $110,000 from Legal Aid's Federal Defender program; the Criminal Defense Division's per-attorney figure is, we believe, slightly higher.

31. The analysis of multiple-defendant cases in New York County in 1984 done by Professors McConville and Mirsky found that 80% of all multiple-defendant cases are two-defendant cases. *See supra* note 968. Thus, it seems likely that the MRD would get more than 66% of the present 18-B panel's share of multiple-defendant cases.

32. Scientific Applications, Inc., *supra* note 24, at 6-7 (preliminary estimate placing savings in the first year at $2 million).

33. Los Angeles' Alternate Defense Counsel was supposed to be phased in, but the county considered the program so successful that it was expanded more rapidly than had been planned.

34. 435 U.S. 475 (1978).

court's refusal to relieve a public defender from representing three co-defendants when the defender had shown that an actual conflict of interest existed.[35] The Court stressed, however, that "[r]equiring or permitting a single attorney [or attorneys from the same office] to represent co-defendants . . . is not *per se* violative of constitutional guarantees of effective assistance of counsel."[36] Moreover, in *Cuyler v. Sullivan*,[37] the Court found that trial courts "may assume" that no conflict exists or that a knowing waiver was made by the defendants in a situation involving joint representation, "unless the trial court knows or reasonably should know" of an actual conflict.[38]

The New York Court of Appeals has similarly declined to adopt a *per se* rule against joint representation,[39] but went further than the *Cuyler* Court by requiring the trial judge to conduct an inquiry about possible conflicts and waivers in all joint representation situations.[40] Nonetheless, under both the federal and the New York State Constitutions, joint representation by attorneys from the same office does not violate the right to effective assistance of counsel, absent a showing that "counsel actively represented conflicting interests."[41]

The critical question here is whether, for purposes of deciding if an "actual conflict" exists in a situation involving joint representation, special standards should apply to lawyers from the same public defenders office. In particular, should special standards apply where a "Chinese Wall" separates one set of attorneys from the other? The New York Court of Appeals was the first to address this question. In *People v. Wilkins*,[42] the court rejected a claim that "unknowing dual representation" by two Legal Aid attorneys of the complaining witness and a defendant in a criminal case was necessarily an "actual conflict" under the sixth amendment.[43] The *Wilkins* court acknowledged that a conflict would presumptively exist if the two attorneys were from an ordinary law firm, but refused to apply that "presumption" to "mere dual representation by the same *attorney of record*, designated on behalf of the Legal Aid Society":[44]

> While it is true that for the purpose of disqualification of counsel, knowledge of one member of a law firm will be imputed by inference to all members of that law firm (*Laskey Bros. of W.Va. v. Warner*

35. *Id.* at 484.
36. *Id.* at 482.
37. 446 U.S. 335 (1980).
38. *Id.* at 347.
39. People v. Gomberg, 38 N.Y.2d 307, 342 N.E.2d 550 (1975).
40. People v. Macerola, 47 N.Y.2d 257, 264, 391 N.E.2d 990, 993 (1979).
41. *Cuyler*, 446 U.S. at 349-50. The question of "actual conflict" should be carefully separated from the issue of prejudice. Once a defendant has shown "that a conflict of interest has actually affected the adequacy of his representation [he] need not demonstrate prejudice in order to obtain relief." *Id.*; *Gomberg*, 38 N.Y.2d at 312, 342 N.E.2d at 553.
42. 28 N.Y.2d 53, 268 N.E.2d 756 (1971).
43. *Id.* at 55, 268 N.E.2d at 757.
44. *Id.* at 56, 268 N.E.2d at 757 (emphasis in original).

> *Bros. Pictures*, 224 F.2d 824), we do not believe the same rationale should apply to a large public defense organization such as the Legal Aid Society. The premise upon which disqualification of law partners is based is that there is within the law partnership a free flow of information, so that knowledge of one member of the firm is knowledge to all . . . . In view of the nature of the [Society] and the scope of its activities, we cannot presume that complete and full flow of "client" information between staff attorneys exists, in order to impute knowledge to each staff attorney within the office.[45]

Nine years later the Illinois Supreme Court reached the same result, holding that a public defender office should not be considered a single law firm for conflicts purposes:

> Upon review of the authorities and consideration of the diversity of organization of the offices of the public defenders, we conclude that the avoidance of conflicts of interest which results in failure to provide effective assistance of counsel does not require us to hold that the individual attorneys who comprise the staff of a public defender are members of an entity which should be subject to the rule that if one attorney is disqualified by reason of a conflict of interest then no other member of the entity continue with the representation. In many instances the application of such a *per se* rule would require the appointment of counsel with virtually no experience in the trial of criminal matters, thus raising, with justification, the question of

45. *Id.* at 56, 268 N.E.2d at 757-58. The basic principle of *Wilkins*, that Legal Aid is exempt from the ordinary imputation of knowledge to all members of the firm, has generally been followed. In re Bradley, 103 A.D.2d 569, 482 N.Y.S.2d 58 (3d Dep't 1982), *appeal dismissed*, 64 N.Y.2d 884 (1985); People v. Spencer, 101 Misc. 2d 259, 420 N.Y.S.2d 868 (N.Y. Sup. Ct., Kings County, 1979). Recently, however, the principle was questioned in In re Bruce W., 114 Misc. 2d 91, 95-96, 450 N.Y.S.2d 734, 737-38 (N.Y. Fam. Ct., Queens County, 1982)(Gartenstein, J.). There a Legal Aid attorney from the Juvenile Division, representing a juvenile in a Family Court proceeding, was "presumed" to have knowledge of an actual conflict of interest because an alleged co-perpetrator was being prosecuted as an adult in Criminal Court where he was represented by an attorney from the Criminal Defense Division ("CDD"). Accordingly, the court required proof rebutting the conflict presumption, or waivers by the defendants, for continued Society representation. *Id.* at 95-96, 450 N.Y.S.2d at 738. Judge Gartenstein distinguished *Wilkins* essentially on the grounds that this dual representation was knowing, and a free flow of information between the CDD and the Juvenile Division could be presumed. The judge also noted that the Society apparently had no "uniform policy" to deal with these situations, and there was evidence that the CDD lawyer had already communicated information about a "write-up" of witness testimony to the lawyer from the Juvenile Division. *Id.* at 92-93, 450 N.Y.S.2d at 736.

A Conflicts Unit would have a strict, uniform "Chinese Wall" policy, thereby avoiding most of the dangers Judge Gartenstein feared. The precedential force of In re Bruce W., 114 Misc. 2d 91, 450 N.Y.S.2d 734, can be questioned to the extent it suggests a rebuttable presumption of conflicting interest in such a joint defense situation, as opposed to a mandatory inquiry. *Cf.* People v. Coates, 109 Ill. 2d 431, 488 N.E.2d 247 (1985), *cert. denied*, 106 S. Ct. 1474 (1986) (no actual conflict in fact arose when one public defender represented defendant in child pornography case and mother of the child allegedly abused was being represented by another public defender in a child custody case).

competency of counsel.[46]

While bar association opinions have so far applied the single-office presumption of knowledge to public defenders representing two defendants on the same or related matters, we have discovered no case involving a Conflicts Unit.[47]

After reviewing these precedents, the ethics opinions, and the whole question of second-tier defense organizations, the Director of the NLADA has concluded that, as a practical, ethical, and constitutional matter, a Conflicts Unit could be set up under the following guidelines:

1. Personnel from outside the concerned office or agency may not have access to any records involving a conflicts case.
2. Staff personnel who have access to confidential material could not be transferred to an office representing a co-defendant.[48]
3. The concerned office or agency must establish uniform policies strictly adhered to so as to avoid any impediment to vigorous representation.
4. Upon discovery of a conflict situation, co-defendants must be immediately reassigned.[49]

All considered, we see no insuperable constitutional or ethical barriers to setting up a Legal Aid Conflicts Unit.[50] That does not end the inquiry, however, as to its propriety. There are many who feel that there will be an abiding appearance of impropriety about a Conflicts Unit that will inevitably trouble

46. People v. Robinson, 79 Ill. 2d 147, 158-59, 402 N.E.2d 157, 162 (1980). The Multiple Defendant Division ("MUDD") of the Cook County Public Defender Office relied upon *Robinson* as authority for its creation. The *Robinson* court's distrust of the quality of assigned counsel, not its expense, was one obvious basis for its decision.

47. *See* American Bar Ass'n Comm. on Ethics and Professional Responsibility, Informal Op. 1418 (1978) (two branches of state public defender office, with staffs of 16 and five lawyers respectively, cannot represent two clients in the same case under MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 5-105(D) (1974)); N.Y. State Bar Ass'n Comm. on Professional Ethics, Formal Op. 173 and Op. 462 (1977) (members of the same public defender office, in either private or public capacities, should not represent co-defendants with conflicting interests).

48. In New York this transfer provision would be very important. The Court of Appeals has already held that transfers from Legal Aid to the District Attorney's office and back can create, because of the appearance of impropriety alone, the necessity of complete disqualification of attorneys. People v. Shinkle, 51 N.Y.2d 417, 421, 415 N.E.2d 909, 910-911, 434 N.Y.S.2d 918, 920 (1980). *See also* People v. Sawyer, 57 N.Y.2d 12, 20, 438 N.E.2d 1133, 1137, 453 N.Y.S.2d 418, 422 (1982), *cert. denied*, 459 U.S. 1178 (former assistant district attorney disqualified after transferring to public defender's office).

49. 1984 Wilson Responses, *supra* note 18, at 15. *See also* Geer, *Representation of Multiple Criminal Defendants*, 62 MINN. L. REV. 119, 161 n.170 (1978). Geer's article supports the concept of the Conflicts Unit, *id.*, and was cited with approval by the Court in *Cuyler*. 446 U.S. at 354 (Marshall, J., concurring in part and dissenting in part).

50. Needless to say, a Bar Association Ethics Opinion approving the concept of a Conflicts Unit ought to be obtained in advance. While the Chicago MUDD unit never obtained one, it seemed unnecessary there in light of *Robinson* and the fact that the Presiding Judge of the county was the appointing authority.

defendants, particularly if there seems to be a special camaraderie among co-counsel who formally work for the same office. Questions have also been raised about whether the "Chinese Wall" would really work, and about the ultimate power that the Executive Director of the Society would have to favor one office branch over the other.[51]

We share many of these concerns. It is yet another reason we favor a mid-range defender model. But we are reasonably confident that if the Legal Aid Society is committed to forming a Conflicts Unit these problems could probably be avoided.

b. *Advantages and disadvantages of a Conflicts Unit.*

There is a plain practical advantage to establishing a Legal Aid Conflicts Unit: why re-invent the wheel when the Society could create, quickly and soundly, a defender organization superior to the present 18-B panels?

In this connection the Society's established (and currently stable) relationship with the Association of Legal Aid Attorneys is also an advantage, especially when it comes to quelling remaining doubts about ethical propriety. The contract provides for "step" salary increases solely on the basis of seniority, and contains many other protections for staff attorneys that would insulate the staff of a Conflicts Unit from punitive acts by upper management for the way that unit handled a case.

On the other hand, the Society's practical advantage also reflects the main disadvantage to creating a Conflicts Unit as opposed to a mid-range defender: it would be more of the same. Our study of the 18-B panels uncovered many problems at Legal Aid, particularly in New York County, the site of Professors McConville and Mirsky's research.[52] The Society is not, and does

51. We have spoken about these issues to a number of people working in the Chicago MUDD unit and some knowledgeable observers of its operation. One of these observers, Professor Shelven Singer of the Chicago-Kent Law School, did not question the efficacy of the "Chinese Wall," but he felt that there were problems with sending mixed messages to clients and with the power of the Chief Public Defender to promote members of the MUDD unit and curtail its budget. Professor Singer, who is a scholar in this area and a consultant to many public defender offices in the Mid-West, made it clear that he was opposed to conflict units in principle.

There were also grumblings from members of the MUDD unit itself that they were treated as a "stepchild" of the larger public defender organization. Our general impression, however, was that the MUDD unit's problems were typical of those of branch offices in large public defender systems; they did not appear to be peculiar to a conflicts unit.

52. So far it can be fairly said that our study of 18-B has improved Legal Aid and done little to change 18-B. Professors McConville and Mirsky found serious problems in New York County with the Legal Aid "catch" system, *see supra* pp. 844-49, with the practice of some attorneys who improperly claimed they were conflicted on a case so they could get rid of it, *see supra* note 1130; note 1133 and accompanying text, and the practice of some attorneys in the arraignment parts to seek the "lighter" defendant on a co-defendant case. *See supra* TABLE 9-1, at 821; TABLE 9-2, at 826; TABLE 9-3, at 827. These findings engendered great controversy, particularly to the extent that they were phrased or perceived as sweeping condemnations of all staff attorneys, and it is not our intention here to make judgments on these matters. We do note, however, that the Society has informed us of a number of steps it has taken to correct whatever problems existed: it has restructured management in New York County, and insti-

not pretend to be, the perfect delivery system for defense services.

An independent MRD, organized along the lines we have suggested, could be an innovative and exciting institution that would provide healthy "competition" for Legal Aid. We think the creation of such an organization would benefit the whole system, including Legal Aid. It is possible that a Conflicts Unit could result in similar benefits if properly managed.

3. Revitalized 18-B Panel to Handle Current Caseload Demands

a. *Panel staff attorneys would work as administrators and supervisors of the county panel out of an office in the county.*

At least three full-time attorneys should staff offices in the Bronx and Queens, four in Brooklyn, and six in New York County. These attorneys would have a dual role: they would both administer the operation of the county panel and supervise the work of panel attorneys. This means that they could assume certain important tasks that the small beleaguered staff at the Central Offices of the current panels cannot hope to accomplish:

i. Arraignment schedules would be set up every three months in conjunction with the county's administrative judge, the District Attorney, and the Legal Aid borough chief. Since all major groups of the criminal bar would be involved, it might be possible not only to adjust the tracking of cases at such meetings but to deal with the seemingly intractable problem of scheduling calendar calls to minimize "deadtime."

ii. The county administrators would act as liaison with the administrative judge, the county bar association, the District Attorney, and Legal Aid. This way 18-B attorneys could speak and act to improve representation conditions as a cohesive, organized group.

iii. Arraignment schedules and caseloads could be monitored to insure that no one lawyer or firm were taking too many cases.

iv. When judges have a problem with an 18-B attorney, a county staff attorney could engage in short-term intervention to solve the problem. The absence of a supervisor to take such action was one of the major complaints we heard from judges. In this fashion, those attorneys who are plainly not performing acceptably could be identified rather quickly.

v. In conjunction with the county bar association and the Central Screening Committee, the panel staff would investigate complaints against 18-B attorneys from clients, lawyers, and others.

vi. The panel staff would make sure lawyers, investigators, and experts were paid promptly, and would be in a position to know if any of them were padding their vouchers.

vii. The panel staff would have access to a citywide network of experts

tuted new rules for the "catch" system, the declaration of a conflict, and the selection of co-defendants in the arraignment parts.

and could be relied upon by panel attorneys for expertise in finding the right expert.

viii. The panel staff should play some role in the development of attorney training and continuing education programs.[53]

ix. The panel staff would have responsibility for the collection of data to go into 18-B's caseload weighting system.

It naturally follows from this enumeration of tasks that the panel staff must be composed of experienced, competent lawyers capable of commanding respect. Their salaries must be substantial and their authority to make decisions should be plain.

The county office must also have a secretarial staff sufficiently large to assure that the panel staff attorneys are not spending their time on ministerial chores. Each county office would also have a computerized communications system capable of instantly checking payments, claims, caseload data, and other relevant information.

b. *The county office would serve as a home base for a pool of investigators and a Diversion/Pre-sentencing team provided by the Osborne Society.*

Although many in the pool of county investigators could work there on a part-time basis, and by court appointment on a case-by-case basis, there must be a group of no less than five occupied full-time at each county office. These investigators would be available to perform immediate emergency tasks such as taking photographs of injured defendants, securing evidence quickly, serving last-minute subpoenas, and finding last-minute witnesses.

Given the signal success of the Osborne Society's Assigned Counsel Alternatives Advocacy Project ("ACAAP") in Bronx County, it makes sense to expand this program by having it contract with the city to provide 18-B attorneys with diversion and pre-sentence counseling on a citywide basis.

Moreover, it is cost-effective to have one organization administer such a program because there are obvious economies of scale. Although each borough would have a team consisting of two social workers, two counselors, and one staff attorney (the Osborne model), a central organization could supplement the teams by employing, full-time or as retained consultants, a psychologist, psychiatrist, or educational/vocational counselor who could do specialized testing and work-ups. Similarly, a central computerized information system would greatly facilitate the search for diversion programs and the allocation of what are very scarce resources.

We asked Elizabeth Gaynes, the director of Osborne's Bronx project, to draw up a plan and budget for such an expansion. She submitted an impres-

53. We think the continuing attorney education programs now run by the Office of Special Projects in the First Department have produced a very useful set of manuals and some excellent lecture series. We do believe, however, that arrangements could be made with metropolitan-area law schools to conduct attractive training programs in trial and appellate advocacy solely for the benefit of panel attorneys. Geoffery Ralls, the panel administrator in the First Department, has suggested to us some interesting proposals along these lines that ought to be pursued.

sive, concrete proposal to us which details how the expansion would work, Department by Department, over a three year period. The cost of this project is estimated at between $1.2 and $1.5 million a year, depending upon the mix of services one chooses. The organization would be able to handle 1,000 clients annually for purposes of in-depth advocacy (including supervision after release), and approximately 2,500 responses to requests for technical assistance, as well as an ongoing training program. Since the city would have to pay for these services in any event (if only attorneys requested them), this plan seems like a bargain.

c. *Screening, recruitment, and the firm-retainer contract.*

The Central Screening Panel in the First Department needs administrative support — secretaries, investigators, and a budget for expenses. With such a commitment, the fine board of volunteer attorneys who have undertaken this demanding job believe that they can adequately screen applicants and review active panel members for re-certification.

Indeed, under our plan for revitalizing 18-B, the Screening Panel, working with panel staff attorneys in the boroughs, would have to play a critical and expanded role. One-third of the panel would have to be re-certified for membership each year. This procedure, modeled after the method of the federal Criminal Justice Act, will expeditiously weed out a large number of panel attorneys who are doing mediocre or poor work. Concomitantly, the Screening Committee and panel staff would have to engage in a strong recruitment drive designed not only to attract new attorneys but to "re-activate" good lawyers already on the panels who have ceased taking cases.

Our study of the panels indicates that there is a large enough pool of able, experienced criminal practitioners to run the panels. In the past, attorneys who formerly worked for the District Attorney's office or the Legal Aid Society have joined the panel soon after starting in private practice but became inactive once their practices began to take off. We believe that the comparatively low hourly rates paid for panel service are not alone responsible for this phenomenon. Many of these attorneys could afford and would desire to take a limited number of criminal cases but have been discouraged by the inconvenience and frustrations of 18-B administration. We think the creation of panel staff attorneys, a rational scheduling of cases, the diversion/pre-sentence teams, and the pool of investigators would attract many attorneys.

Finally, at the suggestion of the current 18-B administrators, we have considered the idea of creating firm-retainer contracts. Under a firm-retainer contract certified panel attorneys would agree to cover a set number of arraignment sessions and to provide continuing representation on all cases so assigned. Each attorney would keep separate vouchers and submit them for each case, but the attorney's firm would receive in advance a retainer for these services that would constitute about half of what the attorney would otherwise

be expected to bill for all cases picked up at arraignment.[54] In addition, the firm-retainer contract would permit the panel attorney to send an associate of the firm to cover cases for non-essential adjournments while still billing for the time.[55]

It must be emphasized that we are adamantly opposed to any kind of contract system that would involve competitive bidding by firms for panel work. The ABA and the NLADA have recently reviewed the use of contract bidding systems across the country and have strongly condemned them.[56]

d. *Advantages and disadvantages of a revitalized 18-B panel.*

Under ideal conditions, a revitalized 18-B panel would be our first choice. The existence of a strong private criminal bar is healthy for the system. Not only would panel attorneys bring with them the experience of working with district attorneys and the Legal Aid Society, they would be able to draw upon knowledge of the federal system and other areas of practice that would make them more effective advocates. No matter how good the institution, there are often advantages to approaching matters in a non-institutional setting.

The major disadvantage to the plan we propose is financial. Nothing short of the recommendations we make, and the financial commitment it entails, will make the 18-B panels work effectively. Yet the supplemental cost of our revitalization plan runs in the neighborhood of $5 million.

Moreover, even assuming our proposal were instituted, we have some abiding doubts about its success simply because 18-B compensation rates, despite the recent increase, are too low. The history of 18-B practice instills in us a lack of confidence in the willingness and ability of private attorneys to provide quality representation in the volume necessary to make the panel a success unless they can make money from it. With low rates, assigned counsel plans tend to attract those attorneys who will take money on the panels by doing a volume business at the expense of quality representation. That has not only been true in New York, but in other major metropolitan areas.[57]

Our revitalized 18-B panel represents a calculated risk that significantly upgrading the quality of representation conditions will stimulate good lawyering and guard against the usual effects of the low rates. It is a gamble not worth taking unless the city is willing to spend the money on the back-up services we have outlined.

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54. Another possible feature of the firm contract would be a tax incentive. One proposed by George Spinakos, administrator of the Second Department panel, was a fixed lump sum credit for the firm against the City's rent and occupancy tax.

55. The McConville-Mirsky study revealed that an extraordinary percentage of the current panels consists of sole practitioners. *See supra* TABLE 5-1, at 721.

56. American Bar Ass'n Criminal Justice Section, Standing Committee on Legal Aid and Indigent Defendants, Recommendations and Report on Governmental Contracts for Criminal Defense Services (amended and approved Feb. 1985).

57. Albert-Goldberg & Hartman, *The Public Defender in America*, in THE DEFENSE COUNSEL 67 (W. McDonald ed. 1983).

SYSTEMIC RECOMMENDATIONS

Solutions to the problem of indigent representation should rest on a set of organizing principles regarding the mutual interaction of the several providers of defender services. The following principles are essential to the proper operation of the criminal justice system, however the transformation of 18-B may be accomplished.[58]

a. *All defender organizations, in conjunction with the City, should develop consistent methods of data collection and comparable "case weighting systems".*

The data that 18-B administrators, the Legal Aid Society, and the Office of Court Administration collect are extremely limited, and often impossible to compare.[59] We believe that all of the major actors in the defense system must use consistent methods of data collection.[60] Certain statistics regarding each defender organization are essential: the number of cases (by type of crime) it processes in the Criminal Court and the Supreme Court, without double counting; the number of cases it disposes and the form of disposition; the time it takes for a case to reach disposition, including the number of calendar appearances involved; the number of cases the organization processes but does not carry to disposition (e.g., bench warrants, relieved cases); how long a case is carried before it leaves the organization and, in relieved cases, the type of attorney (18-B, private, Legal Aid) to whom it goes; the number of cases the organization tries before juries or judges; the duration of the trial and the result; the number of mistrials and their duration; the number of pre-trial hearings by type and their duration; and the number of pending cases in each court.

This kind of gross data is necessary in order to make a broad assessment of the number and type of cases flowing through the criminal justice system, and of each defender organization's share. Each organization should be collecting this data in the same way.

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58. Our recommendations concerning the consistent collection of gross data, case weighting systems, and caseload caps bear directly upon the administration of the 18-B panels, which will exist in some form. By definition, our "unavailability" recommendation does not apply to 18-B which, in theory, is open-ended and must find a way to accept all assignments.

59. A few examples of the kinds of data whose absence stymied our inquiry are: data on the cost of appeals on a per case basis (the Appellate Division could not provide this information); data on how many multiple-defendant cases were in the system, how many of them were two-defendant cases, and how many were represented by private counsel; and precise data on the type of lawyer to whom cases went when Legal Aid or 18-B was relieved. Similarly, important data could not be compared. For instance, since Legal Aid and OCA count dispositions differently (Legal Aid counts at the sentence, OCA at the plea) we could not calculate with precision the respective shares of pending cases that 18-B and Legal Aid had in the Supreme or Criminal Courts.

60. *See* National Legal Aid and Defender Association, Guidelines For Negotiating and Awarding Governmental Contracts for Criminal Defense Services, Guideline III-22 (Dec. 1984) (recommends uniform management and data collection procedures for all defender organizations in a system) [hereinafter NLADA/ABA Guidelines]. These Guidelines were approved by the American Bar Association House of Delegates in July of 1985.

But even consistent collection of gross data would not be a sufficient basis for budgeting, planning or managing the work of a defender organization in a city the size of New York. Each organization must employ a well-constructed "caseload weighting system," based on sensibly-crafted time sheets kept by staff or panel attorneys.[61]

A caseload weighting system measures the different levels of attorney time and effort *actually* required, on the average, for different types of cases (e.g., felonies, misdemeanors, murders, grand larceny, robberies) that take different dispositional routes through the system (e.g., disposed at arraignment, after the filing of motions, after hearings, after trial). With the assistance of a caseload weighting system, defender organizations and the city could begin, for the first time, to predict intelligently personnel and budgetary needs for a given county in a given year.

Consider New York County. The Legal Aid Society has claimed that its staffing needs there are disproportionately higher than in other counties because cases are not "tracked," and attorneys therefore experience more "dead time" (e.g., time spent waiting in court for a case to be called, or waiting to interview a defendant who is incarcerated).[62] Competently constructed time sheets and case weighting data would identify "dead time," substantiate or refute the Society's New York County claim, and usefully instruct all parties on staffing needs.

Similarly, caseload weighting data could help measure the impact of major changes in the system, such as the institution of an Individual Assignment System for judges, or even an amendment to sentencing statutes that increased mandatory minimums for a certain category of crime.

In short, a caseload weighting system is indispensable for the successful operation of defender organizations: it provides a persuasive basis for management's budget requests and planning, and it functions as a good diagnostic tool for measuring attorney performance and for allocating scarce attorney resources. Thus, the city should insist not only on the collection of gross data, but that all defender-organizations use consistent and comparable caseload weighting systems.

b. *The city should agree to caseload caps for all defender organizations, and each organization should have the right to declare itself "unavailable" when those caseload caps are exceeded.*

61. *See* National Legal Aid and Defenders Association, Case Weighting Systems for the Public Defender: A Handbook for Budget Preparation (June 5, 1985) (submitted by Joan E. Jacoby) (an excellent, easily understood description of case weighting systems and their application to defender organizations) [hereinafter 1985 NLADA Handbook for Budget Preparation].

62. *See* 1985 Reply Memorandum, *supra* note 15, at 26-27. Measuring "dead time" is always a vital factor in caseload weighting systems for defender organizations. Simply measuring case-processing time — how many hours a lawyer worked on a case in and out of court — does not accurately measure attorney effort. In a defender organization, the amount of time lost on activities not directly assignable to a particular case can be substantial. *See* 1985 NLADA Handbook for Budget Preparation, *supra* note 61, at 34-35.

1. Caseload Caps

All defender organizations, whether Legal Aid, a Legal Aid Conflicts Unit, or a mid-range defender, should establish with the city a caseload cap for its lawyers. That cap should be based upon data reflecting the different amounts of time and effort that attorneys *actually* spend on different kinds of cases (when such data becomes available), and the experience level of the attorney for whom the cap is being set.[63]

The figure chosen as a caseload cap could be cross-checked by calculating a *minimum* number of cases that an attorney of a particular level of experience should handle over the course of a year; such minima would guard against the possibility of lawyers unnecessarily "hoarding" cases or "slowing down" in order to avoid taking new assignments.[64] Similarly, both the case cap and the minimum case handling requirement could be discounted by an amount depending upon the number of days the attorney spends on trial, the assumption being that the attorney who logs many days on trial, particularly on serious felony cases, should be carrying and turning over fewer cases. Once a caseload weighting system were in place, these kinds of estimates could be done with great sophistication and confidence.

Until data on case weights is available, we think that accountability demands that minima be set and fulfilled in good faith. Both the city and defender organizations should strive to develop and abide by these benchmarks.

We recognize that there might be good reasons for the city to set different caseload caps and minimum case handling requirements with each of its defender organizations — the experience level of the attorneys, and the mix of cases assigned might be somewhat different for each of them. But the caps and minima ought to be comparable and manageable. It would be unethical and counterproductive for the city to create competition for funding among defender organizations if that competition entailed bidding to undertake a higher caseload cap. Quality legal representation, even with a caseload weighting system, can only be quantified up to a point; it should not be manipulated by quotas or subjected to "speed ups" like work on an assembly line.

On the other hand, caseload caps and minimum case handling requirements force a defender organization to define the actual functions of middle-management with specificity: who is a full-, a half-, or a quarter-time case handling supervisor?; who is a non-case handling administrator?; and how many supervisors and administrators are required per case-handling attorney?

63. Although our discussion of a caseload cap is part and parcel of the proposals we offer for *new* defender organizations, *see supra* text accompanying notes 19-53, the strong arguments in favor of a cap also make it an appropriate reform to implement within the current delivery system.

64. The National Legal Aid and Defenders Association standards for the operation of defender organizations suggest a caseload cap in terms of number of cases handled per year. NLADA/ABA Guidelines, *supra* note 60, at 12-13 (Guideline III-6). Our proposal for a minimum case handling requirement as a "cross-check" derives from NLADA's notion that such a calculation is a feasible standard of measurement.

While we do not believe that the Office of Management and Budget should have the power to review and reject defender-organization staffing proposals line by line, we do feel that caps, minimum requirements and a reviewable caseload weighting system will provide the city with a fair and effective way of monitoring and negotiating staffing needs.

Beyond the rationalization of the budget process, we think that caseload caps will keep the morale and the performance of staff attorneys in defender organizations at a high level. They will make more court appearances promptly; they will be able to "cover" cases for each other in a professional fashion; they will be better prepared; they will make more expeditious decisions about accepting a plea or going to trial; and they will not "burn out" so frequently or so quickly. In short, manageable caseloads will enable the whole court system to run more efficiently.

2. *Declaration of Unavailability*

A second basic organizing principle is the right of a defender organization to declare itself "unavailable." Like the caseload cap, the declaration of "unavailability," and the circumstances under which it may be made, should be spelled out in all of the city's contracts with its institutional defender organizations.[65]

A declaration of unavailability is appropriate, in our judgment, when a pre-designated percentage of attorneys in any county office of a defender organization have exceeded their caseload caps, and management has been unable to maneuver personnel to relieve the overload. This means that the defender organization, after giving notice to the courts and the city, would

65. In truth, the "right" to declare "unavailability" already exists within the Bar Association Plan and the Legal Aid Society's agreement with the City. Adopting the language of Executive Order No. 178 of the Mayor of the City of New York (Nov. 27, 1965), reprinted at Appendix 2(a), the August 6, 1966 agreement between the City and the Legal Aid Society provides that the Society does not have to furnish representation that would otherwise be required when there is a "conflict of interest or for other appropriate reasons." 1966 Agreement, *supra* note 18, at app. 2(c), at 932. Article I of the Bar Association Plan contains exactly the same language. App. 2(b), at 925. "Other appropriate reason" for refusing appointment entails, as we understand it, the "unavailability" of attorneys due to excessive caseloads such that representation of more clients would violate the norms of professional conduct, *e.g.* MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 6-101(A)(2) & (3) (1980); MODEL RULES OF PROFESSIONAL CONDUCT Rules 1.1, 1.3 (1983), and the sixth amendment obligation to render effective assistance of counsel.

In California, public defender offices throughout the state have been making such declarations of "unavailability" for over a decade pursuant to CAL. PENAL CODE § 987.2 (West Supp. 1986), which provides that the court should appoint someone other than the public defender to represent an indigent when the public defender has refused because of "conflict or other reasons." *See* Ligda v. Superior Court, 5 Cal. App. 3d 811, 828, 85 Cal. Rptr. 744, 754 (1970). The same language is used in CAL. GOV'T CODE § 27706 (West Supp. 1986), concerning the right of the public defender to refuse appointment. The Los Angeles Alternate Defense Council's version of a mid-range defender incorporates in its contract with the County, citing CAL. GOV'T CODE § 27706 (West Supp. 1986), the same right to declare itself "unavailable."

stop picking up new cases in certain arraignment parts until such time as the caseloads of its attorneys returned to normal levels.

If the city feels the defender organization has acted improperly in declaring itself "unavailable," the matter should immediately be submitted to binding arbitration. The arbitrators should be lawyers familiar with the functioning of the criminal courts, appreciative of the conditions under which the attorneys are working and sensitive to the issues of professional responsibility. We do not expect defender organizations lightly to declare themselves unavailable, nor do we expect that the declaration will be challenged without good cause. We view it as a safety valve that must be used when, despite the best projections derived from caseload weighting systems, workload unpredictably increases.

When a defender organization declares itself unavailable, we expect that the unstaffed arraignment sessions will be covered by lawyers from the 18-B panel and from any other "available" defender organization that would not encounter a conflict.

Attorneys who have exceeded their caseload caps are presumptively no longer rendering effective assistance of counsel in accordance with the sixth amendment or the Code of Professional Responsibility. This is the best and most important reason for recognizing the right to declare unavailability. We see at least two additional benefits, however.

First, all players in the defender system — the courts, the city, and the defender organizations themselves — will be able to respond more rationally to sudden increases in the flow of cases that create overload. There will be no hidden shifts or "shedding" of cases from one defender organization to another that could cause an inefficient allocation of resources.

Second, we believe that the right to declare unavailability, in conjunction with caseload caps and case weighting systems, will put negotiations between the city and its defender organizations on a realistic footing. In the past these negotiations tended to focus unduly on "front-end" responsibilities — how much does it cost to fund enough attorneys to staff all arraignment sessions? The "back-end" of the process — the time and attorney resources necessary to bring cases to disposition — was not adequately examined, if only because the data for doing so was very limited. Using a case weighting system, the "back-end" of the process can be profitably discussed, and reasonable calculations with respect to costs and personnel can be made. To the extent that miscalculations or unexpected changes in the system take place, the existence of caseload caps and the right to declare unavailability provide a safety valve and an orderly method of adjustment.

c. *The Legal Aid Society Should Take Homicide Cases.*

In view of the quality of its staff and support services, there is no reason to believe that Legal Aid attorneys cannot try homicide cases as well as, or better than, most of the 18-B lawyers who currently handle these cases. To shut Legal Aid out of this class of cases results in the misallocation of precious

criminal justice dollars. Moreover, we think the formation of a Legal Aid Homicide Bureau would be enthusiastically welcomed by the very best staff attorneys in the Society, attorneys who have relished the challenge of homicide cases for years.

CONCLUSION

The Criminal Justice Coordinator for the City of New York should meet with representatives of this Association and the Office of Court Administration to begin immediate discussions aimed at implementation of this Report's recommendations, particularly our recommendation that a mid-range defender replace the 18-B panel as currently constituted. To this end, we urge that the following steps be taken:

1. The Association of the Bar should deliver copies of this Report to the Mayor of the City of New York and his Criminal Justice Coordinator and to the State Administrative Judge along with an invitation for them to meet with representatives of the Association at a mutually agreeable time.

2. The Association should appoint members familiar with all aspects of this Report to meet with representatives of the city.

3. This Committee should appoint a Subcommittee consisting of Jack Lipson, Barry Scheck and Kenneth Wirfel to monitor the progress of the discussions between the Association, the city and the State Administrative Judge.