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## Settlement Begins Historic Reformation of Public Defense in New York State

**October 21, 2014** — The New York Civil Liberties Union and the law firm of Schulte Roth & Zabel LLP today announced a historic settlement that overhauls public defense in five counties and lays the foundation for statewide reform of New York’s broken public defense system. By entering into the agreement, the state is taking responsibility for providing public defense for the first time in the more than 50 years since the Supreme Court held that it is a state obligation.

“Today’s agreement is a victory for equal justice more than 50 years in the making,” said New York Civil Liberties Union Executive Director Donna Lieberman. “For the first time, New York State is acknowledging its constitutional responsibility to provide lawyers to poor defendants who have been forced to navigate the criminal justice system undefended and alone. With New York’s public defense system in the national spotlight, the state has entered this agreement and shown it will no longer stand by while innocent people lose their families, homes and jobs because they’re too poor to hire private lawyers. More than 50 years after the Supreme Court called the right to public defense an ‘obvious truth,’ today our state begins making it an ‘actual truth.’”

“For far too long and for far too many New Yorkers, the constitutional right to counsel has been an empty promise. With today’s settlement, the State of New York finally commits to turn that right into a reality,” said former federal prosecutor Gary Stein, the Schulte Roth & Zabel litigation partner in charge of the firm’s pro bono effort in the case. “Poor people will no longer have to stand before a court without a lawyer while critical decisions are made affecting their lives and liberty. Public defenders will now be given the time and the tools they so desperately need. This is an enormous victory not just for our tens of thousands of clients, but for all who care about fair and evenhanded criminal justice.”

The settlement agreement was reached the day before the NYCLU and Schulte Roth & Zabel’s lawsuit, *Hurrell-Harring v. New York*, was set to begin trial after seven years of litigation. The lawsuit charged that New York State’s decision to abdicate responsibility for public defense to its counties resulted in a patchwork of often understaffed, poorly resourced and largely dysfunctional public defense systems where defendants were routinely arraigned without attorneys, urged to take plea bargains regardless of the facts of their cases, burdened by excessively high bail, and incarcerated for shockingly long periods for misdemeanors and petty crimes. The suit contended that by failing to provide poor defendants with adequate representation, New York State was violating the U.S. Constitution, the state constitution and the laws of New York.

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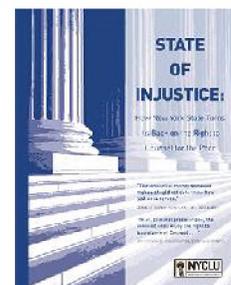
The Settlement (1.55 MB)

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Under the agreement, the state will adopt major reforms focusing on five New York counties – Ontario, Onondaga (Syracuse), Schuyler, Suffolk and Washington – that were chosen because their public defense systems are all different and cover communities large and small, but are all emblems of New York’s flawed approach. The agreement, which will last 7½ years and is subject to court approval, contains the following major provisions:

- Ensures that every poor criminal defendant will have a lawyer at the first court appearance, where bail often is set and pleas taken;
- Requires New York to hire sufficient lawyers, investigators and support staff to ensure that all poor criminal defendants have lawyers with the time and support necessary to vigorously represent the defendant;
- Provides for the setting of caseload standards that will substantially limit the number of cases any lawyer can carry, thereby ensuring that poor criminal defendants get a real defense;
- Requires New York to spend \$4 million over the next two years to increase attorney communications with poor criminal defendants, promote the use of investigators and experts, and improve the qualifications, training and supervision of lawyers representing indigent defendants;
- Mandates the creation of eligibility standards for representation, thus allowing more New Yorkers to access public defense services;
- Strengthens the Office of Indigent Legal Services as a state-level oversight entity tasked with ensuring the constitutional provision of public defense services and commits New York to provide the office with the resources it needs to develop plans and implement and monitor reforms mandated by the settlement; and
- Provides that the plaintiffs will receive detailed reports allowing them to monitor compliance with the agreement and, if necessary, return to court to enforce it.

*Hurrell-Harring v. New York* would have been the first time any state stood trial for its public defense failures, calling attention to a nationwide criminal justice crisis where poor, or indigent, defendants are too often effectively denied the right to counsel, creating a two-tiered system of justice. In one of his last public acts before announcing his resignation, Attorney General Eric Holder submitted a statement of interest supporting the *Hurrell-Harring* lawsuit, the first ever U.S. Department of Justice show of support in a state court proceeding on public defense. The filing suggests that states must be held accountable if they fail to provide adequate legal services to poor people accused of crimes. Since then, the eyes of the nation have been on New York.

“New York State has recognized not only that a lack of resources and high caseloads make it impossible for public defense attorneys to represent their clients, but also that a functioning public defense system must pay attention to the quality of representation provided to the poor,” said NYCLU Senior Staff Attorney Corey Stoughton, lead counsel on the case. “This agreement is a template by which New York can establish equal justice for all in every single county and should serve as a model for the rest of the country.”

“This settlement marks what we hope and expect to be the beginning of sweeping reforms of New York’s broken public defense system,” said NYCLU Associate Legal Director Christopher Dunn. “For far too long, poor criminal defendants in New York have been railroaded by a public defense system that did little more than process guilty pleas and ruin lives.”

In addition to Stoughton and Dunn, NYCLU staff who have worked on the case include Arthur Eisenberg, Mariko Hirose, Erin Harrist, Philip Desgranges, Barrie Gewanter, Dana Wolfe, Noah Breslau, Malita Picasso, Alexis Karteron, Rebecca Engel, Taylor Pendergrass, Deborah Berkman, Daniel Freeman, Palyn Hung, Jeffrey Fogel, Susannah Karlsson, Brooke Menschel and Demetrius Thomas.

The Schulte Roth & Zabel LLP team, led by Stein, special counsel for pro bono initiatives Daniel L. Greenberg and senior litigation associate Kristie M. Blase, has also included attorneys Jason Mitchell, Nancy Durand, Matthew Schmidt, Jared Wong, Daniel Cohen, Amanda Jawad, Noah Gillespie and Peter Shadzik, as well as Evan Melluzzo, Catherine Kim, Christian Purcell and Mahlik Richard. In all, the team has comprised dozens of the firm’s lawyers and staff from every practice area over the past seven years.

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