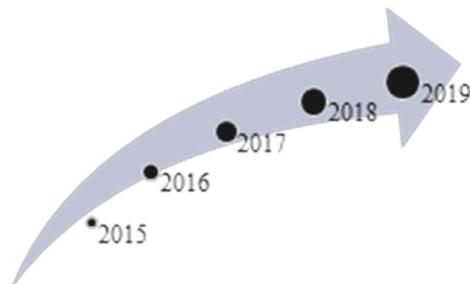




Implementing Hurrell-Harring Caseload Relief: Building Lasting Infrastructures That Enable Quality Public Defense



**Indigent
Legal Services**

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INTRODUCTION

On December 8, 2016, the Office of Indigent Legal Services (“ILS”) submitted *A Determination of Caseload Standards Pursuant to § IV of the Hurrell-Harring v. The State of New York Settlement* (“Caseload Standards Report” or “December 8, 2016 Report”) to the *Hurrell-Harring Settlement* parties.¹ The December 8, 2016 Report sets forth new caseload standards for seven categories of criminal cases which are binding on all providers of mandated criminal representation in Onondaga, Ontario, Schuyler, Suffolk, and Washington counties (“five counties”). Applicable to both institutional defenders and assigned private counsel, the new caseload standards represent a significant reduction from previously relied on standards, such as the 1973 NAC standards,² and are delineated both as average maximum number of cases per annum and average minimum hours to be spent on each case type.

To determine appropriate caseload standards, ILS took a two-pronged approach. First, ILS contracted with the RAND Corporation to conduct a three-phase caseload study in the five counties.³ This study consisted of: time tracking for eight weeks by attorneys providing mandated representation, a time sufficiency survey administered to those attorneys, and a Delphi panel. Second, at the conclusion of the study and in accordance with § IV(B)(1) of the Settlement, ILS consulted with the Settlement parties, government officials and providers of mandated representation in the five counties, and the Office of Court Administration (“OCA”).⁴ The culmination of these efforts resulted in caseload standards intended to give public criminal defense attorneys the ability to spend the amount of time on cases needed to provide quality representation.

The December 8, 2016 Report also detailed two essential requirements to successfully implement the new caseload standards: 1) the estimated financial resources, and 2) the practical timeline necessary to meaningfully reduce provider criminal caseloads while building sound foundational structures to support attorney casework.⁵ In April 2017, the State budget included

¹ This report was submitted in compliance with the *Hurrell-Harring v. State of New York Settlement* (“Settlement”) and subsequent amendments extending the deadline for ILS to produce caseload standards to December 8, 2016. Original Settlement agreement available at: <https://www.ils.ny.gov/files/Hurrell-Harring%20Final%20Settlement%20102114.pdf>; Caseload Standards Report available at: <https://www.ils.ny.gov/files/Hurrell-Harring/Caseload%20Reduction/Caseload%20Standards%20Report%20Final%20120816.pdf>. The Caseload Standards Report was distributed publicly on May 8, 2017.

² Caseload Standards Report, p. 2-3, supra n. 1 (describing NAC Standards of 400 non-traffic misdemeanors, 150 felonies, 25 appeals, 200 juvenile cases, and 200 mental health cases).

³ See Second Amendment to the *Hurrell-Harring Settlement*, § IV(B)(4) (authorizing ILS to retain a third-party expert to assist in determining caseload standards).

⁴ For a more detailed description of this process see Caseload Standards Report, supra n. 1.

⁵ The Settlement currently sets September 2017 as the deadline for the five counties to comply with the caseload standards. This deadline was set under the assumption that ILS would determine caseload standards by December 2015. However, as noted supra in n. 1, the deadline to set caseload standards was extended to December 2016 pursuant to a Settlement amendment to allow the determination of caseload standards to be informed by a caseload study. Thus, the September 2017 deadline for complying with the caseload standards was no longer practical.

the first prerequisite: \$19,010,000 in State funding devoted to Caseload Relief in the five *Hurrell-Harring* counties. In October 2017, the parties entered into discussions about extending the Settlement’s deadline for compliance with the caseload standards. In late November 2017, the parties reached an oral agreement to extend the deadline to April 30, 2019 and in doing so recognized the second prerequisite to successful implementation: a practical timeline in which to build the infrastructure necessary for the provision of high-quality representation.⁶

In the interim, ILS has worked with the providers to develop plans for hiring staff, securing adequate office space, and developing programs, policies and protocols for use of supportive resources. The parties agreed to specific benchmarks for each provider to implement these plans. For institutional providers, the benchmarks generally set time frames for hiring new staff. For assigned counsel providers, the benchmarks generally set time frames for establishing protocols for panel attorney access to and utilization of supports, including mentors, second chairs, non-attorney professionals, and training.

As set forth in the December 8, 2016 Report, professional standards require defense attorneys to engage in a variety of tasks in every case, even cases that are likely to be resolved by way of a plea. These tasks include, but are not limited to, the following: effectively communicate with the client; learn of the client’s background and personal circumstances; advocate for pre-trial release; investigate the facts of the case; know the law and engage in legal research where there are gaps in knowledge; determine the need for non-attorney professional supports and expert assistance, and obtain the needed support and assistance; develop a theory of the case and of sentencing; preserve the client’s legal options; research, write, and file appropriate motions; identify and advise the client on the collateral consequences of a conviction and consider using the existence of such consequences during plea negotiations; where warranted, prepare for trial; in the event of a conviction, whether by trial or guilty plea, prepare for sentencing, effectuate the client’s right to appeal and, upon request, request the assignment of appellate counsel.⁷ With inadequate County funding, however, public criminal defense attorneys were too often forced to “triage” cases and engage in short-cuts, leaving many essential tasks undone.⁸ This has led to wrongful convictions, over-punishment, fundamental unfairness, and the perpetuation of racial disparities in our criminal justice system.

⁶ As of the writing of this report, a written amendment to the Settlement to memorialize this oral agreement has been agreed to by the parties, but has not yet been finalized.

⁷ This list is derived from a review of the following professional standards: New York State Bar Association, Committee to Ensure Quality Mandated Representation, *2015 Revised Standards for Providing Mandated Representation* (2015); American Bar Association (ABA) Standards of Criminal Justice: Defense Function (4th ed., 2015); National Legal Aid and Defender Association, *Performance Guidelines for Criminal Defense Representation* (2006); and International Legal Foundation, *Measuring Justice: Defining and Evaluating Quality for Criminal Legal Aid Providers* (Nov. 2016).

⁸ As one public defense expert has stated: “Public defenders thus faced with grossly excessive caseloads would then triage these resources, pushing more (though still insufficient) resources to their most serious cases, and providing little more than the illusion of a lawyer for most of their remaining clients with less serious charges, especially those charged with misdemeanors.” Stephen F. Hanlon, *The Gideon Decision: Constitutional Mandate or Empty Promise? A Fifty-Year Deal Under Fire*, 52 U. LOUISVILLE L. REV. ONLINE, 32 (2013).

To ensure that attorneys are devoting the time needed to provide quality representation, as required by ILS's caseload standards, the current culture must shift from one of triaging cases to one of investigating and litigating cases. This is a significant culture shift that can only occur with sufficient funding, strong leadership, and the ongoing support and training of attorneys. The implementation of the Settlement's Caseload Relief funding reflects the needed support and training in different ways for the different types of providers. For institutional providers, the Caseload Relief funds ensure that there are adequate resources for training and bolstering the existing infrastructure to ensure that there is sufficient supervision of staff attorneys and support staff. For assigned counsel programs, Caseload Relief implementation employs several strategies to train and support panel attorneys, including: legal knowledge and skills training; mentor and resource attorney programs; and second chair programs.

This new infusion of funding represents a significant increase from the inadequate budgets under which the *Hurrell-Harring* providers have been accustomed to operating. Each provider has had to navigate their County approval process for both monetary appropriations and hiring. Further, hiring qualified staff, identifying and expanding to new office space, and increasing attorney use of non-attorney supports necessarily requires a significant investment of time and effort. While the new Caseload Relief funding has offered the chance to reduce caseloads, restructure, and improve their ability to represent clients, no provider (or County for that matter) wanted to get it wrong by rushing their plan. Instead, each *Hurrell-Harring* provider thoughtfully developed and implemented plans that use the Caseload Relief funding to reduce caseloads while simultaneously improving the quality of representation.

As of April 30, 2019, all *Hurrell-Harring* providers met ILS caseload standards. The following report describes their efforts to build lasting infrastructures, challenges they have faced, and initial successes.

ONONDAGA COUNTY

Onondaga County Hiscock Legal Aid Society

Prior to 2004, the Hiscock Legal Aid Society ("Hiscock") was the primary provider of mandated representation in Syracuse City Court cases and in appeals and parole revocation proceedings. The Onondaga County Bar Association Assigned Counsel Program ("Onondaga ACP" or "ACP") served as the primary provider for felony and town and village court cases.

In mid-2003, the New York State legislature raised the assigned counsel rates of compensation from \$25 per hour for out-of-court time and \$40 per hour for in-court time, to \$60 per hour for misdemeanor cases and \$75 per hour for felony cases, with these new rates to go into effect on January 1, 2004. Faced with increased costs of mandated representation, Onondaga County began to explore different methods for delivering mandated services. The County obtained proposals from both Hiscock and the Onondaga ACP. The latter proposed transferring the responsibility for Syracuse City Court representation from Hiscock to the ACP as a cost-savings measure. The County accepted the ACP's proposal and decided that, starting in 2004, the ACP

would be the primary provider for all mandated representation services in criminal trial level-cases.

Onondaga County's 2003 decision to deal with its limited budget by selecting the least costly provider of mandated services had two implications for Hiscock. First, Hiscock lost the contract to provide representation in Syracuse City Court but maintained its contract to provide representation in parole revocation proceedings and in appeals. Second, this decision signaled that Hiscock would face on-going challenges in obtaining sufficient funding from the County for its mandated services resulting in consistently high attorney caseloads and limited access to non-attorney supports.

The funding challenges were evident in 2015, when ILS met with the County to discuss and develop a plan for spending the *Hurrell-Harring* Settlement's Quality Improvement funding. At that time, Hiscock's Appeals Program was staffed with five attorneys and two support staff, all of whom handled some Family Court cases in addition to criminal appeals. The program had a significant backlog of appeals, which resulted in clients often waiting for up to two and a half years before an attorney was available to begin working on their appeal. During structured interviews with ILS staff in mid-2017, the Appeals Program attorneys identified the appeals backlog as a barrier to full compliance with the ILS caseload standards (as measured by the average amount of time they spend in their appeal cases). They acknowledged that because of this backlog, they complete their appeals as quickly as possible to reduce the time other clients must wait for an attorney to start working on their case. Thus, for example, attorneys found it difficult to justify conducting in-person visits with their imprisoned clients knowing that such visits will result in a longer wait for their other clients.⁹

At the same time, Hiscock's Parole Revocation Defense Program was staffed with two attorneys and a part-time support staff. Notably, while the Appeals Program had a supervising attorney, the Parole Revocation Defense Program did not. To further aggravate the impact of a limited staff, in early 2016, Hiscock lost funding from the New York State Division of Criminal Justice Services ("DCJS"), which provided invaluable non-attorney support through a contract with the Center for Community Alternatives ("CCA") for assistance in identifying clients' treatment needs and connecting them to treatment. When funded, this service resulted in many of the Parole Revocation Defense Program's clients receiving community-based treatment instead of having their parole revoked and being sent back to prison.

The Hiscock Legal Aid Society (Hiscock) used Caseload Relief funding as an opportunity to both hire new staff and restructure its existing Criminal Practice. As a result, as of April 2019, there were 12 full-time attorneys who were assigned to parole revocation, post-disposition, and criminal appeal cases, including Managing Attorney Piotr Banasiak, and Supervising Attorneys Craig Schlanger (Parole Revocation) and Philip Rothschild (Criminal Appeals).

⁹ Note that the ILS "Appellate Standards and Best Practices" set forth in-person visits with clients as a standard and best practice. See Standard IX (noting that after reading the trial brief, appellate counsel should have at least one in-person meeting with the client, even if incarcerated, unless doing so "is not reasonably feasible" or "would not be in the client's best interest"). These standards are available at: <https://www.ils.ny.gov/files/Appellate%20Standards%20Final%20010515.pdf>.

The initiatives discussed below have led to Hiscock's successful implementation of caseload standards as well as improving attorneys' ability to provide quality representation on appeals and parole revocation cases.

- ☑ **New staffing** – Hiscock added a new social worker in May 2018 to support the criminal practice's work and elevated a staff attorney to the role of Managing Attorney of Criminal Programs to provide quality oversight of both the Appeals and Parole Revocation Defense Programs.
- ☑ **Appeals Backlog** – The Settlement's Quality Improvement measures provided funding for two additional appeals attorneys, but the addition of those attorneys only ensured that they had enough attorneys to handle the number of new appeals assignments. There were still too many clients waiting for attorneys to start work on their appeals. With Caseload Relief funds, Hiscock created the Appeals Caseload Reduction Project: a three-year project to be overseen by the new Managing Attorney of Criminal Programs. They hired an attorney in May 2018 and a legal assistant to assist in preparing the appeals in June 2018. They also recruited twelve attorneys to accept appeals on a contractual basis; their work is coordinated and supervised by Project staff. During that time, the Hiscock conducted preparatory work on dozens of appeals to make sure files were complete before assigning them to contract attorneys. In August 2018, Hiscock began assigning appeals to the contract attorneys.
- ☑ **Parole Revocation** – While *Hurrell-Harring* Quality Improvement funds provided Hiscock with sufficient staffing to comply with Caseload Standards for the anticipated number of new appeals case assignments, Hiscock did not have sufficient staffing to comply with Caseload Standards for the anticipated number of new parole revocation case assignments. Hiscock decided to shift staffing patterns based on caseload needs, dedicating approximately 25% of an appeals attorney's time to providing representation on "parole overflow" cases. Hiscock needed to monitor the number of new parole revocation assignments and assign cases in excess of caseload standards to the attorney handling the "parole overflow." Hiscock began this new system in June 2018. One of their newer appellate attorneys volunteered to handle the "parole overflow" cases, excited by the opportunity to learn a new area of criminal law. Craig Schlanger, the Parole Revocation Defense Program's supervising attorney, trained her and oversees her parole revocation work.

Challenges...

Hiscock's Appeals Program continues to address the backlog issue and faces the challenge of recruiting and retaining contract attorneys to handle backlog cases. With approximately 17 contract attorneys handling backlog cases, Hiscock's Managing Attorney, Piotr Banasiak, has had to allocate significant time to supervising their work. Despite the challenges, Hiscock is working diligently to eliminate the backlog within a three-year period.

Results...

These changes are already showing improvement. Hiscock attorneys are meeting with their parole revocation clients regularly and, shortly after the new supervisor was hired, the frequency of consulting with other attorneys on their cases (“advice seeking”) increased. Hiscock also reports that reduced caseloads as well as the addition of both a supervisor and a full-time social worker have enhanced the level of practice in the Parole Revocation Defense Program. The social worker regularly visits clients at Jamesville Correctional Facility. She performs an assessment of treatment needs and helps attorneys advocate for better dispositions that involve treatment instead of additional prison time. The attorneys are also conducting more preliminary hearings and creatively litigating on behalf of their clients facing parole revocations. Moreover, prior to Caseload Relief implementation, contact with attorneys from the ACP representing parole revocation clients on new criminal charges was limited. Now, they have opened the lines of communication, and Mr. Schlanger reports more frequent contact with ACP attorneys on their shared clients.

Onondaga County Assigned Counsel Program

For years prior to *Hurrell-Harring* implementation, the Onondaga County Bar Association Assigned Counsel Program refused to monitor attorney workloads and actively discouraged attorneys from spending time and resources on cases. The ACP’s 2003 proposal to the County for delivering mandated representation is perhaps the most significant starting point for understanding why.

The ACP developed its proposal after being told by the County that the program’s projections for the costs associated with the enhanced hourly rates for assigned attorneys was too high.¹⁰ Thus, the proposal was “designed to substantially reduce program expenses....”¹¹ To do so, the ACP proposed the following: transfer the responsibility for Syracuse City Court representation from Hiscock Legal Aid Society to the ACP; diminish the number of people deemed eligible for assigned counsel by making it more difficult to apply; limit the services for which panel attorneys could bill; limit attorney access to non-attorney professional services; and limit the ACP’s infrastructure, and thus capacity to support quality representation and monitor attorney caseloads. The proposal touted the program’s “minimal administrative overhead costs,” which left the program with a skeletal staffing pattern that included the Executive Director and five clerical staff members. There was no training program and no process or staff person designated to support panel attorneys or to respond to questions and concerns from clients, attorneys, and judges.¹²

¹⁰ As previously stated, in 2004 the hourly rates for assigned counsel attorneys were increased to \$60 per hour for misdemeanor cases and \$75 per hour for felony cases. The ACP had projected that the statutory increase in attorney compensation rates would cost the County approximately \$3.3 million per year. See *Proposal for Retention of the Onondaga County Bar Association Inc., as the Indigent Defense Provider for Onondaga County*, at 2. This proposal was submitted by the ACP on August 13, 2003.

¹¹ 2003 ACP proposal at 2.

¹² *Id.* at 2.

Though acknowledging that “objective quality of representation must be a paramount consideration in selecting a program and provider,” the ACP’s 2003 proposal failed to identify any steps the program would take to support panel attorneys in delivering quality representation. Indeed, the ACP acknowledged that “[a]ccountability [with an ACP] is weaker than with an institutional provider.”¹³

The ACP’s 2003 proposal also noted that in Onondaga County, judges “are very protective of their local system of justice, and some judges would view changes, including the assignment of a public defender, legal aid attorney, or contract attorney to their court without prior consultation, as an unacceptable infringement of their judicial authority.”¹⁴ With this, the ACP endorsed the practice of judges assigning cases to a list of attorneys the judges select without any input from the ACP on attorney workloads or abilities. This practice is known as the “core system” and the judges’ preferred attorney lists are known as the “core lists” or “cores.” The ACP’s acquiescence to a core system uninformed by attorney workloads or qualifications reflected the then Executive Director’s resistance to overseeing panel attorney work. Indeed, she once explained to ILS staff that she preferred having judges assign cases because then she was not responsible for handling complaints from attorneys about getting too many or too few case assignments. Under her tenure as ACP Executive Director, the core system of case assignments became deeply entrenched.

The County’s decision to accept the proposal that the ACP replace Hiscock as the primary provider in Syracuse City Court had a deleterious impact on the ACP panel. As the Syracuse City Court primary provider, Hiscock took seriously its responsibility to supervise and train staff attorneys. Some of these attorneys eventually left Hiscock and joined the ACP panel so they could take a broader array of cases, including felonies. They brought to the ACP experience and exposure to quality representation. However, when Hiscock lost the contract for City Court representation, the County simultaneously lost its primary resource for trained, experienced attorneys. Because the County no longer had an institutional criminal defense provider, recent law school graduates who wanted a career in criminal defense were required to either search for work with institutional providers in other jurisdictions or join the Onondaga ACP panel. Thus, there were many attorneys who joined the ACP panel straight out of law school with no meaningful criminal defense training or experience.

Kathleen Dougherty took over as the new ACP Executive Director in early 2017 and found an ACP culture that had been negatively influenced for years by the core system of assignments, the lack of experience and training of new attorneys, and an overworked and underappreciated administrative staff. Ms. Dougherty, with the blessing of the ACP Board and at the urging of the County, immediately began bolstering the ACP staffing pattern using *Hurrell-Harring* Settlement funding. She quickly filled these critical leadership positions: Deputy Director; Quality Improvement Director; and Chief Financial Officer. She also realized that staff salaries were too low to maintain quality people and right-sized the salary structure of her staff. This has boosted the morale of ACP staff members and has facilitated a shift in the ACP office culture so

¹³ *Id.* at 3.

¹⁴ *Id.* at 4.

that staff members now promptly respond to attorney, client, and judicial concerns. As of April 2019, the ACP’s staffing structure is as follows:

Executive Leadership

Executive Director
Deputy Director
Quality Enhancement Director
Chief Financial Officer
Juvenile Justice Coordinator

Support Staff

Executive Assistant
Quality Enhancement Associate
Receptionist/Office Assistant
Data Entry Specialists/Client Assistants (4)
CAP Clerks (4)

Middle Management

Eligibility Manager
Operations Manager
Claims Manager

Specialized Services

CAP Coordinator
Mitigation Supervisor
IT Specialist

With critical leadership and a quality staff in place, the ACP Caseload Relief funding was used to create the following infrastructure:

- ☑ **Centralized Arraignment Part Staffing** – The ACP staffs the Onondaga County Centralized Arraignment Part (CAP), which began on December 17, 2017, with two arraignment attorneys and a clerk. The clerk maintains the court lists for all Syracuse City Court and town and village court justices and assists in assigning attorneys to defendants who are arraigned. The clerk also has information on caseloads for each attorney and will not assign attorneys when doing so would put them on pace to exceed the caseload standards. This method still gives judges some control over the assignment of cases (by using attorney lists created in consultation with judges), but also ensures that attorneys are assigned in compliance with the caseload standards.¹⁵
- ☑ **Caseload Monitoring** – The ACP developed a point system based on the weighted caseload categories. For example, a misdemeanor is one point, while a violent felony is six. The ACP updated its database to implement this weighted case system in September 2017.¹⁶ The ACP also assessed the relative caseloads for each court, and using this information, developed a point system to determine the appropriate number and types of “cores” attorneys can be on and still comply with the caseload standards.
- ☑ **Recertification** – In Spring 2018, the ACP began its first ever recertification of panel attorneys. The goal was to get to know each panel member better and “right-size” the panels – i.e., placing attorneys on case-type panels for which they have the qualifications and experience (misdemeanor, felony, violent felony, and homicide panels). The

¹⁵ This assignment method is also consistent with ILS’ *Standards for Establishing and Administering Assigned Counsel Programs* (“ACP Standards”), available at: <https://www.ils.ny.gov/files/ACP/ACP%20Standards%20with%20Commentary%20070119.pdf>. Standard 8.1.e requires ACP Administrators to direct or make attorney assignments to cases which can be achieved when “[a] Program Administrator...select[s] panel attorneys to individual cases or...provide[s] a list of qualified attorneys from which courts may assign counsel on a rotational basis.” See Commentary to Standard 8.1.e.

¹⁶ Notably, this point system is not yet able to take into account the amount of time attorneys spend on non-18B criminal work. Still, it is a starting point for managing attorney caseloads and useful tool for the ACP.

Committee completed its recertification in mid-September 2018. The Professional Standards Committee took steps to address shortcomings in the use of quality measures by stressing the importance of using resources, having a mentor, and establishing better relationships with their clients.

- ☑ **Community Collaboration** – The ACP is now collaborating with multiple community stakeholders including: contracting with the Center for Court Innovation to provide a social worker and case manager, housed at the ACP, to assist ACP clients with social work and case management services; and Hiscock for an appellate consultation project to assist ACP attorneys with new or challenging legal issues they wish to discuss and identify issues for preservation. These alliances not only better serve ACP clients but also establish the Onondaga ACP as a partner in the community.
- ☑ **Mentor Program and Resource Attorneys** – Initiated in mid-2016, the Mentor Program pairs less experienced attorneys with more experienced attorneys who serve as mentors. While the Mentor Program was initially voluntary, the ACP’s updated Handbook now requires utilization of a mentor in certain circumstances. The Mentor Program also includes the Resource Attorney program to support all panel attorneys. Resource attorneys are experienced attorneys, some of whom have specialized knowledge or experience. All panel attorneys may utilize the resource attorneys at any time to discuss a particularly challenging legal or factual issue, challenging client issues, or just to brainstorm about their cases.
- ☑ **Training** – The ACP has developed a multi-faceted training program that includes not only in-house trainings, but also scholarships for attorneys to attend regional, state, and national trainings. For in-house trainings, the ACP has developed a skill-based two-week “Nuts and Bolts” training for attorneys new to the ACP who have little or no prior criminal defense experience. For those already on the panel, the ACP has cultivated relationships with the Onondaga County Bar Association (“OCBA”), the New York State Association of Criminal Defense Lawyers (“NYSACDL”), and NYSDA to co-sponsor CLE programs throughout the year.
- ☑ **Second Chair Program** – The ACP utilizes the second chair program to achieve two goals: first, ensure that clients have quality representation; and second, develop the skills and experience of trial attorneys by working with a more experienced attorney.
- ☑ **Access to Non-Attorney Professionals** – The ACP is working to increase the use of non-attorney professionals by implementing policies requiring or urging attorneys to engage these services and by amending its policies regarding payment of non-attorneys to facilitate utilization of these services.¹⁷

¹⁷ These efforts are detailed in ILS’s report, “Implementing the *Hurrell-Harring v. The State of New York* Settlement: 2017 Update,” (“2017 Update report”), at p. 7-8, available at: <https://www.ils.ny.gov/files/Hurrell-Harring/2017%20Update%20Quality%20and%20Counsel%20at%20Arrestment%20Plans%20FINAL%20103017.pdf>.

Challenges. . .

There are many current panel attorneys who know what quality representation is and how to deliver it. There are also many who desire to learn from and work collaboratively with other attorneys and non-attorney professionals. These panel attorneys appreciate the support and guidance the ACP has been providing since implementation of the *Hurrell-Harring* Settlement. They also serve as role models for other panel attorneys. But the fact remains: achieving consistently high-quality representation and compliance with the caseload standards requires a shift in culture among panel attorneys and the judiciary.

The ACP continues to face challenges in caseload monitoring. The problem is most acute for attorneys whose caseload consists primarily of lower level cases (violations, misdemeanors, and class D felonies). Some attorneys complain that the point value for these cases is too high, which illuminates the reality that, because of decades of inadequate public defense funding, it has become acceptable to “triage” lower level cases. Too many attorneys are not yet fully investigating and litigating these cases. To confront this reality, ILS has urged the ACP to focus its training and supports on improving the quality of representation in violations, misdemeanors, and low-level felonies. The ACP has also urged the judges to not assign cases to the attorneys who were over the caseload limit and to add to their core lists other attorneys who had not accumulated too many points. As anticipated, given how entrenched the core system is, some judges have resisted or rejected the ACP’s guidance about their core lists. The ACP will persist, however, in discussing with judges the many problems that stem from the current core system, including substandard quality of representation and the unfairness inherent in having a small percentage of panel attorneys receive the bulk of case assignments.

Results. . .

Under new leadership, the ACP began engaging in various strategies to urge attorneys and judges to monitor caseloads and comply with the caseload standards and has made considerable strides in a short period. Some of their successes can be seen through the following:

- ☑ **Access to Non-Attorney Professionals** – Since 2015, the use of non-attorney professionals has almost doubled. The enhanced ACP infrastructure allows the ACP to better monitor use of these supports and has also allowed the ACP leadership to actively remind attorneys of their availability through the weekly *ACP Defender* newsletter, regular panel attorney meetings, and affirmative outreach to individual attorneys.
- In one high profile case that involved a shooting and death of a child, an ACP attorney effectively used an investigator to obtain video surveillance showing his client was not at the crime scene at the time of the crime and had been misidentified as the shooter. Because of the investigation results, the client was released from custody. In another case, an attorney’s work with an investigator unearthed exculpatory information for a 15-year-old client charged as a juvenile offender who maintained his innocence. As a result, the felony charges were dismissed.

- Case attorneys had their client’s two-hour videotaped confession transcribed from Spanish to English and discovered their client requested counsel three to four times during the police interview. The judge suppressed all statements made after the initial request for counsel. Based on this experience, the program is entering into a contract with Language Line to allow attorneys to contact interpreters for any language, day or night.
 - Having an in-house mitigation specialist paid off for a young client who was facing 25 years in prison. Though the client was eligible for youthful offender adjudication, the prosecution pushed for adult treatment and a 15-year prison sentence. Because of effective mitigation and sentencing advocacy, the client avoided incarceration and instead received a probation disposition.
 - In a case where a 15-year-old was charged with Robbery in the first degree, the ACP’s partnership with the Center for Community Alternatives (“CCA”) led to thorough mitigation work by CCA. Their efforts gathering information on the client’s background led to a removal to Family Court.
- ☑ **County Initiatives** – The new infrastructure at the Onondaga ACP has allowed its leadership to participate in important County initiatives.
- ACP leaders rotate active involvement in the County’s Raise the Age Implementation Task Force as well as the County collaborations to develop two new diversion courts: Mental Health Court and Opioid Court. Indeed, a member of ACP leadership traveled to Buffalo with Syracuse City Court Judge Rory McMahon to observe Buffalo’s Opioid Court and meet with court personnel.
- ☑ **Second Chair Program** – The ACP told ILS that, “[u]nquestionably [the Second Chair Program] has resulted in higher quality representation and will have a positive long-term effect on ACP’s services to clients.”
- Chuck Keller, who is one of the ACP’s more seasoned defense attorneys, has served as both a lead attorney and second chair. This shows that the ACP is effectively using the Second Chair program for multiple reasons: ensuring that a case is well-resourced, especially in more factually or legally complex cases; providing less experienced attorneys “on- the-job” training; and ensuring that an attorney who may not have the experience and qualifications needed for a case to which he or she has been assigned has the support needed via a more experienced second chair attorney.

ONTARIO COUNTY

When the *Hurrell-Harring* lawsuit was filed in 2007, Ontario County relied solely on an Assigned Counsel Panel to provide mandated representation. However, in 2009 before any settlement was reached, the County took significant steps to improve the delivery of public defense services by creating a Public Defender’s Office. In June 2014, Ontario County reached

an individual settlement (“Ontario Settlement”) with the parties which, in relevant part, required the County to maintain the Public Defender’s Office and create a new Conflict Defender’s Office which would also provide much-needed oversight of the Assigned Counsel Panel.¹⁸

Notably, the 2014 Ontario Settlement also contemplated an overflow system for case assignments, i.e., when the Public Defender’s Office reached enumerated caseload limits, the Conflict Defender would take any additional assignments. Should the Conflict Defender Office reach its caseload limits, any additional assignments would be given to members of the Assigned Counsel Panel. Paragraph 10 of the Ontario Settlement set forth the parameters for caseload/workload limits stating that the caseloads must meet the workload standards detailed in the New York State Bar Association’s 2013 Revised Standards for Providing Mandated Public Defense (“NYSBA Standards”). The NYSBA Standards state in relevant part, “[i]n no event, however, shall the local workload standards exceed the national workload standards established in criminal cases by the National Advisory Commission on Criminal Justice Standards and Goals [“NAC”] (Task Force on Courts, 1973) Standard 13.12, which sets forth the following maximum cases per year: 150 felonies or 400 misdemeanors or 200 mental health matters or 25 appellate assignments.”

When the global Settlement was reached four months later, section IV included the same language regarding caseload/workload limits with one important distinction: ILS was to set new caseload limits, not to exceed the NYSBA/NAC Standards, which would be binding on all five counties. As stated previously, the ILS caseload standards were issued in the December 8, 2016 Report.

Ontario County took significant steps to build its mandated defense programs and comply with caseload standards as described below.

Ontario County Public Defender

In 2011, two years after the County created the Public Defender’s Office (“PD Office”), Leanne Lapp was appointed Public Defender. In 2015, when the global Settlement was approved, the Public Defender’s Office was staffed by Ms. Lapp, her First Assistant, and ten full-time assistant public defenders, one of whom handled a mix of Family Court and criminal cases. They were supported by five support staff members, including two investigators. To implement other Settlement provisions, in 2016, the PD Office hired an attorney to comply with Counsel at Arraignment obligations and elevated an existing staff member to a paralegal position to assist in Quality Improvement initiatives. In 2017, an additional attorney for Counsel at Arraignment representation was hired.

When ILS met with the County to discuss Caseload Relief implementation, Ms. Lapp indicated that her main concerns were supervision and lack of administrative support. She recognized that both her and her First Assistant’s caseloads were too high to allow them to devote sufficient time to attorney supervision and administrative duties while at the same time spending the time necessary on their cases. An analysis of the PD Office’s caseloads from 2015 supported Ms.

¹⁸ See Settlement Agreement Regarding Claims Involving Ontario County, §§ 3, 4.

Lapp’s view. Thus, in developing their Caseload Relief Plan, ILS worked with the County and Ms. Lapp to fully realize the overflow system initially contemplated in the 2014 Ontario Settlement as well as provide additional administrative support.

The County’s Caseload Relief Plan included a two-pronged method to reduce caseloads by transferring cases to the other Ontario County public defense providers. First, the County transferred responsibility for representation of all parole matters to the Conflict Defender’s Office, unless the PD Office is providing representation on an accompanying criminal case. Second, the PD Office committed to monitoring individual attorney caseloads on a periodic basis to systematically refer any cases in excess of ILS standards to the Conflict Defender’s Office.

Additionally, to assist in implementing this new system, ensure accurate data collection, and bolster administrative support, the PD Office use Caseload Relief funds to hire a new Office Specialist in November 2017 with Caseload Relief funds. These steps had their intended effect: both the Public Defender and First Assistant have reduced caseloads and increased the time they have for supervision and community engagement. Additionally, staff attorneys feel more supported and have more time available to fully litigate their cases.

After full Caseload Relief implementation, in April 2019, the PD Office staffing was as follows:

Attorney

- 1 full-time Public Defender
- 1 full-time First Assistant
- 11 full-time Assistant Public Defenders (criminal)
- 1 full-time Assistant Public Defender (family)

Support Staff

- 1 Confidential Secretary
- 1 Paralegal Specialist
- 1 Senior Investigator
- 2 Investigators
- 3 Office Specialists

Challenges...

The 2017 caseload analysis suggested that there would need to be fewer cases than anticipated transferred to the Conflict Defender Office as “overflow” cases. However, 2018 and early 2019 analyses indicated the opposite: caseload overflow from the PD Office to the CD Office was essential to meet and maintain compliance with caseload standards. Thus, it is critical that the PD Office monitor attorney caseloads and implement the “overflow” system as necessary. The development of such a system has been complicated: because the Public Defense Case Management System (“PDCMS”) users lack uniformity in data entry and collection procedures, it has not been possible to create a simple monitoring tool in PDCMS. Instead, ILS has worked with Ms. Lapp to develop strategies to monitor attorney weighted caseloads. One such strategy included using an Excel spreadsheet; the other, counting by hand. Neither system is ideal as both are burdensome and create extra work for her already busy support staff. ILS will continue to work with Ms. Lapp to create a more efficient system of monitoring cases.

Like many providers, as the PD Office’s staff has grown, they have outgrown their office space. To address this problem, the County provided a satellite space in Hopewell as an interim solution. However, the offices are not within walking distance which makes supervision difficult

and isolates staff located at the satellite location. The County is working on a solution to the issue of space but has yet to complete a timeline.

Results...

The Ontario County PD Office has developed policies and protocols that are positively impacting the ways in which clients are represented. Specifically, the office has investigators on staff who are assigned to all violent felony level cases and are readily available upon request in all other types of cases. When a violent felony case is assigned to an attorney, both the attorney and the investigator receive an automated email transmittal through the PD Office's PDCMS notifying them that an investigator has been assigned to the case. In cases in which an investigator is not automatically assigned, the attorney can approach the investigator directly. The Office also has a contract with a part-time sentencing advocate. Having these supports on staff is working well, as information provided to ILS reveals these services were used in a significant number of cases.

For Spanish-speaking clients, PD Office attorneys have easy access to an interpreter in the form of a Spanish speaking administrative staff person whose job responsibilities include assisting attorneys when clients come to the office for meetings.

These policies and protocols are having a positive effect on client communication and use of non-attorney professional supports. Much of this is credited to the leadership of Public Defender Leanne Lapp. For example:

- ☑ **Supervision** – Since taking the helm in 2011, Ms. Lapp's commitment to quality representation has been apparent. At first, she lacked adequate attorney and administrative staffing to allow her and her First Assistant to devote sufficient time to supervision and leadership. Now, they have more manageable caseloads and more administrative support. Not only does this give Ms. Lapp more time for supervision, but she also now can become more engaged with community and County leaders.
- Ms. Lapp and other County leaders and community-based organizations recently collaborated in a bid to obtain a federal Substance Abuse and Mental Health Services Administration (SAMHSA) grant for funding to enhance the screening, case management, support, and post-recovery services that the County's diversion courts provide. As part of this collaboration, Ms. Lapp helped design and write a successful grant proposal. The County is now in the process of implementing the first phase of a total of \$1.89 million dollars over three years to expand these services. Ms. Lapp noted that prior to Settlement implementation she would not have had the time to participate in such a collaboration. Now, her ability to engage at this level not only enhances client services but also elevates the status of the PD Office in the community.
- ☑ **Quality Representation** – Ms. Lapp's staff members report the positive impact of Settlement funding: they have more time, resources, and support.

- Recently, four PD Office attorneys participated in an unpublished study conducted by students at the University of Rochester. The study assessed the time resource needs of the Monroe County Public Defender’s Office, a non-*Hurrell-Harring* Settlement County, as compared to those of the Ontario PD Office, an office approximately two and half years into Settlement implementation. The researchers asked about time management, caseload and case management, access to and usage of resources, and ability to meet their respective office’s expectations. The results were undeniable: in every category Ontario PD Office attorneys reported that increased staffing had an obvious and positive impact on the quality of their representation. They reported feeling that they can dedicate sufficient time to all their clients and that they have access to the necessary resources to provide quality representation. Further, Ontario PD Office attorneys indicated that they felt supported by one another and Ms. Lapp. Attorneys explained that Ms. Lapp’s recently reduced caseload has allowed her to be readily available for consultation and assistance. They credited much of this improvement to Settlement implementation.

- ☑ **Training** – With increased staffing, Ontario PD Office attorneys have also been able to attend more high caliber trainings and have had more opportunities to be exposed to best practices nationally.
 - In 2018, Ms. Lapp sent two attorneys to the National Criminal Defense College in Macon, Georgia, which is a two-week, intensive skills training and is considered one of the best such trainings in the country. The two attorneys came back with new skills and energy to advocate for clients and shared their knowledge of best practices with their colleagues.
 - Attorneys have also attended regional and statewide trainings in New York City (New York State Association of Criminal Defense Attorneys training on suppression), Saratoga (NYSDA’s two-day Annual Conference), and Ithaca (the Schuyler/Tompkins ACP sponsored Fair Bail CLE) thus further enhancing their legal knowledge and skills. Moreover, attendance at these trainings provided attorneys with valuable networking opportunities and the ability to learn from attorneys in other jurisdictions. The benefits of this extend to the regional defense community. For example, an attorney’s prior attendance at a training hosted by the National College for DUI Defense led to an invaluable connection and the PD Office has now hosted a similar training for the last several years that has been attended by defense attorneys from across the region.

- ☑ **Data** – The addition of administrative staff has also had another positive benefit – improved data collection.
 - Collecting and maintaining information on cases and caseloads not only helps with reporting obligations under the Settlement, it also helps Ms. Lapp learn valuable

information to assist her with supervision. Additionally, she is better equipped to monitor attorney caseloads and trigger the overflow mechanism when necessary to ensure that attorneys are never overloaded.

Finally, it is noteworthy that Ms. Lapp could increase her staffing and attract motivated and experienced attorneys because of reasonable caseloads and pay parity with other County agencies, such as the District Attorney’s Office. Attorneys have left private practice or have come from other counties to work at the Ontario PD Office in part because of these factors. The result is a high retention of staff dedicated to quality representation.

Ontario County Conflict Defender

The Ontario County Conflict Defender Office (“CD Office”) began operating in July 2014, one month after the County reached its individual settlement with the plaintiffs. Andrea Schoeneman was appointed Conflict Defender and remained in that role until July 2019. Ms. Schoeneman also simultaneously assumed the role of Assigned Counsel Panel (“ACP”) Administrator. As a result, she divided her time between her duties as Conflict Defender and her duties as ACP Administrator. For two years, the CD Office staff consisted of Ms. Schoeneman and her confidential secretary, Lisa Phillips. In August 2016, the Conflict Defender Office hired a First Assistant, Carrie Bleakley. Shortly after Ms. Bleakley was hired, Ms. Schoeneman sought to reduce her caseload so that she could devote sufficient time to supervision, administration of the Conflict Defender Office, and her other role as ACP Administrator.

When the County developed the Caseload Relief Plan transferring the responsibility of parole cases to the Conflict Defender Office, it was apparent that the office needed to hire a third attorney to cover the increased number of cases and ensure compliance with ILS caseload standards. Additionally, with the influx of cases, there would be more administrative needs. Like Ms. Schoeneman, Ms. Phillips plays a dual role with responsibilities to both the Conflict Defender Office and the Assigned Counsel Panel. Thus, the final Caseload Relief Plan included funding for an additional full-time attorney and a full-time Senior Clerk.

With the Settlement’s Caseload Relief funding, the Conflict Defender Office hired both the attorney and Senior Clerk in September 2017. Thus, after full Caseload Relief implementation, in April 2019 the CD Office staffing was as follows:

Attorney

1 part-time Conflict Defender
(who also serves as ACP Administrator)
1 full-time First Assistant
1 full-time Assistant Conflict Defender

Support Staff

1 Confidential Secretary
1 Senior Clerk

The CD Office also developed and implemented a system to consistently monitor CD Office caseloads and transfer “overflow” cases to the Ontario County Assigned Counsel Panel (Ontario ACP) as needed. Implementation of this system allowed the CD Office to assume responsibility for the additional cases (both parole revocation and PD Office overflow) while simultaneously meeting caseload standards and providing quality representation.

In late July 2019, Ms. Schoeneman retired and the County appointed Ms. Bleakley as the new Conflict Defender and ACP Administrator.¹⁹

Challenges...

In the short time since its inception in 2014, the CD Office has undergone several transitions, many close in time. Within two years, the CD Office added two new attorneys and a support staff position. The office also was given the new responsibility of providing primary representation on most parole revocation cases while simultaneously accepting more “caseload overflow” cases. At the same time, Conflict Defender Andrea Schoeneman continued to play her dual role as Assigned Counsel Program Administrator. These changes significantly enhanced Ms. Schoeneman’s administrative responsibilities. Ms. Schoeneman had to actively monitor CD Office caseloads, monitor conflicts, and, to control CD Office attorney caseloads and guard against conflicts, she had to assign cases to ACP attorneys and oversee that program. Further, as a new office experiencing growth and changes in caseload it has been challenging to develop a system of attorney assignment that ensures cases are evenly distributed and no one attorney is overburdened.

By adding a third attorney and an additional administrative support staff member, the Conflict Defender Office took steps to alleviate Ms. Schoeneman’s workload, enabling her to focus her efforts on her supervisory and administrative responsibilities. Moreover, the addition of an attorney allowed the CD Office to systematically plan for court coverage to lessen the burden on each attorney. Finally, Ms. Schoeneman became very active in periodically monitoring attorney case assignments. She sent cases to the ACP when necessary: either when there was a potential to exceed the caseload standards or when there was a geographic challenge to coverage. Since her appointment as Conflict Defender in July 2019, Ms. Bleakley has assumed these responsibilities.

Notably, as the number of Conflict Defender Office staff increased, it too needed to seek out new office space. The Conflict Defender Office relocated to new office space in September 2017.

Results...

During a period of significant transition, the County’s investment in the CD Office’s infrastructure and resources has proven effective as the program has increased expenditures on the use of non-attorney professional services and attorney attendance at nationally-sponsored trainings. For example:

- Enhanced Access to Non-Attorney Professional Supports** – The CD Office recognizes the need to focus on increasing the use of non-attorney professional supports including investigators, experts, sentencing advocates, and social workers. They have already seen an increased use of investigators on cases.

¹⁹ In October 2019, the County hired a new attorney to backfill the vacant attorney position.

- The CD Office reported to ILS that in 2015, the office did not spend any money on investigator services. In contrast, with increased funding for experts and investigators as part of Caseload Relief implementation, the CD Office reports spending almost \$15,000 on investigator services between July 1, 2017 and June 30, 2018.
- ☑ **Training** – Caseload Relief has also meant additional funds for attorney training and, with reduced caseloads and additional staff, attorneys can now attend professional development trainings without compromising case coverage.
 - In 2018, CD Office attorneys attended a three-day juror selection training hosted by the National Association of Criminal Defense Lawyers (“NACDL”) in New Orleans and the NYSDA Annual Conference. Further, Ms. Bleakley and their new attorney, Ben Gilmour, regularly attend local CLE programs sponsored by the Public Defender Office and other defense providers.
- ☑ **More Collaboration on Cases and Systemic Issues** – Hiring a third attorney under Caseload Relief alleviated Ms. Schoeneman’s and Ms. Bleakley’s caseloads such that they had time to devote to strategizing methods to address systemic issues and better support and oversee the ACP attorneys’ work. CD Office attorneys can now more easily collaborate and brainstorm with panel members.
 - In addition to Ms. Schoeneman’s supervision of the panel, Ms. Bleakley and Mr. Gilmour regularly participate in the ACP monthly panel meetings which include discussion of best practices, brainstorming cases, trainings on issues, and general discussion about case litigation and systemic issues attorneys commonly face. Ms. Bleakley often co-presents on topics at these meetings. For example, at one such meeting she led a training on motion practice with the assistance of ACP mentor attorney, Bob Zimmerman. This type of collaboration results in a stronger CD Office and defense bar.

Ontario County Assigned Counsel Program

As described above, prior to 2009, the County relied solely on an Assigned Counsel Program (“ACP”) to provide public defense representation. However, there was no infrastructure or quality oversight in the program. When Ms. Schoeneman took on the role of Administrator in 2014, she began to assess the panel and brainstorm new initiatives to improve the quality of ACP attorney representation. She drafted a new handbook to guide attorneys on ACP expectations. She also started requiring panel attorneys to visit their incarcerated clients within 24 hours of assignment and she developed a new re-certification process for attorneys to remain on the ACP. Before Ms. Schoeneman took over the role of Administrator, there was no supervision, training, or mentoring available to panel attorneys. Further, ACP attorneys were not utilizing non-attorney professionals such as investigators and experts as often as they should. Ms. Schoeneman identified these as key issues and suggested in early meetings with ILS that the ACP would benefit from an experienced mentor attorney to guide panel attorneys as well as a pool of funds

that would allow attorneys to access non-attorney supports without having to preview their cases in court.

The Settlement's Quality Improvement funding provided the initial foundation for infrastructure development and Ms. Schoeneman identified an experienced, well-respected attorney to act as a Mentor Attorney. The Caseload Relief Plan included funding to contract with this lawyer as Ontario County's first ACP Mentor Attorney.

Additionally, with Quality Improvement funds, ACP attorneys can now apply directly to the ACP to access non-attorney professional supports, rather than having to apply to the court. This change has led to a substantial increase in the use of investigators and experts.

With the foundation of the new ACP infrastructure in place, the County's Caseload Relief Plan continued program development by expanding opportunity and access to resources and training, as well as continue the Mentor Attorney rate increase, as follows:

- ☑ **Training** – Previously the ACP's access to training was ad hoc. Now with Caseload Relief funds, the ACP can sponsor or co-sponsor in-house CLEs as well as provide scholarships for panel attorneys to attend reputable trainings sponsored by other criminal defense organizations. Funding is available for the cost of trainings, travel, and a stipend for attending. This enables panel attorneys who generally depend on hourly work to attend trainings they might have otherwise foregone because of the lost income. The CD Office regularly emails panel attorneys notifications of upcoming trainings, and at monthly meetings attorneys are reminded to take advantage of this resource.
- ☑ **Enhanced access to non-attorney professional supports** – Attorneys are now required to use investigators on all felony and sex offense cases or if communicating with a fact witness on any case, unless the attorney can justify not using one. Attorneys are also strongly encouraged to use investigators on misdemeanors and sentencing or mitigation experts on relevant cases and other experts as needed. The ease and availability of funding for such resources has resulted in a significant increase in the use of investigators and experts.
- ☑ **Mentoring** – The ACP now has funds available to contract with experienced attorneys to act as mentors and support to the panel. Caseload Relief funds increase the Mentor Attorney rate of pay to ensure that they are properly compensated. Their current mentor, Bob Zimmerman, hosts monthly panel meetings and attorneys are encouraged to consult with him on a regular basis. Attorneys are also now required to consult with Mr. Zimmerman on any case in which a trial date is scheduled. Ms. Bleakley monitors attorney use of this resource.

Finally, the Caseload Relief Plan ensures that there is funding to pay attorneys for increased voucher costs, which should be realized over time as attorneys devote more time and resources to their assigned cases.

Challenges...

The Ontario ACP is a small program comprised of mostly older, experienced attorneys. It is also a rural program which has had difficulty attracting new attorneys to join the panel. This is particularly true given its previous history of little structure, oversight, and resources as well as the ACP Plan's preference for in-County attorneys. While the ACP currently has sufficient attorney capacity for new case assignments, the older attorneys will eventually retire or reduce the number of assigned criminal cases they take. Accordingly, Ms. Schoeneman faced the challenge of new attorney recruitment while at the same time elevating expectations and changing the ingrained practice culture of existing panel attorneys. This will be a continual challenge given the demographics and culture of the County, but she had already taken steps to address both issues. First, by adding infrastructure and making it easier to access resources, increasing training opportunities, and simply acting in a supportive role, Ms. Schoeneman created a program in which attorneys want to participate. Second, she sought approval from the Ontario Bar Association to open panel membership to attorneys from outside of the County. And, finally, she and Mr. Zimmerman started to hold monthly lunch meetings to engage all panel attorneys on relevant issues in the law and to brainstorm individual cases.

Additionally, Ms. Schoeneman employed creative strategies to ensure clients were represented by qualified attorneys on their cases. For example, she recruited and assigned experienced attorneys from Monroe County to difficult cases on an as needed basis. However, Ms. Schoeneman understood that these temporary assignments would not solve the long-term problem of recruiting and maintaining quality attorneys on the panel and she had intended to continue working on this issue. These efforts continue under the leadership of the new ACP Administrator, Carrie Bleakley.

Results...

With Caseload Relief funds, the Ontario County Assigned Counsel Program formalized its training program, enhanced access to non-attorney professional supports, and increased access to mentoring services. Having ease of access to non-attorney supports and funds for these services has led to improved quality for Ontario ACP clients. The following are examples:

- ☑ **Training** – During her tenure as ACP Administrator, Ms. Schoeneman created protocols to encourage attorneys to attend trainings using scholarship funds, and she notified attorneys of opportunities to gain skills and knowledge at trainings.
 - ACP panel attorneys have attended trainings that covered a wide range of topics including the DWI Master Class hosted by the Ontario PD Office; training on appeals; and Making Sense of Science. Additionally, in 2018, the ACP sent a panel attorney to NACDL's three-day intensive juror selection training and one to the NYSDA Annual Conference.
- ☑ **Non-Attorney Supports** – With program policies on use of investigators and experts firmly in place, ACP attorneys continue to increase their use of non-attorney

professionals. The ACP reports that attorneys are using non-attorney professional supports, such as investigators, interpreters, experts and sentencing advocates, with greater frequency, and in some cases, good results.

- In one case, the investigation revealed the name of the true co-defendant in a shooting case, completely dismantling the case against the ACP client which was based solely on a misidentification. In another case, using an investigator cast doubt on the client's presence at a robbery through text tower pings and cell tracking, resulting in a better plea agreement. And, in more than one case, investigators revealed discrepancies in the allegations which led to reduced charges or, in one instance, reduction from a felony to an Adjournment in Contemplation of Dismissal. That case also involved a forensic analysis of the client's phone.
- An ACP attorney utilized a sentencing advocate on one case which led to a good result for the client. The attorney worked with sentencing advocate, Kim Goulding, to gather information about the client and draft a mitigation report. The program reports that Ms. Goulding's pre-sentence mitigation report was so compelling that the judge agreed to a reduced sentence for the client on what was otherwise a strong felony assault case.
- ☑ **Mentoring** – The ACP also continues to hold monthly panel meetings with Mentor Attorney, Mr. Zimmerman. Attorneys attending these meetings brainstorm cases, share war stories – mistakes and successes -- discuss recent trials, and talk about prosecution strategies and judge policies. As noted above in the Ontario CD Office section, Ms. Bleakley and Mr. Gilmour have also been actively participating in the monthly panel meetings. These meetings not only provide important information about available resources; they also cultivate a more creative approach to advocacy. The ACP reported that instances of attorneys consulting with Mr. Zimmerman have increased with regular monthly meetings. The ACP also reports that attorneys are litigating issues more often and more aggressively, and they are winning.
- Attorneys have had their cases dismissed after grand jury review and reduced after challenging a photo array. One successful probable cause hearing led to evidence being suppressed which in turn resulted in the case being dismissed.
- ☑ **Trials** – Attorneys have been more willing to take cases to trial with the introduction of the new initiatives with many attaining favorable dispositions for their clients because of their willingness to litigate more aggressively.

SCHUYLER COUNTY

Schuyler County Public Defender's Office

The Schuyler County Public Defender Office ("PD Office") is the County's primary provider of mandated criminal and Family Court representation. In 2007, when the *Hurrell-Harring* lawsuit was filed, the PD Office was staffed with only one full-time public defender, one part-time attorney, and one full-time administrative assistant. Between 2011 and 2015, the County effectively used ILS distribution and competitive grant funding to increase its staff, so that by

August 2015, just prior to *Hurrell-Harring* Settlement implementation, the PD Office was comprised of: Public Defender Wes Roe, one full-time Assistant Public Defender; one part-time Assistant Public Defender; and one full-time Confidential Secretary.

When ILS met with Schuyler County officials in 2015 to develop a plan for using the \$55,957 in *Hurrell-Harring* Quality Improvement funding, the most pressing quality issue was the lack of a well-administered assigned counsel program. Accordingly, it was decided to use all the *Hurrell-Harring* Quality Improvement funding to create a regional assigned counsel program with Tompkins County. Counsel at Arraignment funding was used to implement an on-call program in which Public Defender attorneys were available from 9 am to 9 pm to cover off-hour arraignments. As a result, unlike the other *Hurrell-Harring* providers, the Settlement’s Quality and Counsel at Arraignment funding has not increased the number of Public Defender Office staff. If anything, the Counsel at Arraignment objectives have increased staff responsibilities, requiring staff to participate in a weekend on-call rotation and to be available during business hours to cover off-hour arraignments.

In August 2017, the PD Office used Caseload Relief funding to contract with a caseworker from Opportunities, Alternatives and Resources of Tompkins County (O.A.R.) to work with clients. The position was made full-time in April 2018. Caseload Relief funds were also used to hire a part-time grants manager.

The final Caseload Relief Plan called for the PD Office to hire a part-time Assistant Public Defender and a part-time Legal Secretary. In December 2017, Wes Roe, County officials and ILS decided to supplement the part-time attorney position with *Hurrell-Harring* Counsel at Arraignment funding to create a full-time position. The new attorney, Valerie Gardner, joined the PD Office in May 2018. The new part-time legal secretary was hired in June 2018. Thus, after full caseload relief implementation, in April 2019 the Schuyler County PD staff was:

Attorneys

- 1 full-time Public Defender
- 2 full-time Assistant Public Defenders
- 1 part-time Assistant Public Defender

Support Staff

- 1 full-time Confidential Secretary
- 1 part-time Legal Secretary

Additionally, the mid-2018 review of PD Office caseloads indicated that because of an increase in new cases, even with an additional attorney on staff, the PD Office needed to implement a “caseload overflow” plan to ensure compliance with caseload standards. The PD Office developed a system for consistent monitoring and periodic transfer of “overflow” cases to the Schuyler/Tompkins Regional Assigned Counsel Program (Schuyler/Tompkins ACP) and implemented the new overflow system as of November 2018.

In developing its Caseload Relief Plan, the Schuyler County Public Defender’s Office sought to not only meet caseload standards but also improve client communication, ease client access to public defender representation and support services, increase attorney supervision, and bolster the office’s capacity to ensure that clients are represented at arraignment. Full implementation of the Caseload Relief Plan has meant that Schuyler PD Office attorneys now have reduced caseloads, more support, and more time available to research and litigate each case.

Challenges...

The primary barrier to caseload standards implementation in Schuyler County was space. In 2017 the PD Office did not have the space needed to accommodate the new attorney and secretarial positions, and it was not possible to expand the space they occupied at that time. Thus, it was necessary to find a new, larger space for the office. After assessing several options, the County decided to re-locate the offices of another County agency and move the PD Office from the first floor of the County Court building to a larger space on the third floor. Renovations took some time, but the PD moved into the new space in May 2018.

Prior to hiring the two new staff members, Mr. Roe emphasized the unique considerations of hiring new people for his small office. In hiring new staff, he looks not just for qualifications, experience, and commitment to public defense, but also for the ability to work well in a small setting with the PD Office's current staff. In other words, office "fit" is an important consideration, which can make hiring and keeping new staff even more challenging in a small office located in a rural setting. Fortunately, in filling both the new attorney and part-time legal secretary positions, Mr. Roe found individuals who integrated well into the existing office.

Results...

- ☑ **Client-Centered Representation** – Caseload Relief has meant more opportunities for client assistance and communication.
 - Lisa Duggan is the O.A.R. caseworker who works with clients of the PD's Office. As a member of the defense team, Ms. Duggan serves as a critical liaison between clients, their attorneys, their families, and other programs. Ms. Duggan visits male clients incarcerated in the Schuyler County jail three times per week and visits female clients held in the Chemung County jail once a week. When clients are incarcerated, she goes to the jail for an initial meeting. If the client has not completed the application for assigned counsel (which the PD Office also uses as an intake form to collect key client information), Ms. Duggan assists in completing the form. Ms. Duggan also identifies the immediate and future needs of the Office's incarcerated clients. She has formed relationships with local resource agencies. She is working to bring new programs, such as NA meetings, into the jail. Ms. Duggan also works with clients when they are released, assisting them with applications for employment, housing, and benefits. Mr. Roe reports O.A.R. is a valuable resource for clients and attorneys.
- ☑ **More Time for Supervision** – Patricia Halstead, who is the part-time Schuyler County-based coordinator for the Regional Schuyler/Tompkins ACP, now also serves as the part-time grants coordinator for the PD Office. She worked closely with Mr. Roe to become familiar with the PD Office's array of grants. She spends her time on grant management tasks and assists Mr. Roe in completing and submitting reimbursement reports. Although Mr. Roe initially invested significant time training Ms. Halstead, she is now fully familiar with her responsibilities. As grants coordinator, Ms. Halstead has assumed many of the administrative tasks Mr. Roe performed in the past. As intended, staffing a grants

coordinator position in the PD Office has afforded Mr. Roe more time for supervision and his own caseload.

- ☑ **Consultation and Collaboration** – Reduced caseloads have also boosted office camaraderie and encouraged more brainstorming and consultation.
 - Because Ms. Gardner is an experienced criminal attorney, Mr. Roe was able to immediately shift some of the existing attorney workload to her and assign her to several local courts. Ms. Gardner’s presence has reduced individual attorney caseloads, giving the attorneys more time to work their cases and generated more consultations between PD attorneys both one on one and as a team.

- ☑ **Enhanced Counsel at Arraignment Coverage** – The addition of a third full-time attorney also increased the PD Office’s capacity to provide counsel at arraignment by spreading the weekend and holiday on-call arraignment shifts among four, instead of three, attorneys. Further, with four attorneys the PD Office expanded its counsel at arraignment coverage to include overnight shifts on weekends and holidays. The PD Office now provides counsel at arraignment on weekends and holidays from 9 pm Saturday through Monday at 11 pm.

- ☑ **Training** – A larger staff has also allowed the PD attorneys to further develop their legal knowledge and skills by attending trainings and conferences.
 - With only two full-time attorneys prior to hiring Ms. Gardner, the PD Office often faced a dilemma: send attorneys to necessary trainings or ensure case and court coverage. Quite appropriately, ensuring that clients were represented was prioritized, but attorney professional development suffered. However, since Ms. Gardner joined the Office, PD attorneys have attended trainings on such subjects as DWI, Fighting for Fair Bail, and Preserving Appellate Rights and attended the two-day NYSDA Annual Conference. At these events, PD attorneys gain knowledge and make important connections. During the 2018 NYSDA Conference, Mr. Roe connected with Nancy Ginsburg, an adolescent intervention expert from the New York City Legal Aid Society. Mr. Roe was supervising and brainstorming with Ms. Gardner on a case in which her 16-year-old client was charged with arson. The connection Mr. Roe made with Ms. Ginsburg proved to be valuable as she subsequently provided technical assistance and legal expertise in a very difficult case.

- ☑ **Quality Representation** – Increased time to work on cases due to caseload relief has significantly improved the quality of representation that Schuyler Public Defender’s Office attorneys can provide to clients.
 - Assistant Public Defender Mark Raniewicz was assigned to a factually and legally complex case that resulted in a trial in early 2019. Prior to trial, Mr. Raniewicz’s client was adamant about testifying. Mr. Raniewicz spent many hours with him, exploring why he wanted to testify, explaining why his testimony was not necessary to achieve his objectives, and further explaining how testifying could affirmatively damage his defense. Ultimately, his client decided not to testify. At trial, the client

was found not guilty of all the felony charges and instead was convicted only on two misdemeanors. After the trial, Mr. Raniewicz's client expressed gratitude for spending the time needed to effectively assist in his defense. Mr. Raniewicz told ILS that without a reduced caseload he would not have been able to spend the time necessary to strategize, research and litigate this case to obtain such a favorable result.

Schuyler/Tompkins Regional Assigned Counsel Program

In the spring of 2015, when ILS began meeting with Schuyler County to discuss *Hurrell-Harring* Settlement implementation, the County had a contract with a local attorney, Jessica Saks, to provide representation to clients the Public Defender Office could not represent because of a conflict. This contract was for \$32,000 per year, and with it, Ms. Saks took about half the criminal and Family Court conflict cases. As was stated in ILS's 2015 Quality Improvement Plan, this Conflict Defender contact was established primarily as a cost-savings measure for the County. There was consensus, however, that as the Conflict Defender, Ms. Saks was working under high caseloads with few resources.

The conflict cases that Ms. Saks did not take were assigned to attorneys on a list maintained by the Public Defender's Confidential Secretary. There was no formal assigned counsel program, no qualifications to be included on this list, and no quality oversight or support for the attorneys who agreed to be included on this list. In its individual settlement agreement with the *Hurrell-Harring* plaintiffs, Schuyler County agreed to establish a formal assigned counsel program in accordance with County Law § 722. This settlement agreement specifically contemplated the creation of a regional assigned counsel program with another county.²⁰

By June 2015, Schuyler County had begun meeting with Tompkins County to discuss a regional Assigned Counsel Program to be administered and supervised by Tompkins County; by August 2015, Schuyler County had begun to draft an Inter-Municipal Agreement ("IMA") to formalize this regional program. During meetings with ILS, Schuyler County officials and Wes Roe agreed that creating this regional Assigned Counsel Program was Schuyler County's most pressing quality improvement need and that, therefore, the \$55,956 available through *Hurrell-Harring* Quality Improvement funding should be used for this program. It was also decided that the Settlement's Quality Improvement objectives could best be achieved by discontinuing the under-resourced Conflict Defender contract and having just two providers of mandated representation: the Public Defender Office and the Regional Schuyler/Tompkins Assigned Counsel Program.

By March 2016, the IMA was executed by both Schuyler and Tompkins counties. The Schuyler Conflict Defender contract was terminated as of March 31, 2016, and on April 1, 2016, the Regional Schuyler/Tompkins ACP began operating. This program is overseen by Lance Salisbury, Supervising Attorney, and Julia Hughes, Administrator. Patricia Halstead helps coordinate the program in Schuyler County -- i.e., managing assignments of attorneys to cases, tracking vouchers and data, and communicating regularly with panel attorneys. Ms. Halstead has

²⁰ See Settlement Agreement Regarding Claims Involving Schuyler County, § 4.g.

an office near the PD Office in the Schuyler County Court Building and is there at least three days per week.

The Regional Schuyler/Tompkins ACP utilized Caseload Relief funds to enhance the overall quality of representation. These initiatives included bolstering its training program, enhanced access to non-attorney professional supports including sentencing advocacy, creation of a mentoring program, and providing second chair opportunities to attorneys. When these resources were put in place, the ACP disseminated policies and protocols to panel attorneys on the availability of all these supports.

Thus, the Schuyler/Tompkins ACP used caseload relief funds to build the following infrastructure:

- ☑ **Access to sentencing advocacy services** – For several years, the Tompkins ACP attorneys have had access to the sentencing advocacy and mitigation investigation services of the Center for Community Alternatives. This service can play an essential role in plea negotiations, sentencing advocacy, or both. Caseload Relief funding was used to allow panel attorneys who work in Schuyler County to access these same services.
- ☑ **Access to non-attorney professional services** – Caseload Relief funding ensures that panel attorneys have access to the support services and resources needed to fully investigate and litigate their cases. In March 2018, the ACP disseminated to the Schuyler panel attorneys a protocol designed to promote use of these services. Pursuant to this protocol, panel attorneys no longer need to submit a request to the presiding judge for approval of these services but may instead email the ACP Supervising Attorney to request these services. If the service is needed immediately, such as when it is critical to obtain a video of the alleged crime, interview a witness, or to take photographs of evidence, the attorney may retain the non-attorney professional and notify the ACP immediately thereafter. The ACP’s Supervising Attorney and Administrator monitor the panel attorneys to ensure that they are using these services and where appropriate, contact panel attorneys directly to urge them to retain appropriate non-attorney professional support services in specific cases.
- ☑ **Mentoring** – The ACP used Caseload Relief funding to establish a program to allow panel attorneys to access mentor and resource attorneys. This program provides mentoring to attorneys new to the panel and to attorneys who request one-on-one mentoring. It will allow attorneys to consult with more experienced attorneys about challenging legal and factual issues that arise in specific cases or to improve their litigation skills such as juror selection, cross-examination, motion practice and oral argument.
- ☑ **Second Chair Opportunities** – For assigned counsel programs, participation in a trial as a second chair attorney or as the lead attorney with the support of a second chair is perhaps the best means of litigation training. The Caseload Relief funding ensures that panel attorneys have access to second chair opportunities for enhanced training. It also

ensures that attorneys who need a second chair in more challenging cases can access this support.

- ☑ **Training** – For the past several years, the Tompkins ACP has used ILS non-competitive grant funding to host in-house CLE training programs. Caseload Relief funding is being used to bolster this training program so that issues pertaining to practice in Schuyler County courts can be addressed. Funding is also being used for scholarships for the Schuyler panel attorneys to attend trainings and skill development programs sponsored by other reputable organizations (such as the New York State Defender Association, New York State Association of Criminal Defense Lawyers, and the New York State Bar Association.).

Finally, the Caseload Relief Plan ensures that there is funding to pay attorneys for increased voucher costs, which should be realized over time as attorneys devote more time and resources to their assigned cases.

Challenges...

Lance Salisbury and Julia Hughes are implementing the Caseload Relief programs discussed above strategically and thoughtfully, with a keen sense of the background, experiences, and attitudes of the panel attorneys who take cases in Schuyler County. Many of the attorneys who practice in Schuyler County have a lot of experience in criminal defense, but little experience having the time and resources needed to fully investigate and litigate their cases. Moreover, a significant percentage of the assigned criminal cases are misdemeanors or low-level felonies. As is true throughout New York State, because of historically insufficient funding for public criminal defense, defense attorneys have prioritized spending time and resources on the more serious felony cases, and “triaging” misdemeanor and lower level felony cases has become the norm, even for experienced criminal defense attorneys. Mr. Salisbury and Ms. Hughes understand that there are now resources available to shift this “triage” culture, and they have committed themselves to increasing their presence in Schuyler County and devoting time and effort to reaching out to panel attorneys to encourage them to use the resources and supports that are now available to them.

Results...

- ☑ **Training** – The Schuyler/Tompkins ACP disseminated to panel attorneys a protocol regarding this funding, so attorneys know of its availability. The ACP leadership also affirmatively reaches out to panel attorneys to notify them of training opportunities.
 - In 2018, the Schuyler/Tompkins ACP sponsored 6 CLE programs that were open to both Schuyler and Tompkins County ACP attorneys. Schuyler/Tompkins ACP attorneys attended at least 3 of these programs.
 - The ACP provided scholarships to two panel attorneys to attend the multiday New York State Bar Association’s Young Lawyer’s Section Trial Academy.

- ☑ **Mentoring** – The Schuyler/Tompkins ACP has 4 experienced attorneys who serve as mentors available to panel attorneys. Two of the mentors are specialized resource attorneys – one in methamphetamine cases and one for parole revocation cases.

 - The program reports that the mentors billed 54.27 hours in 2018 and two attorneys consulted with mentors. In one case, an assigned attorney consulted with a mentor to strategize plea negotiation options and possible defective search warrant issues.

- ☑ **Second Chair Program** – With funds and protocols to provide second chair opportunities to attorneys in place, the Second Chair Program not only provides support and training, but also, as Mr. Salisbury noted, the presence of a second chair gives the defense parity in the courtroom, particularly because the District Attorney often has more than one person working on the case.

 - In 2018, one attorney second chaired a case. In that case the client was charged with manufacturing methamphetamine. The case was factually complex, and the client was challenging to represent because of mental health and substance abuse issues. The ACP assigned a second chair attorney to not only ensure that the case was sufficiently staffed, but also to allow the second attorney to receive “on the ground” training. Ultimately, the team’s advocacy paid off: an initial offer of five years in prison resulted in a non- jail disposition of probation.

- ☑ **Non-Attorney Professional Supports** – Attorneys on the Schuyler ACP panel are no longer required to apply to a court for funds to employ non-attorney professionals in their cases. Non-attorney professionals including investigators, interpreters, experts (such as medical/mental health professionals and forensic evidence experts) and sentencing advocates can be retained directly through the ACP. In a County where the historical use of investigators and experts been low, Mr. Salisbury has made attorney use of investigators and experts a priority.

 - One attorney utilized the sentencing advocacy services of the Center for Community Alternatives (CCA) and obtained a very positive outcome. A client was facing multiple drug charges which, upon conviction, would have resulted in deportation. CCA prepared a compelling report about the client. On the eve of trial, the District Attorney agreed to resolve the case with a plea to a non-deportable offense and time served. Ms. Hughes told ILS, “The attorney tells me the report was so good that the [client] will now be able to attach it to his immigration case. And the DA agreed to change the charges to something that wouldn’t make [the client] deportable[.] Even the DA said the report was phenomenal.”

- ☑ **Attorney Advice and Participation in Investigatory Stages** – Schuyler ACP attorneys are now more involved in the investigatory and other early stages of their cases.

 - In three instances in 2018, Schuyler ACP attorneys were assigned at various stages to ensure their client’s rights were protected. In one case, the client was subpoenaed to testify against her husband as a material witness. Timely intervention by an ACP

attorney resulted in the court rejecting the District Attorney's material witness order. In another case, an attorney was assigned to help a client navigate involvement in a pending criminal investigation. In the third case, an assigned attorney was representing a client in a family court matter when the client was subpoenaed to testify against her ex-husband in a criminal matter at trial. The same attorney was assigned to provide legal assistance and advice to the client during any questioning and testimony at trial. The attorney advised the client on all possible consequences of refusing to testify, testifying at trial, her legal and practical concerns and issues, and the process of reestablishing a relationship with her daughter.

- ☑ **C.P.L. § 440 practice** – Schuyler ACP attorneys are also assisting clients in post-disposition litigation.
 - In one case, a client filed a pro se C.P.L. § 440.10 motion with accompanying documentation, seeking to vacate a judgment entered against him. The court allowed the person to proceed as a poor person and assigned an attorney to represent him. This attorney argued that the client's prior attorney provided ineffective assistance as counsel in the case.

SUFFOLK COUNTY

Averaging 30,000 new criminal cases annually in recent years, Suffolk County has the largest caseloads of the *Hurrell-Harring* counties. It is also by far the most populous of the five counties. Its two providers of mandated criminal representation are the Suffolk County Legal Aid Society ("SCLAS") and the Assigned Counsel Defender Program ("SCACP"). Until Settlement implementation, both providers had insufficient infrastructure to shoulder the burden of high caseloads. The Settlement's Caseload Relief funding and other Settlement initiatives allowed both programs to restructure and hire necessary staff to provide essential support and supervision.

SCLAS

With the exception of homicide cases, SCLAS is the primary provider of public defense services in Suffolk County and handles the majority of the County's mandated representation caseload. SCLAS attorneys historically carried high caseloads and SCLAS operated for decades with limited resources. This translated to limited access to non-attorney professional supports and not enough attorneys or supervisors for the number of cases handled. In short, attorneys were overburdened and under-resourced, which led to a high rate of attrition. SCLAS's two offices, in Central Islip and Riverhead, were overcrowded and there was nowhere to meet with clients or hold trainings. It was clear that the program needed resources to augment its infrastructure by adding attorneys and support staff, layers of supervision and administrative support, and providing training to ensure attorneys are prepared for cases.

When Settlement implementation began in March 2015, SCLAS had 72 attorneys in its three Criminal Practice Bureaus: the District Court Bureau in Central Islip and the County Court and East End Bureaus both located 30 miles away in Riverhead. They were supported by 26 total

support staff, including secretarial staff, investigators, and social workers but there were simply not enough of these supports to provide access to these resources on every relevant case.

With District Court attorneys averaging 500 cases each annually, SCLAS's first phase of Caseload Relief, "Caseload Relief I," focused on relieving the District Court burden by lowering caseloads and restructuring to provide a supportive environment using an interdisciplinary team approach. By hiring new attorney staff as well as more social workers, investigators, and paralegals, attorneys began to focus on providing holistic representation to clients.²¹

Caseload Relief I (2016-2017) allowed SCLAS to recruit and hire 23 new attorneys and elevate experienced staff attorneys to supervisory roles. SCLAS also used Caseload Relief funds to: bolster its existing social work services by hiring a supervising social worker and an additional entry level social worker; hire a supervising investigator to oversee and train investigators and create a new Investigations Unit; hire five paralegals to support attorney work (SCLAS had never previously employed paralegals); hire an in-house IT Director; hire data entry specialists and an account assistant to provide administrative support; and promote key members of the management team to director positions to create a solid backbone for the organization. Further, for the first time, SCLAS hired a Training Director to develop its first comprehensive in-house training curriculum.

By the end of 2017, SCLAS Criminal Practice staffing patterns were as follows:

Attorney

98 full-time attorneys

Support Staff

40 full-time support staff

The second phase of Caseload Relief, "Caseload Relief II" (2017-2020) funding added 24 new attorneys and 13 support staff professionals. This round of hiring bolstered County Court and East End Bureau staffing while at the same time promoting from within to ensure careful supervision and encourage attorney retention.

After full Caseload Relief implementation, in April 2019 Criminal Practice staffing was as follows:

Attorney:

122 full-time attorneys

Support Staff:

53 full-time support staff

In total, since implementation began in 2017, SCLAS has added:

- ❖ 47 new attorneys,
- ❖ 4 social workers (including a supervisor),
- ❖ 7 data and/or administrative support staff,
- ❖ 6 paralegals, 4 investigators (including a supervisor),
- ❖ 1 Spanish interpreter,

²¹ SCLAS's approach is described in more detail in ILS's *Implementing the Hurrell-Harring v. The State of New York Settlement: 2017 Update* ("2017 Update Report"), available here: <https://www.ils.ny.gov/files/Hurrell-Harring/2017%20Update%20Quality%20and%20Counsel%20at%20Arrestment%20Plans%20FINAL%20103017.pdf>.

- ❖ 1 Account Assistant,
- ❖ 1 IT Director, and
- ❖ 1 Training Director.

SCLAS also created a new Community Outreach component by promoting an existing attorney to the role of Community Outreach Director and hiring a Community Advocate. Three existing attorneys were promoted to key director positions – Chief Operating Legal Officer, Trial Director, and Legal Director. With each round of hiring, newly hired attorneys underwent a comprehensive new attorney training program which provided foundational knowledge and opportunities for practical skill development before beginning client representation. During this period, SCLAS moved to a team approach, restructuring District Court staff to groups of 12-15 attorneys with a paralegal, social worker, investigator, and senior attorney/supervisor and teaming up attorneys from District Court’s FP-1 Unit and County Court Bureau on felony cases to ensure continuity of counsel on post-indictment felony matters.

Challenges...

Like all the *Hurrell-Harring* providers, SCLAS has had to navigate the complicated intersection between the County and State contract approval and appropriation processes to ensure receipt of Caseload Relief and other Settlement funding. The protracted process resulted, at times, in delays in implementation. SCLAS took as many steps as possible to begin implementation prior to receiving the funds from the County.

Additionally, for SCLAS, hiring numerous new attorney and support staff in a short timeline poses a multitude of challenges which can impede the hiring process if not planned for properly. With the influx of new District Court staff, SCLAS was set to outgrow its already overcrowded space. This meant, SCLAS had to identify new office space in Central Islip, wait for the build out, furnish the space, and finally move staff. Similarly, with the County Court expansion, SCLAS had to expand its Riverhead office space as well.

Moreover, it is not enough to simply hire any attorney applicant. SCLAS is thoughtful about identifying committed and diverse applicants to ensure quality representation, which takes time. All new attorneys are now required to participate in the new attorney training program. These attorneys were not available - or realistically ready - to begin representation on criminal cases while undergoing this training. Accordingly, the reduction in existing attorney caseload and burden was not immediately realized. Now, however, the addition of 47 well-trained attorneys is having a significant impact on both caseloads and quality representation.

Results...

Some examples of impact already seen follow.

- ☑ **More Support and Camaraderie** – When SCLAS moved the District Court staff to a team approach, they named Kate Lovly District Court Bureau Chief and elevated other existing staff attorneys to new team supervisor and senior attorney positions. Ms. Lovly

instituted regular meetings of the entire District Court Bureau and began sending a monthly newsletter highlighting important legal updates, noting recent staff accomplishments, and promoting monthly team building challenges. One month, for example, teams competed to contribute “coins for clients” to be donated for the purchase of transportation vouchers for clients. Everyone on the team participates – attorneys, paralegals, social workers, investigators, and senior attorneys/supervisors. Not only do these activities assist in the dissemination of valuable information, but these monthly meetings and contests have also fostered camaraderie amongst the teams and boosted morale. Staff who once felt overburdened and unsupported are now part of the team.

- Ms. Lovly was working with one of the new attorneys hired under Caseload Relief on a case where his client was sentenced to time served and was to be released that day. A social worker, also hired under Caseload Relief, was working with the client to assist with release. However, the attorney got a text from the social worker that the client would not be released due to a warrant in one of the West End village courts. Though the attorney had already left the office, he called the village court and drove there to appear and vacate the warrant. Without the dedication of the new attorney and social worker and support of their Bureau Chief, that client would have spent at least one more night in jail. Instead, the client was released.
- ☑ **Supervision** – Attorneys have repeatedly stated that, while they previously felt there was no one to turn to when confronted with a challenging issue, now there is always a supervisor there to help.
 - An attorney received notice from the assistant district attorney on her case that the judge was improperly texting the assistant district attorney and suggesting strategies to get the SCLAS off the case. The attorney was able to immediately consult with a supervisor to develop a strategic response, which ultimately resulted in the judge’s recusal from the case.
- ☑ **Training** – SCLAS now requires every newly hired attorney to participate in an intensive training curriculum that consists of both legal foundational knowledge and practical skills-based training. The curriculum emphasizes quality, client-centered representation and has evolved with the input of prior new attorney classes. Prior to Caseload Relief implementation, there was no formalized training and no new classes of attorneys to train and offer feedback. Now, they are working together to build a solid foundation of quality representation before attorneys begin to take cases. Additionally, when SCLAS introduced the holistic defense model, every member of SCLAS’s staff was required to attend a training on the topic given by their new Community Outreach Director, Liz Justesen.
- ☑ **Community Collaboration** – SCLAS’s Caseload Relief implementation has given leadership more time to establish better connections for clients and play a key role in the County.

- Suffolk County was chosen to pilot the Chief Judge’s Permanent Commission to Access to Justice’s Strategic Plan. The goal of this Commission is to ensure access to justice for low income people in need of civil legal services. District Administrative Judge C. Randall Hinrichs invited SCLAS’s Attorney in Charge, Laurette Mulry, to participate in the initial meeting and to serve on the Suffolk County Leadership Group. Though SCLAS does not directly provide civil legal services, Ms. Mulry’s perspective has been invaluable to the group as there is tremendous overlap in the communities facing criminal and civil legal issues. As Ms. Mulry put it, clients come to SCLAS with criminal cases that resulted from underlying civil legal issues or the existence of a criminal case incurs civil legal issues. With the assistance of its new social work staff and Ms. Justesen’s community outreach, SCLAS is in the position to offer advice to the group on potential needs and gaps in representation in this area. Judge Hinrichs has praised the critical contribution SCLAS has made to this program. Further, SCLAS’s participation in this initiative has enabled them to make better connections with other community stakeholders who can assist their clients.

SCACP

The Suffolk County Assigned Counsel Defender Program (“SCACP”) is the primary provider of mandated representation on all homicide cases and provides conflict representation on all matters. SCACP also administers various Counsel at Arraignment programs including the conflict arraignment program in District Court Part D-11, Summons Appearance Part (“SAP”) arraignment representation, and, more recently, the East End off-hour arraignment program.

In 2015, the Suffolk County Assigned Counsel Defender Program consisted of part-time Administrator, David Besso, who ran the program out of his private office, his administrative assistant and a few contract staff members to assist with voucher review. The entire infrastructure budget for SCACP was \$75,000 which resulted in Mr. Besso effectively working pro bono for the program. Yet, in addition to his busy private practice, Mr. Besso was responsible for reviewing thousands of attorney vouchers each year, managing the program’s various grants including the ILS distribution and competitive grants, meeting with judges about concerns, and coordinating panel CLE programs. During early meetings with ILS, Mr. Besso was clear that the program needed more infrastructure and a full-time Administrator. He also stressed the need for enhanced access to non-attorney professional supports such as investigators and experts. The SCACP panel consisted of approximately 175 attorneys, yet the program was operating on a shoestring budget. It was apparent that the SCACP required a much stronger infrastructure to ensure proper oversight and support of panel attorneys.

As described in more detail in section IV (2) of ILS’ 2017 Update Report²², the Settlement’s Quality Improvement initiatives provided the initial funding for the program’s transformation. Mr. Besso’s administrative assistant, Stephanie McCall, was elevated to the role of Deputy Administrator and, in early 2017, SCACP hired Daniel Russo as a full-time Administrator. In August 2017, the SCACP moved into new office space equipped with a conference room

²² Supra n.15.

accessible to panel attorneys.²³ With Quality Improvement funding, SCACP was also able to contract with an accountant familiar with grant coordination and to strengthen the program's financial structures. In doing so, SCACP implemented their own payroll system and applied for 501(c)(3) non-profit status. In less than two years, the SCACP was transitioning from a "mom and pop" operation with an insufficient budget to an independent professional program able to properly support quality public defense.

Analysis of SCACP caseloads supported Mr. Besso's opinion in 2015: panel attorneys needed improved access to non-attorney professional supports and additional supervision. Further, the SCACP recognized that putting mentor and second chair programs in place as well as increasing training opportunities would encourage attorneys to devote more time to their clients' cases.

Thus, SCACP Caseload Relief funding was used to create the following infrastructure:

- ☑ **Supervision** – In addition to Mr. Russo's oversight, the SCACP contracts with an experienced Quality Control/Mentor Attorney. This attorney meets with, directly observes, and trains panel attorneys, adding another layer of support and supervision to the infrastructure.
- ☑ **Access to investigators, interpreters and social workers** – With Caseload Relief funding, SCACP hired two in-house investigators, a Spanish interpreter, and a case manager/social worker. Panel attorneys can now simply call the SCACP office or the staff members directly to access these services. For the first time, panel attorneys now have access, beginning as soon as arraignment, to these non-attorney professionals without having to apply for a Court order. Mr. Russo has communicated to the panel his expectation that attorneys utilize these services on all relevant matters and has put in place procedures for his staff to reach out directly to attorneys on cases.
- ☑ **Access to sentencing advocacy and mitigation services** – SCACP used Caseload Relief funds to contract with experienced mitigation and sentencing advocacy experts.
- ☑ **Access to other experts and non-attorney professionals** – Caseload Relief provides funds for experts and other non-attorney supports so that panel attorneys can apply directly to the SCACP with their requests, rather than having to preview their cases to a judge. With the new supervision structure in place, attorneys are encouraged to utilize appropriate experts and non-attorney supports in their cases.
- ☑ **Mentoring** – In addition to the Quality Control/Mentor Attorney described above, SCACP is using Caseload Relief funding to contract with an experienced, well-respected criminal defense attorney to serve as a mentor to panel members. Mr. Russo has urged attorneys to consult with the mentor attorney on all cases, especially those that are trial bound.

²³ The office space was funded by a combination of Quality and Caseload Relief funding.

- ☑ **Enhanced training funds** – SCACP is using Caseload Relief funds to increase SCACP sponsored CLEs as well as to provide scholarships for other training opportunities. For example, in addition to its twice-yearly mandatory SCACP sponsored CLEs, the Program partnered with the Suffolk County Bar Association to co-sponsor a ten-day Trial Practicum skills development series in 2018 and has sent numerous panel attorneys to external trainings. The SCACP regularly advises 18B attorneys of upcoming training opportunities and monitors attendance.
- ☑ **Coordination of non-attorney professional supports and other resources** – To ensure attorneys have ease of access to all the new non-attorney professional supports as well as for proper program oversight, the SCACP used Caseload Relief funds to hire a paralegal/18B coordinator to serve in a supportive role to panel attorneys and facilitate use of these services.
- ☑ **Other program infrastructure support** – SCACP’s marked growth has led to increased need for administrative support. Attorneys are already seeing a difference with quicker voucher payments and other administrative support. But, focusing on the program’s financial and administrative tasks meant that Mr. Russo and Ms. McCall could not properly supervise and oversee other aspects of the program. Caseload Relief funds allowed the Program to hire an Office Financial Assistant to take on some of these administrative responsibilities as well as contract with a Corporate Not-for-Profit expert who assists with program development.

Finally, the Caseload Relief Plan ensures that there is funding to pay attorneys for increased voucher costs, which should occur over time as attorneys devote more time and resources to their assigned cases.

Challenges...

In addition to the delays in receiving funding described above in the SCLAS section, SCACP faces some barriers to caseload standards implementation.

Like other assigned counsel programs, SCACP is faced with the challenge of elevating expectations and changing the culture of panel practice. Many of the SCACP attorneys come to the panel with prior experience and a sense of indigent criminal defense practice which often includes spending little time or resources on assigned cases, particularly misdemeanors. Mr. Russo has taken significant steps by putting in place expectations that attorneys will use the new non-attorney supports, mentors, and training resources available. He also implemented multi-faceted program protocols to encourage their use. For example, rather than waiting for attorneys to reach out, the in-house case manager now receives notice of all new assignments and proactively contacts attorneys to offer services. Mr. Russo is also working to get to know the panel practice through regular court observations and other panel interactions in addition to voucher review. Incorporating the newest Mentor/Quality Control Attorney into this structure has further aided with assessing individual panel attorney performance and identifying those in need of additional support.

Another challenging issue involves case assignments. Namely, SCACP is not always in control of panel attorney assignments and at times must rely on attorney notification if a judge assigns the attorney to a case. SCACP has taken steps to address this issue by working with District Court clerks to regularly obtain lists of panel attorney assignments made in District Court. However, they are still relying on attorneys to notify the program of any County Court judge assignments. To ensure proper caseload monitoring and case distribution, it is imperative that SCACP know what assignments are made on a timely basis.

Additionally, SCACP currently still relies on paper vouchers which, due to the sheer volume of vouchers submitted to the program, results in a significant administrative burden and creates issues for attorney caseload monitoring. To address this, SCACP developed an electronic vouchering system which should improve the voucher process while at the same time allow for more up-to-date attorney assignment information which will assist with caseload compliance monitoring.

Results...

- ☑ **Non-Attorney Professional Supports** – The choice to bring supportive services in-house is working. Attorneys are frequently using investigative, social work, and interpreter services on cases. And, they are experiencing success.
 - The SCACP reports that the investigators are consistently in demand and attorneys are gaining favorable results. Investigators have been able to recover exculpatory videos, obtain witness statements, and assist with scene visits.
 - An assigned counsel attorney worked with the SCACP’s staff investigator to obtain exculpatory video footage in a case where his client was charged with a D felony. Thanks to the investigator’s work, the attorney as able to effectively negotiate the felony charge down to a plea to a disorderly conduct violation with a sentence of time served. Mr. Russo noted, “[t]hanks belongs to ILS and the HH funding that enabled this attorney to have a skilled investigator help our indigent client resolve a serious felony matter.”
- ☑ **Training** – The ACP also developed and disseminated training protocols which encourage attorneys to attend trainings. They have sent attorneys to both skills-based and traditional CLE trainings and they continue to sponsor their bi-annual CLEs. The ACP has received positive feedback from attorneys attending trainings.
 - In 2018, the SCACP sponsored or co-sponsored 12 trainings. This is a significant increase from previous years where they typically hosted only 2 trainings. In fact, the SCACP partnered with the Suffolk County Bar Association as a co-sponsor to their trial practicum. Because of this collaboration, 43 SCACP attorneys participated in this intensive trial trainer. Additionally, the SCACP sent 86 attorneys to external trainings, 3 of which were multi-day, skills-based trainings including New York State Defenders Association’s Basic Trial Skills Program.

- One attorney who attended NYSDA’s Basic Trial Skills Program wrote to the ACP thanking them for the opportunity and indicating that she learned “invaluable trial techniques” that will inevitably benefit her clients.
- ☑ **Mentoring/Quality Control Attorneys** – The SCACP reports that attorneys are frequently consulting with both the mentor and quality control attorney. Both mentors have worked with attorneys to brainstorm issues, strategize cases, and prepare for hearings and trials and are part of a team approach designed to fully support attorney representation.
- On a weekly basis, the mentor attorney informally consults with attorneys at the attorney room in District Court. Since January 2019, the mentor/quality control attorney has met individually with every member of the misdemeanor panel.
 - On a trial-bound DWI last year, a less experienced panel attorney’s extensive preparation with the mentor attorney and Administrator Dan Russo gave her the confidence she needed for her first trial.
 - A seasoned attorney worked with the mentor attorney, quality control attorney, Mr. Russo, and their investigator on a murder case which initially resulted in hung jury and, on retrial, resulted in an acquittal.

WASHINGTON COUNTY

Washington County currently has two providers of mandated representation: a Public Defender’s Office (“PD Office”) and an Assigned Counsel Program (“ACP”). Less than five years ago, when the Settlement was approved in 2015, the structure of mandated defense in Washington County was vastly different. At that time, there was no formal Assigned Counsel Program and the PD Office consisted of only one full-time attorney – the Public Defender – and seven part-time assistant public defenders. In the short time since Settlement implementation began in 2015, the County has dramatically transformed the provision of public defense services by committing to building and restructuring both programs to ensure there are enough qualified attorneys who will have the time to competently represent each client while simultaneously assuring access to necessary support services. Both programs have made great strides in implementation of the ILS caseload standards.

Washington County Public Defender

In late 2009, when Michael Mercure was appointed Washington County Public Defender, the office staff consisted of Mr. Mercure, four part-time assistant public defenders, and one full-time administrative assistant whose dual responsibilities included maintaining a panel of private attorneys for conflict assignments and supporting the PD Office. By 2014, the office had added three more part-time assistant public defenders bringing the total to seven part-time attorneys and Mr. Mercure. Still, increasing the number of part-time attorneys available for assignments was

insufficient to provide quality representation to the number of clients in need of public defense representation in Washington County. The office was fragmented, with little quality oversight and no formal structure. The part-time attorneys did not have desks or even voicemail at the office.²⁴ Mr. Mercure was overburdened and, with only one administrative assistant dividing her time between the two programs, the PD Office did not have nearly enough support.

After the Settlement agreement was finalized, the County recognized it was necessary to professionalize and build the office to ensure public defense clients receive quality representation. The County began in 2015 by transitioning two part-time attorneys to full-time with a combination of County and ILS grant funds. The office also added an administrative staff member with ILS grant funding.

Around the same time, in September 2015, the County severed the administration of the private attorney assigned counsel program from the PD Office and created a new Assigned Counsel Program. However, the severance resulted in the Public Defender's administrative assistant leaving to assist with establishing the new ACP. Thus, for a period of 2015, even with the addition of a new support staff position, the PD Office still lacked appropriate support. Notably, this severance also led to the creation of two separate case management system databases: one for the PD Office and one for the new ACP.

In 2016, the County transitioned two more part-time attorneys to full-time with *Hurrell-Harring* Counsel at Arraignment Settlement funding and ILS non-competitive distribution funding. With a combination of Settlement funding under the Quality Improvement contract and County funds, the PD Office added one more administrative staff member. With a more robustly staffed office, Mr. Mercure also took the opportunity to elevate an existing staff member, Barry Jones, to the role of First Assistant Public Defender to aid with attorney supervision and support.

Many of the initial transitions were intended to not only build the PD Office, but also to ensure that there were enough attorneys to implement some of the other Settlement initiatives. For example, the plan for providing Counsel at Arraignment as detailed in ILS's 2015 *Implementing the Counsel at Arraignment Obligations in the Hurrell-Harring v. The State of New York Settlement (Final Plan)* and subsequent updates set up a system in which public defense attorneys would be available for all off-hour and regular arraignments.²⁵ The addition of full-time attorneys ensured coverage of these initiatives, and the addition of support staff helped with

²⁴ See <http://www.truth-out.org/news/item/32702-equal-before-the-law-new-york-counties-face-push-to-upgrade-public-defender-system>.

²⁵ The 2015 *Implementing the Counsel at Arraignment Obligations in the Hurrell-Harring v. The State of New York Settlement (Final Plan)* is available here: <https://www.ils.ny.gov/files/Hurrell-Harring/Counsel%20at%20Arraignment/Hurrell-Harring%20Final%20Counsel%20at%20Arraignment%20Plan%20111215.pdf>; the November 2016 Update is available here: <https://www.ils.ny.gov/files/Hurrell-Harring/Counsel%20at%20Arraignment/Hurrell-Harring%20Updated%20Counsel%20at%20Arraignment%20Plan%20111016.pdf>; the November 2017 Update is available here: <https://www.ils.ny.gov/files/Hurrell-Harring/2017%20Update%20Quality%20and%20Counsel%20at%20Arraignment%20Plans%20FINAL%20103017.pdf>.

associated data entry and collection. Still, these developments only marginally contributed to a reduction in caseloads and attorney burden.

Accordingly, to reduce caseloads and further enhance the quality of representation, Washington County's Caseload Relief Plan transitioned another part-time attorney to full-time bringing the total attorney staffing to six full-time and two part-time attorneys. The plan also included funding for attorney training and necessary non-attorney supports such as experts, investigators, and interpreters as the office grew.

When ILS issued the new caseload standards in December 2016, analysis of then-existing data showed the PD Office needed at least one more full-time attorney to comply with the new standards. Further, with the addition of another full-time attorney, the PD Office needed another support staff member to maintain a ratio of two attorneys-to-one support staff.²⁶ Mr. Mercure indicated that this support position should be another administrative staff member. The final Caseload Relief Plan included the recommended full-time attorney and legal assistant.

Once the Washington County Board of Supervisors approved the creation of the two new positions with the Settlement's Caseload Relief funding, Mr. Mercure filled the attorney position (in September 2017) and the administrative position (in January 2018).

Therefore, after full caseload implementation, in April 2019 the PD Office consisted of the following:

Attorney

1 full-time Public Defender
1 full-time First Assistant
5 full-time Assistant Public Defenders
2 part-time Assistant Public Defenders

Support Staff

1 Secretary to Public Defender
3 Legal Assistants

The PD Office took a multifaceted approach to meeting caseload standards. Initially, the County's Caseload Relief Plan focused on hiring additional staff. However, even with additional attorneys on staff, it was also necessary to implement a "caseload overflow" plan which would transfer some cases to the Washington County Assigned Counsel Program (Washington ACP). ILS met with the County and both providers of public defense to develop a "caseload overflow plan" to supplement their existing Caseload Relief plan. It was agreed that starting July 1, 2018, the Assigned Counsel Program (ACP) would now be the primary provider of representation for all misdemeanor Aggravated Unlicensed Operation and misdemeanor Suspended Registration cases for the County's highest volume courts. Additionally, the PD Office would periodically monitor caseloads and systematically refer cases over the Caseload Standards to the ACP.

ILS worked with the PD Office to develop a system to monitor caseloads using an Excel caseload calculator. Since the second half of 2018, ILS has been working closely with the PD

²⁶ ILS has stated that this should be, at a minimum, the ratio in institutional provider settings. See *An Estimated Cost of Compliance with Maximum National Caseload Limits*, available at: <https://www.ils.ny.gov/files/Estimate%20of%20Upstate%20Cost%20of%20Compliance%20Report%20Nov%202013.pdf>.

Office to ensure the caseload overflow system enables the PD Office to comply with Caseload Standards. Together, these steps have reduced PD Office caseloads and provided attorneys with the time and space necessary for quality representation.

Challenges. . .

The Washington PD Office has more than quadrupled in full-time staff size since Settlement implementation began. Along the way, the Office has taken steps to professionalize and create a collaborative and collegial environment. However, expanding in both staff and resources so quickly is not without its challenges. As the PD Office has expanded, so has the need for additional, adequate office space. During the first period of staffing growth in 2015, the County moved the PD Office to a then-more suitable space where all attorneys would have access to at least a shared desk and phone. However, the new space was far from optimal. In 2017, with the anticipated additional staffing necessary for caseload reduction, space reached a crisis point.

Additionally, Washington County is unique among the other *Hurrell-Harring* Counties in that there are two New York State Department of Corrections and Community Supervision (“DOCCS”) correctional facilities located in the County: Great Meadows Correctional Facility and Washington Correctional Facility. As a result, the PD Office caseload is comprised of a substantial number of “prison cases” or, individuals charged with crimes originating in one of the DOCCS facilities. Typically, clients with prison cases are already located outside of Washington County by the time the PD Office is assigned to the case because, as a matter of DOCCS policy, most clients charged with crimes arising from inside a DOCCS facility are transferred to another facility soon after an allegation. This creates a significant barrier for already overburdened attorneys to meet and communicate with incarcerated prison clients which has historically resulted in attorneys waiting until the client’s next court date in Washington County to discuss the case.

Another issue has been accessing non-attorney supports. As a rural county, there are simply not as many supportive services readily available to attorneys and their clients in Washington County as exist in more urban counties. Additionally, prior to *Hurrell-Harring* implementation, the Washington County Public Defender Office attorneys had to obtain court authorization every time they needed an investigator in a case. This created a barrier to using these services, which in some cases, proved to be insurmountable. It also made it impossible to retain an investigator quickly prior to evidence disappearing.

Results. . .

Public Defender Mike Mercure has taken several proactive measures to ensure structures are in place, attorneys are encouraged to utilize the necessary tools for effective representation as well as enable attorneys to better communicate with clients. Below are some of the impacts already realized:

- ☑ **Office Space** – Following the 2017 crisis point mentioned above, the County responded with a temporary solution by providing an annex across the hallway from the current PD Office where three attorneys have temporary desks, phones, and privacy walls. They have recently expanded their footprint to include two additional rooms; each housing one attorney.
- ☑ **Client Communication** – Caseload relief funding has allowed the attorney handling most of the prison cases the time and ability to travel to visit prison clients at their new facilities. As of July 2018, the attorney began visiting his prison clients at their facilities. Mr. Mercure has also implemented a policy encouraging these in-person visits. Having more attorneys means that Mr. Mercure and the assigned attorney do not have to choose between having in-person meetings with clients and other case coverage and obligations. Mr. Mercure is also working on putting systems in place to make it easier for prison clients to call their attorneys.
- ☑ **Investigators** – Mr. Mercure has also continued to encourage the use of investigators on every case. He now has an investigator scheduled to be in the office every Tuesday to ensure all his attorneys have access. The PD Office co-sponsored a training in May 2019 called “Team Defense: Working with an Investigator”. Mr. Mercure invited local investigators to the training, which included group exercises between attorneys and investigators.

 - Alyson Clark, an Assistant Public Defender in Washington County, told ILS the value of easier access to investigators. She noted that since *Hurrell-Harring* implementation, attorneys no longer need to seek court authorization and, therefore are using this resource more often. She highlighted this change by telling us of her client, who was charged with stealing from a store. She quickly retained an investigator to obtain the store’s time stamped video tape. The video tape proved that Ms. Clark’s client was not present when the crime occurred. She successfully used this evidence to have the charges against her client dismissed.
- ☑ **Mentor Support** – As with the Assigned Counsel Program (described below), the PD Office has formalized a relationship with experienced criminal defense practitioners, Terence Kindlon and Laurie Shanks, to act as mentors to PD Office attorneys. Mr. Kindlon and Ms. Shanks intend to maintain a regular presence in the County to ensure they are available for attorney consultation and mentoring, and they conduct periodic trainings that focus on skill development and effective litigation.

 - Assistant Public Defender Dustin Bruhns recently had a case where access to mentor support was invaluable. In a felony case stemming from a prison incident, after learning from his client that the prosecution ignored his client’s request to testify in the grand jury, Dustin successfully moved to dismiss the indictment. When the case was re-presented, Dustin consulted with mentor attorney, Laurie Shanks, to develop a strategy. Taking her advice, Dustin informed the prosecutor not only about his client’s wish to testify, but also about a witness available to testify about the incident.

This teamwork paid off – the grand jury heard from the client and the witness and ultimately voted not to indict the client.

- ☑ **New litigation strategies** – Recognizing the unique nature of prison cases, Mr. Mercure recently began exploring new strategies for litigation. He sought advice from other providers who have experience with litigating prison matters and has started to develop mechanisms for getting discovery including visiting and inspecting scenes with defense investigators.

Washington County ACP

As noted above, prior to 2015 there was no formal assigned counsel program. When the Public Defender's Office had a conflict, the Public Defender's administrative assistant reviewed her list of private attorneys willing to accept public defense assignments and selected an attorney for the case. There was no attorney oversight or supervision, and insufficient tracking of assigned cases other than through voucher submissions to the County. In September 2015, the County created an Assigned Counsel Program Office that would have its own staff and its own case management database, NYSDA's PDCMS.

The Assigned Counsel Program Office was initially staffed solely by a non-attorney Administrator. Realizing the need for additional support, the County used a combination of County and Settlement funding to hire a legal assistant. The County also decided that a Supervising Attorney was necessary for quality oversight of panel attorneys. Filling the role of part-time Supervising Attorney proved more challenging. To pay the Supervising Attorney's salary, the County was relying on a small amount of money funded by the Settlement's Quality Improvement contract, but it was not enough to attract a qualified candidate. Recognizing that this role was crucial to the success of the ACP, the County allocated Caseload Relief funds to increase the salary. In 2016, the County hired Thomas Cioffi as Supervising Attorney.

With a Supervising Attorney and office staff in place, the ACP began to build infrastructure to enhance attorney support and oversight with the goal of promoting quality representation. The final Caseload Relief Plan included the above-mentioned funds allocated to augment the Supervising Attorney salary as well as the following:

- ☑ **Access to non-attorney professionals** – Mr. Cioffi worked with the County and the courts to develop a system under which attorneys can apply directly to the ACP for these services. This new system means attorneys can access these services more quickly and without having to preview their cases to the court. Mr. Cioffi introduced this new system and the available resources to the panel both by letter and at a March 2018 panel meeting. He indicated that attorneys should use investigators on all felony cases and when interviewing a fact witness, and he encouraged the use of investigators for misdemeanors. Further, Mr. Cioffi told attorneys they should seek out experts on all relevant matters and recommended that they consult with sentencing and/or mitigation experts on cases where this service could be useful,

particularly in matters where Youthful Offender adjudication is a possibility. Mr. Cioffi is monitoring attorney use of this resource.

- ☑ **Training** – With Caseload Relief funds, the ACP can now sponsor or co-sponsor regular in-house CLEs as well as provide scholarships for attorneys to attend reputable criminal defense trainers elsewhere. Mr. Cioffi will continually notify the panel of training opportunities and encourage attorneys to use this resource.
- ☑ **Mentors** – Caseload Relief funds are available for panel mentoring and consultation with more experienced attorneys. The mentor program is accessible to all panel attorneys and mandated for some newer panel attorneys.
- ☑ **Second Chair Program** – With Caseload Relief funds, attorneys now have the ability to second chair one another on hearing and trial matters. This provides valuable experience to newer attorneys as well as critical support to attorneys acting as lead counsel in complex cases.

Finally, the Caseload Relief Plan ensures that there is funding to pay attorneys for increased voucher costs, which should be realized over time as attorneys devote more time and resources to their assigned cases.

Challenges. . .

The Washington ACP faces many of the same challenges as other rural, upstate New York Assigned Counsel Programs. Like other less populous counties, the ACP has difficulty recruiting qualified and committed attorneys for the panel. Panel attorneys practice in multiple counties and many are solo practitioners, which often results in a culture of isolation. Additionally, though many current panel attorneys are experienced criminal attorneys, until now they have had to practice without the time and resources necessary to fully investigate and litigate cases. Thus, there is an additional challenge of elevating expectations amongst existing panel attorneys as new resources become available.

Results. . .

Below are examples of some of the successes made possible by the infrastructures and programs created with the support of Caseload Relief funding:

- ☑ **Supervision** – Mr. Cioffi continues to grow into his leadership role as Supervising Attorney. He has worked to recruit dedicated and experienced attorneys to join the panel and further cultivate a culture dedicated to quality representation. Mr. Cioffi has also provided critical support to his panel attorneys.
 - Following a recent trial, the judge was resistant to approving the attorney's voucher for payment because the attorney had spent more time on the case than is typically spent on cases in Washington County. Mr. Cioffi reviewed the attorney's work and

determined it was time well-spent. He held firm and made sure the attorney was properly compensated. Previously, this attorney would have had no one to assist him with this issue. Now, attorneys know they can come to Mr. Cioffi when conflicts arise and, importantly, that they will be fully compensated for spending quality time investigating and litigating their cases.

- ☑ **Caseload Overflow Plan** – As discussed in the Washington County Public Defender section above, the Washington ACP is now primarily responsible for representing defendants in Vehicle and Traffic Law misdemeanor cases in the County’s highest volume courts.
 - Mr. Cioffi has made it easy for attorneys to obtain a client’s driving abstract from the Department of Motor Vehicles (DMV). Historically, clients were responsible for obtaining their own abstracts. Because of the cost, time and effort to do so, they often did not get them. Now, when the ACP receives notice of an eligible client charged with a Vehicle and Traffic Law misdemeanor where the ACP will be the primary provider under the new caseload plan, the ACP automatically generates the DMV driving abstract and includes it with the notice of assignment sent to the attorney. Additionally, ACP attorneys can contact the ACP Office to request driving abstracts for any Vehicle and Traffic Law matter and the ACP Office acquires it for no cost on all assigned matters.

- ☑ **Access to non-attorney professionals** – In May 2018, Mr. Cioffi finalized the ACP Handbook which memorializes the program’s supports and expectations for the ACP attorneys, including protocols for client communication and use of non-attorney professional supports (which had previously been disseminated to the panel in March 2018) as well as expectations for training, use of second chairs, and mentoring. Around the same time, Mr. Cioffi distributed written protocols to the panel for the use of these supports. In both, Mr. Cioffi communicated the ACP’s expectation that panel attorneys must request a second chair attorney for all homicide cases and for their first two criminal jury trials. He also strongly encourages the use of second chairs on violent felony cases, cases with complex legal or factual issues, and cases that are likely to go to trial. Additionally, in late-May 2018, ILS worked with the Washington County ACP to develop and implement a system to track and report the use of non-attorney professional supports and began tracking attorneys’ use of investigators, experts, second chairs, interpreters, and mentoring. Prior to that, the ACP’s only source of tracking came from vouchers paid.
 - In 2018, an attorney utilized the services of a sentencing advocate to assist in his advocacy, which to our knowledge, is the first time an ACP attorney has used such a service in Washington County. Mr. Cioffi is monitoring and encouraging attorney use of these resources.

- ☑ **Training** – With Caseload Relief funds, the ACP sponsors or co-sponsors regular in-house CLEs as well as provides scholarships for attorneys to attend reputable criminal defense trainers elsewhere. In 2018, the Washington ACP co-sponsored 3 trainings in the County, each of which had about five to ten ACP attorneys in attendance. In 2019, Mr. Cioffi also sent two attorneys to NYC for a bail reform/discovery training and many more to Albany’s program on the same topics. Mr. Cioffi will continually notify the panel of training opportunities and encourage attorneys to use this resource.

- ☑ **Mentors** – Mr. Cioffi formalized a relationship with experienced criminal defense practitioners, Terence Kindlon and Laurie Shanks, to act as mentors to panel attorneys. Attorneys are
 - Within days of formalizing the mentor relationship, Mr. Kindlon and Ms. Shanks worked with an ACP attorney to prepare for an upcoming DWI trial, reviewing the case file and pretrial transcripts and outlining and practicing cross-examinations of prosecution witnesses. The attorney’s preparation and effective utilization of the mentors not only resulted in favorable pre-trial rulings, but ultimately his client was acquitted of all charges. After the trial, the attorney told ILS, “I was lucky enough to work with Terry Kindlon and Laurie Shanks in preparation for this trial. I cannot begin to articulate the degree to which they helped. I learned more in a few hours than in my last three trials combined. I think the mentor program is a wonderful addition and Terry and Laurie are absolutely amazing.”

CONCLUSION

In its 2006 report, *The Final Report to the Chief Judge of the State of New York, the Commission on the Future of Indigent Defense Services* (commonly known as the “Kaye Commission”), described New York’s public criminal defense system as “a haphazard, patchwork composite of multiple plans... [resulting in] a fractured, inefficient and broken system.” As described in the Kaye Commission’s report, public defense providers often worked on their crushing caseloads in isolation, lacking the time and resources needed to, among other things, collaborate with other criminal defense providers. Public defense providers also lacked the time to network with other community stakeholders, and often were not included in community initiatives that impacted their clients. In many communities, public defense providers felt isolated and invisible.

With reasonable caseloads, the *Hurrell-Harring* providers have more mentoring and training opportunities. They have the time and resources needed to develop defense teams that include mentors, second chair attorneys and the expertise of non-lawyers, including investigators, social workers, and interpreters. They can also now network and participate in community initiatives. Ideally, this will allow them to establish themselves as important community stakeholders to be included in initiatives that impact low-income people at risk for, or with a history of, being arrested. Additionally, defense attorneys now have time and opportunities to meet defenders

from other jurisdictions and to brainstorm on common issues they face. This enables defense providers to feel less isolated, ultimately promoting a much more cohesive system in which providers across the State can collaborate more often and more effectively on individual cases and on addressing systemic barriers to justice for low-income people.

Each *Hurrell-Harring* provider has hired additional staff and created methods for monitoring caseloads and, where needed, developed and implemented caseload overflow systems. ILS will continue to work with providers to ensure continuing and permanent compliance with the caseload standards created pursuant to our responsibility under the *Hurrell-Harring* Settlement Agreement.