PUBLIC DEFENSE
THE NEW YORK STORY

BY GEOFF BURKHART
The persistent failure of indigent criminal defendants to receive adequate legal representation is so well documented that it is no longer news.


Nice job on my case. Have you thought about becoming a lawyer?

—A common compliment paid public defenders by their clients

There is a long-standing rumor among criminal defendants that public defenders are not attorneys—that their representation is inferior. Scrape aside scuttlebutt, and there is a painful lump of truth: poor defendants often receive worse representation than their wealthy counterparts.

On the whole, public defenders are no less talented than their private-sector peers. When public defenders provide—and indigent defendants receive—subpar representation, it is often the product of flawed public defense systems. Because of standards such as the ABA Ten Principles of a Public Defense Delivery System, those flaws are well known:

• Saddled with unreasonably high workloads (Principles 2 and 5);
• Denied adequate funding and resources (Principle 8);
• Plagued with judicial or political interference and a lack of independence (Principle 1); and
• Deprived of sufficient training, supervision, and client communication (Principles 3, 4, 6, 9, 10).

(See ABA Standing Comm. on Legal Aid & Indigent Defendants, ABA Ten Principles of a Public Defense Delivery System (2002), http://tinyurl.com/7ejhguj.)

Most public defense systems in the United States suffer from some mix of these defects. As a result, public defenders are too often speed bumps on the road to a guilty plea. In upcoming issues of Criminal Justice, I’ll try to shine a light on the problems of public defense, as well as some of the solutions. I’ll also explore how we think, write, and speak about public defense. To begin, I home in on New York.

New York is a good point of entry for discussing public defense in the United States. It’s neither the worst nor the best. It’s home to America’s most populous city and scores of small towns. Like public defense in the United States generally, it is a patchwork of defense provision. Above all, it shows us opportunity. Through legislation, litigation, and a coalition of defenders, judges, law firms, and bar associations, New York public defense is improving.

New York Public Defense: A Short History

Public defense in New York is paradoxical. There is a long history of criminal defense innovation, from early provision of counsel to holistic defense, DNA exonerations, and digital forensics. Yet there is also a history of underfunding, political interference, patchwork provision, and skyrocketing workloads.

Early history. New York has a viable claim to inventing public defense in America. Since New York achieved statehood in 1788, its courts have had the power to assign counsel to indigent criminal defendants. (People ex rel. Acretelli v. Grout, 84 N.Y.S. 97, 98 (App. Div. 1903) (recounting the history of New York public defense).) Public defense became increasingly common when, in 1879, the Legal Aid Society began representing criminal defendants. Two years later, the New York legislature adopted section 308 of the New York Code of Criminal Procedure, requiring pro bono counsel for unrepresented defendants in felony cases. These advances occurred well before Clara Shortridge Foltz introduced the concept of the “public defender” at the 1893 Chicago World’s Fair.

Section 308 governed New York public defense until two decisions shifted the landscape. In Gideon v. Wainwright, 372 U.S. 335 (1963), the United States Supreme Court unanimously held that the Sixth Amendment, applicable via the Fourteenth Amendment, required states to appoint counsel to indigent felony defendants. Writing for the Court, Justice Black stated that it is an “obvious truth” that, “in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” (Id. at 344.) The Court declared that “lawyers in criminal courts are necessities, not luxuries.” (Id.)

In Gideon’s wake, many states scrambled to build public defense systems. The effect was less pronounced in New York, where appointment of counsel in felony cases was already the law, if not always the practice. Another case further solidified the right to counsel in New York. In People v. Witenski, 207 N.E.2d 358 (N.Y. 1965), the New York Court of Appeals extended the right to counsel to all criminal defendants, not just those accused of felonies. The court emphasized that the “law as to the right to counsel must be made ‘meaningful and effective’ in criminal courts on every level.” (Id. at 395.)

While Gideon and Witenski guaranteed the right to counsel for indigent defendants across the state, neither described how counsel should be provided. In New York, as in many states, defense provision and funding were left to the counties. In 1965, Governor Nelson Rockefeller signed into law article 18-B, giving New York’s 62 counties three options for public defense provision: (1) a public defender office, (2) a contract with a legal aid society, or (3) a panel of assigned private counsel.

Problems proliferate. On its face, article 18-B satisfied Gideon. But it provided no oversight mechanism, no representation standards, no workload limits, and no state funding. As a result, New York public defense has, for decades, stood on uneven ground. For years, committees,
task forces, and bar associations, such as the New York State Defenders Association, have pushed for better funding, statewide oversight, and reasonable workloads.

In 1994, public defense in New York City became considerably more complicated. The relationship between Mayor Rudolph Giuliani and the Legal Aid Society—the city’s largest defense provider—soured, and the society’s staff lawyers went on strike. Giuliani retaliated by cutting Legal Aid’s budget and issuing requests for proposals (RFPs) for other agencies to provide public defense. The RFPs resulted in contracts with several new public defense providers, including the Bronx Defenders and Brooklyn Defender Services. This rift increased the jumble of defense provision in New York, but also drove innovation, such as expanding the holistic approach to public defense, in which defense offices provide comprehensive legal and social services.

Worried that the city would prize efficiency over effectiveness when selecting providers, the Appellate Division of the New York Supreme Court, prompted by requests from several bar associations, created the Indigent Defense Organization Oversight Committee (IDOOC) and charged its volunteer panel with publishing performance standards and monitoring public defense provision in New York City. Still, problems proliferated.

In 2001, a series of New York Times articles highlighted the problems. One described “a defender system in which underpaid, ill-prepared, virtually unsupervised private lawyers sometimes represent hundreds of defendants per year, leaving little time or incentive for them to master the facts, prepare and argue the cases or file appeals of dubious convictions.” (Drive-By Legal Defense, N.Y. TIMES, Apr. 12, 2001.) The piece called for a statewide indigent defense commission, standards, caseload caps, and oversight. In the years that followed, several bills were introduced to, among other things, create a statewide oversight commission. None gained any traction.

By this time, even article 18-B’s architects had recognized its flaws. Three leaders instrumental in the article’s creation—former counsel to Governor Rockefeller, Michael Whiteman; state Senator Warren M. Anderson; and former Assemblyman Richard J. Bartlett—formed the Committee for an Independent Public Defense Commission. They lamented the state of public defense in New York:

We believed we were protecting the right to counsel under the United States Constitution. We hoped that New York would rise as a leader among the states in protecting the rights of poor people. We believed that we were creating a model for the nation that would allow for the independence of defense lawyers, the zealous representation of clients, and a fair and balanced criminal justice system. . . . While times have changed, the legal framework of our state’s public defense system has not. We have neglected the public defense system that was created in 1965. . . . We have let 36 years pass without a serious revisit. As a result we have an outdated system on the verge of collapse.

(Press Release, Michael Whiteman, Chair, Comm. for an Indep. Pub. Def. Comm’n, Framers of State’s Public Defense System Call for Overhaul (July 9, 2001) (internal quotation marks omitted).)

Whiteman later added, “I believed the new law would keep New York in the vanguard of guaranteeing the right to counsel to poor people . . . But by 2001, I realized . . . that the system we had created could not achieve Gideon’s goal.”

Tipping point. In the last dozen years, New York public defense has begun to improve. It appears, perhaps, that the calls for change—now decades old—have reached critical mass. The first wave of change included a lawsuit, a seminar, and increased national attention.

In 2000, assigned counsel in New York earned $40 an hour for in-court work, and $25 an hour for out-of-court work—amounts set by the legislature in 1985. The New York County Lawyers’ Association (NYCLA), assisted by pro bono counsel Davis Polk & Wardwell, filed an action challenging the constitutionality of the assigned counsel statutes.

In 2003, the Supreme Court of the State of New York issued a robust opinion in the NYCLA’s favor. (See N.Y. Cnty. Lawyers’ Ass’n v. State, 763 N.Y.S.2d 397 (Sup. Ct. 2003).) The court found that extremely low statutory rates had caused attorney shortages, leaving judges to “cajole, urge and even beg assigned counsel to take cases.” (Id. at 408.) The remaining attorneys carried unreasonably high workloads that prevented them from delivering effective assistance of counsel. (Id. at 407.) Ultimately, the court recognized that a crisis existed, held that the statutes were unconstitutional as applied, and issued a mandatory permanent injunction directing the state to pay assigned counsel $90 an hour (regardless of whether work was in-court or out-of-court) until the legislature addressed the issue. (Id. at 410.)

The legislature acted while the case was on appeal, increasing compensation rates for assigned counsel to $60 an hour for misdemeanors (now capped at $2,400 instead of $800), and $75 an hour for all other cases (now capped at $4,400 instead of $1,200). (See N.Y. County Law § 722-b.)

That same year, New York’s unified court system held a seminar regarding public defense at Pace Law School. Stakeholders from both the city and upstate attended. They agreed that statewide standards, meaningful training, and resource parity with prosecutors were needed. Soon after, a special committee of the New York State Bar Association promulgated performance standards and called for training, caseload caps, and an independent statewide oversight commission.

The problems in New York were also gaining national recognition. In 2004, the ABA published Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice (http://tinyurl.com/dx7b68q). The report included testimony that “[c]aseloads are radically out of whack in some
places in New York. There are caseloads per year in which a lawyer handles 1,000, 1,200, 1,600 cases.” The report further noted that, with 62 counties, New York had over 95 plans for providing representation, each with different scope of service, staffing procedures, support staff, investigation, training, appointment practices, eligibility standards, and attorney skills. The report noted with hope, however, that Chief Judge Judith Kaye had recently created a commission to study public defense.

The Kaye Commission
Tremendous as it is, Judith Kaye’s impact on New York public defense could be a footnote in her biography. During a career spanning 20 years each at white-shoe firms and on the bench, Kaye has declined consideration for posts as United States attorney general and United States Supreme Court justice. As New York’s first female chief judge, she authored landmark opinions on in vitro fertilization, the death penalty, and gay marriage. Yet public defenders will know her by the commission that bears her name.

Formation. In 2004, halfway through an hour-long State of the Judiciary address, Chief Judge Kaye spoke about public defense:

Under our current system created in 1965, which places the burden primarily on local governments, a patchwork of indigent defense programs of varying size and character has developed around the State. At the same time, we have experienced dramatic changes in the type, complexity and volume of criminal cases, and we continue to face shortages of qualified private lawyers willing to take on criminal assignments. . . . [A] top-to-bottom reexamination of our indigent defense system is long overdue.

She announced the formation of the Commission on the Future of Indigent Defense Services. It would later be affectionately called the Kaye Commission. The commission was to be headed by Judge Burton Roberts and Professor William Hellerstein. Hellerstein moved quickly to hire the Spangenberg Group, a well-known criminal justice research and consulting firm.

The Spangenberg Group. Bob Spangenberg and his team soon embarked on a project that remains “the most comprehensive study of indigent defense representation ever undertaken in New York State.” The team attended hearings; visited courtrooms in 22 counties; met with judges, attorneys, and supervisors; and reviewed reports, statutes, and case law. After 78 days of site work and meetings with over 350 people, Spangenberg issued a report with 55 findings that concluded, “New York’s indigent defense system is in a serious state of crisis.” (Robert L. Spangenberg et al., Spangenberg Grp., Status of Indigent Defense in New York: A Study for Chief Judge Kaye’s Commission on the Future of Indigent Defense Services (June 16, 2006), http://tinyurl.com/olpufh3.)

The system failed to comply with any one of the ABA Ten Principles of a Public Defense Delivery System: it lacked independence, reasonable workloads, enforceable standards, sufficient resources, adequate staff, competitive salaries, current technology, vertical representation, sufficient client contact, language access services, expert services, and proper training and supervision.

In New York City, Spangenberg found a large number of defendants pleading guilty at first appearance, often after only a few minutes of attorney consultation. The agencies contracted to defend the public were severely underfunded and overworked, and private assigned counsel were not subject to qualification, performance, or oversight standards.

Upstate, Spangenberg observed “town and village courts” that handle misdemeanor and traffic matters, as well as felony arraignments, often off-record. Spangenberg found that these courts dispose of a large percentage of the state’s criminal matters. The system hosts approximately 2,000 part-time judges—roughly 72 percent of all judges in New York—the majority of whom are nonlawyers. Spangenberg saw many defendants deprived of their right to counsel, often because public defenders did not staff town and village courts. A contemporaneous New York Times article described these courts:

Some of the courtrooms are not even courtrooms: tiny offices or basement rooms without a judge’s bench or jury box. Sometimes the public is not admitted, witnesses are not sworn to tell the truth, and there is no word-for-word record of the proceedings. Nearly three-quarters of the judges are not lawyers, and many—truck drivers, sewer workers or laborers—have scant grasp of the most basic legal principles. Some never got through high school, and at least one went no further than grade school.


Overall, Spangenberg documented “a haphazard, patchwork composite of multiple plans that provides inequitable services across the state to persons who are unable to afford counsel. The multiple plans . . . not only lack uniformity and oversight, but often fail to comply with the requirements of [article 18-B]. The result is a fractured, inefficient and broken system.”

The Kaye Commission Report. Bolstered by the Spangenberg Report, the Kaye Commission’s findings were decisive: “[T]he Commission has concluded that there is, indeed, a crisis in the delivery of defense services to the indigent throughout New York State and that the right to the effective assistance of counsel, guaranteed by both the federal and state constitutions, is not being provided to a large portion of those who are entitled to it.” The commission’s specific findings included the following:

• There are no clear standards for determining whether a client is indigent and eligible for representation;
• There are no binding statewide standards for attorney performance;
• Public defense funding is grossly inadequate;
• Attorney workloads throughout the state are excessive;
• There is a severe lack of support services, including investigators, social workers, and interpreters;
• There is a lack of adequate attorney training;
• There is minimal attorney-client contact, with client meetings often occurring for the first time on the day of court;
• Article 18-B created an unfunded mandate for New York counties, causing uneven representation across the state;
• In New York’s 1,281 town and village courts, the majority of justices are nonlawyers;
• In town and village courts, there is widespread denial of the right to counsel;
• There is a significant resource disparity between defenders and prosecutors;
• Discovery practices are murky and often unlawful;
• Collateral consequences, including immigration status, are not properly investigated; and
• There is no comprehensive data collection system.

Based on these systemic problems, the commission made several concrete recommendations:

• New York should establish an independent, statewide defender office;
• The office should include an indigent defense commission, a chief defender, regional and local defenders, appellate defenders, and conflict counsel;
• The commission should have the power to hire a chief defender; implement performance, hiring, training, continuing education, and eligibility determination; and set rates and standards for assigned counsel;
• The State of New York, not its counties, should fund public defense;
• New York should eliminate resource disparity between prosecutors and defenders; and
• New York should implement a comprehensive data collection system.

(COMM’N ON THE FUTURE OF INDIGENT DEF. SERVS., FINAL REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK (June 18, 2006), http://tinyurl.com/qctmfru.)

The Kaye Commission Report was a clear indictment of New York public defense. But criminal justice systems never pause. While reformers tried to leverage the Kaye Commission Report, thousands of criminal defendants were processed in New York criminal courts. Kimberly Hurrell-Harring was one of them.

Hurrell-Harring

Crime and conviction. A nursing assistant for 12 years, Kimberly Hurrell-Harring often worked two jobs to support her young daughters and her mother, who had had a stroke. In September 2007, Kimberly drove 240 miles with her daughters in tow to visit her husband in prison. The family made this trek at least twice a month.

That morning, Kimberly left the girls at the Budget Inn and went to visit her husband alone. Kimberly, who had no criminal history, attempted to deliver less than an ounce of marijuana to her husband. Two investigators discovered the contraband, detained her, and Kimberly confessed. Her husband attested that he had threatened her, forcing her to bring marijuana into the prison.

Asked later why she smuggled a small amount of marijuana, Kimberly responded, “I asked myself the same question. . . . My husband asked me. It was for his own purposes. I should have put my foot down and said no. But let’s be honest, we all did things for men that we shouldn’t have did. I bet it’s happened to you.” (Bill Meyer, Public Defender Offices Are in Crisis Nationwide, Plain Dealer (Cleveland, Ohio), June 3, 2009.)

Kimberly was charged with promoting prison contraband, a first-degree felony, and possession of marijuana. She had no attorney at arraignment. A local judge set a $10,000 bail—amount well outside her means. She languished in Washington County Jail.

Kimberly spoke with her attorney for mere minutes before or after court appearances. She called him repeatedly, but rarely heard back. Despite favorable case law, he never attempted to negotiate a misdemeanor plea. Ultimately, Kimberly would plead guilty to promoting prison contraband and be sentenced to six months’ jail time and five years’ probation. She would lose her job, her housing, and her nursing assistant license.

Litigation. On one of Kimberly’s court dates, Daniel J. Freeman, an observer from the New York Civil Liberties Union (NYCLU), saw a “stunned and confused” defendant with a defense attorney doing little for her. Familiar with these kinds of abuses, as well as with the Kaye Commission Report, NYCLU attorneys saw the need for a lawsuit challenging New York public defense. The NYCLU approached Schulte Roth & Zabel, a New York firm, then wrapping up class action litigation against the Federal Emergency Management Agency (FEMA) concerning Hurricane Katrina evacuees. In addition to its experience with large pro bono actions, Schulte had something many firms did not: partner Danny Greenberg, former head of the Legal Aid Society.

In 2007, the NYCLU and Schulte filed a complaint against the State of New York, naming Kimberly Hurrell-Harring and 19 others as plaintiffs. The action stood on the shoulders of the Kaye Commission Report:

Despite the Kaye Commission’s unequivocal statement that the State is now knowingly and systematically violating the fundamental rights of its poorest citizens to meaningful and effective legal representation in criminal cases, more than a year has passed without any action by the State to remedy the problem. . . . Plaintiffs Kimberly Hurrell-Harring [et al.] are among the thousands of defendants currently affected by the structural and
systemic failings of the public defense system identified by the Kaye Commission.

The suit concentrated on five New York counties: Onondaga, Ontario, Schuyler, Suffolk, and Washington. These counties exhibited neither the worst nor the best representation in New York. They did, however, represent each of the three article 18-B representation models: public defender (Schuyler and Washington Counties), assigned counsel (Onondaga and Ontario Counties), and contract counsel (Suffolk County).

In 2009, New York’s Appellate Division dismissed the action as nonjusticiable, where no party was seeking relief from a conviction or, and relief, if warranted, should come from the legislature, not the courts. (Hurrell-Harring v. State, 883 N.Y.S.2d 349 (App. Div. 2009).) The New York Court of Appeals reversed, finding that the complaint stated a claim not under Strickland v. Washington, 466 U.S. 668 (1984), but under Gideon. (Hurrell-Harring v. State, 930 N.E.2d 217 (N.Y. 2010.).) Specifically, the court held that the complaint stated a claim for “constructive denial of the right to counsel by reason of insufficient compliance with the constitutional mandate of Gideon.” (Id. at 224–25.)

Once remanded, discovery wound on for several years. A memorandum to defenders by an unknown author unearthed during discovery shows a system where triage is the norm:

As a practical matter, we simply can’t treat every case as a trial case because we lack the time and resources to successfully undertake such an approach. . . . Therefore our focus must be directed towards potential trial cases. . . . The initial encounter with the client, though an inadequate opportunity to allow for a thorough discussion of the case, should nevertheless provide a sufficient opportunity to “triage” the client’s case to determine if further comprehensive dialogue is necessary.

(Affidavit of Norman Lefstein, Preliminary Report on Indigent Defense Systems in NY State, (October 2013) at ¶ 99 (on file with author.).)

Compare that memorandum with the ABA Defense Function Standards:

Defense counsel has a duty to investigate in all cases, and to determine whether there is a sufficient factual basis for criminal charges. . . . The duty to investigate is not terminated by factors such as the apparent force of the prosecution's evidence, a client’s alleged admissions to others of facts suggesting guilt, a client’s expressed desire to plead guilty or that there should be no investigation, or statements to defense counsel supporting guilt.

(Standards for Criminal Justice: Def. Function Standard 4-4.1(a)-(b) (4th ed. 2015.).)

Their case bolstered by this evidence, the plaintiffs prepared for trial and hired public defense experts Norman Lefstein and Robert Boruchowitz.

The Department of Justice. Approximately seven years into the Hurrell-Harring litigation, the Department of Justice (DOJ) filed a statement of interest. In that statement—essentially an amicus brief—the DOJ did not take a stance on the merits. Rather, it sought to “assist the Court in assessing whether the State of New York has ‘constructively’ denied counsel to indigent defendants during criminal proceedings.” (Statement of Interest of the United States at 1, Hurrell-Harring, No. 8866-07 (N.Y. Sup. Ct. Sept. 25, 2014), www.justice.gov/file/65011/download.)

The statement asserted that constructive denial of counsel occurs when either (1) “on a systemic basis, lawyers for indigent defendants operate under substantial structural limitations, such as a severe lack of resources, unreasonably high workloads, or critical understaffing of public defender offices”; or (2) “the traditional markers of representation—such as timely and confidential consultation with clients, appropriate investigation, and meaningful adversarial testing of the prosecution’s case—are absent or significantly compromised on a system-wide basis.” (Id.) Although either would violate the Sixth Amendment, the DOJ noted that these circumstances often go hand-in-hand.


While the statement’s content broke no ground, its mere filing did. This was the first time the DOJ showed support for public defense in a state court proceeding.

Settlement. On October 21, 2014—shortly before trial was scheduled and less than one month after the DOJ filed its statement of interest—the parties settled. The settlement was limited to the five counties listed in the suit. However, New York’s commitments were substantial:

• Assume the responsibility to provide lawyers, rather than leaving that task to the counties;
• Provide counsel at every client’s arraignment (i.e., counsel at first appearance);
• Establish workload limits for public defense providers;
• Create and implement standards to determine whether a defendant is indigent and eligible for representation; and
• Pay for counties to implement effective supervision and training; hire more lawyers, investigators, and experts; create confidential meeting spaces; and require that attorney experience match the cases assigned.

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The settlement charged the Office of Indigent Legal Service (ILS)—an agency that did not exist at the litigation’s outset—with the settlement’s implementation. According to ILS head William J. Leathy, Hurrell-Harring “marks the very first time that the state has stood up and acknowledged that it is a state’s responsibility to comply with the Gideon mandate. It is a state responsibility, not a county responsibility.” (John Caher, Indigent Legal Services: A Discussion with William Leathy, AMICI (2015), www.nycourts.gov/admin/amici.)

New York City Caseload Limits
While Hurrell-Harring was pending upstate, caseloads in the city ballooned. With no workload or caseload caps, the average attorney handled 682 cases per year. In 2009, legislation was passed allowing the chief administrative judge to set caseload limits in New York City. With the support of Chief Judge Jonathan Lippman, Judith Kaye’s successor, state-funded caseload limits were implemented over a four-year period.

Like his predecessor, Chief Judge Lippman understands the issues facing New York public defense: “This is so important to all of us in the justice system,” said Judge Lippman, who was instrumental in ensuring the legislation’s passage. “This affects what judges do in the courtroom every day. We can’t do our jobs unless you have the two key players—the prosecution and the defense—on a level playing field.” (John Eligon, State Law to Cap Public Defenders’ Caseloads, but Only in the City, N.Y. TIMES, Apr. 5, 2009.)

Today, attorney caseloads in New York City are under 400 per year—still quite high, but considerably better than they were. Like the Kaye Commission, Chief Judge Lippman’s involvement in the legislation’s passage was critical to public defense improvement.

Indigent Legal Services
About one year before Hurrell-Harring was filed, longtime defense reformer Jonathan Gradess and current Manhattan District Attorney Cyrus Vance Jr., serving on Governor Eliot Spitzer’s transition team, pushed for a statewide public defense system. Gradess and others appeared to be making headway, when the governor resigned amid a prostitution scandal. Post-Spitzer attempts to create a statewide system, including a 2009 bill, stalled.

Yet the effort was not wasted. This push, coupled with the Kaye Commission Report and the appellate court decision in Hurrell-Harring, led to the creation of the ILS. Executive Law section 832 (2010) created the ILS to “monitor, study and make efforts to improve the quality of services” provided under article 18-B. Section 833 created a nine-member board to oversee ILS. William Leathy, former head of the Massachusetts Committee for Public Counsel Services, took the reins in February 2011.

What had been envisioned as a 20-person, $3 million office is now an 11-person, $1.5 million office, though expanding in light of Hurrell-Harring. The office does not represent clients. Rather, it works to improve representation by approximately 145 providers of indigent defense services in New York. In part, section 832 tasked ILS with (1) evaluating and monitoring the counties’ defense provision; (2) collecting data regarding defense delivery, salaries, caseloads, resource parity, dispositions, expenditures, eligibility criteria, and attorney qualification; (3) analyzing that data and recommending changes; (4) establishing performance standards; and (5) recommending distribution and expenditure for defense services.

Conclusion
In a few short years, New York has witnessed the creation of a statewide public defense commission, the passage of caseload limits in New York City, and the success of impact litigation in five counties. A book could be written on the strategies and tactics used in New York and how they could be applied elsewhere. But three overarching points may be quickly gleaned:

1. Public defense systems can be improved.
2. It doesn’t happen overnight.
3. Public defenders can’t do it alone.

The last point is especially important. New York illustrates the need for a coalition of judges, bar associations, private firms, and interest groups.

Work remains to be done in New York. Workloads are unconscionably high in counties throughout the state, and most public defense offices lack the independence necessary to ensure quality defense provision. There are also tensions—city versus upstate, private versus public representation—that complicate the public defense debate. (See, e.g., N.Y. Cnty. Lawyers’ Ass’n v. Bloomberg, 19 N.Y.3d 712 (2012) (addressing whether the city may allow contract providers rather than assigned private counsel to provide representation in conflict cases).)

Importantly, Hurrell-Harring covers only five counties. But the five counties represented in Hurrell-Harring were not special—indeed, that is why they were chosen. As NYCLU lead attorney Corey Stoughton told the New York Times, “This agreement is a template by which New York can establish equal justice for all in every single county.” (James C. McKinley Jr., In New York, Cuomo Pledges More Aid for Lawyers of the Indigent, N.Y. TIMES, Oct. 21, 2014.)

Equal justice could be costly. ILS has estimated that to bring caseloads in the 57 upstate counties into compliance with even basic caseload limits would require over $100 million annually. But through legislation or litigation, New York’s remaining counties must be funded. As Leathy concluded in a recent interview, “[It] is a very exciting time. It is not the way, I suppose, that the authors of Judge Kaye’s commission’s report wanted. It hasn’t operated that way and in politics and in life things sometimes don’t. But there are a lot of seeds in the ground and we hope that many of them are going to flower.” (Caher, supra.)