

Criminal Procedure Law, directing courts to appoint *pro bono* counsel for unrepresented felony defendants.

3. Sadly today, more than forty years after *Gideon*, the leadership and humanity New York State showed in the past have eroded badly. In the last few decades, dozens of reports, commissions, newspaper investigations, and lawsuits documented the degree to which those accused of crimes in New York State are denied basic constitutional protections.

4. Most recently, in June of 2006, the New York State Commission on the Future of Indigent Defense Services, which was convened by Chief Judge Judith S. Kaye, issued a comprehensive report detailing the crisis in New York's public defense system. After careful study of data from all across the state, the Kaye Commission concluded that "the indigent defense system in New York State is both severely dysfunctional and structurally incapable of providing each poor defendant with the effective legal representation that he or she is guaranteed by the Constitution of the United States and the Constitution and laws of the State of New York ... [and] has resulted in a disparate, inequitable, and ineffective system for securing constitutional guarantees to those too poor to obtain counsel of their own choosing."¹

5. 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.

6. Plaintiffs Kimberly Hurrell-Harring, James Adams, Joseph Briggs, Ricky Lee Glover, Richard Love, Jr., Jacqueline Winbrone, Lane Loyzelle, Tosha Steele, Bruce Washington, Shawn Chase, Jemar Johnson, Robert Tomberelli, Christopher Yaw, Luther

¹ The Final Report of the New York State Commission on the Future of Indigent Defense is attached to this complaint and is thereby incorporated by reference pursuant to CPLR § 3014.

Woodrow of Booker, Jr., Edward Kaminski, Joy Metzler, Victor Turner, Candace Brookins, Randy Habshi, and Ronald McIntyre are among the thousands of defendants currently affected by the structural and systemic failings of the public defense system identified by the Kaye Commission. Plaintiffs bring this lawsuit on behalf of themselves and of all indigent persons with criminal felony, misdemeanor, or lesser charges pending in New York state courts in Onondaga, Ontario, Schuyler, Suffolk and Washington counties (hereinafter, “the Counties”) who are entitled to rely on the government of New York to provide them with meaningful and effective defense counsel.

7. The State of New York’s broken public defense system has deteriorated to the point where it now deprives or threatens to deprive these plaintiffs and the class of indigent defendants they represent of rights guaranteed to them by article I, section 6 of the New York State Constitution; sections 170.10, 180.10, 180.80, 190.50, and 210.15(2)(c) of the New York Criminal Procedure Law; sections 717 and 722-c of the New York County Law; and the Sixth and Fourteenth Amendments to the United States Constitution. Plaintiffs seek declaratory and injunctive relief against the State of New York to prevent violations of plaintiffs’ legal rights and to remedy the State’s continuing failure to ensure that plaintiffs and the class they represent receive meaningful and effective legal representation.

8. The Constitution and laws of the State of New York and the United States Constitution guarantee all persons facing criminal charges the right to counsel, even if they cannot afford a lawyer. It has long been established that the State is obligated to provide public defense counsel to such persons at every critical stage of the criminal justice process.

9. The right to counsel is a right to *meaningful* and *effective* assistance of counsel. Constitutionally adequate counsel is counsel that is capable of putting the prosecution’s case to

meaningful adversarial testing. Where, as is the case in New York, public defense counsel do not have the resources and the tools to engage actively and meaningfully in the adversarial process, courts cannot ensure that their decisions, judgments, verdicts and punishments are rendered fairly and accurately.

10. The constitutional and statutory obligation to provide indigent defendants with meaningful and effective assistance of counsel rests with the State. Since 1965, the State has abdicated its responsibility to guarantee the right to counsel for indigent persons and has left each of its sixty-two counties to establish, fund and administer their own public defense programs, with little or no fiscal and administrative oversight or funding from the State.

11. Because of this abdication of responsibility, the public defense systems in the Counties suffer from some combination of the following deficiencies, among others: incoherent or excessively restrictive client eligibility standards; no written hiring and performance standards or meaningful systems for attorney supervision and monitoring; lack of adequate attorney training; a lack of resources for support staff, appropriate investigations and expert services; no attorney caseload or workload standards; an absence of consistent representation of each client by one lawyer; a lack of independence from the judiciary, the prosecutorial function, and political authorities; and inadequate resources and compensation for public defense service providers, especially as compared to their prosecutorial counterparts.

12. As a result of these deficiencies, many public defense providers in the Counties often fail to: provide representation for indigent defendants at all critical stages of the criminal justice process, especially arraignments where bail determinations are made; meet or consult with clients prior to critical stages in their criminal proceedings; investigate adequately the charges against their clients or obtain investigators who can assist with case preparation and

testify at trial; employ and consult with experts when necessary; file necessary pre-trial motions; or provide meaningful representation at trial and at sentencing.

13. The inability of public defense counsel to put the case against their clients to meaningful adversarial testing causes the class of indigent defendants to suffer numerous harms, including but not limited to: wrongful denial of representation; unnecessary or prolonged pre-trial detention; excessive or inappropriate bail determinations, which have been shown to increase the likelihood of conviction; waiver of meritorious defenses; guilty pleas to inappropriate charges; guilty pleas taken without adequate knowledge and awareness of the full, collateral consequences of the pleas; wrongful conviction of crimes; harsher sentences than the facts of the case warrant and few alternatives to incarceration; and waiver of the right to appeal and other post-conviction rights.

14. This complaint focuses on how the State's failure to provide funding and fiscal and administrative oversight has created a broken public defense system in Onondaga, Ontario, Schuyler, Suffolk and Washington Counties, but the failings in those counties and the types of harms suffered by the named plaintiffs are by no means limited or unique to the named Counties. The State's failure to provide funding or oversight to any of New York's counties has caused similar problems throughout the State.

15. As a direct result of the State's refusal to oversee, set standards for, and adequately fund public defense, indigent criminal defendants in the Counties and across the state face a severe and unacceptably high risk of not receiving meaningful and effective assistance of counsel. In the words of the Kaye Commission, "New York's current fragmented system of county-operated and largely county-financed indigent defense services fails to satisfy the state's constitutional and statutory obligations to protect the rights of the indigent accused."

TABLE OF CONTENTS

PARTIES.....8

JURISDICTION AND VENUE.....11

THE STATE’S FAILURE TO PROVIDE CONSTITUTIONALLY
AND LEGALLY ADEQUATE PUBLIC DEFENSE SERVICES.....12

The Impact of the Public Defense Crisis on the Plaintiffs.....12

The Right to Counsel in New York State.....56

The State’s Abdication of Responsibility to the Counties.....57

The Lack of Enforceable, Statewide Standards.....58

The Lack of State Supervision and Oversight.....59

The Lack of Adequate State Funds for Public Defense Services.....60

The Kaye Commission on the Future of Indigent Defense’s
 Indictment of New York’s Public Defense System.....61

New York State’s Long History of Violating the Right to
 Counsel for Indigent Defendants.....63

The Statewide Failure to Meet Basic Standards of Constitutional
 Legal Representation.....67

*Inadequate Staffing and the Failure to Provide Representation to
 Indigent Defendants At All Critical Stages*.....68

*Incoherent or Excessively Restrictive Financial Eligibility
 Standards and Delays in the Appointment of Counsel*.....72

Lack of Attorney-Client Contact and Communication.....77

*Lack of Attorney Hiring Criteria, Performance Standards
 and Supervisory Controls*.....80

Lack of Training.....83

*Lack of Support Services and the Failure to Conduct
 Investigations and Seek Expert Services*.....85

<i>Excessive Caseloads and/or Workloads</i>	88
<i>Lack of Vertical Representation</i>	90
<i>The Lack of Political and Professional Independence</i>	91
<i>Inadequate Compensation and Lack of Parity with Prosecutorial Counterparts</i>	94
<u>The Effect of the Public Defense Crisis on Indigent Criminal Defendants</u>	98
CLASS ALLEGATIONS.....	99
OTHER ALLEGATIONS.....	101
CLAIMS.....	101
PRAYER FOR RELIEF.....	102

PARTIES

Plaintiffs

16. Plaintiff KIMBERLY HURRELL-HARRING is and at all times present herein has been a resident of Rochester, New York. Mrs. Hurrell-Harring has a pending criminal case in Washington County Court and is currently incarcerated in the Washington County Jail. Mrs. Hurrell-Harring is represented by the Washington County Public Defender's office.

17. Plaintiff JAMES ADAMS is and at all times pertinent herein has been a resident of Syracuse, New York. Mr. Adams has a pending criminal case in Onondaga County Court and is currently incarcerated in the Onondaga County Justice Center. Mr. Adams is represented by an attorney assigned to him by Onondaga County's Assigned Counsel Program.

18. Plaintiff JOSEPH BRIGGS is and at all times pertinent herein has been a resident of Syracuse, New York. Mr. Briggs has a pending criminal case in Onondaga County Court and is currently incarcerated in the Onondaga County Justice Center. Mr. Briggs is represented by an attorney assigned to him by Onondaga County's Assigned Counsel Program.

19. Plaintiff RICKY LEE GLOVER is and at all times pertinent herein has been a resident of Syracuse, New York. Mr. Glover has a pending criminal case in Onondaga County Court and is currently incarcerated in the Onondaga County Justice Center. Mr. Glover is represented by an attorney assigned to him by Onondaga County's Assigned Counsel Program.

20. Plaintiff RICHARD LOVE, JR., is and at all times pertinent herein has been a resident of Syracuse, New York. Mr. Love has a pending criminal case in Onondaga County Court and is currently incarcerated in the Onondaga County Justice Center. Mr. Love is represented by an attorney assigned to him by Onondaga County's Assigned Counsel Program.

21. Plaintiff JACQUELINE WINBRONE is and at all times pertinent herein has been a resident of Syracuse, New York. Mrs. Winbrone has a pending criminal case in Onondaga County Court. Mrs. Winbrone is represented by an attorney assigned to her by Onondaga County's Assigned Counsel Program.

22. Plaintiff LANE LOYZELLE is and at all times pertinent herein has been a resident of Palmyra, New York. Mr. Loyzelle has a pending criminal case in Canandaigua City Court and is incarcerated in the Ontario County Jail. Mr. Loyzelle is represented by an attorney assigned to him by Ontario County's Assigned Counsel Program.

23. Plaintiff TOSHA STEELE is and at all times pertinent herein has been a resident of Geneva, New York. Ms. Steele has a pending criminal case in Ontario County Court and is incarcerated in the Ontario County Jail. Ms. Steele is represented by an attorney assigned to her by Ontario County's Assigned Counsel Program.

24. Plaintiff BRUCE WASHINGTON is and at all times pertinent herein has been a resident of Rochester, New York. Mr. Washington has a pending criminal case in the Victor Town Court in Ontario County and is incarcerated in the Ontario County Jail. Mr. Washington is represented by an attorney who was assigned to him by Ontario County's Assigned Counsel Program.

25. Plaintiff SHAWN CHASE is and at all times pertinent herein has been a resident of Ithaca, New York. Mr. Chase has a pending criminal case in Hector Town Court and is represented by the Schuyler County Public Defender's Office.

26. Plaintiff JEMAR JOHNSON is and at all times pertinent herein has been a resident of Elmira, New York. Ms. Johnson is currently facing criminal charges in Schuyler

County Court and is incarcerated in the Schuyler County Jail. Ms. Johnson is being represented by the Schuyler County conflict defender.

27. Plaintiff ROBERT TOMBERELLI is and at all times pertinent herein has been a resident of Burdett, New York. Mr. Tomberelli is currently facing criminal charges in Schuyler County Court. Mr. Tomberelli is represented by the Schuyler County Public Defender's Office.

28. Plaintiff CHRISTOPHER YAW is and at all times pertinent herein has been a resident of Odessa, New York. He is currently facing criminal charges in Schuyler County Court and Orange Town Court. He is being represented by the Schuyler County Public Defender's Office.

29. Plaintiff LUTHER WOODROW OF BOOKER JR. is and at all times pertinent herein has been a resident of Mastic Beach, New York. Mr. Booker has a pending criminal case in the Suffolk County Court and is incarcerated at the Suffolk County Correctional Facility in Riverhead. Mr. Booker is represented by the Legal Aid Society of Suffolk County.

30. Plaintiff EDWARD KAMINSKI is and at all times pertinent herein has been a resident of Patchogue, New York. Mr. Kaminski has a pending criminal case in the Riverhead Town Court in Suffolk County. Mr. Kaminski is represented by the Legal Aid Society of Suffolk County.

31. Plaintiff JOY METZLER is and at all times pertinent herein has been a resident of Huntington, New York. Ms. Metzler has a pending criminal case in the Suffolk County District Court in Central Islip. She is represented by the Legal Aid Society of Suffolk County.

32. Plaintiff VICTOR TURNER is and at all times pertinent herein has been a resident of Bellport, New York. Mr. Turner has two pending criminal cases at the Suffolk County District Court. Mr. Turner is represented by the Legal Aid Society of Suffolk County.

33. Plaintiff CANDACE BROOKINS is and at all times present herein has been a resident of Fort Anne, New York. Ms. Brookins has a pending criminal case in the Granville Village Court in Washington County and is currently incarcerated in the Warren County Jail. Ms. Brookins is represented by the Washington County Public Defender's office.

34. Plaintiff RANDY HABSHI is and at all times pertinent herein has been a resident of Hudson Falls, New York. Mr. Habshi has a pending criminal case in the Washington County Court and is currently incarcerated in the Washington County Jail. Mr. Habshi is represented by an attorney who has contracted with Washington County to provide public defense services.

35. Plaintiff RONALD MCINTYRE is and at all times present herein has been a resident of Gloversville, New York. Mr. McIntyre has a pending criminal case in the Washington County Court and is currently incarcerated in the Washington County Jail. Mr. McIntyre is represented by an attorney who has contracted with Washington County to provide public defense services.

Defendant

36. Defendant the STATE OF NEW YORK is required by its own Constitution and laws and by the United States Constitution to provide meaningful and effective legal representation to indigent defendants in criminal court proceedings. The State Capitol and center of State government is in Albany County.

JURISDICTION AND VENUE

37. This Court has jurisdiction over this action pursuant to Article 30 of the New York Civil Practice Law and Rules (CPLR) § 3001.

38. Venue is proper pursuant to Article 5 of the CPLR §§ 503(a), 503(c), and 505(a).

**THE STATE'S FAILURE TO PROVIDE FOR CONSTITUTIONALLY AND LEGALLY
ADEQUATE PUBLIC DEFENSE SERVICES**

The Impact of the Public Defense Crisis on the Plaintiffs

Kimberly Hurrell-Harring (Washington County)

39. Kimberly Hurrell-Harring is a registered nurse and has no prior criminal record. Prior to her arrest, she held one full-time and one part-time job in order to care for her mother, who is recovering from a stroke, and her four-year-old and sixteen-year-old daughters.

40. Mrs. Hurrell-Harring was arrested on September 29, 2007, and charged with one count of introduction of prison contraband in the first degree, a felony, and possession of marijuana, a violation. Mrs. Hurrell-Harring was accused of bringing 22.1 grams, or about $\frac{3}{4}$ of one ounce, of marijuana to her incarcerated husband for his personal use. She faces up to seven years imprisonment and up to \$5000 in fines.

41. Mrs. Hurrell-Harring was not represented at her arraignment, where, despite her lack of prior criminal history, bail was set at \$10,000 cash or \$20,000 bond. Mrs. Hurrell-Harring could not afford to post bail and was remanded to the Washington County Jail, where she remains.

42. Mrs. Hurrell-Harring first met her attorney at the county jail shortly after her arraignment. During this meeting, Mrs. Hurrell-Harring felt that her attorney took no interest in her case, her family, or her future. Mrs. Hurrell-Harring's attorney has refused to take any calls she has made to his office since this initial interview.

43. Although Mrs. Hurrell-Harring strongly hoped for probation, so that she could continue to support her family, her attorney did not move to reduce the felony charge to promoting prison contraband in the second degree, a misdemeanor, despite clear precedent holding that the lesser charge is the appropriate one given the small amount of marijuana

involved. *See, e.g., People v. Stanley*, 19 A.D.3d 1152, 1152, 796 N.Y.S.2d 767 768, (4th Dept. 2005); *People v. Brown*, 2 A.D.3d 1216, 1216, 769 N.Y.S.2d 657, 657 (3d Dept. 2003). On information and belief, Mrs. Hurrell-Harring's attorney also failed to advocate for a plea bargain to reduced charges and/or probation given the circumstances of her offense, her lack of a prior record, and her family situation.

44. On October 12, 2007, having been incarcerated for several weeks and presented with no other options, Mrs. Hurrell-Harring pled guilty to promoting prison contraband in the first degree. During the court proceeding in which she pled guilty, it was clear that her attorney had not informed her of the full consequences of the plea prior to her decision to enter it.

45. Ms. Hurrell-Harring will be sentenced on November 16, 2007. Based on her plea bargain, she expects to be sentenced to six months imprisonment and five years of probation. As a result of this felony conviction, Mrs. Hurrell-Harring stands to lose her license to serve as a registered nurse, a profession she has served in for twelve years.

46. The State of New York has not provided Mrs. Hurrell-Harring with the representation to which she is constitutionally and legally entitled, insofar as she was not represented at all critical stages; has not had sufficient opportunity to discuss with her attorney the factual basis for the charges against her, to participate in building a defense to those charges, or to make informed decisions regarding the progress and disposition of her case; and has been denied investigative services, motions practice and vigorous advocacy that could have contributed to her defense and/or brought an end to unnecessary incarceration. Upon information and belief, the State of New York will continue to fail to provide Mrs. Hurrell-Harring with the legal representation to which she is entitled as her case proceeds.

47. The representation provided to Mrs. Hurrell-Harring is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from of the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

James Adams (Onondaga County)

48. James Adams was arrested on July 31, 2007, and charged with robbery in the third degree, burglary in the third degree, and harassment in the second degree, all felonies. Mr. Adams is accused of shoplifting several sticks of deodorant from a drug store. If convicted, Mr. Adams faces a maximum sentence of fourteen years imprisonment on these charges.

49. Mr. Adams was represented by an attorney at his arraignment but was assigned a different attorney during the arraignment. Bail was set at \$2500, which Mr. Adams could not afford.

50. Mr. Adams has never seen his attorney outside of open court. Mr. Adams first saw his attorney at a court appearance on August 7, 2007. During this appearance, Mr. Adams's attorney asked for a one-week adjournment because he had neither reviewed his client's file nor had time to prepare for the hearing. Mr. Adams's attorney was not even aware that his client was incarcerated. When the hearing ended, Mr. Adams asked his attorney for a chance to speak about his about his case, but Mr. Adams's attorney did not meet with him.

51. On August 14 and September 4, 2007, Mr. Adams again appeared in court. Both times, his case was adjourned. On each occasion, Mr. Adams asked his attorney for a meeting,

but no meeting occurred. During these court appearances, the judge encouraged the prosecutor and defense counsel to negotiate the felony burglary and robbery charges down to misdemeanor petit larceny, but the attorneys did not do so.

52. On September 18, 2007, Mr. Adams appeared in court again but his attorney did not appear. The prosecutor attempted to present Mr. Adams with a notice that his felony charges had been referred to a Grand Jury, but the judge admonished the prosecutor that notice must be served on Mr. Adams's counsel. During this appearance, Mr. Adams heard the prosecutor tell the judge that he had extended a plea offer to Mr. Adams. Mr. Adams's attorney never communicated that offer to Mr. Adams.

53. Mr. Adams wanted to discuss the possibility of exercising his right to appear before the Grand Jury with his attorney but, unable to reach his attorney, Mr. Adams lost his opportunity to do so. Mr. Adams was indicted on felony burglary and robbery charges on September 21, 2007.

54. Mr. Adams has attempted to contact his attorney several times between his court appearances, but his attorney's dedicated voicemail box is always full and his office does not accept collect phone calls from the jail. Mr. Adams's wife also has called his attorney several times, but the attorney never returned her calls. Mr. Adams contacted Jail Ministry, a prisoner-rights organization, to ask them to call his attorney on his behalf, but Mr. Adams's attorney still never contacted him.

55. On September 25, 2007, Mr. Adams attempted to file his own *pro se* motion under NY CPL § 190.80, which generally requires release of any person accused of a felony who has not been indicted within forty-five days of arrest. Without an attorney to provide counsel, he

simply mailed form papers obtained from the prison law library and he is not sure whether he properly filed his motion.

56. Still unable to reach his attorney, Mr. Adams wrote directly to the district attorney on October 3, 2007, explaining the facts of his case and alleging that he had been misidentified by the prosecution's witnesses.

57. During a court appearance on October 5, 2007, Mr. Adams hand-delivered a letter to his attorney and to the prosecutor complaining about the lack of attorney-client communication and explaining the possible misidentification. During this court appearance, without prompting from Mr. Adams's attorney, the judge expressed concern that Mr. Adams had been overcharged for felony burglary and robbery for allegedly stealing deodorant from a drug store. The judge suggested that because of this concern he would review the Grand Jury minutes. Despite these statements from the judge questioning the basis for the indictment, Mr. Adams's attorney did not file a motion to dismiss the indictment.

58. During his most recent court appearance, on October 19, 2007, the judge ordered Mr. Adams's attorney to file a motion to dismiss the indictment. As with his prior court appearances, Mr. Adams's attorney did not speak to Mr. Adams before or after the appearance.

59. Mr. Adams has not had any contact with his attorney in nearly a month and does not know the status of his case. Mr. Adams has spent many hours in the jail law library trying to understand what it means to dismiss an indictment and what the judge's suggestion to file this motion means for his case.

60. As of the filing of this complaint, Mr. Adams has been incarcerated for more than three months for allegedly stealing deodorant from a drug store. Mr. Adams's next court

appearance is scheduled for November 30, 2007, at which time he will have been incarcerated for four months.

61. As a result of his arrest and incarceration, Mr. Adams, lost his job as a day laborer and is unable to support his wife, his two teenage daughters, and his granddaughter. Mr. Adams's family was evicted from their home because they could not afford to pay rent without his income.

62. The State of New York has failed to provide Mr. Adams with the representation to which he is constitutionally and legally entitled, insofar as he has not had sufficient opportunity to discuss his case with his attorney, to participate in building a defense to the charge against him, or to make informed decisions regarding the progress and disposition of his case; has been deprived of investigative assistance, motions practice and vigorous advocacy that may contribute to a favorable resolution of the charge against him and/or an end to unnecessary incarceration; and does not understand where his case stands or the status of the charges against him. Upon information and belief, the State of New York will continue to fail to provide Mr. Adams with the legal representation to which he is entitled as his case proceeds.

63. The representation provided to Mr. Adams is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Joseph Briggs (Onondaga County)

64. Joseph Briggs was arrested on August 7, 2007, and charged with possession of stolen property in the third degree, a felony. Because of prior felony convictions, Mr. Briggs faces a maximum life sentence if convicted of these charges.

65. Prior to his arrest, Mr. Briggs was a self-employed roofer who was attempting to start his own small roofing business.

66. Mr. Briggs was not represented by an attorney at his arraignment, at which he was denied bail.

67. Mr. Briggs first saw his attorney at a court appearance on September 4, 2007, almost a month after his arrest and incarceration. In the preceding weeks, Mr. Briggs, who was eager to speak to his attorney about his case and ask about the possibility of a bail reduction so he could get back to work, learned that his attorney had adjourned several court appearances without consulting him. While awaiting this court appearance, Mr. Briggs asked the court deputy to ask his lawyer to come speak to him in the holding cell to discuss his case and prepare for the appearance, but Mr. Briggs's attorney did not do so.

68. Mr. Briggs next saw his attorney on September 10, 2007, in a meeting that lasted approximately five minutes. After that brief meeting, Mr. Briggs attempted on numerous occasions to contact his attorney from the jail, but his attorney's dedicated voicemail box was always full and his office did not accept collect calls from the jail. Mr. Briggs also wrote to his attorney but never received any response.

69. Mr. Briggs was indicted on September 19, 2007. Mr. Briggs's attorney never consulted with him before waiving his right to a preliminary hearing and never discussed with him his right to testify before the Grand Jury.

70. Mr. Briggs next appeared in court on October 10, 2007. Mr. Briggs's attorney did not appear in court on that day. The judge asked Mr. Briggs if he would like to get a new attorney. Mr. Briggs said yes, and the judge assigned a new attorney.

71. Mr. Briggs has never met or spoken with his new attorney. He has written to her three times and tried to call his new attorney but her voicemail box is always full and her office does not accept collect calls from the jail. Meanwhile, Mr. Briggs has been unable to discuss with his attorney the possibility of moving to dismiss the indictment because he was denied an opportunity to testify before the Grand Jury, file other motions for release based on his prolonged and unnecessary pretrial incarceration, or obtain a copy of his file because his attorney has not responded to these letters.

72. Mr. Briggs contacted Jail Ministry, a prisoner rights organization, to ask for its help in contacting his attorney, but Jail Ministry told him that it had passed along so many complaints about lack of attorney-client contact to that particular attorney that she had instructed the organization never to call her about her clients again.

73. Mr. Briggs's next court date is not scheduled until December 7, 2007. Mr. Briggs, who has been incarcerated since August 7, 2007, does not understand why his next court date is so far away or what is happening with his case.

74. Upon information and belief, neither of Mr. Briggs's attorneys has conducted any independent investigation into the facts surrounding Mr. Briggs's case or the existence of any possible defenses that might be available to him.

75. The State of New York has failed to provide Mr. Briggs with the representation to which he is constitutionally and legally entitled, insofar as he has not been represented in all critical proceedings; has not had sufficient opportunity to discuss his case with his attorney, to

participate in building a defense to the charge against him, or to make an informed decision about the progress and disposition of his case; has been subjected to lengthy and unnecessary pretrial incarceration; and does not understand where his case stands or the status of the charges against him. Upon information and belief, the State of New York will continue to fail to provide Mr. Briggs with the legal representation to which he is entitled as his case proceeds.

76. The representation provided to Mr. Briggs is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Ricky Lee Glover (Onondaga County)

77. Ricky Lee Glover was arrested on June 12, 2007, and charged with burglary in the third degree, a felony, and related misdemeanor charges of petit larceny and possession of burglary tools. Because of prior felony convictions, the maximum sentence Mr. Glover faces on these charges is life imprisonment.

78. Mr. Glover was represented at arraignment by an attorney, but was assigned to a second attorney during the arraignment. He was denied bail and remanded to jail, where he remains.

79. After arraignment, Mr. Glover immediately tried to contact his new attorney but his attorney's dedicated voicemail box was consistently full and her office would not accept collect calls from the jail.

80. Mr. Glover met his attorney only once, on June 21, 2007, in the jail. According to a grievance filed on behalf of Mr. Glover by the Onondaga County Human Rights Commission, during that meeting, which lasted only a few minutes, Mr. Glover's attorney informed him that he had a "dead case" even though she admitted that she had not obtained and reviewed any files from the prosecutor or conducted any discovery or independent investigation. Mr. Glover asked his attorney to advocate for bail but she did not do so. Mr. Glover has not seen his attorney since this first meeting more than four months ago.

81. During their first and only meeting, again according to Mr. Glover's grievance, Mr. Glover specifically asked his attorney not to waive his right to a preliminary hearing. Mr. Glover's attorney adjourned his first scheduled preliminary hearing on June 15, 2007. On June 29, 2007, Mr. Glover's attorney, against his specific instructions, waived Mr. Glover's right to a preliminary hearing in a letter to the judge.

82. On July 10, 2007, having been unable to reach his attorney for over a month, Mr. Glover filed his own *pro se* motion for release under NY CPL § 180.80, which generally requires release of any person accused of a felony who has been held for more than 120 hours after arrest without a preliminary hearing. Mr. Glover was unaware that his attorney had already waived his preliminary hearing. Mr. Glover only found out that his right had been waived months later when he called the Onondaga County Human Rights Commission.

83. Since their first and only meeting in June, Mr. Glover has neither met with his attorney nor been able to reach her by telephone. Mr. Glover's family has also attempted to reach his attorney several times. On one occasion, Mr. Glover's mother was able to reach his attorney, who told his mother that Mr. Glover was "about to get out." Months later, Mr. Glover remains in jail.

84. On October 6, 2007, Mr. Glover, still unable to reach his attorney, filed his own *pro se* motion under NY CPL § 190.80, which generally requires release of any person accused of a felony who has not been indicted within 45 days of arrest. Without an attorney to provide counsel, Mr. Glover did not know where to file the motion and remains unsure whether it was properly filed.

85. On October 15, 2007, Mr. Glover learned that the felony charges he was facing had been reduced to misdemeanor charges. He learned this because an attorney grievance committee forwarded a copy of a letter his attorney had written to that committee defending her representation of Mr. Glover against his complaint. His attorney never communicated this information to Mr. Glover; he would not have known if he had not received this letter from the grievance committee.

86. Since learning his charges were reduced, Mr. Glover has been researching in the jail law library whether he can file his own motion for a bail reduction so he can get out of pretrial detention.

87. Mr. Glover's attorney also represents him on pending traffic violations in the Onondaga Town Court. Mr. Glover is anxious to have a hearing and resolve those charges, but his attorney has adjourned his hearing at least four times without consulting with Mr. Glover. Unable to reach his attorney to address this issue, Mr. Glover wrote directly to the town court justice to ask him not to allow his attorney to adjourn his case again.

88. Mr. Glover is concerned that his attorney may have a conflict of interest because she may have represented his daughter in a family court proceeding involving him. He has been unable to raise this issue with his attorney, however, because he cannot reach her.

89. As of the filing of this complaint, Mr. Glover has been incarcerated 148 days and has had no direct contact with his attorney since June 21, 2007, more than four months ago.

90. The State of New York has not provided Mr. Glover with the representation to which he is constitutionally and legally entitled, insofar as he has not had sufficient opportunity to discuss his case with his attorney, to participate in building a defense to the charges against him, or to make informed decisions about the progress and disposition of his case; has been deprived of investigative assistance, motions practice and vigorous advocacy that may contribute to a favorable resolution of his case and/or an end to unnecessary incarceration; may have been deprived to the right to appointment of counsel free of conflicts of interest; and does not understand where his case stands or the status of the charges against him. Upon information and belief, the State of New York will continue to fail to provide Mr. Glover with the legal representation to which he is entitled as his case proceeds.

91. The representation provided to Mr. Glover is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Richard Love, Jr. (Onondaga County)

92. Richard Love, Jr. was arrested on September 12, 2007, and charged with grand larceny in the third degree and criminal possession of a forged instrument, both felonies. Upon

information and belief, Mr. Love faces sentencing as a repeat felony offender and could face a life sentence on these charges.

93. Mr. Love was not represented by an attorney at his initial arraignment, at which he was denied bail.

94. Mr. Love first saw his attorney days after his arraignment when he came to the jail for a few minutes so that Mr. Love could sign a form that the attorney needed so he could get paid. Mr. Love next saw his attorney during a court appearance weeks later, in late September. Mr. Love's attorney did not meet or speak with Mr. Love before or after the appearance. During the proceeding, Mr. Love did not understand what was going on and was not even sure what charges were being discussed.

95. Upon information and belief, Mr. Love's attorney has not conducted any independent investigation into the facts surrounding Mr. Love's case or the existence of any possible defenses that might be available to him.

96. Mr. Love was eager to file a motion for bail so he could return to work, but his attorney did not file a bail reduction motion. Mr. Love remains incarcerated.

97. Mr. Love has attempted on numerous occasions to contact his attorney from jail but his attorney's dedicated voicemail box is usually full and his office does not accept collect calls from the jail. Mr. Love's family has also attempted to reach his attorney without success. Mr. Love called the Onondaga County Assigned Counsel Program to seek its assistance in contacting his attorney, but the Onondaga County Assigned Counsel Program informed him that it could not help him.

98. On October 5, 2007, Mr. Love wrote to the judge and asked to proceed *pro se* rather than continue to be represented by his current attorney.

99. On October 26, 2007, Mr. Love appeared before a different judge. Mr. Love's attorney once again did not prepare Mr. Love for this appearance or meet with him prior to entering the courtroom. During this proceeding, the prosecutor presented a plea offer that Mr. Love had already rejected. Because his attorney had failed to do so, Mr. Love began to negotiate directly with the judge and the prosecutor and to advocate for a reduction to misdemeanor charges. Mr. Love told the judge that he felt uncomfortable taking a plea because he had never met with his attorney to discuss the facts of his case. Upon hearing this, the judge agreed to assign a new attorney to Mr. Love.

100. Mr. Love is a veteran of the United States Navy. He is married with two grown children and seven grandchildren. Before he was arrested, Mr. Love held two jobs to support his family. Because he has been incarcerated for nearly two months, he lost both of his jobs.

101. The State of New York has not provided Mr. Love with the representation to which he is constitutionally and legally entitled, insofar as he has not been represented in all critical proceedings; has not had sufficient opportunity to discuss his case with his attorney, to participate in building a defense the charges against him, or to make an informed decision about the progress and disposition of his case; and has been deprived of investigative assistance, motions practice and vigorous advocacy that may contribute to a favorable resolution of his charges and/or an end to unnecessary incarceration. Upon information and belief, the State of New York will continue to fail to provide Mr. Love with the legal representation to which he is entitled as his case proceeds.

102. The representation provided to Mr. Love is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to

meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Jacqueline Winbrone (Onondaga)

103. Jacqueline Winbrone was arrested on September 12, 2007, and charged with possession of a loaded firearm in the second degree, a felony. After being called to her home because of a domestic dispute, the police searched the Winbrone family's car and found the firearm, which Mrs. Winbrone stated was not hers and must belong to her husband. The maximum sentence Mrs. Winbrone faces on these charges is 15 years imprisonment.

104. Prior to her arrest, Mrs. Winbrone was the sole caretaker for her seriously ill husband, who relied on her to transport him to dialysis treatment several times a week. Shortly after Mrs. Winbrone was arrested, her husband passed away. Mrs. Winbrone believes that her husband died because he had no one to care for him and transport him to dialysis. Because no one was able to make rent payments while she was incarcerated, Mrs. Winbrone has been evicted from her home.

105. Mrs. Winbrone was represented at arraignment but was assigned to a different attorney during the arraignment. Bail was set at \$10,000, which she could not afford.

106. After arraignment, Mrs. Winbrone wished to seek a bail reduction so she could take care of her family. She attempted to contact her attorney but his dedicated voicemail box was consistently full and his office would not accept collect calls from the jail.

107. On September 16, 2007, Mrs. Winbrone learned that her husband had died. Because the jail permitted her to make a non-collect call, Mrs. Winbrone was able to reach her

attorney in his office for the first time and ask him to petition for a bail reduction so she could leave jail and attend the funeral. Her attorney nevertheless failed to obtain a bail reduction hearing until a few days later, after the funeral had already occurred. At the bail reduction hearing, the court reduced bail to \$5000, which Mrs. Winbrone, who is on public assistance, still could not afford. In open court, Mrs. Winbrone tried to explain to her attorney that this bail reduction would not make any difference, but he did not respond. At the end of the hearing, Mrs. Winbrone asked her attorney if they could meet, but he left without speaking to her.

108. On September 17, 2007, without consulting with Mrs. Winbrone or explaining the reasons, Mrs. Winbrone's attorney waived her right to a preliminary hearing.

109. Thereafter, Mrs. Winbrone tried several times to reach her attorney by phone without success. She wrote to him, asked her mother to call him long-distance from Georgia, and called a prisoner-rights organization to ask it to reach out to him, again without success. Unable to reach her attorney, Mrs. Winbrone wrote a letter to the judge in her case explaining the facts of her case, hoping the judge would help her get out of jail.

110. Mrs. Winbrone next saw her attorney several weeks later at a court appearance on November 1, 2007, which she believes was scheduled because of the letter she wrote to the judge. During this appearance, her attorney did not speak to her at all. She did not understand what was happening during this proceeding. When she heard her attorney misstating certain facts of her case to the judge, she tried to correct him, but was told that her attorney must speak on her behalf in court.

111. Upon information and belief, Mrs. Winbrone's attorney has not conducted any independent investigation into the facts surrounding Mrs. Winbrone's case or the existence of any possible defenses that might have been available to her.

112. On November 2, 2007, Mrs. Winbrone appeared before the court and was released on her own recognizance after spending almost two months in jail. Mrs. Winbrone believes that her release is a result of a meeting she had with advocates from an Onondaga County pretrial release program, not the result of any advocacy by her attorney.

113. The State of New York has not provided Mrs. Winbrone with the representation to which she is constitutionally and legally entitled, insofar as she has not had sufficient opportunity to discuss her case with her attorney, to participate in building a defense to the charge against her, or to make informed decisions about the progress and disposition of her charge; has been deprived of investigative assistance, motions practice and vigorous advocacy that may have contributed to a favorable disposition of her charge and/or an end to unnecessary incarceration; and was subjected to several weeks of unnecessary incarceration. Upon information and belief, the State of New York will continue to fail to provide Mrs. Winbrone with the legal representation to which she is entitled as her case proceeds.

114. The representation provided to Mrs. Winbrone is illustrative of the pattern of representation provided to indigent defendants in the Counties and is results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Lane Loyzelle (Ontario County)

115. Lane Loyzelle was arrested on September 27, 2007 and charged with petit larceny, a misdemeanor, for allegedly stealing twenty dollars from two people he knew. He faces a maximum sentence of one year imprisonment, as well as fines of up to \$1000.

116. At his arraignment, Mr. Loyzelle was not provided with an attorney. Bail was set at \$2500 cash or \$5000 bond, which he could not afford. Mr. Loyzelle asked the judge to lower the bail so that he could return to work and not lose his job. His request was denied and he was remanded to the Ontario County Jail. Mr. Loyzelle has now lost his job.

117. Mr. Loyzelle has met with his attorney only once. This meeting took place immediately before a court appearance on October 10, 2007, lasted approximately five minutes, and took place in the holding area outside the courtroom, in full hearing of other inmates. Mr. Loyzelle was uncomfortable discussing his case in front of other inmates, but Mr. Loyzelle's attorney never met with him other than in this public space.

118. Upon information and belief, Mr. Loyzelle's attorney never conducted any independent investigation into the facts surrounding Mr. Loyzelle's case or the existence of any valid defenses that might have been available.

119. As of the filing of the complaint, Mr. Loyzelle has been incarcerated for six weeks for allegedly stealing \$20 and has not had any contact with his attorney for almost a month.

120. The State of New York has not provided Mr. Loyzelle with the representation to which he is constitutionally and legally entitled, insofar as he has not been provided with representation at every critical stage; has not had sufficient opportunity to discuss his case with his attorney, to participate in the building of a defense against the charges he faces, or to make informed decisions about the progress and disposition of his case; and has been denied

investigative assistance, motions practice and vigorous advocacy that may contribute to a favorable resolution of his case. Upon information and belief, the State of New York will continue to fail to provide Mr. Loyzelle with the legal representation to which he is entitled as his case proceeds.

121. The representation provided to Mr. Loyzelle is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Tosha Steele (Ontario County)

122. Tosha Steele was arrested on July 25, 2007, and charged with criminal possession of a controlled substance in the third degree, a felony. Ms. Steele, who has three children, faces a maximum of 25 years in prison and fines of up to \$30,000.

123. Ms. Steele's attorney has never visited her in jail. She has only seen her attorney twice since her arrest in July, both times during or immediately prior to court appearances and has spoken briefly on the phone with him once when she was able to reach him from the jail.

124. Ms. Steele first met her attorney immediately before a court appearance for approximately five to ten minutes in the holding area outside the courtroom, in full hearing of other inmates.

125. Ms. Steele did not see her attorney again until her next court appearance almost a month later, on August 20, 2007. Without meeting with or consulting Ms. Steele beforehand,

Ms. Steele's attorney waived her right to a preliminary hearing. Ms. Steele was confused about what had occurred but her attorney never explained it to her.

126. Ms. Steele's attorney failed to appear in court for her most recent court appearance on October 5, 2007, and her case was adjourned, prolonging her pre-trial incarceration. Ms. Steele's attorney has not contacted her to explain his failure to appear in court or to notify her of her next court date.

127. Upon information and belief, Ms. Steele's attorney has not conducted any independent investigation into the facts surrounding Ms. Steele's case or any possible defenses that may be available to her.

128. As of the filing of this complaint, Ms. Steele has been incarcerated for more than three months and has not had any contact with her attorney for more than two months.

129. The State of New York has failed to provide Ms. Steele with the representation to which she is constitutionally and legally entitled, insofar as she has not had sufficient opportunity to discuss her case with her attorney, to participate in building a defense to the charges against her, or to make informed decisions about the progress and disposition of her case; has been subjected to lengthy and unnecessary pretrial incarceration; has been deprived of investigative services, motions practice and vigorous advocacy that could contribute to her defense and/or bring an end to unnecessary incarceration; and does not understand where her case stands or the status of the charges against her. Upon information and belief, the State of New York will continue to fail to provide Ms. Steele with the legal representation to which she is entitled as her case proceeds.

130. The representation provided to Ms. Steele is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from the structural and

systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Bruce Washington (Ontario County)

131. Bruce Washington was arrested on August 20, 2007, and charged with petit larceny, a misdemeanor. He faces a maximum sentence of one year imprisonment, as well as fines of up to \$1000.

132. At arraignment, Mr. Washington was not represented by counsel. Bail was set at \$1500 cash or \$3000 bond, which he could not afford, and he was remanded to jail.

133. Mr. Washington's first meeting with his attorney occurred several days after his arrest at the Ontario County Jail and lasted less than ten minutes. Outside of this first meeting, Mr. Washington has never met with his attorney in the jail. All other contact has occurred solely before or after scheduled court appearances and has lasted no more than a few minutes.

134. Mr. Washington's attorney is a specialist in real estate and tax law, not criminal defense.

135. Upon information and belief, Mr. Washington's attorney never conducted any independent investigation into the facts surrounding Mr. Washington's case or the existence of any valid defenses that might have been available.

136. After remaining in jail for almost two months unable to discuss a possible defense with his attorney, Mr. Washington pled guilty as charged on October 16, 2007. At the time of his plea, Mr. Washington was not informed of the full consequences of his guilty plea. For

example, after his plea had been entered, Mr. Washington learned that the lengthy pre-sentencing investigation required in his case would result in his being incarcerated for approximately three weeks longer than the sentence contemplated by his plea agreement. Mr. Washington's attorney has not met with Mr. Washington since entering the guilty plea and, upon information and belief, has not taken any action to address the delay in sentencing. Mr. Washington's sentencing hearing is scheduled for January 8, 2008.

137. The State of New York has not provided Mr. Washington with the representation to which he is constitutionally and legally entitled, insofar as he has not been represented at every critical stage of the proceedings; has not had sufficient opportunity to discuss his case with his attorney, to participate in building a defense to the charges against him, or to make informed decisions about the progress and disposition of his case; was deprived of investigative assistance, motions practice and vigorous advocacy that may have contributed to his defense; and has been subjected to lengthy and unnecessary pretrial incarceration. Upon information and belief, the State of New York will continue to fail to provide Mr. Washington with the legal representation to which he is entitled as his case proceeds.

138. The representation provided to Mr. Washington is illustrative of the pattern of representation provided to indigent defendants in the Counties and is results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Shawn Chase (Schuyler County)

139. Shawn Chase was arrested on April 6, 2007, and charged with driving while intoxicated and driving with a blood alcohol level over 0.08%, both misdemeanors, and possession of an open container of alcohol in a motor vehicle, a traffic infraction. Mr. Chase faces a maximum of one year of imprisonment plus fines on these charges.

140. Mr. Chase's case was delayed five months before he was deemed eligible for a public defense attorney. After repeated denials of his application for representation by the Schuylers County Public Defender's Office, he was finally assigned counsel by a judge.

141. Mr. Chase submitted his first application for public defense services shortly after his first court appearance, in late April or early May 2007. When he applied, he was incorrectly told that he would have a hard time obtaining an attorney because his charges were mere traffic violations. The public defender's office later denied his application based on his household income and unspecified county guidelines, despite the fact that Mr. Chase has previously been found eligible for public defense services in a neighboring county.

142. Once a month between May and October of 2007, Mr. Chase appeared in court and was told his case must be adjourned so that he could obtain counsel. During this time, Mr. Chase applied for a public defender approximately three additional times. Upon information and belief, his application was denied each time also on the basis of his household income and unspecified county guidelines.

143. At a court appearance in August of 2007, Mr. Chase, frustrated with his inability to obtain an attorney, provided the court, the prosecutor, and the assistant public defender with a letter prepared by a retired lawyer explaining why Mr. Chase was entitled to a public defender. At his next court appearance, in September of 2007, the judge ordered the Schuylers County

Public Defender's office to represent Mr. Chase. During this court appearance, four months after his arrest, Mr. Chase finally met with his attorney for the first time.

144. At Mr. Chase's trial, on October 30, 2007, Mr. Chase discovered only ten minutes before he took the stand that he would be testifying. He was not prepared for his testimony. Mr. Chase was convicted of driving while intoxicated. Mr. Chase erroneously believes that this conviction will bar him from obtaining a commercial license for his planned career as a civil engineer. His attorney has not met with him since his conviction.

145. Mr. Chase's sentencing hearing is scheduled for December 19, 2007. Mr. Chase is not sure what sentence he could face and how that sentence could impact his future plans.

146. The State of New York has failed to provide Mr. Chase with the representation to which he is constitutionally and legally entitled, insofar as he experienced unnecessary and prolonged delay in the appointment of counsel based on incoherent and excessively restrictive eligibility standards; did not have sufficient opportunity to make informed decisions about the progress and disposition of his case; and was denied effective representation at trial. Upon information and belief, the State of New York will continue to fail to provide Mr. Chase with the legal representation to which he is entitled as his case proceeds.

147. The representation provided to Mr. Chase is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Jemar Johnson (Schuyler County)

148. Jemar Johnson was arrested on August 30, 2007, and charged with criminal possession of a controlled substance in the third degree, a felony. Ms. Johnson faces a maximum sentence of nine years imprisonment if convicted.

149. Ms. Johnson was not represented at arraignment, where bail was set at \$15,000 cash or \$30,000 bond. Unable to pay this amount, she was remanded to jail.

150. On September 10, 2007, Ms. Johnson's case was scheduled for a hearing, but Ms. Johnson was not taken to court and did not hear from her attorney to explain why she did not appear in court. The next day she found out from a corrections officer that her bail had been reduced to \$10,000 cash or \$20,000 bond. Still unable to pay, she remained in jail.

151. Ms. Johnson has met her attorney only once, shortly after her arraignment. She is unable to call her attorney because his office does not accept collect calls from the jail. She wrote to him at least three times before he came to visit her again, at the end of September.

152. Upon information and belief, Ms. Johnson's attorney has conducted no independent investigation into the charges Ms. Johnson faces, including contacting any of the witnesses who could assist her defense.

153. Ms. Johnson received a plea offer from the district attorney but she cannot make an informed decision about whether to accept the plea because she does not understand the full, collateral consequence of such a conviction, including the possible impact on her public assistance. Ms. Johnson has lost confidence that her attorney will provide her with good advice about whether to accept a plea or proceed to trial, and does not trust that her attorney is capable of mounting a defense for her at trial.

154. As of the filing of the complaint, Ms. Johnson has been incarcerated for more than two months. Although biologically male, Ms. Johnson identifies as a female and is uncomfortable being housed in with other men in the Schuyler County Jail. Her prolonged incarceration is harming her ability to obtain her General Educational Development certificate, which she was working for prior to her arrest. Although Ms. Johnson is ready to take the GED test, no one will come from Albany to administer the test to her because she is the only one in the Schuyler County Jail who is ready to take it.

155. The State of New York has failed to provide Ms. Johnson with the representation to which she is constitutionally and legally entitled, insofar as she has not been represented in all critical proceedings; has not had sufficient opportunity to discuss her case with her attorney, to participate in building a defense to the charge against her, or to make informed decision about the progress and disposition of her case; has been denied access to investigative services, motions practice and vigorous advocacy that could contribute to her defense; and has been subjected to prolonged and unnecessary incarceration. Upon information and belief, the State of New York will continue to fail to provide Ms. Johnson with the legal representation to which she is entitled as her case proceeds.

156. The representation provided to Ms. Johnson is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Robert Tomberelli (Schuyler County)

157. Robert Tomberelli was arrested on June 15, 2007, and charged with driving while under the influence of alcohol, a misdemeanor; aggravated unlicensed operation of a motor vehicle in the first degree, a felony; and two traffic infractions for having no headlights and parking in an intersection. Mr. Tomberelli faces a maximum sentence of 4 years imprisonment.

158. At his arraignment on June 15, 2007, Mr. Tomberelli was not represented by counsel and he was released on his own recognizance.

159. Mr. Tomberelli has been represented by two different attorneys in his case because his case was originally in town court, which is covered by the one attorney, and was later transferred to county court, which is covered by a different attorney.

160. On July 26, 2007, Mr. Tomberelli met with his second attorney. During this meeting, his attorney called the prosecutor's office and, despite the fact that she had not yet discussed the issue with Mr. Tomberelli, informed the prosecutor that Mr. Tomberelli would waive his right to an indictment before a grand jury.

161. On October 4, 2007, Mr. Tomberelli waived his right to grand jury indictment and entered guilty pleas to the offenses of driving while under the influence of alcohol and aggravated unlicensed operation of a motor vehicle. The guilty plea would subject him to the jurisdiction of Schuyler County's specialty drug court. Mr. Tomberelli is unsure whether his guilty plea means he will face prison time, what it means that his plea subjects him to the jurisdiction of the drug court, or what the possible collateral consequences of his guilty plea might be. Mr. Tomberelli felt pressured to plead because he was given only a short amount of time to accept or reject the plea, and he did not understand whether he had any other options, such as going to trial or negotiating a better plea.

162. Mr. Tomberelli's sentencing is scheduled for November 15, 2007. Although he has expressed concern about terms of probation that would confine him to Schuylar County because his job is in another county, upon information and belief, his attorney has not raised this issue with a probation officer or the district attorney.

163. The State of New York has failed to provide Mr. Tomberelli with the representation to which he is constitutionally and legally entitled, insofar as he was not represented in all critical stages; was deprived of consistent, vertical representation; and has not had sufficient opportunity to discuss his case with his attorney, to participate in building a defense to the charges against him, or make informed decisions about the progress and disposition of his case. Upon information and belief, the State of New York will continue to fail to provide Mr. Tomberelli with the legal representation to which he is entitled as his case proceeds.

164. The representation provided to Mr. Tomberelli is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Christopher Yaw (Schuylar County)

165. Christopher Yaw was arrested on June 25, 2007, for the felony crime of grand larceny in the fourth degree. He was arraigned without counsel in Dix Town Court, where bail was set at \$5000 cash or \$10,000 bond. Unable to pay this amount, he was remanded to the

Schuyler County Jail. He was later transferred to the Chemung County Jail, where he remains.

Mr. Yaw faces a maximum sentence of 4 years imprisonment on this charge.

166. Although Mr. Yaw agreed to waive both his right to a preliminary hearing and his right to a grand jury indictment, he did not fully understand the consequences of these waivers at the time.

167. In September, 2007, Mr. Yaw wrote two letters to his attorney but received no response. Subsequently, his attorney said she would visit him on October 19, 2007, but she did not do so. In late October, Mr. Yaw learned that his November 1, 2007, court appearance had been adjourned. His attorney has provided no explanation for the adjournment.

168. On September 20, 2007, Mr. Yaw was arraigned in Orange Town Court on misdemeanor charges and traffic infractions related to his felony charge. Because these charges are filed in a different court and the Schuyler County Public Defender's office assigns different attorneys to each court, Mr. Yaw is represented by a different attorney on these charges even though they arise out of the same alleged incident as his felony charge.

169. Mr. Yaw understands only through his own research that one of the offers being considered by the district attorney for his felony charge is equivalent to a sentence he could get if he went to trial on that charge. Although he wishes to take his cases to trial, he has not had the opportunity to talk to his attorneys about the charges against him, the facts of his case, or whether it would be possible to negotiate a better plea.

170. Upon information and belief, Mr. Yaw's attorneys have conducted no independent investigation into the facts surrounding Mr. Yaw's case or the existence of any valid defenses that might have been available to him.

171. The State of New York has not provided Mr. Yaw with the representation to which he is constitutionally and legally entitled, insofar as he was not represented at all critical stages; was deprived of consistent, vertical representation; has not had sufficient opportunity to discuss his case with his attorney, to participate in building a defense to the charges against him, or to make informed decisions about the progress and disposition of his case; and has been deprived of investigative assistance, motions practice and vigorous advocacy that may contribute to a favorable resolution of his charges and/or an end to unnecessary incarceration. Upon information and belief, the State of New York will continue to fail to provide Mr. Yaw with the legal representation to which he is entitled as his case proceeds.

172. The representation provided to Mr. Yaw is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Luther Woodrow of Booker, Jr. (Suffolk County)

173. Luther Woodrow of Booker, Jr. was arrested on September 28, 2007 and charged with criminal possession of stolen property in the fourth degree, a class E felony. He faces a maximum sentence of four years of imprisonment, as well as fines of up to \$5000.

174. Mr. Booker was arraigned on September 29, 2007, at the Suffolk County District Court in Central Islip. Bail was set at \$1000 bond, which Mr. Booker could not afford, causing him to remain in jail. Mr. Booker's attorney did not advocate for lower bail.

175. At his next court appearance, on October 2, 2007, Mr. Booker was represented by a different Legal Aid attorney. Mr. Booker met with this second attorney for five minutes immediately before his scheduled court appearance. This meeting took place in the inmate holding area, in full hearing of correctional officers and other inmates. Although Mr. Booker still sought a reduction in bail to enable him to return to his job and family, his second attorney, like the first, did not file a bail reduction motion.

176. Mr. Booker had no other contact with his second attorney until his October 16, 2007, court appearance. Prior to that appearance, Mr. Booker again met with his second attorney for less than five minutes in the holding area.

177. During the court appearance on October 16, Mr. Booker's second attorney waived his right to file a motion under CPL § 180.80 without having discussed the issue with him or received his consent. Mr. Booker signed the waiver in open court without being told what he was signing or the consequences of such a waiver. At the time of signing, Mr. Booker did not know what type of document he was signing and felt confused and pressured to sign it.

178. After waiving his right to release, Mr. Booker's second attorney informed him, in open court, that the best Mr. Booker could hope for would be the prosecutor's offer of eight months of jail time. Mr. Booker felt he had no alternative but to enter a guilty plea and, in open court, agreed to do so. The judge then questioned Mr. Booker and, when Mr. Booker persistently maintained his innocence despite having just entered a guilty plea, withdrew and voided the plea. Mr. Booker's second attorney told him that she would meet with him in the holding area after the proceeding to discuss what had happened with respect to his voided guilty plea. Mr. Booker waited but she never returned.

179. When Mr. Booker subsequently attempted to reach his second attorney from the jail, the Legal Aid office informed him that he was being assigned a new, third attorney. Mr. Booker asked if he could speak with this new attorney but was told that Legal Aid was yet not sure who the new attorney would be.

180. Still having no idea who his new attorney was, Mr. Booker appeared in court for a scheduled appearance on October 22, 2007. Mr. Booker's case was adjourned because no Legal Aid attorney appeared in court that day to represent him, and he returned to jail.

181. The next day, Mr. Booker was brought to court again and met his third attorney for minutes before his scheduled court appearance. Like his other attorney meetings, this one took place in the holding area, in full hearing of correctional officers and other inmates, and lasted only a few minutes. In court that day, presented with no other options and without understanding the full, collateral consequences of his plea, Mr. Booker accepted the same plea offer he had rejected at his prior court appearance and entered a plea of guilty.

182. Upon information and belief, none of Mr. Booker's attorneys conducted any independent investigation into the facts surrounding Mr. Booker's case or the existence of any valid defenses that might have been available.

183. Mr. Booker is scheduled to be sentenced on November 20, 2007. Mr. Booker has not had any contact with any of his attorneys since he entered his guilty plea on October 23, 2007, and no attorney has contacted him to prepare him for sentencing.

184. Because he has been incarcerated for almost two months awaiting resolution of his charges, Mr. Booker has not been able to provide necessary financial and emotional support to his pregnant live-in girlfriend and her six young children.

185. The State of New York has failed to provide Mr. Booker with the representation to which he is constitutionally and legally entitled, insofar as he has been deprived of consistent, vertical representation; and has not had sufficient opportunity to discuss his case with his attorneys, to participate in building a defense to the charges against him, or to make informed decisions about the progress and disposition of his case. Upon information and belief, the State of New York will continue to fail to provide Mr. Booker with the legal representation to which he is entitled as his case proceeds.

186. The representation provided to Mr. Booker is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Edward Kaminski (Suffolk County)

187. Edward Kaminski was arrested on December 11, 2006, and charged with grand larceny in the fourth degree, a felony. The maximum sentence that he faces is four years imprisonment and fines of up to \$5000.

188. Mr. Kaminski was assigned a Legal Aid attorney on March 20, 2007, after he ran out of funds to pay for his private attorney. Mr. Kaminski's first contact with his Legal Aid attorney was for less than five minutes in the public hallway outside the court room before an appearance.

189. Following this brief meeting, Mr. Kaminski never saw, spoke with, or communicated with his attorney except during scheduled court appearances or in the public hallway outside the courtroom for less than five minutes prior to court appearances.

190. At a court appearance on May 15, 2007, Mr. Kaminski was informed that he would be assigned to a different Legal Aid attorney. Neither the court nor his new attorney offered any explanation for the reassignment.

191. On September 19, 2007, Mr. Kaminski was assigned to a third Legal Aid attorney. Mr. Kaminski was dismayed because he felt he had developed a relationship with his second attorney and had been satisfied with and confident in that attorney's representation. Once again, no explanation for the reassignment was offered. As with both of his previous attorneys, Mr. Kaminski only met with his third attorney for less than five minutes outside the court room in the public hallway, in front of other defendants, immediately prior to his court appearance. Upon information and belief, Mr. Kaminski's new attorney had not had time to review Mr. Kaminski's case file and familiarize himself with the status of his case. At the appearance, Mr. Kaminski's attorney requested an adjournment.

192. Mr. Kaminski missed his October 15, 2007, court date. Shortly afterward, Mr. Kaminski's first attorney – not his present attorney – wrote him a letter informing him that a bench warrant had been issued due to Mr. Kaminski's non-appearance.

193. At his next court date, on October 30, 2007, Mr. Kaminski approached both his first and his third Legal Aid attorneys in the hope of clearing up his confusion about who was representing him. Mr. Kaminski was not alone in his confusion, as his third Legal Aid attorney confessed that he did not know who Mr. Kaminski's attorney was at the time and stated that the Legal Aid office is in "chaos."

194. At that court appearance, on October 30, the judge presented Mr. Kaminski with a pre-trial order stating that, due to his non-cooperation with the Legal Aid Society, his right to court-appointed counsel had been waived. Mr. Kaminski believes that the large number of adjournments on his case due to the constant changing of Legal Aid attorneys gave the court the misperception that he was not cooperating with them. However, upon information and belief, his attorneys sought adjournments most often to compensate for their lack of preparation. Mr. Kaminski is currently without a lawyer. His trial is scheduled for November 29, 2007.

195. The stress caused by the confusion and prolonged adjudication of his case has affected Mr. Kaminski's health. He has lost fifteen pounds since he was charged and often has trouble sleeping at night. Mr. Kaminski has missed necessary medical appointments to treat his neuropathy and Hepatitis C because the dates often conflict with required court appearances. He has also been unable to visit and care for his elderly mother who suffers from dementia.

196. The State of New York has failed to provide Mr. Kaminski with the representation to which he is constitutionally and legally entitled, insofar as he has been wrongly denied his right to counsel; has been deprived of the ability to develop a meaningful attorney-client relationship and to have representation at every critical stage due to lack of consistent representation; and does not understand where his case stands or what work has been done on it while on the verge of going to trial as a *pro se* litigant. Upon information and belief, the State of New York will continue to fail to provide Mr. Kaminski with the legal representation to which he is entitled as his case proceeds.

197. The representation provided to Mr. Kaminski is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to

meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Joy Metzler (Suffolk County)

198. Joy Metzler was arrested on October 16, 2007, and charged with petit larceny, a misdemeanor. The maximum sentence she faces is one year in jail, as well as fines up to \$1000.

199. Ms. Metzler saw her attorney for the first time in open court during arraignment. Bail was set at \$1000 cash or \$3000 bond, which Ms. Metzler could not afford, causing her to remain in jail for seven days until her brother was able to raise money and post bail. Ms. Metzler's attorney took no action to advocate for lower bail and, as a result of her incarceration, she lost her new job. She is unsure how her family, including her brother and his three children who depend on her income, will now get by.

200. At her next court appearance, on October 22, 2007, Ms. Metzler was represented by a second Legal Aid attorney. This attorney met with Ms. Metzler for a few minutes prior to the court appearance in the holding area, in full hearing of correctional officers and other inmates. Since then, Ms. Metzler has not seen or heard from her attorney and remains unsure of the status of her case.

201. Upon information and belief, neither of Ms. Metzler's attorneys conducted any independent investigation into the facts surrounding Ms. Metzler's case or the existence of any valid defenses that might have been available.

202. The State of New York has failed to provide Ms. Metzler with the legal representation to which she is constitutionally and legally entitled, insofar as she has not been

provided with consistent, vertical representation; has not had sufficient opportunity to discuss her case with her attorney, to participate in building a defense to the charges against her, or to make informed decisions about the progress and disposition of her case; and was subjected to unnecessary incarceration. Upon information and belief, the State of New York will continue to fail to provide Ms. Metzler with the legal representation to which she is entitled as her case proceeds.

203. The representation provided to Ms. Metzler is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Victor Turner (Suffolk County)

204. Victor Turner was arrested on August 18, 2007, and charged with criminal possession of a controlled substance in the seventh degree and resisting arrest, both misdemeanors, and disorderly conduct, a violation. Mr. Turner also faces another misdemeanor possession of a controlled substance charge from an earlier incident in 2006. The maximum sentence Mr. Turner faces is six years imprisonment, as well as fines of up to \$7250.

205. Legal Aid began its representation of Mr. Turner on or around January of 2007, when he ran out of funds to pay the private attorney he has been able to retain on his 2006 charge. Since that time, Mr. Turner's case has been handled by at least four different Legal Aid attorneys. During the first seven months of his representation by Legal Aid, he was represented

by a different attorney at each court appearance. His current attorney has been handling his case for four months.

206. Mr. Turner's only meetings with his various attorneys have taken place at the courthouse immediately before or during scheduled court appearances. Each of these meetings lasted less than five minutes and took place in the hallway or other public areas of the courtroom, in full hearing of correctional officers and other defendants.

207. Mr. Turner has repeatedly refused to accept a plea offer urged on him by both the prosecutor and his own attorneys. Each time, Mr. Turner's attorneys have responded to his refusal by requesting an adjournment of his case, whereupon the prosecutor and Mr. Turner's next attorney would simply present the same plea bargain to him again at the next court appearance.

208. Mr. Turner has never spoken with or seen any of his attorneys except in court. During the first ten months of his representation by Legal Aid, he did not even have contact information for Legal Aid and was unable to ask questions or get updates about the status of his case. Mr. Turner eventually received a business card with his current attorney's contact information during his October 19, 2007, court appearance, ten months after he was assigned to be represented by Legal Aid.

209. Upon information and belief, Mr. Turner's attorneys have conducted no independent investigation of the facts underlying his charges or any possible defenses that may be available to him. Mr. Turner is concerned that witnesses who could support his defense may disappear because the incident underlying his arrest occurred over one year ago.

210. The prolonging of Mr. Turner's case over the past year has made it difficult for him to hold down a job because he must constantly request days off for court appearances. As a

result, Mr. Turner is unable to meet his child-support obligations to his young daughter. Mr. Turner also lost his car, making it even more difficult to hold down a job and make his monthly court appearances.

211. Mr. Turner's next court appearances are scheduled for November 16, 2007, and November 30, 2007. His attorneys have yet to explain the purpose of these appearances or prepare him for them.

212. The State of New York has failed to provide Mr. Turner with the representation to which he is constitutionally and legally entitled, insofar as he has not been provided with consistent, vertical representation; has not had sufficient opportunity to discuss his case with his attorneys, to participate in building a defense to the charges against him, or to make informed decisions about the progress and disposition of his case; has been deprived of appropriate investigative assistance, motions practice and vigorous advocacy that may have contributed to a favorable resolution of the charges; and does not understand where his case stands or the status of the charges against him. Upon information and belief, the State of New York will continue to fail to provide Mr. Turner with the legal representation to which he is entitled as his case proceeds.

213. The representation provided to Mr. Turner is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Candace Brookins (Washington County)

214. Candace Brookins was arrested on October 15, 2007, and charged with five counts of forgery in the second degree, a felony, five counts of criminal possession of a forged instrument in the second degree, also a felony, and one count of petit larceny, a misdemeanor. Ms. Brookins faces a maximum sentence of twenty years in prison, as well as fines of up to \$51,000.

215. Ms. Brookins has a four-year-old daughter whom Ms. Brookins's mother is taking care of while Ms. Brookins is incarcerated. If Ms. Brookins were sentenced to the statutory maximum, she would not be released until her daughter was twenty-four, losing all opportunity to raise and parent her.

216. Ms. Brookins has only spoken to her attorney once over the phone and once immediately prior to a court appearance on October 16, 2007, when her attorney spoke to her while a corrections officer was only feet away, with no apparent concern for confidentiality. Ms. Brookins's attorney has not provided her with a copy of her court files or the investigative files for her case.

217. Upon information and belief, Ms. Brookins's attorney has conducted no independent investigation into the facts surrounding Ms. Brookins's case or the existence of any possible defenses that may be available to her

218. Ms. Brookins is currently represented by the same attorney who represented a witness in Ms. Brookins's case when that witness was initially charged with the crime with which Ms. Brookins now stands accused, a clear conflict of interest. The witness had been charged with crimes derived from passing bad checks, but, represented by Ms. Brookins's current attorney, defended herself by claiming that Ms. Brookins had in fact written the checks

without her permission. The charges against the witness were dropped, and charges were subsequently filed against Ms. Brookins based on the witness's statements.

219. Ms. Brookins had a court hearing on October 30, 2007. Upon information and belief, her case was adjourned pending indictment. She remains incarcerated.

220. The State of New York has failed to provide Ms. Brookins with the representation to which she is constitutionally and legally entitled, insofar as she has not had sufficient opportunity to discuss her case with her attorney, to participate in building a defense to the charges against her, or to make informed decisions about the progress and disposition of her case; and has not been provided with an attorney who is free from conflicts concerning her case. Upon information and belief, the State of New York will continue to fail to provide Ms. Brookins with the legal representation to which she is entitled as her case proceeds.

221. The representation provided to Ms. Brookins is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Randy Habshi (Washington County)

222. Randy Habshi was arrested on July 26, 2007, and charged with burglary in the second degree, a felony. He faces a maximum sentence of fifteen years of imprisonment, as well as fines of up to \$15,000.

223. At arraignment, Mr. Habshi was not represented by counsel. Bail was set at \$100,000 cash or \$200,000 bond, which he could not afford.

224. Without any meaningful conversations with his attorney and without fully understanding the nature of the waiver, on August 1, 2007, Mr. Habshi waived his preliminary examination based on his attorney's instruction.

225. For over two months, between August and October, Mr. Habshi never saw or spoke with his attorney outside of court appearances, despite Mr. Habshi's repeated attempts to contact his attorney. At a court appearance on October 10, 2007, Mr. Habshi's attorney did not show up. The next day, Mr. Habshi's attorney visited him in jail for a few minutes solely to deliver the prosecutor's plea offer.

226. Mr. Habshi's official criminal record contains what he believes to be a mistake, but his attorney has provided him no opportunity to discuss the mistake or the possibility of clearing it up. This potential error, a plea to a misdemeanor that is currently recorded as a felony, could make a substantial difference in sentencing if Mr. Habshi were to plead guilty or be found guilty after trial. The prosecutor's plea offer reflects the possibly mistaken premise that Mr. Habshi has a previous felony conviction.

227. Mr. Habshi has taken advantage of his time in jail to break several addictions. He has completed a GED course and is awaiting the results of his examination. Nevertheless, Mr. Habshi's attorney has failed to speak with him concerning any details of his life which might become relevant at sentencing, should Mr. Habshi plead guilty or be found guilty after trial.

228. The State of New York has failed to provide Mr. Habshi with the representation to which he is constitutionally and legally entitled, insofar as he had insufficient opportunity to discuss his case with his attorney, to participate in building a defense to the charges against him,

and to make informed decisions about the progress and disposition of his case. Mr. Habshi has also been deprived of alternatives to incarceration that would offer him effective treatment for his past drug addictions. Upon information and belief, the State of New York will continue to fail to provide Mr. Habshi with the legal representation to which he is entitled as his case proceeds.

229. The representation provided to Mr. Habshi is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

Ronald McIntyre (Washington County)

230. Ronald McIntyre was arrested on October 24, 2005, and charged with grand larceny in the fourth degree, a felony. He faces a maximum sentence of seven years of imprisonment, as well as fines of up to \$5,000.

231. On December 20, 2005, Mr. McIntyre notified the court that he had attempted to contact his public defense attorney several times to ascertain the date of his next court hearing, but the public defender had not returned his calls. Mr. McIntyre's court file contains no indication that the court responded to his request for information concerning his next court date. Because of his attorney's failure to inform him of his court date, Mr. McIntyre then missed his court date on January 17, 2006. A bench warrant was issued for Mr. McIntyre's arrest, and he was re-arrested and remanded to jail on August 14, 2007.

232. Mr. McIntyre was assigned a new attorney following his re-arrest. He spoke with this attorney for only one or two minutes at two separate court appearances.

233. Mr. McIntyre has now been assigned a third attorney. Mr. McIntyre has had no contact with this third attorney and has not been able to discuss the strategic ramifications of testifying before the grand jury with any attorney.

234. As of the filing of this complaint, Mr. McIntyre has been incarcerated for nearly three months and does not understand what is happening with his case or whether he has been indicted.

235. The State of New York has failed to provide Mr. McIntyre with the representation to which he is constitutionally and legally entitled, insofar as he has been denied consistent, vertical representation, hampering his attempts to explain his case to an attorney and his hopes of receiving substantive representation; and has had insufficient opportunity to discuss his case with his attorney, to participate in building a defense to those charges, or to make informed decisions about the progress and disposition of his case. Upon information and belief, the State of New York will continue to fail to provide Mr. McIntyre with the legal representation to which he is entitled as his case proceeds.

236. The representation provided to Mr. McIntyre is illustrative of the pattern of representation provided to indigent defendants in the Counties and results from the structural and systemic failings that led the Kaye Commission to conclude that New York State is failing to meet its constitutional and legal obligations to indigent persons accused of crimes, including the absence of statewide standards, meaningful oversight and adequate funding of the current county-operated and largely county-financed public defense system.

The Right to Counsel in New York State

237. The right to counsel is firmly established in New York State and has been since the Legislature passed section 308 of the Criminal Procedure Law in 1881. Indeed, the Constitution and laws of New York provide far more extensive protections in this area than federal constitutional law provides. *See, e.g., People v. Settles*, 46 N.Y.2d 154, 161 (1978) (“So valued is the right to counsel in this State ... it has developed independent of its Federal counterpart Thus, we have extended the protections afforded by our State Constitution beyond those of the Federal – well before certain Federal rights were recognized.”); *People v. Arthur*, 22 N.Y.2d 325, 328 (1968) (noting that the broad right to counsel in New York requires exclusion of confession taken after attorney request and was denied access to client, though federal law may not); *People v. Benevento*, 91 N.Y.2d 708, 714 (1998) (rejecting the more restrictive “harmless error” test applied to federal claims of ineffective assistance of counsel and applying a more flexible standard); *People v. Krom*, 61 N.Y.2d 187, 197 (1984) (explaining that, in contrast to federal law, the right to counsel in New York does not permit law enforcement to question a suspect after invocation of right to counsel even if the suspect initiates conversation).

238. In 1965, the Court of Appeals further expanded the right to counsel in *People v. Witek*, which held that indigent defendants in all criminal cases, not merely in felony prosecutions, are entitled to have counsel appointed to represent them. 15 N.Y.2d 392, 395 (1965). The Court of Appeals observed that the “right and the duty of our courts, to assign counsel for the defense of destitute persons, indicted for crime, has been, by long and uniform practice, as firmly incorporated into the law of the State, as if it were made imperative by express enactment.” *Id.* at 397 (internal quotation omitted). The Court also noted that in New York

State “the right of counsel must be made ‘meaningful and effective’ in criminal courts on every level.” *Id.* at 395.

239. That same year, the Court of Appeals held in *People v. Hughes*, that an indigent defendant “who is by statute accorded an absolute right to appeal ... is entitled to the assignment of counsel to represent him on such appeal if he so requests.” 15 N.Y.2d 172 (1965). It is equally well established that this right requires “meaningful and effective” assistance of assigned appellate counsel. *Id.* at 173.

240. Accordingly, under the Constitution and laws of New York, as well as the Constitution of the United States, the obligation to provide meaningful and effective assistance of counsel to indigent defendants in all criminal court proceedings rests with the State.

The State’s Abdication of Responsibility for Public Defense Services to the Counties

241. In 1965, to meet constitutional mandates, the Legislature adopted Article 18-B of the New York County Law, requiring each of New York’s 62 counties to establish its own plan for providing indigent criminal defendants with legal representation. Article 18-B offers counties the option of creating a public defense system using one of three methods, or a combination thereof: (1) establishing county public defender offices; (2) contracting with a private legal aid society; or (3) using a panel of private assigned counsel.

242. Onondaga County relies solely on an assigned counsel system to provide public defense services to criminal defendants. The assigned counsel program is administered by the Onondaga County Bar Association under contract with the county government.

243. Ontario County also relies solely on an assigned counsel system, administered by the Ontario County Bar Association, to provide public defense services to criminal defendants.

244. Schuyler County relies on a county public defender office to provide public defense services to criminal defendants. The Schuyler County public defender office consists of a Chief Public Defender and one part-time assistant public defender. The county maintains a contract with a private attorney from an adjacent county to handle most cases in which the public defender cannot represent the client due to a conflict of interest; any additional conflicts cases are distributed among a small number of assigned counsel.

245. Suffolk County contracts with a legal aid society to provide the majority of its public defense services, with a smaller number of conflicts cases handled by assigned counsel. The Suffolk County Legal Aid Society consists of approximately 60 full-time attorneys who staff two offices, one in the eastern part of the county and another in the western part.

246. Washington County relies on a county public defender office to provide public defense services to criminal defendants. The Washington County public defender office consists of one part-time Chief Public Defender and three additional part-time assistant public defenders. Conflict cases are handled by assigned counsel.

The Lack of Enforceable, Statewide Standards

247. Unlike the vast majority of the rest of the country, New York State has established no enforceable standards for the provision of public defense services by which the quality of representation can be measured and guaranteed. Thus, there is no mechanism for measuring whether constitutionally adequate counsel is being provided to indigent defendants and for insuring against disparities in the quality of representation by mere happenstance of geographic location.

248. The American Bar Association (ABA), the National Legal Aid and Defender Association (NLADA), the National Advisory Commission on Criminal Justice Standards and Goals (NAC), the New York State Defenders Association (NYSDA), and the New York State Bar Association (NYSBA) have all promulgated standards reflecting a general consensus for measuring the quality of defense services. *See, e.g.*, ABA Standards for Criminal Justice: Providing Defense Services (3d ed. 1992); ABA Ten Principles of a Public Defense Delivery System (2002); ABA Standards for Criminal Justice, Providing Defense Services (3d ed. 1992); NLADA Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services (1984); NLADA, Standards for the Administration of Assigned Counsel Systems (1989); NAC Report of the Task Force on Courts (1973); NYSDA, Standards for Providing Constitutionally and Statutorily Mandated Representation in New York State (2004); NYSBA, Standards for Providing Mandated Representation (2005).

249. None of these standards are enforced by the State.

The Lack of State Supervision and Oversight

250. Article 18-B delegates to the counties responsibility for providing meaningful and effective representation in criminal proceedings to people who cannot afford private lawyers. The State exercises no meaningful supervision or oversight of the provision of public defense services.

251. No state agency or office exists for the purpose of monitoring or evaluating the quality of representation provided under the counties' chosen plans for providing public defense.

252. Although the Office of the State Comptroller requires each county to submit an annual report in order to qualify for state funding for public defense services, no state agency or officer reviews these forms for the purpose of evaluating whether the counties' systems meet

constitutional standards for representation. A county's system is only evaluated by the Comptroller's office if the annual report reflects a reduction in local expenditures from the previous year, in which case the county may still qualify for state funds if they demonstrate a "maintenance of effort" to provide public defense services.

253. Counties often provide inaccurate or incomplete information in their annual reports. In past years, several counties have failed to complete any report at all.

The Lack of Adequate State Funds for Public Defense Services

254. Article 18-B places the financial burden on the counties to provide public defense services. The result, according to the Kaye Commission Report, is that "[t]he amount of monies currently allocated within the State of New York for the provision of constitutionally-mandated indigent criminal defense is grossly inadequate."

255. In 2003, responding to a court ruling, the Legislature raised the rates of compensation for private assigned counsel lawyers (known as 18-B lawyers) and created the Indigent Legal Services Fund ("ILSF") to provide, for the first time, some state funding to compensate for the additional county expenditures required to cover the increase in 18-B rates.

256. Despite the creation of the ILSF, state funding remains a very small percentage of the overall cost of public defense services in the counties and does not ensure adequate funding levels. In all but one county, state funds in 2006 accounted for one-quarter or less of the total costs of providing public defense services. In many counties, state funds constituted only 15% of overall public defense expenditures. Across the state, state funds accounted for 18% of total spending on public defense, with counties bearing the burden for most of the remaining costs.

257. As the Kaye Commission notes, the State's failure to provide adequate funding "imposes a large unfunded mandate by the state upon its counties [that] results in a very uneven

distribution of services and compromises the independence of defense providers.” The Kaye Commission concludes that the funding system “results in an inadequate and in many respects an unconstitutional level of representation and creates significant disparities in the quality of representation based on no factor other than geography, thereby impugning the fairness of New York’s criminal justice system.”

The Kaye Commission on the Future of Indigent Defense’s Indictment of New York’s Public Defense System

258. A comprehensive indictment of New York’s public defense system came in June 2006, when the Kaye Commission on the Future of Indigent Defense released a report concluding that “the indigent defense system in New York State is both severely dysfunctional and structurally incapable of providing each poor defendant with the effective legal representation that he or she is guaranteed by the Constitution of the United States and the Constitution and laws of the State of New York [and] has resulted in a disparate, inequitable, and ineffective system for securing constitutional guarantees to those too poor to obtain counsel of their own choosing.”

259. The Kaye Commission was convened in May 2004 by Chief Judge Judith S. Kaye and, according to Judge Kaye’s State of the Judiciary Address earlier that year, was charged with “examin[ing] the effectiveness of indigent criminal defense services across the State, and consider[ing] alternative models of assigning, supervising and financing assigned counsel compatible with New York’s constitutional and fiscal realities.” Chaired by William E. Hellerstein and the Honorable Burton B. Roberts, the Kaye Commission consisted of 30 members representing each of New York’s twelve judicial districts and included prominent prosecutors, defense attorneys and judges.

260. The Kaye Commission conducted four public hearings (in New York City, Albany, Rochester and Ithaca), with testimony from 93 individuals and groups from across the State, including public defenders, private defense lawyers, assigned counsel plan administrators, judges, prosecutors, experts in public defense, bar association representatives, members of the civil rights community, representatives of community groups, and criminal defendants and their families.

261. The Kaye Commission also drew extensively on the factual findings of its consultant, The Spangenberg Group, which, according to the Kaye Commission, “is a nationally and internationally recognized criminal justice research and consulting firm that specializes in research concerning indigent defense services.” The Spangenberg Group collected and analyzed data from each of New York’s 62 counties and conducted independent site work in 22 counties specifically selected to be geographically and demographically representative of the entire State. The Spangenberg Group’s findings were presented to the Kaye Commission in an April 5, 2006, report entitled *Status of Indigent Defense in New York*. According to the Kaye Commission, the Spangenberg Group’s report represents “the most comprehensive study of indigent defense representation ever undertaken in New York State.”

262. Based on the facts uncovered by the Spangenberg Group and on the hearings it conducted, the Kaye Commission concluded that “New York’s current fragmented system of county-operated and largely county-financed indigent defense services fails to satisfy the state’s constitutional and statutory obligations to protect the rights of the indigent accused.”

263. The Kaye Commission’s “ultimate conclusion,” based on all the information presented to it, was “that the delivery system most likely to guarantee quality representation to those entitled to it is a statewide defender system that is truly independent, is entirely and

adequately state-funded, and is one in which those providing indigent defense services are employees of entities within the defender system or are participants in an assigned counsel plan that has been approved by the body established to administer the statewide defender system.” Further, the Commission noted that “[a]dequate funding of indigent criminal defense must be provided by the New York Legislature from the State’s General Fund, not from the counties.”

New York State’s Long History of Violating the Right to Counsel for Indigent Defendants

264. The Kaye Commission report is only the latest in a long line of indictments of New York’s public defense system. The State has never fully lived up to its obligation to provide meaningful and effective assistance of counsel to all indigent defendants facing criminal charges, though it has long known that its obligation was not being met. There is a decades-long history of indictments levied against New York’s fractured public defense system.

265. As far back as 1967, the New York State Bar Association conducted a seminar addressing the absence of standards for ensuring quality representation and the lack of guidelines for determining eligibility, utilizing investigators and experts, and establishing the scope of representation. Throughout the 1980s and early 1990s, the New York State Defenders Association published a series of reports and testified before numerous bodies decrying the crisis in public defense funding. In 1994, the New York County Lawyers Association established a task force to study the issue and, the following year, urged the immediate creation of a Board of Trustees for Indigent Defense to oversee and secure the professional independence of defender organizations in New York City.

266. In 1997, the New York County Lawyers’ Association’s Task Force on the Representation of the Indigent issued a report declaring that the rates of compensation for

assigned counsel were inadequate and “inconsistent with New York’s commitment to equal justice.” NYCLA, *Task Force on the Representation of the Indigent, Assigned Counsel Compensation Committee* (1997).

267. In 2000, the Unified Court System issued a report, *Assigned Counsel Compensation in New York: A Growing Crisis*, which focused on the problem created by low rates for assigned counsel. The report concluded not only that rates should be increased, but also that the State must share the cost of assigned counsel compensation, establish a statewide review process for reviewing rates, and implement statewide eligibility standards.

268. In March 2001, after holding extensive hearings, the Appellate Division, First Department’s Committee on Legal Representation of the Poor issued a report entitled *Crisis in the Legal Representation of the Poor: Recommendations for a Revised Plan to Implement Mandated Funded Legal Representation of Persons Who Cannot Afford Counsel*. The report concluded that “[t]he entire system by which poor people are provided legal representation is in crisis” and that the major causes of the crisis included “lack of resources, support and respect, [and] inadequate funding of institutional providers combined with ever-increasing caseloads.” The Committee called on the State “to reconsider the entire legislative structure relating to governmentally funded legal representation of the poor.”

269. Also in 2001, the New York State Defenders’ Association issued a report, *Resolving the Assigned Counsel Fee Crisis: An Opportunity to Provide County Fiscal Relief and Quality Public Defense Services*. The report went beyond the call for raising assigned counsel rates and called for the creation of “an independent and politically insulated statewide Public Defense Commission that would oversee both the distribution of state funds and the provision of

defense services,” as well as the creation of enforceable, statewide standards for both eligibility determinations and evaluating service providers.

270. In April 2001, the *New York Times* published a three-part series on New York City’s public defense system. An April 12, 2001, editorial accompanying the series noted that its description of the system raised a real question of “whether many defendants are getting the legal representation to which they are entitled, or are receiving merely token representation to give their trials a veneer of constitutionality” and called for “a strong state role – preferably through a politically insulated commission – in setting quality standards ... and in exercising vigorous oversight to make sure those standards are met.”

271. In July 2001, the Committee for an Independent Public Defense Commission, chaired by Michael S. Whiteman, former counsel to Governor Nelson A. Rockefeller, declared that the indigent defense system was on the verge of collapse and presented a bill to establish an independent oversight commission.

272. In 2003, New York County Lawyers’ Association successfully sued the State of New York, alleging that the compensation scheme for assigned counsel violated the state and federal constitutional right to meaningful and effective counsel. In his decision, Supreme Court Justice Lucindo Suarez made the following factual findings regarding the provision of public defense services across the State:

Too many assigned counsel do not: conduct a prompt and thorough interview of the defendant; consult with the defendant on a regular basis; examine the legal sufficiency of the complaint or indictment; seek the defendant’s prompt pre-trial release; retain investigators, social workers, or other experts where appropriate; file pretrial motions where appropriate; fully advise the defendant regarding any plea and only after conducting an investigation of the law and the facts; prepare for trial and court appearances; and engage in appropriate presentence advocacy, including seeking to obtain the defendant’s entry into any appropriate diversionary program.

N.Y. County Lawyers Ass'n v. State, 196 Misc.2d 761, 774-75 (Sup. Ct. N.Y. County 2003).

273. In 2004, the inadequacies of New York's public defense system were noticed on a national level in the American Bar Association's Report, *Gideon's Broken Promise*. The report noted that New York failed to meet national standards regarding training for public defense service providers, unconstitutionally restricted eligibility standards because of financial pressures to keep costs low, and in some parts of the state had "radically out of whack" caseloads ranging from 1200 to 1600 cases per attorney.

274. Also in 2004, the NAACP Legal Defense & Education Fund released a report entitled *The Status of Indigent Defense in Schuylar County* concluding after four months of field work that "the quality of public defense services ... was extremely poor and fell short of state and federal constitutional, as well as professional standards for criminal defense."

275. In 2005, the New York State Bar Association's Special Committee to Ensure Quality of Mandated Representation released a report finding that public defense service providers in New York "are under-funded and overworked to such an extent that they lack the time or resources necessary to maintain and improve the quality of the representation they provide." The report concluded that addressing New York's public defense crisis required "the creation of an independent public defense oversight mechanism empowered to provide oversight, quality assurance, support and resources to providers of mandated representation."

276. As recently as August, 2007, a joint report of the National Legal Aid and Defender Association and the New York State Defender's Association detailed the problems with New York's public defense system as they impacted Franklin County. The report concluded that, "[v]ictimised by an underfunded and fragmented system that violates national legal standards and the state's professed commitment to equal justice, Franklin County fails to

provide effective representation on behalf of the accused in criminal cases.... [L]eaving the task of funding public defense services to the counties – even in part – endangers a state’s entire ability to dispense justice fairly.”

277. In light of the Kaye Commission Report, the Spangenberg Group Report and the numerous reports and studies that preceded them, it is clear that the State has known of the deficiencies in the State’s public defense system for many years. The State’s failure to remedy those deficiencies amounts to deliberate indifference to the constitutional and legal rights of indigent criminal defendants.

The Statewide Failure to Meet Basic Standards of Constitutional Legal Representation

278. As a result of the State’s failure to provide oversight, standards, and funding, indigent persons in New York State, including in the Counties, are not receiving, or are at severe and unacceptably high risk of not receiving, constitutionally and legally adequate representation, as measured by well-accepted national and state standards.

279. There is a national consensus on both the requirements of meaningful and effective public defense delivery systems and the tasks public defense providers must undertake to provide constitutionally adequate legal representation. This consensus is reflected in standards for the provision of public defense services promulgated by the American Bar Association (ABA), the National Legal Aid and Defender Association (NLADA), the National Advisory Commission on Criminal Justice Standards and Goals (NAC), the New York State Defenders Association (NYSDA), and the New York State Bar Association (NYSBA).

280. The public defense system in New York does not live up to these basic standards. As the Kaye Commission found, “New York’s indigent defense system does not even conform to the American Bar Association’s Ten Principles of a Public Defense Delivery System.”

281. The public defense systems in the Counties suffer many symptoms of a broken public defense system as measured by national and state standards, including: inadequate staffing resulting in no representation for some defendants, particularly in arraignments where bail determinations and other critical decisions are made; incoherent or excessively restrictive eligibility standards that exclude indigent people from getting counsel; lack of attorney-client consultation and communication impairing the ability to present and prepare a defense and advocate for pre-trial release; a lack of hiring criteria, performance standards and supervisory controls resulting in a lack of meaningful and effective counsel; a lack of training resulting in inexperienced and inadequate counsel; a lack of resources for investigations and expert services where they are needed to present an adequate defense; overwhelming caseloads and/or workloads that prevent attorneys from serving all their clients; a lack of vertical representation, such that different attorneys represent the same defendant at various stages, impairing the development of an attorney-client relationship, resulting in gaps in representation during critical phases, and depriving clients of lawyers who understand their case; a lack of independence from judicial, prosecutorial and political authorities that compromises the ability to provide adequate representation; and inadequate resources and compensation, particularly as compared to prosecutorial personnel, resulting in poor quality representation.

*Inadequate Staffing and the Failure to Provide Representation to
Indigent Defendants At All Critical Stages*

282. Attorneys are not always available to represent each eligible defendant at every critical stage of the criminal process, thus directly depriving defendants of the right to counsel.

283. The Spangenberg Group’s report to the Kaye Commission found that public defense service providers “in most counties across the state are not staffed sufficiently to cover all of the numerous dockets in their counties.” Moreover, “some judges do not apply the law [requiring appointment of counsel] ... out of fiscal concern”

284. National and state standards for the administration of a public defense system recognize that a defense attorney should be present at all critical stages of the prosecution, including arraignment. *See* First Department Indigent Defense Organization Oversight Committee, General Requirements for All Organized Providers of Defense Services to Indigent Defendants (1996), Performance Standard II; NLADA Guidelines for Legal Defense Systems in the United States (1976), Guidelines I-1.2(a) & V-5.11; NLADA Performance Guidelines for Criminal Defense Representation (1995), Guidelines 1.1 & 3.1; NLADA Standards for the Administration of Assigned Counsel Systems (1989), Standards 2.1(c) & 2.5(a); NYSDA, Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State (2004), Standard V(A)(3); NYSBA Standards for Providing Mandated Representation (2005), Standard B-2.

285. The common practice of making bail determinations during arraignment makes the presence of counsel even more critical at this stage. In a 2007 study of non-felony cases in New York City, the New York City Criminal Justice Agency found that higher rates of bail correlate with longer period of pretrial detention, and longer periods of pre-trial detention, even controlling for other factors, creates an increased likelihood of conviction. The study suggests that detained defendants may be less able to assist in building a defense and that detained defendants may feel pressure to plead guilty in order to gain release. *See* Mary D. Philips, Ph.D., *Bail, Detention, and Non-Felony Case Outcomes*, CJA Research Brief (May 2007). Thus, the

absence of counsel to advocate for lower bail or alternatives to pretrial incarceration at arraignment is particularly harmful.

286. In Onondaga County, for example, many defendants are not represented at arraignments where crucial decisions about bail are made and pleas may be offered and accepted without benefit of advice from counsel. Attorneys assigned to cover arraignments often do not have the time or resources to interview all incarcerated defendants before arraignment, and if defendants are not interviewed they are not represented. Defendants who are not in custody are largely not represented at arraignment at all.

287. In Ontario County, many defendants are unrepresented at arraignment, and bail determinations are regularly made without the benefit of representation or advocacy by counsel. One county justice reports that in the ten years he has been on the bench, he has only seen an attorney present at arraignment once. Without the benefit of advocacy from counsel, bail may be set based on inappropriate factors. For example, some judges frequently deny bail to unrepresented defendants who did not take a breathalyzer test at the time of an arrest for a DUI.

288. In Schuyler County, defendants appear without attorneys at arraignments where, again, bail determinations are often made. Defendants are therefore unable to advocate for appropriate bail determinations and thus face unnecessary incarceration.

289. In Washington County, nearly all defendants are unrepresented at arraignments and in the early stages of the criminal process. Defendants are sometimes pressured not to get lawyers by judges and prosecutors who offer a plea before counsel is assigned and imply that the plea offer will be withdrawn if the defendant waits for the appointment of counsel. Defendants also are unable to advocate for appropriate bail determinations and thus face unnecessary incarceration.

290. Many defendants who are unrepresented in critical proceedings plead guilty without the benefit of advice from counsel and without fully understanding the consequences of their plea. Unrepresented defendants may be forced to negotiate with the district attorney and the judge directly, without the benefit of advice and representation from counsel.

291. Similarly, many defendants who are unrepresented in critical proceedings make incriminating statements that could prejudice their cases. In Schuyler County, for example, a judge stated to an unrepresented defendant charged accused of making false statements, “It says here you lied to the police,” and the defendant, without counsel to advise him, confirmed that he had done so.

292. The Counties often fail to appoint counsel for defendants charged with lower-level offenses, in plain violation of the right to counsel. In Suffolk County, for example, judges often deny counsel to a defendant because he or she is facing a violation charge, even though the defendant is in custody or facing jail time.

293. The deprivation of the right to counsel is particularly evident in the justice courts, also known as “town and village” courts. These courts handle by far the largest number of cases in the state’s criminal justice system, including violations, misdemeanors and the preliminary stages of felony prosecutions.

294. The Kaye Commission found “that the deprivation of indigent defendants’ right to counsel was widespread in Town and Village Courts. Specifically, we learned that there are significant delays in the appointment of counsel, that many indigent defendants must negotiate pleas with the prosecution while unrepresented, and that many justices themselves lack a clear understanding as to which cases trigger the right to counsel. The Commission also learned that

all too often counsel for indigent defendants are not available to attend the numerous Town and Village Courts.”

295. The institutional providers in Suffolk, Schuyler and Washington counties do not have adequate staff to cover all the justice courts in their jurisdictions. The assigned counsel programs in Onondaga and Ontario do not have any system for ensuring that assigned counsel are available during critical proceedings in the justice courts. As a result, eligible defendants go unrepresented at critical stages.

296. In Schuyler County, one part-time assistant public defender must cover all non-felony cases in 11 justice courts, as well as paternity, child support, and drug treatment court cases. In Washington County, three part-time assistant public defenders cover 24 justice courts, in addition to sharing the family court docket with the Chief Public Defender.

297. It is not uncommon in the Counties for the right to counsel to be waived inappropriately in the justice courts, leaving defendants to negotiate directly with the prosecutor, most often resulting in a guilty plea and sentencing at the first court appearance.

298. In many counties, justice courts hold “DA nights” in which a district attorney is present to represent the prosecution in critical proceedings, but oftentimes no public defense attorney is available to represent indigent defendants. During these proceedings, when no public defense attorney is present, indigent defendants must negotiate and interact with both the justice and the prosecutor and may even enter a guilty plea, all without the benefit of counsel.

Incoherent or Excessively Restrictive Financial Eligibility Standards and Delays in the Appointment of Counsel

299. The lack of statewide eligibility standards results in incoherent and poorly designed processes for determining whether defendants are financially eligible for public representation and for ensuring prompt assignment of counsel.

300. The Kaye Commission found that “[t]here are no clear standards regarding eligibility determinations and procedures,” and that “[i]n the absence of uniform guidelines, subjective and sometimes disparate eligibility determinations are made across the state, and competing concerns such as county funding and workload may become inappropriate factors in the determination.”

301. National and state standards for the administration of a public defense system mandate clear guidelines governing eligibility determinations, in order to ensure that defendants who need public representation are not denied their right to counsel. *See* NLADA Guidelines for Legal Defense Systems in the United States (1976), Guidelines I-1.5, I-1.6; NAC Report of the Task Force on Courts (1973), Standard 13.2; NYSDA, Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State (2004), Standard VII; NYSBA Standards for Providing Mandated Representation (2005), Standards C-1, C-2.

302. National and state standards for the provision of public defense services also mandate that defense counsel be assigned as soon as possible after arrest, detention or a request for counsel. *See* ABA Ten Principles, Principle 3; ABA Standards for Criminal Justice, Defense Function (3d ed. 1993), Standard 4-3.6; ABA Standards for Criminal Justice, Providing Defense Services (3d ed. 1992), Standard 5-6.1; NLADA Guidelines for Legal Defense Systems in the United States (1976), Standard I-1.2; NLADA Standards for the Administration of Assigned Counsel Systems (1989), Standard 2.5; NLADA Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services (1984), Guidelines III-18; NAC Report of the Task Force on Courts (1973), Standard 13.1; NYSDA, Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State (2004),

Standard V(A)(3); NYSBA Standards for Providing Mandated Representation (2005), Standard B-1, B-2, B-4.

303. In Onondaga County, the assigned counsel program maintains written standards for eligibility that improperly exclude eligible defendants from representation. For example, ownership of a home – even a mobile home – automatically precludes assignment of counsel, without consideration of the value of the home, the equity in the home, or the ability to obtain a loan against the home. The standards also fail to consider whether clients carry any debts that would prevent them from being able to afford a lawyer.

304. Minors in Onondaga County are excluded from representation based on parental income, even if the parent will not pay for a lawyer, and based on lack of parental cooperation in providing income information.

305. In practice, moreover, eligibility determinations in Onondaga County are made by each judge according to his or her different and often subjective standards and procedures. The administrator of the assigned counsel program recently sent a letter from the county pressuring judges to assign counsel in fewer cases because of the county's fiscal concerns.

306. A lack of clarity regarding eligibility and assignment procedures in Onondaga County results in occasions where assigned counsel will attempt to coerce public defense clients into paying fees, a phenomenon, known as “flipping” a client. For example, one client reported that his assigned counsel attorney demanded \$7500, with a \$2500 retainer, before he would do any work on the client's case. The attorney also phoned the client's wife to demand payment. The client has not been able to pay the attorney and has remained incarcerated for over a month while his attorney persists in adjourning his court dates. A client of another assigned counsel

attorney paid his appointed lawyer \$2000 that he borrowed from his family for the promise of a “better result.”

307. In Ontario County, judges make initial eligibility decisions based on their subjective determinations of a defendant’s financial status, rather than through any standard process applying clear and uniform guidelines. Ultimate discretion over eligibility decisions rests with the assigned counsel administrator, with no avenue for judicial appeal.

308. Schuyler County has excessively stringent eligibility standards that result in the exclusion of clients who should qualify for a public defender. For example, owning a car is considered evidence that a client can afford a private lawyer, regardless of the value of the car, and without accounting for the fact that a car is a basic necessity in rural Schuyler. One judge indicated to a defendant that if he made more than \$16,000 a year, he would not qualify. Despite having one of the highest poverty rates in the State of New York, over the past four years nearly half of the clients referred to the Schuyler County public defender have been deemed “not indigent.” Many people who are considered eligible in surrounding counties are deemed ineligible for public defender services in Schuyler.

309. Defendants in Schuyler County under the age of 21 are often disqualified based on parental income, regardless of whether the defendant is able to rely on that income.

310. In Suffolk County, eligibility determinations are based on income and the value of any assets that the applicant owns without accounting for debts, the amount of equity in any assets, other financial obligations, or the actual cost of retaining a private attorney to defend against the relevant charge. One defendant was denied a legal aid attorney after informing the court that he earned \$12 per hour and that his weekly income after taxes is approximately \$380. Without inquiring further into the defendant’s financial status, family obligations, or ability to

pay for an attorney, the judge informed the defendant that he would need to retain a private attorney. Forced between paying rent and paying to retain an attorney, the defendant chose to pay his rent and proceed without counsel.

311. Clients under the age of 21 in Suffolk County may be excluded from representation based on parental income, even if they are estranged from their parents or their parents refuse to pay for a lawyer.

312. In many of the justice courts in Suffolk County, eligibility determinations are made by judges based on arbitrary and subjective standards, often resulting in the denial of counsel for individuals who should be found eligible for public defense services.

313. In Washington County, eligibility determinations are made by the public defender office based on written guidelines that account only for income and family size and do not account for debts and other significant financial obligations.

314. In many counties, the system for determining eligibility results in serious delays and barriers to the appointment of counsel. For example, there are often delays in the appointment of counsel because of confusion on the part of applicants regarding the process for applying, the failure of judges to properly inform eligible defendants about the process, failure to appoint counsel immediately at arraignment, and difficulties in sorting out conflicts in multiple-defendant felony cases.

315. In Ontario County, for example, it is not uncommon for incarcerated clients to wait several days before learning the names of their attorneys and having an opportunity to communicate with them. In Onondaga County, one client languished in jail for three weeks before learning the name of his assigned counsel.

316. In Schuyler County, clients sometimes must wait a month or more after arrest before being assigned an attorney. One client applied for counsel the day she was arrested but, after not hearing from the public defender's office for over a month, gave up and asked a public defender from an adjacent county to represent her.

Lack of Attorney-Client Contact and Communication

317. Indigent defendants in the Counties suffer from a lack of access to and communication with their public defense counsel.

318. The Kaye Commission found that it is common to find public defense attorneys who do “not visit their clients in jail, return phone calls, answer letters, or conduct even minimal investigations of their clients’ cases. In some counties, the only attorney-client contact available is through collect calls to counsel, which many counsel refuse to accept. In a number of counties, attorney-client contact occurs only when the defendant is brought to court for a scheduled appearance.”

319. National and state standards for public defense systems recognize that client contact and communication are essential elements of meaningful and effective representation. *See* ABA Ten Principles, Principle 4 (commentary); ABA Standards for Criminal Justice, Prosecution Function and Defense Function (3d ed. 1993), Standards 4-2.1, 4-3.1, 4-3.8; NLADA Guidelines for Legal Defense Systems in the United States (1976), Guideline I-1.3(a); NLADA Performance Guidelines for Criminal Defense Representation (1995), Guideline 1.3(c); NAC Report of the Task Force on Courts (1973), Standard 13.3; NYSDA, Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State (2004), Standard VIII(A)(5), (7); NYSBA Standards for Providing Mandated Representation (2005), Standard I-3.

320. In Onondaga County, the assigned counsel program does not monitor or encourage attorney-client contacts. Indeed, the program frequently cuts vouchers for “too much” client contact. Most assigned counsel attorneys are unable or unwilling to visit their clients in jail and conduct all client contact prior to court appearances. One client reported having been incarcerated on misdemeanor charges for almost five months and never having spoken with his attorney about his case. Another attorney’s client complained to the Onondaga Human Rights Commission that he had been in jail for more than 200 days without being indicted and had not seen his assigned counsel attorney in several months. When confronted with this fact by the Onondaga County Human Rights Commission, the attorney responded that he could not visit his client more often because “[Onondaga] County will not pay for superfluous jail visits.”

321. In Onondaga County, assigned counsel under pressure of excessive caseloads frequently do not have time to speak to a client about anything other than a plea offer. One client reported that, after being unable to reach his attorney during several weeks in jail, he attempted to discuss his case with her before a court appearance but she interrupted him, said she “doesn’t want to hear it,” and refused to discuss anything but the prosecutor’s plea offer. When the client expressed discomfort with the offer, the attorney began to walk away, swore at the client, and told him that if he wanted to go to trial he’d have to find another attorney.

322. Many incarcerated clients in Onondaga are unable to speak with their attorneys because their offices will not accept collect calls and their voicemail boxes, which are accessible by direct line from the jail, are always full.

323. The Ontario County assigned counsel program also does not monitor or ensure adequate attorney-client contacts. Incarcerated clients are often unable to reach their attorneys and do not receive timely updates about the status of their cases.

324. In Schuyler County, incarcerated inmates often cannot reach their public defender because their public defender's office is not equipped to or will not accept collect phone calls, which are some inmates' only means of making telephone calls. Released clients also may have trouble meeting with their attorney, particularly as the conflict defender and most assigned counsel attorneys maintain offices in other counties that are difficult and expensive to reach.

325. In Suffolk County, clients often complain that their attorneys do not return their calls and only want to talk about plea bargains. Clients are often pressured to accept plea bargains without any explanation of alternative options. Incarcerated clients rarely meet with their Legal Aid attorney outside of court appearances.

326. In Washington County, public defense attorneys rarely meet with clients outside of court appearances, most often in public places such as at counsel's table within earshot of the judge and the prosecutor. Incarcerated clients have particular trouble communicating with their attorneys. Although the county jail has established a system for allowing toll-free legal calls from the jails, not all the public defenders have taken advantage of this system. Communication is so infrequent that one public defense attorney even arranged a plea bargain before ever having met his client. The bargain was struck based on the prosecutor's version of the facts then presented to the client in a public hallway outside the court as a *fait accompli*.

327. In all the Counties, public defense lawyers frequently waive client's rights, such as the right to a preliminary hearing or the right to testify before a Grand Jury, without consulting with their clients or explaining the reasons for the waiver, sometimes against their clients' express instructions. For example, in Onondaga County, a client strongly wished to testify before the Grand Jury in order to present an alibi and offer witnesses in support of his alibi, but repeated phone calls to his assigned counsel attorney from the jail, as well as calls from the

client's family, were ignored, and the client was unable to assert his right to testify or even discuss the option with his lawyer.

328. A lack of attorney-client communication particularly harms clients with mental health issues. In Suffolk County, for example, a 22-year-old veteran of the Iraq War who was diagnosed with Post Traumatic Stress Syndrome upon his return from Iraq was represented by a Legal Aid attorney who failed to communicate with the client at any time before, during, or after arraignment. As a result, the attorney did not learn of or address the client's mental health issues. Without access to mental health treatment, the client was almost immediately arrested again and spent two days in jail before being assigned to a second Legal Aid attorney who also failed to communicate with the client about his mental health issues. Only when the client's mother directly communicated with the judge about the defendant's Post-Traumatic Stress Syndrome was the client given a mental examination and offered assistance.

329. A lack of attorney-client contact often results in prejudice to a client's case or unnecessary incarceration. For example, in Onondaga County, a client facing misdemeanor charges missed a court appearance because his attorney never informed him of the court date and never returned the client's repeated phone calls. As a result, a bench warrant was issued and the client was arrested, denied bail, and spent almost a month in jail. The client reported that he felt pressure to plead guilty just so he could get out of jail, even though he felt he had a valid defense.

Lack of Attorney Hiring Criteria, Performance Standards and Supervisory Controls

330. There are no meaningful attorney hiring criteria, performance standards or supervisory controls to ensure basic quality of representation among public defense service providers.

331. The Kaye Commission found that “[d]espite the existence of various sets of standards for representation that bar associations have issued over the years, there is no single set of standards that actually governs what ‘adequate’ indigent defense services means.” Moreover, because the practice standards that exist are not enforceable in New York, “in some areas, substandard practice has become the acceptable norm.”

332. National and state standards for the administration of a public defense system state that written hiring criteria are necessary to ensure that an attorney’s ability, training, and experience match the complexity of the cases he or she faces. *See* First Department Indigent Defense Organization Oversight Committee, General Requirements for All Organized Providers of Defense Services to Indigent Defendants (1996), Performance Standard II; NLADA Guidelines for Legal Defense Systems in the United States (1976), Standard V-5.9; NYSBA Standards for Providing Mandated Representation (2005), Standard E-2; *see also* ABA Ten Principles, Principle 6 (requiring that counsel’s ability, training, and experience match the complexity of the case); NLADA Performance Guidelines for Criminal Defense Representation (1995), Guideline 1.2(a) (same).

333. National and state standards also mandate that a public defense system maintain written performance standards complemented by a system of active supervisory control. *See* ABA Ten Principles, Principle 10; First Department Indigent Defense Organization Oversight Committee, General Requirements for All Organized Providers of Defense Services to Indigent Defendants (1996), Performance Standards IV & VI; NLADA Guidelines for Legal Defense Systems in the United States (1976), Standard V-5.4; NLADA Standards for the Administration of Assigned Counsel Systems (1989), Standard 4.4; NYSDA, Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State (2004),

Standard VI(E); NYSBA Standards for Providing Mandated Representation (2005), Standard J-1 to J-9.

334. The criteria for placement on the assigned counsel panels in the Counties are minimal and do not create any meaningful check on the quality of representation. In Schuyler County, for example, any willing attorney, no matter how inexperienced, can be appointed to the most complex felony case. In Washington County, an individual with knowledge of the system reported that some attorneys on the assigned counsel panel are “barely qualified to practice law.” An attorney on the assigned counsel panel in Washington reported that he had been assigned a complex felony case straight out of law school, even though he thought that was “unfair” to his client. In Onondaga County, the criteria for getting on the panels are minimal and may be waived.

335. The institutional providers in Schuyler, Suffolk and Washington counties do not have any written hiring criteria for attorneys.

336. None of the Counties have any binding or enforceable written performance standards for attorney conduct.

337. In Suffolk County, Legal Aid attorneys are evaluated and promoted almost exclusively based on the number of cases that they dispose of each year. Thus, there is an enormous incentive to encourage pleas regardless of whether they are in the best interest of the clients. Consequently, less than one percent of all cases are brought to trial. For example, one Legal Aid Society client found himself represented by a new attorney at a court proceeding several days after his arrest. Prior to the proceeding, the attorney met with the client for only 5 minutes and advised the client to accept a plea bargain even though the offer equaled the maximum sentence for the pending charges. The attorney refused to seek a reduction in the

charges or to attempt to negotiate a better plea offer. Because no other options were explained to him, the defendant accepted the plea bargain, believing that he had no choice but to do so.

338. In Onondaga County, because there are no supervisory controls over assigned counsel, attorneys who have repeatedly been removed from representing individual clients by judges for cause are still permitted to remain on the assigned counsel panel lists and receive new client assignments.

339. Moreover, because Onondaga County has no meaningful system for handling complaints and disciplining attorneys for inadequate performance, clients are often not able to get an attorney removed for cause when removal would be appropriate. For example, Plaintiff Richard Love, who is African-American, asked a judge to remove his attorney after his attorney made a racist comment to him during a court appearance. The judge asked if Mr. Love could afford his own attorney. When Mr. Love reported that he could not, the judge replied, “then you’re stuck.” Only when a different judge was assigned to Mr. Love’s case was his attorney removed and a new attorney assigned.

Lack of Training

340. Public defense service providers in the Counties are not subject to any statewide training requirements related to criminal defense representation and are not provided with adequate access to training programs.

341. The Kaye Commission found that “very few institutional providers have in place viable training programs and ... [i]n regard to assigned counsel and contract defense programs, training ranges from non-existent to the barely adequate.”

342. Onondaga, Ontario, Schuyler, and Washington counties have no training requirements for public defenders or assigned counsel other than the standard Continuing Legal

Education (CLE) requirements for active membership in the Bar, which do not require specialized courses in criminal defense practice. Furthermore, these Counties do not allocate any funding for public defense service providers to fulfill their CLE requirements.

343. In Suffolk County, there are no formal training requirements for attorneys beyond the requirement to obtain some of their annual CLE credits in criminal law. Lack of funding often prohibits attorneys from participating in outside training workshops and seminars.

344. One effect of the lack of training is that many public defense attorneys are unaware of, and thus unable to advocate for, available alternatives to incarceration for their clients. For example, in Suffolk County, a Legal Aid attorney incorrectly informed a defendant that he did not qualify for a drug treatment program that can serve as an alternative to incarceration. The defendant performed his own research and learned that he did in fact qualify. Unable to contact his attorney after repeated attempts, the defendant wrote to the judge, who appointed a new attorney and approved the defendant's admission to the treatment program.

345. National and state standards for public defense systems recognize that meaningful and effective representation cannot occur without a mandatory, universal training program for public defense providers. *See* ABA Ten Principles, Principle 9 (commentary); ABA Standards for Criminal Justice, Providing Defense Services (3d ed. 1992), Standard 5-1.5; NLADA Defender Training and Development Standards (1997), Standard 1.1; NLADA Guidelines for Legal Defense Systems in the United States (1976), Guideline V-5.7, 5.8; NLADA Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services (1984), Guideline III-17; NLADA Standards for the Administration of Assigned Counsel Systems (1989), Standards 4.2, 4.3.1, 4.3.2, 4.4; NLADA Performance Guidelines for Criminal Defense Representation (1995), Guideline 1.2(b); NAC Report of the Task Force on Courts (1973),

Standard 13.16; NYSDA, Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State (2004), Standard VI(A), (B); NYSBA Standards for Providing Mandated Representation (2005), Standard F-1, F-2; N.Y. CLS Sup. Ct. § 613.9 (2007).

Lack of Support Services and the Failure to Conduct Investigations and Seek Expert Services

346. Public defense service providers in the Counties are not provided with the resources required to obtain necessary support services, including investigators and experts. Without these services, preparing a constitutionally and legally adequate defense for clients is often impossible.

347. The Kaye Commission found that public defense services throughout the State are marked by “inadequate provision of and lack of requests for expert and investigative services.”

348. National and state standards for public defense systems recognize that the provision of meaningful and effective assistance of counsel requires adequate support staff, including investigators, and that conducting investigations is a key component of competent counsel. *See* ABA Standards for Criminal Justice, Providing Defense Services (3d ed. 1992), Standard 5-1.4; ABA Standards for Criminal Justice, Prosecution Function and Defense Function (3d ed. 1993), Standard 4-4.1(a); NLADA Performance Guidelines for Criminal Defense Representation (1995), Guideline 4.1; NLADA Guidelines for Legal Defense Systems in the United States (1976), Guideline IV-4.1; NLADA, Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services (1984), Standard III-9; NLADA Standards for the Administration of Assigned Counsel Systems (1989), Standard 4.6; NAC Report of the Task Force on Courts (1973), Standard 13.14; NYSDA, Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State (2004),

Standard VIII(A)(6); NYSBA Standards for Providing Mandated Representation (2005), Standard H-1, H-6. *See also* N.Y. County Law §§ 722, 722-c (2007).

349. National and state standards for public defense systems recognize that a constitutionally and legally adequate public defense system must allow for the appointment of experts where necessary to present a meaningful and effective defense. *See* ABA Standards for Criminal Justice, Providing Defense Services, Standard 5-1.4; NLADA Guidelines for Legal Defense Systems in the United States (1976), Guideline III-3.1; NLADA, Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services (1984), Guideline III-8; NLADA Performance Guidelines for Criminal Defense Representation (1995), Guideline 4.1(b)(7); NAC Report of the Task Force on Courts (1973), Standard 13.14; NYSDA, Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State (2004), Standard VIII(A)(8)(c); NYSBA Standards for Providing Mandated Representation (2005), Standards H-1, H-6; N.Y. County Law §§ 722, 722-c (2007).

350. In 2006, based on data reported by the counties, New York State spent an average of \$11.80 per case on investigative services and \$5.65 per case on expert services.

351. In Onondaga and Ontario counties, as is common among counties that rely on an assigned counsel system, assigned counsel must apply to the Court for approval of funds for investigative and expert services, and there is often tacit pressure not to apply for such services in order to keep costs down.

352. In Onondaga County, some judges are reluctant to order expenditures of county funds on investigators and experts, and many assigned counsel have given up requesting funds for such services. One judge has noted that, mindful of costs, he requires attorneys to provide

“lots of detail” as to their need for investigator services. Not surprisingly, this judge reports that he “does not receive requests for investigators ... except in the most serious cases.”

353. In Ontario County, some courts report receiving as few as one or two requests per year for expert or investigative services.

354. In Schuyler and Washington counties, the public defender offices have inadequate support staff, have no staff paralegals or investigators, and do not have the capacity to conduct investigations. In Schuyler County, public defenders have been forced to use the State’s experts in their defense of their clients. Washington County reports having spent no money on expert services in 2005 and 2006.

355. In Suffolk County, the Legal Aid Society employs only six staff investigators to support 60 attorneys and investigate approximately 26,000 cases per year, despite the fact that ABA standards suggest there should be one staff investigator for every three attorneys. ABA Ten Principles, Principle 8 (commentary n.23). Most of these investigators hold other jobs, are available only part-time, and have other administrative responsibilities outside of performing investigations. The Suffolk County Legal Aid Society also has no paralegals or support staff with legal training. Additionally, attorneys must sometimes share computers, impeding their ability to conduct online research and perform other functions necessary to represent their clients meaningfully and effectively

356. The Suffolk County Legal Aid Society reports having spent no money on experts from 2002 to 2006. In 2006, only 2% of the assigned counsel program’s reported expenses were attributed to expert services.

Excessive Caseloads and/or Workloads

357. Public defense service providers in the Counties operate under the burden of excessive caseloads and/or workloads that compromise their ability to provide effective representation to their clients.

358. None of the Counties has meaningful, written caseload or workload standards or any effective mechanism to monitor attorney caseloads and workloads.

359. The Kaye Commission found that “virtually all institutional defenders ... labor under excessive caseloads.”

360. In the Counties that rely on assigned counsel, attorneys are free to represent, in addition to their private clients and appointments from other counties, as many appointed clients as they choose. In Counties that rely on an institutional defender, excessive overall caseloads and workloads reduce public defense attorneys’ ability to meaningfully and effectively represent each client. In Washington County, one public defender reported that he had “too many cases” and admitted that his high caseload puts pressure on him to take pleas for his clients even when he believes the client has a strong defense.

361. The problem of excessive caseloads is compounded in many of the Counties by a reliance on part-time public defenders with competing private practices that distract from their public defense docket and create excessive caseload burdens. The institutional defenders in Schuylers and Washington counties, for example, rely exclusively on part-time assistant defenders, and the chief defenders in both counties have private practices in addition to their ostensibly “full time” public defender jobs.

362. The problem is further compounded by the fact that all public defense service providers in the Counties are also responsible for handling Family Court cases, which many attorneys report require even more time and resources than criminal cases.

363. Excessive caseloads and workloads place enormous pressure on public defense attorneys to secure plea agreements and avoid going to trial, even when this decision may not be in the best interests of their clients. Across the State, based on data reported by the Counties in 2006, less than 2% of public defense cases are taken to trial. In the Counties, the trial rate is 1.4%, or only 463 out of more than 32,000 reported public defense cases.

364. The strong pressure to obtain early pleas also places pressure on attorneys to accept plea offers that waive clients' rights to appeal and other post-conviction remedies. Unsurprisingly, therefore, only a very small percentage of criminal convictions in New York are appealed. In 2006, according to data reported by the Counties, the percentage of criminal cases appealed in Onondaga, Ontario, Schuyler, Suffolk and Washington collectively was just 1.3%. Washington County reported having no appeals in 2006, while Suffolk and Schuyler counties reportedly less than 1% of cases were appealed.

365. National and state standards for the provision of public defense services provide caseload management is an essential element of a constitutional public defense system. *See* ABA Ten Principles, Principle 5 (commentary); ABA Standards for Criminal Justice, Prosecution Function and Defense Function (3d ed. 1993), Standard 4-1.3(e); ABA Standards for Criminal Justice: Providing Defense Services (3d ed. 1992), Standard 5-5.3; NLADA Guidelines for Legal Defense Systems in the United States (1976), Guidelines V-5.1, 5.3; NLADA, Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services (1984), Guidelines III-6, III-12; NLADA Standards for the Administration of Assigned

Counsel Systems (1989), Standard 4.1.2; NYSDA, Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State (2004), Standards IV, III(E); ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 06-441 (2006); NYSBA Standards for Providing Mandated Representation (2005), Standards G-1, G-2.

Lack of Vertical Representation

366. The Counties' public defense systems are often designed so that indigent defendants are provided with different public defense attorneys at different stages of the prosecutorial process. Such "horizontal" representation creates a barrier to forming a meaningful attorney-client relationship and developing a client's trust. Moreover, when a defendant's case is between stages, it simply lies dormant with no representation being provided, no investigations conducted, and no counsel to advise the client until the case is assigned a new attorney at the next stage.

367. The Spangenberg Group report found that, even though it diminishes the quality of representation, many public defense service providers provide this kind of "horizontal" representation "for the sake of efficiency."

368. National and state standards for the administration of a public defense system provide that, as a general rule, the same attorney should continuously represent the client until completion of the case. *See* ABA Ten Principles, Principle 7; NLADA Guidelines for Legal Defense Systems in the United States (1976), Guideline 5.11; NLADA Standards for the Administration of Assigned Counsel Systems (1989), Standard 2.6; NYSDA, Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State (2004), Standard V(A)(4); NYSBA Standards for Providing Mandated Representation (2005), Standard I-5. *See also* N.Y. County Law § 717 (2007).

369. In Onondaga County, for example, certain assigned counsel are assigned “arraignment days” in the City and County courts to represent felony defendants being arraigned in any given day. Some time after arraignment, clients are assigned a different lawyer.

370. In Suffolk County, defendants charged with felonies are almost always assigned different attorneys before and after indictment, often following substantial delays, and many defendants find that they are represented by a different attorney every time they appear in court. As a result, criminal defendants facing felony charges must learn to trust and communicate with a new attorney immediately after they are indicted, knowing that their previous attorney will no longer be able to help them.

371. In Schuyler and Washington counties, the system of assigning particular lawyers to particular courts means that nearly all felony defendants arraigned in a justice court are assigned to a new attorney when the case is transferred out of the justice court and into the county court, often after substantial delays.

The Lack of Political and Professional Independence

372. The system of county-based funding and administration causes a lack of independence from judicial, prosecutorial and political authorities for public defense services providers in the Counties.

373. The Kaye Commission found that, because of the State’s abdication of public defense funding and administration responsibilities to the counties, “New York fails to ensure the independence of its indigent defense providers who are too often subject to undue interference from the counties that fund them.”

374. No fewer than seven county public defenders and legal aid society directors – from Saratoga, Rensselaer, Essex, Greene, Steuben, Onondaga, and Westchester counties –

testified before the Kaye Commission, citing specific instances of political interference with their ability to provide meaningful and effective representation to their indigent clients.

375. National and state standards for the administration of a public defense system require professional and political independence for public defense services providers in order to guarantee meaningful and effective representation of indigent defendants. *See* ABA Ten Principles, Principle 1; ABA Standards for Criminal Justice, Providing Defense Services (3d ed. 1992), Standards 5-1.3, 5-1.6; NLADA Guidelines for Legal Defense Systems in the United States (1976), Guideline 2.18; NLADA Standards for the Administration of Assigned Counsel Systems (1989), Standard 2.2; NLADA Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services (1984), Guideline II-1; NAC Report of the Task Force on Courts (1973), Standard 13.8; NYSDA, Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State (2004), Standards II, III-A; NYSBA Standards for Providing Mandated Representation (2005), Standard A-1. *See also* DR 2-103 (22 NYCRR 1200.8).

376. In Onondaga, for example, the director of a legal aid society that formerly handled a large percentage of the county's criminal docket reported the following exchange with a county legislator to the Kaye Commission:

A legislative committee member asked me the following series of questions in a hostile tone of voice, starting with, isn't it true that the legal aid society has a policy of not disposing of cases at arraignment? I answered that that was in fact our policy because we were never given adequate resources to be able to meet our clients in jail before arraignment or to have staff present to discuss cases with them before arraignment. Therefore, it would be a violation of an ethical [obligation] to our clients to do so. The next question was, isn't it true that you make motions in every case? The answer unfortunately was no. We don't have the resources to do that.... The next question was, isn't it true that you served demands to produce in every case? The answer was yes. That is the statutory requirement to preserve our client's rights to discovery. And, finally, I was asked, isn't it true that you require a written response from the DA's office to those

demands? ... These questions were very troubling because they imply that we were doing something wrong by fulfilling our legal and ethical responsibility to our clients and that we were subjected to criticism for providing vigorous representation to our clients... I was subsequently told by a member of the judiciary...that the word on the street was that we lost the city court program because we delayed cases. My response then and my response [now] is, one person's delay is another person's due process.

Shortly after this exchange, the county terminated the legal aid society's contract to perform certain criminal public defense representation for Onondaga County.

377. In Onondaga County, rather than leaving staffing decisions to the Assigned Counsel Program, judges make the decision not only whether counsel should be appointed, but which lawyers to appoint to cases in their courtroom. This system creates a risk, and a perception among attorneys, that lawyers who do not ensure swift disposition of their client's cases, even where swift disposition means sacrificing zealous representation, will not receive appointments from judges who are concerned about meeting state-set standards and goals for reducing docket congestion.

378. In both Onondaga and Ontario counties, assigned counsel must obtain judicial approval before spending any funds on investigators or expert services, thus subjecting counsel's judgment regarding the services necessary for zealous advocacy to a court's discretion.

379. There is no independent board or commission that oversees public defense services in Schuyler County. The Chief Public Defender is appointed by the county legislature and must lobby the legislature for necessary budget allocations and meet performance-based standards set by political actors in order to obtain sufficient funding.

380. In Suffolk County, the Legal Aid Society must obtain annual budget approval from the Suffolk County legislature. The Legal Aid Society must submit a detailed budget request and answer detailed questions about expenditures at a hearing before the county

executive. Based on that hearing, the county executive recommends a budget allocation for the Legal Aid Society and the legislature votes on the budget. Most of the time, the Legal Aid Society obtains less than the amount it has requested.

381. In Washington County, there is no independent board or commission that oversees public defense services. The public defender is selected by means of a low-bid process in which the County Board of Supervisors appoints the candidate in part on the basis of a proposal to run the office most cheaply over a two-year period. The Board of Supervisors approves the annual budget and must separately sign off on any expenditure for investigators or experts in individual felony cases. The county also accepts the low-bid proposal for conflict defender services solely for cases arising out of the state prisons located in the county. Moreover, judges have unlimited discretion to reduce assigned counsel's bills for services. As a result, in 2006, per capita county expenditure for public defense in Washington County was under \$7.50, well below the state average of \$21.21.

Inadequate Compensation and Lack of Parity with Prosecutorial Counterparts

382. Public defense service providers in the Counties are, in general, inadequately compensated and lack the resources needed to provide effective representation.

383. National and state standards recognize the importance of adequately compensating both assigned counsel lawyers and institutional public defense service providers. *See* ABA Standards for Criminal Justice, Providing Defense Services (3d ed. 1992), Standard 5-2.4; NLADA Guidelines for Legal Defense Systems in the United States (1976), Guidelines III-3.1, 3.2; NLADA, Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services (1984), Guideline III-10; NLADA Standards for the Administration of Assigned Counsel Systems (1989), Standard 4.7.1; NAC Report of the Task Force on Courts

(1973), Standards 13.7, 13.11; NYSDA, Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State (2004), Standard III(C); NYSBA Standards for Providing Mandated Representation (2005), Standard K-3. *See also* N.Y. County Law § 722-b (2007).

384. In the federal system, guidelines state that the salaries and support given to federal public defenders must be substantially similar to that provided to Assistant United States Attorneys in the Department of Justice. *See* Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Chapter IV, 4.02 A(3).

385. National and state standards also hold that comparable funding for prosecutorial and public defense services is a key measure of the health of a criminal justice system. *See* ABA Ten Principles, Principle 8; NLADA Guidelines for Legal Defense Systems in the United States (1976), Guideline 3.2; NYSDA, Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State (2004), Standard III(C); NYSBA Standards for Providing Mandated Representation (2005), Standard K-1.

386. In 1965, the New York State legislature passed Article 18-B, setting the rates of compensation for private assigned counsel at \$10 per hour for out-of-court work and \$15 per hour for in-court time. The State raised rates slightly in 1977 and 1986, but rates remained stagnant from 1986 until 2003 until, following a lawsuit brought by the New York County Lawyers Association, the Legislature raised the rates to \$60 per hour for misdemeanors and lesser offenses and \$75 per hour for felonies and all other eligible cases.

387. As a result of the financial pressure caused by the rise in 18-B rates, assigned counsel programs place pressure on assigned counsel to keep costs low and on assigned counsel administrators to cut vouchers, even at the expense of the client's needs and interests.

388. In Onondaga County, for example, a county court judge recently wrote an opinion criticizing the assigned counsel program for “incessant bureaucratic nitpicking” in cutting attorney vouchers for reimbursement, remarking that “good attorneys” were being driven out of the program and that the pattern of voucher-cutting “almost amounts to an on-going violation of the Sixth Amendment.”

389. In Ontario County, assigned counsel are paid hourly rates that must cover the costs of health insurance, retirement savings, and overhead costs such as support staff, desks, computers, legal research expenses, and office supplies. Assigned counsel are often not compensated for all the actual time devoted to their cases. For example, the county will not reimburse assigned counsel for any time spent traveling to the various courts throughout the county.

390. The gross disparity between the resources available to public defenders and the resources available to prosecutors highlights the chronic under-funding of public defense in New York, especially in light of the fact that public defense services providers must cover not only criminal prosecutions but also child abuse and neglect cases, family offenses, custody and visitation issues, paternity cases, and child support violations.

391. Although the state provides money to supplement district attorneys’ salaries, it does not do so for the public defenders’ salary. These state funds account for a large percentage of the salaries of many Counties’ district attorneys. For example, in Schuyler, state funds account for approximately half of the District Attorney’s wages.

392. The Kaye Commission found that “[p]rosecutors are consistently better funded and better staffed than indigent criminal defense service providers. Their personnel, on average, have higher salaries and greater ancillary resources than do their public defender counterparts.”

393. In Schuyler County, the Chief Public Defender's salary in 2007 was \$75,849, while the assistant public defender is paid \$37,924. The conflict defender was paid \$2500 per month and must provide for his own malpractice insurance and training, as well as absorb all overhead expenses. By contrast, the district attorney works in a fully supported office and makes more than 50% more than the Chief Public Defender, earning \$119,800.

394. In Washington County, the Chief Public Defender's salary in 2007 was \$51,000, while the District Attorney was paid more than twice as much, earning \$119,792. Assistant public defenders each earned \$44,290, while assistant district attorneys earn up to \$60,715. In addition, the assistant public defenders must pay for their own malpractice and health insurance expenses as well as overhead costs such as office space, support staff, legal research expenses, transportation expenses, computers and office equipment and supplies. Assistant district attorneys do not have to pay for these expenses and are provided with health care benefits.

395. According to the Spangenberg Group report, the Suffolk County Legal Aid Society recently experienced a 16% turnover in staff, including the loss of experienced attorneys, because of low salaries.

396. Inadequate resources and staffing within institutional providers can directly impact representation. As Spangenberg Group's report to the Kaye Commission noted, "[t]he need to be efficient sometimes also results in an institutional provider turning a blind eye to potential conflicts of interest." For example, in Schuyler County, a lack of resources for full staffing means that the Public Defender's secretary administers the assigned counsel program and thus decides which lawyers will represent co-defendants of public defender office clients, creating a systemic conflict of interest.

397. National and state standards for the provision of public defense services recognize a public defense system must be designed to avoid conflicts of interest. *See* ABA Standards for Criminal Justice, Defense Function (3d ed. 1993), Standard 4-3.5(c); NLADA Performance Guidelines for Criminal Defense Representation (1995), Guideline 1.3(b); NYSDA, Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State (2004), Standard VIII(A)(4).

The Effect of the Public Defense Crisis on Indigent Criminal Defendants

398. Hampered by the aforementioned systemic flaws, public defense counsel do not or are not able to perform even the most basic tasks necessary to provide meaningful and effective representation to their clients. They do not act as an adversarial check on the prosecutor in criminal cases.

399. Indigent criminal defendants in New York therefore are experiencing or are at severe and unacceptably high risk of experiencing: wrongful denial of representation; wrongful conviction of crimes; unnecessary or prolonged pre-trial detention; guilty pleas to inappropriate charges; waiver of meritorious defenses; guilty pleas taken without adequate knowledge and awareness of the full, collateral consequences of the pleas; harsher sentences than the facts of the case warrant and few alternatives to incarceration; and waiver of the right to appeal and other post-conviction rights. Defendants are routinely not asked about their immigration status, for example, notwithstanding that a plea which may result in no jail time may ultimately cause the deportation of some immigrant defendants.

400. The history of inadequate representation in New York State has created a pervasive public belief that representation by a public defender is grossly inferior to

representation by a private attorney. Public defender clients in Washington County routinely express their desire to hire a “real lawyer” or a lawyer who wasn’t just “a part of the system.” Several clients reported a commonly held belief that public defenders work harder for their paying clients than for clients they represent as public defenders and that paying clients get more lenient plea bargains. Similarly, in Schuyler County the chief public defender has resisted calls to move the public defender’s office into a county building because it would exacerbate clients’ perception that public defenders are not independent from the judicial and prosecutorial functions.

CLASS ALLEGATIONS

401. The plaintiffs bring this class action pursuant to Article 9 of the New York Civil Practice Law and Rules on behalf of all indigent persons who have or will have criminal felony, misdemeanor, or lesser charges pending against them in New York state courts in Onondaga, Ontario, Schuyler, Suffolk and Washington counties (hereinafter, “the Counties”) who are entitled to rely on the government of New York to provide them with meaningful and effective defense counsel. The Class includes all indigent persons against whom criminal charges will be brought in the Counties during the pendency of this action.

402. The class is so numerous that joinder of all members is impractical. At any given point in time, more than thousands of people with criminal cases pending in New York State courts in the Counties rely on public defense counsel for legal representation.

403. There are questions of law and fact common to the class that predominate over questions affecting only individual members, including but not limited to:

- (1) whether the State has the responsibility under the Constitution of the State of New York and the United States Constitution to provide meaningful and effective assistance of counsel to indigent criminal defendants;
- (2) whether in abdicating its responsibility to the counties, the State has failed to ensure that indigent criminal defendants receive meaningful and effective assistance of counsel;
- (3) whether the State funds the public defense system in a manner that impedes the delivery of meaningful and effective assistance of counsel;
- (4) whether the State's failure to oversee and set standards for the provision of public defense services impedes the delivery of meaningful and effective assistance of counsel;
- (5) whether the State's failure to adequately fund, supervise and administer the public defense system in the counties violates the constitutional and statutory rights of the plaintiff class.

404. The claims of the class representatives are typical of the claims of the class members and by pursuing their own interests the class representatives will advance the interests of the absent class members. Each of the class members is being denied or is at severe and unacceptably high risk of being denied constitutionally and legally adequate assistance of counsel as a result of the defendants' failure to set standards for, oversee and fund public defense.

405. The class representatives will fairly and adequately protect the interests of the class. There are no conflicts of interest between the class representatives and the absent class members and the class representatives will vigorously prosecute this action on behalf of the class.

406. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

407. Defendant has consistently acted and refused to act in ways generally applicable to the class. Thus, final declaratory and injunctive relief with respect to the class as a whole is appropriate.

OTHER ALLEGATIONS

408. Plaintiffs and the members of the class have suffered or are at imminent, severe and unacceptably high risk of suffering irreparable harm because of the Defendant's failure to remedy the financial and administrative deficiencies that plague the provision of public defense. There is no adequate remedy at law to address those deficiencies or the consequent deprivation of adequate and competent assistance of counsel.

CLAIMS

First Cause of Action

(Violation of Article I, § 6 of the Constitution of the State of New York)

409. Plaintiffs hereby incorporate paragraphs 1-408 above.

410. Defendant is violating or will violate plaintiffs' rights under Article I, § 6 of the Constitution of the State of New York by failing to provide meaningful and effective assistance of counsel and due process of law.

Second Cause of Action

(Violation of New York State Statutes Guaranteeing the Right to Counsel for Indigent Defendants)

411. Plaintiffs hereby incorporate paragraphs 1-408 above.

412. Defendant is violating or will violate plaintiffs' rights under New York County Law § 717, 722-c; and New York Criminal Procedure Law §§ 170.10, 180.10, 180.80, 190.50, and 210.15 by failing to provide meaningful and effective assistance of counsel.

Third Cause of Action

(Violation of the Sixth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983)

413. Plaintiffs hereby incorporate paragraphs 1-408 above.

414. Defendant is violating or will violate plaintiffs' rights to meaningful and effective assistance of counsel and to due process of law in violation of the Sixth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs respectfully request the following relief:

- (1) The certification of this action as a class action, pursuant to Article 9 of the New York Civil Practice Law and Rules.
- (2) A declaration pursuant to CPLR § 3001 that the plaintiffs' rights are being violated.
- (3) A preliminary and a permanent injunction requiring the defendant to provide a system of public defense consistent with the Constitution and laws of the State of New York and the United States Constitution.
- (4) An award of the plaintiffs' attorneys' fees, costs and disbursements accrued in pursuit of this action under CPLR § 8601, CPLR § 909 and 42 U.S.C. § 1988; and
- (5) Any other relief the Court deems necessary or proper.

Dated: November 8, 2007
New York, NY

Respectfully submitted,

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