

## **Written Comments of The Bronx Defenders**

### **New York City Council Committees on Courts and Legal Services and Public Safety Oversight Hearing: “Examining How the City Evaluates the Effectiveness of the Provision of Indigent Defense”**

**January 26, 2015**

My name is Justine Olderman, and I am the Managing Director of the Criminal Defense Practice at The Bronx Defenders. I submit these comments on behalf of The Bronx Defenders and thank the City Council for the opportunity to testify.

The Bronx Defenders provides innovative, holistic, and client-centered criminal defense, family defense, civil legal services, social work support and advocacy to indigent people of the Bronx. Our staff of nearly 250 represents 32,000 individuals each year and reaches thousands more through outreach programs and community legal education. The Bronx Defenders is organized into ten interdisciplinary teams. Each team is comprised of criminal defense attorneys, family court attorneys, immigration and general civil attorneys, investigators, social workers and other social services advocates. Through the team model, each client of The Bronx Defenders has seamless access to multiple advocates and services to meet his or her legal and non-legal needs. The primary goal of our holistic defense model is to address the underlying issues that drive people into the criminal justice system and mitigate the devastating impact of criminal justice involvement, such as deportation, eviction, loss of employment, disqualification for student loans and public benefits, deterioration of mental health, or loss of custody. Instead of referring to these outcomes as “collateral consequences,” we use the term “enmeshed penalties,” which better reflects the grave risks and realities that our clients face from the moment of arrest.

Our Criminal Defense Practice is comprised of 81 full time criminal defense attorneys, 13 supervisors, 10 social workers, and 10 investigators who defend clients in 28,000 primary cases and 3,000 conflict cases per year. In addition to our substantive supervisors, we have a Trial Chief, 2 Trial Supervisors, a Legal Director, a Forensic Practice Supervisor, 2 Investigative Supervisors, and a Director of Early Advocacy.

In evaluating the effectiveness of indigent defense, traditional metrics have looked at a range of categories including independence, experience of lawyers, training, supervision, caseloads, and evaluation. On their face, these seem like appropriate categories to assess the delivery of indigent defense services. But in truth, traditional metrics fail to adequately measure effective representation. Some of them fail because the standards they measure set the bar too low or are too general to be meaningful. Others fail because they set the bar too high and so don't reflect the reality of the work we do. But fundamentally, existing standards fail to adequately assess the effectiveness of indigent defense because they are based on an outdated model of criminal defense – one that puts the case at the center of the representation instead of the client. In doing so, they ignore the importance of addressing the root causes of criminal justice involvement and treat enmeshed penalties as an afterthought.

We cannot talk about caseloads, qualifications, training, or supervision without taking into account the radical change in our responsibility to our clients. We must first recognize that no matter how well organized, staffed, trained, supervised, and evaluated we are, we are not meeting minimum standards of indigent defense if we are unknowingly pleading people out to low level offenses only to have them deported, fired from their jobs, or evicted from public housing.

When these standards were drafted, the criminal justice system was very different from the one we practice in today. Over the past ten years, we have seen a significant shift in the nature of our cases. As violent crime has fallen across the city, so have felony arrests. In 2013, there were 7.4% fewer felony arraignments than in 2003.<sup>1</sup> In the meantime, as a result of broken windows policing strategies, the criminal justice system has ballooned with low level, non-violent misdemeanors, violations, and infractions, such as trespass, marijuana possession, turnstile jumps, and driving with a suspended license. In 2013, the city saw a 17.8% increase in arraignments of misdemeanors, violations, and infractions over 2003.<sup>2</sup> The most recent criminal court data shows that misdemeanors, violations, infractions, and other low-level cases make up

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<sup>1</sup> Lisa Lindsay, "Criminal Court Caseload – A 10 Year Overview," in *Criminal Court of the City of New York 2013 Annual Report*, ed. Justin Barry, (New York: Office of the Chief Clerk of the New York City Criminal Court, July 2014), 11. [Online](#).

<sup>2</sup> Lindsay, "Criminal Court Caseload – A 10 Year Overview", 11.

86 percent of the cases arraigned in NYC while felonies only make up 14 percent.<sup>3</sup> In practice, the number of misdemeanors in the criminal justice system is even greater when you take into account the number of felonies which are reduced to misdemeanors once they are evaluated by the grand jury bureau, a percentage that our internal data shows is approximately 15 percent.

In addition, statistics show that the vast majority of both misdemeanors and felony cases are resolved through plea bargaining. In 2013, citywide only 0.2 percent (two-tenths of a percent) of Criminal Court cases were resolved by a trial verdict.<sup>4</sup> That percentage was only slightly larger in Supreme Court where 5 percent were resolved by trial verdict.<sup>5</sup>

Given the large number of cases resolved through guilty pleas, it is more important than ever for criminal defense attorneys to fulfill the Court's mandate in Padilla v. Kentucky to advise their clients of the serious and likely consequences of a plea. While Padilla itself focused on the immigration consequences of a plea bargain, the language of the Court is more expansive and calls for individualized inquiry, advice, and advocacy related to any penalty that is serious, enmeshed, and likely, such as housing, employment, custody, benefits, and student loans. Attorneys need to be able to identify the enmeshed penalties of criminal justice involvement not only to advise clients of the impact of their pleas, but it also enables attorneys to use that information to effectively advocate for alternative dispositions that safeguard their clients' rights, status, and benefits. Unless we, as public defenders work to identify and mitigate these enmeshed penalties, we are unwittingly participating in further destabilizing our clients' lives and in perpetuating the revolving door of criminal justice involvement.

But our role as criminal defense attorneys has not just changed because of Padilla. Effective representation requires that we not only protect against the penalties of criminal justice involvement but that we also seek to address the root causes of that involvement. By focusing on

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<sup>3</sup> Lindsay, "Arraignments – Types of Charges", 25.

<sup>4</sup> Lindsay, "Criminal Court Dispositions", 17. Please note that the categories "Guilty Plea," "ACD," and "SCI" were merged to create a "Plea" category, while "Convictions" was merged with "Acquitted" to create a "Resolved by Trial" category. Finally, we also removed from our whole the "Other" category, which accounts for "resolutions of Criminal Court warrants outstanding in another county; resolutions of Family Court warrants and Orders of Protection outstanding; removals to Family Court; extradition matters; and transfers to another court."

<sup>5</sup> Mayor's Office of Criminal Justice, "Fewer Cases, Pleas & Trials," (meeting, New York, New York, Dec. 8, 2014).

the client instead of the case, we ascertain the full range of our clients' legal and social service needs, build better relationships with our clients, understand their goals and priorities, and as a result achieve better case and life outcomes for our clients.

Traditional evaluation metrics simply do not capture how the criminal justice system has changed, and therefore, our work and role in it. As indigent defense evolves so too must our understanding of what it means to provide effective representation and how we evaluate that effectiveness. While the old metrics still have value, they need to be supplemented by new metrics. While there are many ways of capturing the changing nature of our work, I will focus on three: holistic defense, client engagement, and innovation.

New metrics will go a long way towards helping public defender offices provide effective representation to their clients. But updating metrics alone will not result in the delivery of quality representation. If those who have oversight of indigent defense really care about the effectiveness of our representation, then they must also care about the effectiveness of the court system in which we work. Our courts are plagued by staggering congestion and delay, to the point where they have become one of the greatest obstacles we currently face to delivering on the promise of effective and zealous representation. Our effectiveness and the system's effectiveness are inextricably intertwined and that relationship, which has up until now largely gone ignored, cannot be ignored any longer.

### **The Holistic Defense Metric**

*When I walked into room 490 on late September afternoon, the courtroom appeared to be empty but for a few court officers milling about. The judge was in the back, they said, and would be out in a few minutes. I put my bag and coat in the first row and for the first time faced the back of the courtroom. In the back, in the corner, I saw an old man. He sat tall on the bench and held his hands together in his lap. His skin was brown and weathered. The wrinkles around his eyes extended to out to where his face met a head of thick white hair. Next to him on the bench was a black plastic bag stuffed with papers. "Marcelino Valdez?" I asked. His lips broke into a wide grin, he nodded, and he reached out and grasped both of my hands.*

*Two years earlier, Mr. Valdez had been charged with assaulting his wife. He was originally represented by an attorney from the 18b panel who, during the year that she represented him, had become increasingly concerned that Mr. Valdez could not provide her with details about what happened, talked about government conspiracies, and frequently became suspicious that their conversations were being recorded. She eventually asked that Mr. Valdez be evaluated to see if he was fit. On the next court date, the results came back but Mr. Valdez didn't. The results - he was unfit to stand trial.*

*When he shuffled back into the courtroom a year later, with his black plastic bag overflowing with papers, his lawyer suggested that the judge appoint a public defender office – one with the internal resources to help identify and address all of Mr. Valdez's legal and non-legal needs. And the judge called The Bronx Defenders. What I learned over the next few months as I, an immigration attorney, mental health attorney, and social worker worked with Mr. Valdez was that he had been hospitalized in a psychiatric ward, was suffering from congenital heart failure, was homeless, had lost touch with his daughters and was slowly losing the ability to take care of himself. As if that weren't enough, he was a legal permanent resident would be deported if convicted of assault. And he still faced a finding of unfitness.*

*I and the rest of his team immediately set about identifying his priorities and coming up with a plan. First, we located his daughter, who was able to give us her father's full medical history. We reached out to the head psychiatrist at the hospital who explained that, even with a finding of unfitness, if Mr. Valdez were already connected to services in the community that met his needs, he might be able to be released to outpatient treatment. We then found a nursing home that could care for him and sent all the information to the hospital. As a result, Mr. Valdez was found unfit, his case was dismissed, we took him to the nursing home, where he now lives, gets mental health treatment and proper health care and receives regular visits from his daughter.*

Marcelino Valdez is not unique. He is like most of the people across the United States who are driven into the criminal justice system because of mental illness, along with other issues such as addiction, poverty, homelessness, family instability, violence, and lack of education. And like most of those driven into the criminal justice system, the stakes are much higher than a criminal

conviction. Effective representation requires that public defenders be able to identify the root causes and enmeshed penalties of a client's criminal case.

At The Bronx Defenders we ensure that each and every criminal defense attorney is able to identify a client's legal and non-legal needs by providing an intensive six week interdisciplinary training to our new class of attorneys. They are trained by immigration, housing and employment lawyers. They learn the intersection of criminal justice involvement and licensing, benefits, and student loans. They are instructed on drug and alcohol abuse as well as mental illness. This comprehensive training enables them to identify both the underlying issues that drive people into the criminal justice system and to flag the hidden penalties of a plea.

But it is not enough to simply have the knowledge. To ensure effective representation, public defenders and those who are responsible for their oversight must ensure that these issues are being identified early on in the life of a criminal case. The 2013 report from the Criminal Court shows that half of all cases are resolved with guilty pleas at the initial arraignment.<sup>6</sup> At The Bronx Defenders, we created an arraignment checklist and checklist guide to ensure the early identification of our clients' most pressing non-legal needs as well as the range of enmeshed penalties of a guilty plea. We also created an on-call system so that social workers, investigators, immigration attorneys and other legal advocates on the lawyers' interdisciplinary team are available to provide advice, counsel and services to our clients before they see the judge.

To be effective, it is not only critical that lawyers identify the full panoply of their clients' legal and non-legal needs, but they must also be able provide seamless access to services and ensure dynamic communication among advocates. At The Bronx Defenders, we do this through team structure and technology. After arraignments, the checklist data is entered into our case management system. If any issue is checked, then the lawyers receive an automated email reminding them to make a referral to the appropriate advocate on their team. With the click of a button, an automated referral will be generated and sent to that advocate. Our interdisciplinary team structure and open floor plan ensures that different lawyer and non-lawyer advocates

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<sup>6</sup> Lindsay, "Disposition at Arraignments", 28.

working together with a single client are just a stone's throw from one another, enabling them to communicate and collaborate easily about a client's case.

Traditional metrics evaluate indigent defense providers by case outcomes – number of cases dismissed, ACDs, pleas to reduced charges, and acquittals. By traditional metrics, none of the work done to address Mr. Valdez's homelessness, mental illness, isolation, and immigration status would have been captured. His case would simply have been found under the category titled – found unfit. Case outcomes are still important as an evaluation tool. But if taken alone, they ignore the important work that lawyers are doing to address the root causes of criminal justice involvement and the enmeshed penalties of that involvement.

We have been heartened to see this administration's support for our model. They have provided funding for our immigration lawyers and spearheaded campaigns to divert adolescents and the mentally ill from the criminal justice system. They have also funded a first of its kind program to provide representation to immigrant New Yorkers in immigration detention and increased funding for civil legal services. Over the past year, we have found the mayor and Liz Glazer to be true partners in helping to address the root causes of criminal justice involvement and to mitigate the enmeshed penalties of that involvement.

*Recommended Holistic Defense Metrics for Evaluating the Effectiveness of Indigent Defense*

- Does the provider offer training to its lawyers to identify the root causes of criminal justice involvement?
- Does the provider offer training to its lawyers on enmeshed penalties of criminal justice involvement?
- Does the provider have in-house lawyer and non-lawyer advocates who can advise clients about enmeshed penalties or access to external advocates and can lawyers consult with those advocates before taking guilty pleas, even at arraignments?
- Does the provider have the ability to refer clients to in-house or external advocates who can help clients address their other legal and non-legal needs?

- Does the provider have a system in place to enable the criminal defense attorney to communicate and collaborate with in-house or external advocates to meet clients' legal and non-legal needs?

### **Client Satisfaction Metric**

*Mr. Lassiter has been very compassionate, professional and thorough. I have not met a lawyer who is as dedicated and determined as Mr. Lassiter. I have left messages on his voice mail and the response time was great. One would have believed that I was his only client when in fact he probably had many clients. I have come to value Mr. Lassiter's opinion because he always looked out for my best interest. I really wish Mr. Lassiter well in his career and am very appreciative that such a powerful lawyer represented me.*

A key component in evaluating the effectiveness of indigent defense is client satisfaction. Research by Tom Tyler at Yale Law School has shown that by far the most important factor in whether people accept a decision is their perception that the process is fair. According to his research, the fairness of the *process* is much more important to people than the outcome itself or even the fairness of the outcome.<sup>7</sup> A study by the Center for Court Innovation (CCI) supports this notion of procedural fairness and highlights the importance of clients' satisfaction in evaluating the delivery of defense services. According to their study, after judges, the most important factor for clients in their perception of the court system, is their perception of their lawyer.<sup>8</sup> CCI lays out 4 factors in ensuring that clients perceive the court system as fair. First, that the client's voice is heard. Second, that she is treated with dignity. Third, that decisions are unbiased and consistent, and fourth that clients understand what is going on, their role, and the reasons for the decisions.<sup>9</sup> Defense attorneys play a critical role in ensuring these factors are met and should be evaluated on this role. We represent clients not cases. The extent to which

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<sup>7</sup> Tom Tyler, "Procedural Justice: Why It Matters So Much" (lecture at Community Justice 2012, Washington D.C., Feb. 2, 2012). This is only one of many sources where Prof. Tyler discusses the importance of procedural justice.

<sup>8</sup> M. Somjen Frazer, "The Impact of the Community Court Model on Defendant Perceptions of Fairness: A Case Study at the Red Hook Community Justice Center," (New York: The Center for Court Innovation, Sept. 2006), 14-19. [Online](#). And Erin J. Farley, Elise Jensen, and Michael Rempel. "Improving Courtroom Communication: A Procedural Justice Experiment in Milwaukee," (New York: The Center for Court Innovation, Jan. 2014), v. [Online](#).

<sup>9</sup> Kevin Burke and Steve Leben, "Procedural Fairness: A Key Ingredient in Public Satisfaction," *Court Review* 44 (2007): 4-25. [Online](#).



clients feel like their lawyer listened to them, understood them, advised them, fought for them, and helped them is the key measure of effective advocacy.

At The Bronx Defenders, we solicit feedback from clients in the form of annual client satisfaction surveys. Each summer, we train a group of summer interns to administer a survey to a random sample of prior clients. The data from the survey is collected, summarized, and delivered to the Executive Management Team, which uses the information to help identify areas for improvement.

Traditional metrics presume that case outcomes alone, defined historically as the number of dismissals, ACDs, pleas to lesser charges, alternatives to incarceration, and acquittals is what leads to client satisfaction and in so doing fail to take the complexity of the attorney-client relationship into account. They also fail to take into account the feedback of the people that matter most when it comes to the effective delivery of indigent defense – the clients we represent and serve.

*Recommended Client Satisfaction Metric for Evaluating the Effectiveness of Indigent Defense*

- Does the provider have a system in place for assessing client satisfaction with their representation?
- Is client satisfaction assessed on an annual basis?
- Does the provider have a system in place for analyzing the results of the client satisfaction assessment?
- Does the provider have a process for implementing changes based on the results of the client satisfaction assessment?

**Innovation Metric**

*He, his wife and seven month old son had been kicked out of the home they were living in, sleeping in abandoned buildings, but recently found a shelter in Queens. They have no food and little money. I spoke with Colby, who helped me coordinate with Ryan and Helmis to get some food from the Team Ryan Pantry. The family is very thankful and I am thankful to Team Ryan for the Food Pantry.*

Any evaluation of indigent defense should include an assessment of a provider's ability to identify the changing needs of their clients and create innovative ways of addressing those needs. As the criminal justice system changes and evolves so too must indigent defense providers. As crime patterns have shifted, so have the nature of our cases. As policing policies have changed so has our client population. With technological advances, the nature of evidence has changed. And as criminal justice research evolves, our knowledge and understanding of the need for systemic change grows.

At The Bronx Defenders, we are constantly changing, adapting, and growing to ensure that we are providing the most effective representation to our clients. To meet the unique needs of our most vulnerable clients, we have developed an Adolescent Defense Practice, a Mental Health Project, a Veterans Defense Project, and a Victims of Sex-Trafficking Defense Project. All of these projects and practices are staffed by specially trained attorneys and social workers.

To address the increasing complexity of cases involving forensic evidence, we created a Forensic Defense Practice that provides in-house expertise for cases involving DNA, digital evidence, eyewitness identification, false confessions, and ballistics. In recognition that many of our clients cycle back through the criminal justice system on violations of Probation, we sought and received funding for a Probation Advocate who provides extra support post-sentencing to clients on probation to help them successfully complete their sentence.

Given the research showing the negative impact that bail has on case outcomes as well as life outcomes, we created The Bronx Freedom Fund, a revolving bail fund supported by legislation that The Bronx Defenders helped get passed. The Fund posts bail up to \$2,000 for indigent Bronx residents charged with misdemeanors, and in its first year has been shown to have a 98% rate of clients returning to court. We also created a Client Emergency Fund, host an annual Coat Drive, and run a Food Pantry for our clients in need.

Traditional metrics do not capture innovation in public defense providers. They do not capture the ability of a public defender office to provide individualized representation to different clients

whether they be adolescents, the mentally ill, victims of sex trafficking or veterans. Nor do they recognize the value of spending resources to develop in house expertise in particular areas of practice. And they do not capture the extent to which public defender offices, like The Bronx Defenders, are taking the lead in addressing systemic problems in our criminal justice system, like the problem of bail. Our effectiveness depends on our ability to innovate, create, adapt, and evolve. Any oversight of indigent criminal defense work in the 21<sup>st</sup> Century must take that into account.

#### *Recommended Innovation Metric for Evaluating the Effectiveness of Indigent Defense*

- Does the provider have the ability to use data to identify and respond to emerging client needs?
- Does the provider have procedures and oversight for piloting and evaluating new programs and for expanding those that are successful?
- Is the provider able to leverage funding from foundations, private donors, and other sources to expand services?

#### **The Call to Evaluate the Effectiveness of the Court System and its Impact on the Delivery of Effective Indigent Defense Services**

Two weeks ago, I received this email from one of the most hardworking, thoughtful, and zealous lawyers in my office:

*So, I know that my client's story is not by any means unique, but perhaps that's all the more reason to share.*

*The case of John Carridice is longer than my career thus far; on September 27th, 2012, he was arrested for unlawful assembly, harassment and disorderly conduct. He was badly beaten, requiring stitches, pepper sprayed so badly that even the officer couldn't breathe, and contracted a skin disease while in arraignments.*

*Since September 2012, Mr. Carridice has made 19 court appearances. 13 of those appearances have been for trial. On 7 of those trial dates there have been no judges to hear his case. On the other 6, the prosecution has answered not ready.*

*Meanwhile, John Carridice, who was employed at Children's Aid Society and is now a full time college student, has missed exams, lectures, and scholarship opportunities as he shuttles back and forth to court over and over again.*

*Today, we were again told that there are no parts, and that my client had to be present on the next court date, despite it being exam season. The judge wouldn't even allow me to utter the sentence to make the request to have his appearance excused. My client wept. This large, adult man, wept, because his rights are violated on the streets and within the courthouse; he's forced to come to court, but cannot have his day in court; and the system is insidiously and explicitly thwarting his efforts to improve his life through work and education. And what am I doing? Making requests, being shot down, and adjourning cases while the system tramples and ruins lives?*

*So, my question to you is, what else can I do in these situations? I'm not comfortable with my role at the moment. I'm not comfortable regularly participating in this routine, especially under these circumstances, and essentially giving my clients some version of, "you're right, and I know this is ruining your life, but that's just the way it is, for now". What else can I do?*

*Any suggestions would be appreciated.*

I do have a suggestion. But it is not for her. It is for anyone who has oversight of indigent defense providers. The suggestion is this: that any evaluation of indigent defense providers be conducted side by side with an evaluation of the system in which they operate. If those that oversee indigent defense providers care about the delivery of quality indigent defense services to poor people accused of crimes in this city, then they have to care about the effectiveness of the courthouses in which we work.

Our courthouses are at a breaking point. Quality of life policing has flooded the courts with low-level, non-violent infractions, violations, and misdemeanors, and are now the court system,

especially in the Bronx, is incapable of handling the volume. People like John Carridice, wait in long lines to get into the courthouse only to find that despite their efforts to arrive early, the courtroom is filled with people just like them waiting to have their day in court. A court appearance may last a matter of seconds – as long as it takes to say “The prosecution is ready. So is the defense. Well, there are no parts. How about 6 weeks from now?” But our clients sit idle in court, barred from reading or using their phones, for hours waiting for those futile few seconds. As the lawyer stated, the story of John Carridice is not unique. As Managing Director, it is a story I know well but has become so common place that people have stopped telling it. But it is a story that speaks not only to why people like John Carridice have lost faith in the criminal justice system but why we, as public defenders, are failing to deliver on our constitutional mandate.

The pernicious problem of delay and the promise of effective representation are inextricably intertwined. To understand the ways they are intertwined requires an understanding of how delay manifests itself. Delay takes two forms. The first is daily delay. As of December 2014, there were 11,370 misdemeanor cases pending in Bronx Criminal Court.<sup>10</sup> Each day there are approximately, five all-purpose parts open, as well as the Domestic Violence Part, Misdemeanor Standards and Goals Part, and VTL/Quality of Life Part.<sup>11</sup> In 2013, the Annual Report of the City of New York reported that each misdemeanor court part had a mean of 80 cases calendared each day.<sup>12</sup> Every client is told to come at the same time – 9:30 am. The result is a daily backlog of lawyers and clients waiting to get their cases called. Based on some time calculations this past Friday, I estimate that each two minute court appearance requires approximately 50 minutes of idle wait time.

A typical attorney will have on average five cases on in a given day, which means that lawyers are spending on average four hours a day waiting to have their clients’ cases called in court. That is four hours of motions that are not getting written, investigation requests that are not getting done, social work referrals that are not getting made, client meetings that are not taking place, negotiations with prosecutors that are not happening, and trials that are not getting

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<sup>10</sup> New York State Unified Court System, NYC Criminal Court, “Bronx County Misdemeanor Activity Report 2014 - Term 12,” Dec. 16, 2014.

<sup>11</sup> Lindsay, “Pre-Trial All-Purpose Parts”, 37.

<sup>12</sup> Lindsay, “Number of Cases Calendared Per Day in AP Parts”, 40.

prepared. Being a good public defender, even by traditional metrics, requires time. But the courthouse congestion and delay is sucking up that time and leaving little for being the kind of lawyers that we want to be and that our clients deserve.

The second form of delay is pending case length. As the case of John Carridice illustrates, numerous clients who are trying to fight their case are forced to return to court for years and years, only to find that there are no trial parts available. According the Criminal Court of the City of New York Annual Report, the mean time it took for a case to be resolved in an All Purpose Part was 127.6 days. In the Bronx, that number was 186.9 days.<sup>13</sup> For cases that were resolved by bench trials in the Bronx, it took 512.3 days and for jury trials 732.9 days.<sup>14</sup> Given how long it takes to get a trial, it is perhaps not surprising that of the 14,574 misdemeanors, violations, and infractions pending in Bronx Criminal Court,<sup>15</sup> only 40 cases went to trial. Fifty-five percent of those trials resulted in full acquittals.<sup>16</sup> As of December 2014, there were 1,437 misdemeanor cases in Bronx Criminal Court that had been pending for over a year and 345 misdemeanor cases pending for over two years.<sup>17</sup> Of course, every year many hundreds, if not thousands, of clients with viable defenses and constitutional issues never have their day in court. Most clients simply and understandably lose their resolve after two or three seemingly futile court appearances and opt to resolve their cases through a negotiated disposition. To wait for your day in court in the Bronx takes emotional and financial resources that few of our clients have to spare on the criminal justice system.

Waiting for your client's day in court also takes resources that few public defender officers have to spare. Caseload reduction legislation and the funding it provided has had a significant impact in bringing down pending caseloads. However, court congestion and delay are factors that undermine those legislative goals. The longer a case pends in court, the longer it stays on a lawyer's docket. When delay is as ubiquitous a problem as it is in the Bronx, the result is that lawyers handle fewer clients over the course of the year but their pending caseload remains unacceptably high. Delay not only leads to higher pending caseloads but as clients are required

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<sup>13</sup> Lindsay, "Mean Disposition Age of Dockets Surviving Arraignments and Disposed in AP Parts (Days)", 38.

<sup>14</sup> Lindsay, "Bench Trial Verdicts Mean Age at Disposition (days)" and "Jury Trial Verdicts Mean Age at Disposition (days)", 50.

<sup>15</sup> Lindsay, "Dockets Pending on December 31 (Snapshot of Pending Cases)", 15.

<sup>16</sup> Lindsay, "Trial Verdicts", 49. This data refers to jury trials alone.

<sup>17</sup> New York State Unified Court System, NYC Criminal Court, "Bronx County Misdemeanor Activity Report 2014 - Term 12," Dec. 16, 2014.

to go back and forth to court every six to eight weeks for a court appearance, so are their lawyers. Given the problem of daily delay, it is not surprising that after a day spent appearing on cases where nothing happens, lawyers have little time left to spend on substantive work.

While court congestion and delay are not metrics that can be used to evaluate the effectiveness of indigent defense, they are metrics that must be examined nonetheless. Attorneys simply cannot be effective in a broken system. While the impact of the court system on our work is something any criminal defense attorney is keenly aware of, for the first time, the administration has taken note of it too. In the last few months, we have experienced unprecedented collaboration with the Mayor's Office for Criminal Justice on this very issue. We are pleased that the administration takes the pernicious effect of court congestion and delay seriously and we look forward to working side by side with the Mayor's Office to help identify and implement some solutions to the problem.

*Recommendations for Evaluating the Effectiveness of the Court System and its Impact on the Delivery of Effective Indigent Defense Services*

- Decrease the Volume
  - The primary problem is the sheer volume of cases in the system every year. With over 300,000 misdemeanor cases every year, delay is, to some extent, inevitable and due process hard to come by. The City should do everything within its power to bring down the number of quality-of-life arrests.
- Hearings on Consent
  - Motion practice in both misdemeanor and felony cases is largely perfunctory. Adjournments for motion practice represent a tremendous waste of time and resources, as hearings are granted in virtually every case. The City should encourage all District Attorneys to consent to pre-trial suppression hearings, a practice the Brooklyn D.A. has already adopted.
- Decrease the Length of Adjournments for Trial
  - Because of complacency and congestion, the time between court dates is rarely less than four weeks and often exceeds eight weeks. The judiciary should be encouraged to shorten the length of adjournments when cases are in a trial-ready posture.

- Increase Capacity for Misdemeanor Jury Trials
  - There were only 209 jury trials in NYC Criminal Courts in all of 2013. The mean age for jury trial dispositions is just shy of 600 days (over 730 in the Bronx). The City should drastically increase the courts' capacity to conduct misdemeanor jury trials.
- Excusing Clients
  - Because of court congestion and delay, the vast majority of appearances in misdemeanor cases are perfunctory adjournments. Clients, however, are still required to be in court, often spending many hours waiting for their cases to be called. The courts should adopt a policy of excusing clients from court appearances after their first post-arraignment court date and make the automated court-date reminder system more robust.
- Prompt Discovery
  - Often, discovery in both misdemeanor and felony cases is not turned over by prosecutors until very late in the proceedings. District Attorneys should be encouraged to adopt early open-file discovery so that lawyers and clients can assess the strength of the case early and reach quicker dispositions.
- Charge-Specific Changes
  - VTL § 511 Cases Should Be Heard in the DMV
    - The Criminal Courts effectively function as collection agencies for the DMV in VTL § 511 cases. Cases are adjourned for months while clients pay off traffic tickets with no real expectation by defendants, prosecutors, or judges that the cases will ever actually go to trial. The City should either divert the majority of these cases to the DMV or set up DMV satellite offices in the Criminal Courts so that clients can work out payment plans on-site in a single transaction.
  - Immigration-Safe Plea Policies
    - Cases of non-citizen clients often linger in the system for extended periods of time until the District Attorney makes an immigration-safe offer. The City's District Attorneys should adopt uniform policies that allow for the quick disposition of cases involving non-citizens.



- Technological Solutions
  - Electronic Filing of Motions/Decisions
    - Litigation of motions and other pre-trial legal issues is largely done in an ad hoc fashion on the record during court appearances. Cases are regularly adjourned unnecessarily because crowded court calendars do not allow for thoughtful consideration of legal issues. The Criminal Courts should move toward an electronic filing system so that legal issues can be litigated off-calendar in advance of court appearances, so that parties can be better prepared for scheduled court dates.
  - Real-Time Stats in All Purpose Parts (like Arraignments)
    - The All Purpose parts should be equipped with real-time electronic case tracking (time the judge took the bench, order of cases to be called, etc.). Tracking would encourage accountability from the judiciary and would allow attorneys to make better use of their time.
- Support for § 30.30/Speedy Trial Reform
  - As it has been interpreted by the courts, New York's speedy trial statute, CPL § 30.30, does not provide an effective mechanism for trial court judges to manage their calendars or to force prosecutors to bring cases to trial. The City should support comprehensive speedy trial reform at the state level.