

# ***New York State Defenders Association***

## **1999 Annual Report to the Membership**

July 1999



**New York State Defenders Association  
194 Washington Avenue, Suite 500  
Albany NY 12210-2314**

**<http://www.nysda.org>**



# ***Welcome to the New York State Defenders Association***

## ***Visit us at our new offices:***

194 Washington Avenue, Suite 500  
Albany NY 12210-2314

## ***Visit us on the World Wide Web:***

**[www.nysda.org](http://www.nysda.org)**

### **➤ About NYSDA Now**

**NYSDA's Mission, 2**  
**Officers, 2**  
**Directors, 2**  
**1999 NYSDA Members, 16**  
**Annual Report of Directors Pursuant  
to Not-for-Profit Corporation  
Law 519, 27**

### **➤ Public Defense Backup Center**

**Staff, 2**  
**The Past Year's Accomplishments**

#### **Introduction, 3**

#### **Training, 4**

31st Annual Meeting and Conference, 4  
Chief Defender Convenings, 4  
13th Annual New York Metropolitan Trainer, 5  
1999 Defender Institute Basic Trial Skills Program, 5  
Jenna's Law Sentencing Trainings, 6  
Immigration Law Training for Criminal Defense Providers, 6  
Internet and Other Trainings, 6

#### **Research, Consultation, and the Clearinghouse, 7**

Direct Defender Services, 7  
Criminal Defense Immigration Project, 7  
Public Education, 7

#### **Technical Assistance and Legislative Analysis, 7**

League of Women Voters and NYSDA Hearings on Public Defense, 7  
Comments to the Committee to Promote Public Trust and Confidence in the  
Legal System, 9  
Comments to the New York State Bar on a Proposed Fee Commission, 9  
Gideon Coalition, 10



**Architectural rendering of office building under renovation at 194 Washington Avenue, Albany**

➤ **Public Defense Backup Center** (continued)

**Publications, 10**

*Representing Noncitizen Criminal Defendants in New York State*, 10

*Public Defense Backup Center REPORT*, 10

Materials at [www.nysda.org](http://www.nysda.org), 10

**Defender Automation, 11**

Web Site Redesign, 11

Public Defense Case Management System (PDCMS), 11

Case Digest System, 12

**Amicus Activity, 12**

Counsel Advocated for Clients in Court Proceedings Concerning Drug Treatment, 13

A Defendant's Waiver of Counsel for Prosecutor's Appeal Must be Explicit, 13

Youthful Offender Adjudications Should Not Support Deportation, 13

➤ **The Association in the Future**

Candidates for Election to the Board of Directors, 14

Proposed 1999-2000 NYSDA Board of Directors, 15

Membership Form, 25

**NYSDA's Mission**

The New York State Defenders Association, a not-for-profit, membership organization, has been providing support to New York's criminal defense community since 1967. Its mission is to improve the quality and scope of publicly supported legal representation to low income people.

**Officers**

Edward J. Nowak, President

Peter L. McShane, Vice President

Norman Shapiro, Vice President

Ronald C. Valentine, Vice President

Merble H. Reagon, Secretary

Marsha Weissman, Treasurer

**Staff**

Jonathan E. Gradess, Executive Director

Charles F. O'Brien, Managing Attorney

Stephanie Batcheller, Staff Attorney

Mardi Crawford, Staff Attorney

Sybil A. McPherson, Staff Attorney

Alfred O'Connor, Staff Attorney

Dawn Allert, Office Manager

David L. Austin, MIS Director

Barbara Baggott, Executive Assistant

Darlene Dollard, Information Specialist

Mary Durgie, Accountant

Kevin Harrington, Paralegal

Tara Hoffman, Training Coordinator

James Pogorzelski, Information System Specialist

Wendy Pogorzelski, Research Associate

Kennard Strutin, Information Consultant

Thomas Brewer, Criminal Justice Intern

Tiffany Bullitt, Law Intern

Johnna Christianson, Criminal Justice Intern

David Gonzalez, Law Intern

Barbara Ryn, Criminal Justice Intern

Theresa Williams, Law Intern

**Directors**

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Andrew C. Fine

Susan R. Horn

David L. Lewis

Mark J. Mahoney

Michele Maxian

Leonard E. Noisette

Robert M. O'Leary

John W. Parker, III

Louise Perrotta

Stephen J. Pittari

Marvin E. Schechter

David Steinberg

William P. Sullivan, Jr.

# Public Defense Backup Center

## The Past Year's Accomplishments

### Introduction

Exciting challenges and demoralizing difficulties confronted the New York State Defenders Association, its members, and other public defense providers striving to ensure fulfillment of the constitutional and other mandates to provide quality representation to persons of low income in criminal and related judicial proceedings in the past year. At the end of the 1990s, the Association stands poised to offer increased and improved services to the state's public defense community—if funding for these and other public defense services is forthcoming in the much-delayed state budget process. Support for positive public defense policies has appeared in new places—and frustrations have arisen in unexpected quarters. As always, NYSDA has been called on to aid allies, and to analyze actions or proposals antithetical to public defense interests.

This report provides summaries of the Association's recent activities and achievements, its financial statement, and current membership, along with augurs for the future.

### **New Sites**

In the past year, NYSDA's Public Defense Backup Center moved to efficient and economical office space that has already allowed it to host meetings of its board and other groups in-house, thus saving the expense of leased conference space and maximizing staff participation by minimizing disruption of their ongoing work. The new space provides adequate facilities for all staff. This has stopped the "musical tables" that often ensued in the old space when attorneys and interns were forced to move from the library, in the midst of research, so that the office's only semi-large area could be used as a conference room, a document collating room, etc. Since moving to the new offices, the Association has been able to provide much more in-house training.

The new telephone system is also more efficient. It includes a voice-mail component so that members and other callers can leave detailed messages for any individual staff member who is temporarily unavailable (but incoming calls continue to be answered by a live person, not the voice-mail system, to provide personal attention to callers).

Installation of the computer network in the new offices, with new cables, has ended the frequent down

time created when the old cabling faltered or the IS team had to disconnect and reconnect hardware to accommodate the constant shifting personnel in the never-ending search to provide a place for all the Backup Center's functions.

In addition to its new physical site, the Association was completing, simultaneously with this report, a complete redesign and upgrade of its virtual site on the Internet, at [www.nysda.org](http://www.nysda.org). The many new features of the web site are expected to increase the Backup Center's productivity just as the features of the new office have. As noted elsewhere, the new system includes a server for NYSDA's web page. Planning for the move and other computer planning in the last several months have included efforts to ensure that all Association hardware and software will be Y2K compliant, taking NYSDA into the year 2000 without disruption.

### **Old Problems**

There were recurring, familiar issues to deal with in the past year:

The inadequacy of fees for assigned counsel under County Law article 18-b. The instability of public defense funding. The tenacity of those who want cameras in the courtroom, which would distort judicial process and destroy justice. The timidity of those who understand that mandatory sentences for drug crimes have failed to solve the drug problem, but fear that necessary change will be unpopular. The inconsistency of pundits decrying police brutality while deriding defense demands that illegal police actions invalidate convictions. The insanity of the death penalty.

### **New and Continuing Efforts**

NYSDA tried new tactics and time-honored strategies to deal with the above and other concerns in order to improve the quality of public defense and the criminal justice system in New York state. Among those efforts were:

- Public hearings on the state of public defense in New York, and dissemination of the resulting testimony;
- Increased participation in coalitions addressing problems that impact on public defense issues;

- More education of legislative personnel about public defense issues;
- Maintenance and improvement of resources for responding to requests for assistance and anticipating the public defense community's needs;
- Additional continuing legal education trainings.

### Recognition

The Executive Director of NYSDA, Jonathan E. Gradess, received a Distinguished Public Service Award for Outstanding Contribution to Public Service. This honor by the Nelson A. Rockefeller College of Public Affairs and Policy of the University at Albany, State University of New York was awarded on May 21, 1999.

NYSDA's work was also recognized in calls and letters from public defense providers and others who took the time to thank Backup Center staff for assistance or to let others know the value of the Backup Center's work.

### Future Hopes and Needs

Through the Association and its Backup Center, public defense providers and those who affect (or are affected by) public defense in the state of New York should have, in the next millennium:

- Access to advanced technological tools;
- Decades of experience;
- A network of resources and information;
- The assistance of individuals committed to the improvement of the representation provided to people of low income.

Through the membership and support of public defense lawyers and others, the Association should have a constituency that can speak for it and all public defense providers when the need arises.

The proposed slate of candidates for election to the NYSDA Board of Directors, and the membership form included with this report to encourage new people to join, are signs that the NYSDA of today intends to be an even stronger advocate for the rights of people of low income—and therefore the rights of everyone—in the century to come.

### Training

Already designated by the New York State Continuing Legal Education Board as an Accredited Provider in early 1998, NYSDA was ready to assist public defense lawyers in meeting the Mandatory Continuing Legal Education (MCLE) requirements instituted by the Unified Court System effective December 31, 1998.

Many economical, high-quality, practice-oriented trainings—some annual events, some entirely new—were provided in the last year. Non-CLE events were also sponsored.

### 31st Annual Meeting and Conference

Public defense teams and their supporters gained practical and motivational value at the Association's annual meeting and conference by gathering with colleagues and recognizing the good advocacy provided to poor people by many individuals and programs in New York state. During the conference, held July 31 through August 2, 1998, in Corning, New York, three Special Recognition Awards were presented. Recipients were Leonard Noisette, Neighborhood Defender Service, David Leven, Prisoners' Legal Services, and Anne Erickson, Greater Upstate Law Project. NYSDA's 1998 Service of Justice Award was given to John Dunne, Senior Counsel at Whiteman Osterman & Hanna, for his many years of public interest work on behalf of poor people mired in the criminal justice system.

The following training sessions (totaling *11.5 MCLE hours*) were offered:

- Hot Topics in DWI Defense, Peter Gerstenzang
- The Identification Case: New, Noteworthy and Novel, Miriam Hibel
- The Sex Offender Registration Act After *Doe v. Pataki*, Susan Hendricks
- DNA Evidence—What Can It Tell You and What Are Its Limitations? Alan Hudson
- Recent Developments in Criminal Law and Procedure, Edward Nowak
- 1998 Legislative Review, Al O'Connor
- Forensic Pathology: New Tools for the Defense, Barbara Wolf
- Bullet Proof Cross, David Lewis
- Voir Dire on Difficult Issues, Andrea Lyon

### Chief Defender Convenings

On three occasions in the last year, the Association convened in Albany the heads of public defense offices from around the state to share their own experiences, learn about current programs, trends, and techniques, and provide feedback to the Backup Center about what support efforts are most needed:

**October 30, 1998**—Chiefs provided information about public defense and the criminal justice system to Katherine Lapp, Commissioner of the Division of Criminal Justice Services and Director of Criminal Justice, and discussed current issues.

**December 4, 1998**—Public defense chiefs and members of their staff who handle cases involving the defense of prisoners charged with crime gathered at a special convening coordinated by Backup Center Staff Attorney Sybil A. McPherson. Norman Effman, the Wyoming County Public Defender and head of the Attica Legal Aid Society, as well as Jerry Ader from the same office, and Tom Terrizzi and Robert Selcov of Prisoners' Legal Services, shared tactics and resources specific to these difficult cases.

**February 26, 1999**—Chiefs whose jurisdictions have a drug court, and guest Valerie Raine, Project Director of the Brooklyn Treatment Court, described benefits and problems presented to the defense by the establishment and running of these specialized courts, followed by a general discussion. The program was organized by Staff Attorney Mardi Crawford.

### 13th Annual New York Metropolitan Trainer

For those more than 350 lawyers who registered for this sold-out event on March 13, 1999, the following sessions (totaling *6.5 MCLE hours*) were provided. (For those who missed the training, written materials were made available):

- Recent Developments in Criminal Law and Procedure, Edward Nowak
- Internet Resources for NY Criminal Defense Lawyers, Charles O'Brien & Ken Strutin
- Watertight Objections: Preserving Titanic Errors from Appellate Icebergs, Lynn W. L. Fahey
- No Surprises: Anticipating Unusual Trial and Evidentiary Issues, Panel Moderated by Andrew Eibel
- Counsel or Coercion? Advising Clients to Plead or Not to Plead, Steven Zeidman

### 1999 Defender Institute Basic Trial Skills Program

New lawyers and experienced lawyers new to public defense trial work came to the annual Basic Trial Skills Program. Held at Rensselaer Polytechnic Institute in Troy, New York from June 6 to 12, 1999, the program offered training in client-centered representation skills from a national team of communications experts and experienced trial lawyers. The 56 participants, who earned *over 40 MCLE credits*, came from rural and urban counties around the state—19 counties in all. The coaches came from even more varied locales, with a diversity of experiences to match. They helped participants overcome both universal and individual barriers to peak performance in the courtroom. The program addressed traditional trial skills and equally important skills not always taught in trial training programs, such as listening to the client, learning about the client's life beyond the immediately identifiable "facts of the case," and using the resulting information to best present the client's case.

The response from the participants was strongly positive:

*"This is why we do this work. This is why this work recharges us. This is why this work is a privilege. This is the way to be effective for our client but especially the 'invisible client.' Since it is so different an approach, given heavy caseload, low pay and my old age, I will be distinctively effective."*

The "jurors" who made the *voir dire* exercises possible were not actors or legal colleagues, but members of the public, whose participation helped make the training as "real" as possible for the participants:

*"The jurors were great. If you can believe it, that was the first time I've ever done voir dire. It was thrilling. My confidence has soared. I can do this!"*



Photo credit: Schuyler Photography



### Jenna's Law Sentencing Trainings

The Association responded quickly to passage in 1998 of a new sentencing law dramatically changing the way many felony sentences are calculated, and replacing parole for violent offenders with "post-release supervision." NYSDA created a CLE training program, written materials, and a training videotape, featuring easy-to-follow, step-by-step illustrations of the new sentence calculation rules. Backup Center Staff Attorney Al O'Connor traveled to eight public defense offices across the state providing this multi-media training, to help public defense lawyers provide knowledgeable representation to clients who fall within the statute's ambit. *One hour or more of CLE credit* was awarded.

**Single Sentence— Determinate—  
with Violation**

- YR 0: Defendant sentenced to 7 years + 5 YRs post-release supervision
- YR 6 (end): Defendant released  
➡ (6/7 of 7 yrs.)
- **Post-release Supervision Begins**  
➡ One year (1/7) owed on sentence held in abeyance
- YR 7 (beginning): Violation  
➡ Post-release supervision STOPS
- 1 YR Time Assessment  
➡ Charged to Penal Sentence
- YR 7 (end): Defendant re-released  
➡ Post-release supervision resumes
- YRs 8-12: Post-release Supervision
- YR 12 (end): Sentence expires

### Immigration Law Training for Criminal Defense Providers

The Association continued to furnish public defense providers information on the harsh changes in federal law regarding the effect of criminal proceedings on noncitizens' eligibility to come to and remain in the United States. Manuel D. Vargas, Director of the NYSDA Criminal Defense Immigration Project, was present at the annual conference (see above) to discuss immigration law problems with conferees, and to introduce the new manual, *Representing Noncitizen Criminal Defendants in New York State*, described more fully below. In addition, Manny has presented CLE trainings (for *one hour or more* of credit) on immigration law affecting criminal defense over half a dozen times, and has made presentations at law schools, and at state, national and regional seminars and conferences.

### Internet and Other Trainings

#### *Internet Training for Defense Lawyers*

Trainings to help public defense providers use the Internet to economically access a wealth of legal and other information were held by the Association in New York City on May 4, 1999, and in Syracuse, New York on May 26, 1999. Managing Attorney Charlie O'Brien and Information Consultant Ken Strutin demonstrated Internet sites using a computer-assisted multi-media presentation that was itself an introduction to how technology can be used to effectively impart information. The training provided *2 hours of MCLE credit*.

#### *1998 Criminal Law Update Trainer*

A Criminal Law Update Trainer was held in Syracuse, New York, on October 17, 1998. The program provided *3 hours of CLE credit*.

#### *Monroe County Public Defender Office Trainer*

The Association presented training which provided *6 hours of MCLE credit* on April 24, 1999 in Rochester, NY.

#### *Fourth Department Appellate Training*

The Association cosponsored Appellate Training with the Appellate Division, Fourth Judicial Department, in Rochester, New York on July 10, 1999. This provided *6.5 MCLE credits*.

## **Research, Consultation, and the Clearinghouse**

### **Direct Defender Services**

Whether isolated geographically, limited financially, overburdened with cases, or staggering under a combination of these factors, public defense providers in most of New York's counties need help to provide the quality of representation that is required. The Public Defense Backup Center, which is contractually called upon to establish and disseminate materials from a national litigation bank and to engage in legal research, as well as provide training and other services, helps public defense providers across the state with unusual issues and difficult cases in a number of ways. Staff lawyers aided by legal interns use in-house computer-aided research tools and databases, other electronic tools such as the Internet, and the Backup Center's printed resources to find answers to a variety of questions. They also used their pooled expertise to provide consultation on tactics and presentations. Over 1,244 direct defender service requests from 60 counties were received in the past year.

In addition to research and telephone consultations, NYSDA staff and board members helped attorneys in face-to-face consultations. These included holding "moot court" oral arguments at the Backup Center offices, site visits, and strategy sessions. The Backup Center increased its ability to respond to these requests and provide many other services by adding Staff Attorney Stephanie Batcheller, a former appellate attorney in the Monroe County Public Defender Office, to its staff.

### **Criminal Defense Immigration Project**

Demand for the backup services of the Criminal Defense Immigration Project, begun last year with grant monies in the wake of harsh and complex federal legislation, has been so great that the Association has continued it beyond publication of the manual (described below under Publications). The expertise of the Project's director has been directly provided to many public defense lawyers, as well as to many others, through articles in the Association's monthly newsletter and training programs, described elsewhere. In addition, he has had articles published in the *New York Law Journal*, and has had a "Removal Defense Checklist," originally prepared as training material, reprinted in *Bender's Immigration Bulletin*.

### **Public Education**

The Association has provided information about the right to counsel and the criminal justice system directly to the public, through provision of information to those who called the Backup Center over the past year and through appearances of the Association's Executive Director on radio and in school programs. Through its participation in the Gideon Coalition, a broad-based group of organizations supporting improvements in the provision of counsel to low-income people, the Association has contributed to the dissemination of public information through the media and in public forums. The Coalition prepared a brochure describing the provision of counsel in New York State and the role of the Association and other defense providers; the brochure is available from the Backup Center.



### **Technical Assistance and Legislative Analysis**

NYSDA's contract with the state calls for the Association to (among many other mandates) "assess and analyze the public defense system, identify problem areas and propose solutions in the form of specific recommendations to the Governor, the Legislature, the Judiciary and other appropriate instrumentalities." In the past year, NYSDA has taken several actions to fulfill that mandate, as well as to provide technical assistance to counties and others, as the contract also requires. For example, NYSDA's Executive Director is a member of the DCJS's Steering Committee of the Record Sealing Standard Practices Project. Other activities are described below.

### **League of Women Voters and NYSDA Hearings on Public Defense**

To help overcome the difficulty of discussing public defense services and related issues in a state with over 100 autonomous, county-level public defense systems, four fact-finding hearings on public defense issues of common concern were held across New York by NYSDA and the Leagues of Women Voters of New York State, the City of New York, Rochester Metropolitan Area, Syracuse Metro Area, and Albany County. Defense attorneys, community advocates,

county officials—including county executives, budget/finance officers, and county managers—state legislative leadership, judges, bar association representatives, alternative to incarceration providers, and former public defense clients were invited to participate. More than 80 people appeared to testify, and a dozen more sent written comments.

A primary goal of the hearings was to preliminarily identify what is and is not working in order to assist the state and localities improve the quality of defense services for poor people. Among the problems documented were:

The state and localities have failed to recognize the criminal justice process as a system, in which changes to one segment affects others. Increased resources for law enforcement and prosecutors have resulted in more arrests and prosecutions, which have placed additional burdens on the court system, including public defense. Yet public defense attorneys, who often represent 70% or more of all criminal cases in a given county, are faced with stagnant or reduced budgets.

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***While the state has provided some funding for indigent defense, the primary responsibility has remained local. The localities were also given the right to choose whether indigent defense will be provided by the establishment of public defender offices, by contracting with legal aid societies, by assigned counsel at the statutory fixed rate or by mixed scheme. Thus, along with the need to raise 18-b rates, there is a need to monitor county and municipal funding of public defender offices and legal aid programs to ensure the localities meet the constitutional obligations delegated to them.***

**—Susan Lindenauer, New York State Bar Association, Criminal Justice Section**

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The resources available to prosecutors and law enforcement have grown significantly, especially compared to the resources available to public defense offices, making effective representation of clients more difficult.

Federal and state constitutional rights to competent and effective defense services are in jeopardy

because stagnant fees have caused the roster of available, experienced attorneys to shrink. Attorneys who remain are forced to decide if they should limit the services they provide in order to stay within statutory fee limits, or subsidize the state by paying for constitutionally required services themselves. There was unanimous agreement among attorneys, county officials, and judges that the assigned counsel fees are too low and must be raised. However, any plan to raise assigned counsel fees or increase other public defense funding can create as well as solve problems if not carefully designed. For example, state reimbursement for increased costs to only one type of public defense system, such as assigned counsel, amounts to state endorsement of that system, interfering with county planning.

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***The fact of the matter is that when I did argue at the Court of Appeals my rate was reduced about \$600 or \$700. This was on a case that had statewide significance. . . . The Fourth Department has also cut my vouchers on occasion. I understand that they perceive this—some judges may perceive handling assigned counsel as having a pro bono aspect to it, but when you are in private practice getting paid \$25 or \$40 an hour, there's pro bono there out the Wazoo at the beginning "***

**—Gary Muldoon, Assigned Counsel Attorney, Monroe County**

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Photo credit: Wendy Pogorzelski



Assigned attorneys investigate, meet their clients, research and prepare the case, appear in court and complete their work on a case before receiving compensation, but several witnesses testified that their vouchers were sometimes cut, without explanation or simply to save money. Out-of-pocket expenses and reduced vouchers led to an \$11,000 personal loss for one attorney handling a case in the Court of Appeals for a client of low income.

The quality of representation in public defense services suffers due to a lack of resources—overwhelming caseloads, lack of training, lack of standards to guide the profession, and the previously outlined low compensation.

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***There's no discussion ever of quality.  
There is only a discussion of cheapness,  
how cheap can you do it [provide public  
defense services].***

**—Edward Nowak, Public Defender  
Monroe County**

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Training, essential to assist public defense attorneys in dealing with changes in the law such as increasingly harsh sentencing statutes and in skill development, is often beyond the financial reach of public defense offices. The recent implementation of Mandatory Continuing Legal Education requirements for attorneys in New York State is an additional strain. Not only is there no adequate training line in many public defense budgets, the programs are understaffed and cannot maintain their workload if attorneys are sent to training. Public defense training specific to the issues and concerns surrounding the representation of poor people in criminal matters is difficult to obtain.

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***What kind of training is needed?  
The key area is to teach them to recognize  
mental illness and figure out if the person  
has mental illness or not, . . . Also, to be  
conversant with what mental health  
services are available locally. This is so  
they can talk to the judge about the kind  
of treatment program needed, such as the  
[Mentally Ill Chemically Abusive]  
program. The attorney needs specific  
knowledge about local services, too.***

**—Roy Neville, President  
Alliance for the Mentally Ill, Schenectady**

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Work continues on preparation of an Executive Summary of the hearings.

### **Comments to the Committee to Promote Public Trust and Confidence in the Legal System**

In preparation for a May, 1999 National Conference on Building Public Trust and Confidence in the Justice System, Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman appointed a 31-member committee to identify issues affecting the public's trust in the state's justice system. At the Committee's invitation, NYSDA provided a statement that described how the neglect of public defense services has unbalanced the justice system, resulting in unfairness that breeds a legitimate lack of public trust. The Committee's report does call for, among other things, an increase in funding for public defenders' offices and in compensation for assigned counsel, a permanent fund for civil legal services, and law student loan forgiveness programs for those who work in offices representing low income clients.

### **Comments to the New York State Bar Association on Proposed Legislation Establishing a Commission to Investigate the Adequacy of Assigned Counsel Fees**

At the invitation of the State Bar Association's President, James C. Moore, NYSDA analyzed and provided comments on a proposal from the state Judiciary to legislatively establish a "Commission to Investigate the Adequacy of Rates of Compensation for State-Paid Assigned Counsel." While finding that there might be positive aspects to a legislative measure

establishing an independent, state-wide commission to study or administer the provision of counsel to people with low income, NYSDA recommended against the drafted proposal. The timeline for the proposed commission would have delayed any raise in fees until April of 2000, but as the NYSDA/League hearings show, there is no need for further study to know that current fees are inadequate. Furthermore, the commission as proposed was not sufficiently independent to meet national standards for statewide public defense supervisory bodies. The proposed legislation was not introduced.

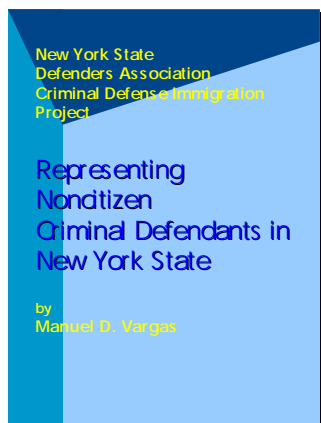
## Gideon Coalition

In addition to the public education activities described earlier, NYSDA and other members of the Gideon Coalition used the March anniversary of the United States Supreme Court right-to-counsel decision, *Gideon v. Wainwright*, to speak with state legislators and staff about the constitutional and social importance of public defense, and about the current crisis of underfunding and neglect.

## Publications

### Representing Noncitizen Criminal Defendants in New York State

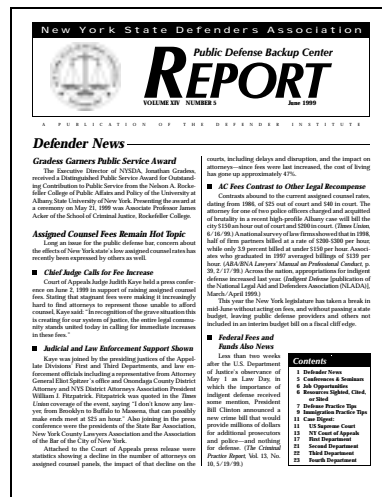
A manual on immigration law for criminal defense teams was introduced at the 31st Annual Meeting and Conference by its author, Manuel D. Vargas, head of NYSDA's Criminal Defense Immigration Project.



The manual has proven immensely popular and helpful to attorneys not only across New York State, but nationally. Over 700 manuals have been distributed. Funding for initial production and distribution of the manual was provided by the Emma Lazarus Fund and the Center on Crime, Communities and Culture, of the Open Society Institute.

## Public Defense Backup Center REPORT

The NYSDA newsletter, published ten times a year, completed in 1998 its thirteenth year of helping public defense providers keep current on legal issues and other developments that affect them. Case digests of recent, relevant decisions continued to appear in every issue (and then become available in searchable



electronic form in the Case Digest System, described below). The *REPORT* received a number of requests to reprint its articles in the past year. With the advent of Mandatory Continuing Legal Education, the "Seminars and Conferences" section of the *REPORT* became more important to readers than ever. As a small palliative for the closing of Prisoners' Legal Services offices across the state due to PLS's removal from last year's state budget, the Association began sending the *REPORT* into the state's prison libraries. The *REPORT* is just one of many items now published on NYSDA's web site as well as in print form, as described below.

### Materials at [www.nysda.org](http://www.nysda.org)

Changes to the Association's web site in the past year allowed the latest *Public Defense Backup Center REPORT* to be posted before print copies could be produced and mailed. Other information available at the web site during the past twelve months included a list of the heads of public defense offices across the state ("Chief Defender List"), the report entitled "Determining Eligibility for Appointed Counsel in New York State: A Report from the Public Defense Backup Center" (1994), and a list of other print materials available from the Backup Center. Work on a redesigned, expanded web site was to culminate in the new site's expected unveiling as described below, with much information newly-published on the Internet, in July, 1999.

## Defender Automation

Thanks to a great Information Systems team, the Backup Center's computer network was moved to the new office space with a minimum of headache for the systems' users, and avoided infection with any of the computer viruses that plagued many organizations in early 1999. MIS Director David L. Austin and Information Systems Specialist James Pogorzelski, along with Managing Attorney Charles F. O'Brien, also worked to ensure that the Association will experience minimal computer problems at the beginning of the year 2000 due to the "Y2K" problem. NYSDA was fortunate to receive assistance from AbirNet, Inc., which provided SessionWall-3™ Internet/Intranet protection and monitoring software for security and auditing. In addition to maintenance and improvement of its in-house information technology, NYSDA embarked on or continued a number of automation projects to assist public defense providers.

## Web Site Redesign

As noted above, a great deal of work was done in the past year at the Backup Center to prepare a redesigned web site that will make useful information quickly and

inexpensively available to public defense providers who are short on resources and long on information needs. A new web server was installed, bringing the web page in-house for easier and faster updating. Conscious of the Internet's value as a research tool, a team of lawyers and information specialists worked to bring together the best sources on the Internet for criminal defense practitioners, as well as to provide more original NYSDA material than had previously been accessible. The Association appreciated the generosity of Tetranet Software Incorporated, whose donated web-site testing and maintenance software—Tetranet Bot Suite (LinkBot, Wisebot, MetaBot)™—was used extensively in the site's development.

## Public Defense Case Management System (PDCMS)

The Public Defense Case Management System (PDCMS), a long-term project of the Association, was designed specifically for public defense offices. It aids in gathering crucial information for tracking clients, cases, and events and reporting on those cases. A Name Search screen allows viewing every name in the database and the relationship the name has for

**Public Defense Case Management System**  
File Options Maintenance Control Reports Help

**Name Search** | **Main Screen** | **Client/Case Info**

**Client Information**

Last Name: DOE | First Name: JOHN | MI: R | Alternate ID: 990039 | NYSID: 3448339 | Interpreter: SPANISH | Sex: M | Race: W

DOB (Age 42): 10/21/1956 | SSN: 393-23-5959 | Address: 2 Spring St., Apt. 2, Adamstown, NY 38338 (583) 388-3802

**Case Information**

S	Case #	Open	Court	Atty.	Top Charge
C	99-0045	01/03/1999	FC	JORI	CUST INTERF-2 (AM)
C	99-17878	11/22/1998	TC	JAFI	PETIT LARCENY (AM)
C	97-1126	04/16/1997	V5V	HQGR	BURGLARY-1 (BFV)

**Case Detail**

CR #: 99-3382242  
 Ind/SCI #: 199002422  
 Bail Status: BAIL  
 Legal Status: PLED  
 Disposition: MTPG  
 Sentence: 30 days JAIL

**Events**

Date	Court	Purp	Time	Atty.	Judge	DA
01/12/1999	CITY	SENT	10:00am	JAFI	FELDSTEIN	SULLIVAN
01/05/1999	CITY	AP30	11:00am	JAFI	FELDSTEIN	SULLIVAN
12/01/1998	CITY	PH	9:00am	MART	FELDSTEIN	SULLIVAN
11/22/1998	CITY	ARR	9:00am	JAFI	FELDSTEIN	SULLIVAN

**Results**

adj 30 day to 01/05/99

**Notes for the day**

John Martin is substitute attorney for today's preliminary hearing.

**Type** | **Attorney's initials**

SUB | MART

The Public Defense Case Management System Main Screen outlines client, case, and event information.

Multiple Conflict Check Report	
Created by: DD	on: 07/20/1999 at: 4:13pm
Date range from 07/09/1999 to 07/09/1999	
List of Pre-Clients Entered on: 07/09/1999	
Harris, Paul	DOB: 10/14/1967
Possible Conflicts Found:	
Found PAUL HARRIS (DOB 10/14/1967) is a(n) INFORMANT in JOHN DOE CPCS-1 (AF) CRIMINAL case 99-2152 closed on 02/16/1999 disposed by FELONY CONVICTION PLEA TO LESSER.	
Found PAUL HARRIS (DOB 10/14/1967) has the same CR# 99338228 with CLIENT AMY JONES CRIMINAL case 97-8822 closed on 04/02/1997 disposed by MISDEMEANOR - PLEA TO LESSER.	
Found PAUL HARRIS (DOB 10/14/1967) as a PRE-CLIENT charged with CPCS 4 (CF) entered on 07/06/1999 has been conflicted out of the system on 07/09/1999 because we are representing co-defendant, Anthony Jones (DOB 03/12/1968).	
Jenkins, Thomas	DOB: 05/14/1956
Possible Conflicts Found:	
Found THOMAS JENKINS (DOB 05/14/1956) is a(n) WITNESS in WILLIAM DOAK ROBBERY 1 (BFV) CRIMINAL case 99-2102 opened on 03/31/1999	

**The Multiple Conflict Check Report is one place possible conflict information is displayed.**

each case with which it is associated. This helps prevent the duplicate entry of names and alerts offices that a conflict may exist even before a name is entered into the system. In addition, conflict information is displayed throughout the system to assist offices in determining if a conflict exists. The PDCMS can also be used to automatically generate letters to clients and labels for files. The system offers flexibility to create a variety of reports using All Purpose Reports and calculates the totals for state reporting such as the Aid to Defense (ATD) Report and the UCS-195 Report. The system also contains the DCJS Charge Table.

PDCMS was recently installed in the Rockland and Schenectady county public defense offices. The Monroe County PD office is currently running an earlier version of the system and plans have been made to install the newest version in that office in the coming fall. Work was nearly completed to convert the computer application that runs the PDCMS to the latest version of Magic™ (version 8). In addition, plans were made to install the system in several other public defense offices this summer and fall, among them, Chemung, Wayne, and Rensselaer counties.

The PDCMS has received a very positive reception so far. The NYSDA team responsible for its development, including Information Specialist Darlene Dollard and Managing Attorney Charlie O'Brien, look forward to demonstrating the system in other offices.

### **Case Digest System (CDS)**

A cost-efficient, easy-to-use electronic research tool, NYSDA's CDS (Windows™ format) contains over 6,000 New York and United States Supreme Court case summaries taken from the *Public Defense Backup Center REPORT* since 1987. Production and distribution of the CDS, which is available on a subscription basis, was made possible in part by the generosity of askSam Systems,™ which provided askSam™ free-form database software and application development consultation.

### **Amicus Activity**

Among the ways that the Association met its contractual obligation to make specific recommendations concerning public defense to the Judiciary in the last year was by filing or joining *amicus* briefs in five cases.

### **Counsel Advocated for Clients in Court Proceedings Concerning Drug Treatment**

NYSDA argued that a defendant whose plea bargain included drug treatment should have had counsel in proceedings at which a court was deciding, after the defendant violated a rule of the treatment program, whether to allow the defendant to continue in a Treatment Alternatives to Street Crime program or to schedule a sentence date. The *amicus* brief was written by Backup Center Staff Attorney Al O'Connor and filed in December, 1998. Unfortunately, the Court of Appeals ruled in *People v [Raphael] Garcia*, No. 24 (2/16/99) that so long as counsel was present at the sentencing proceeding at which incarceration was imposed, the right to counsel was not violated by the absence of counsel at the earlier proceedings.

### **A Defendant's Waiver of Counsel for Prosecutor's Appeal Must be Explicit**

A criminal defendant represented by retained counsel at the trial level who did not respond to the prosecution's appeal may not be deemed to have waived counsel absent record evidence that the de-

fendant had been informed of the right to counsel on the appeal and had waived that right. The Court of Appeals so ruled in *People v [Jovani] Garcia*, No. 28 (2/23/99). The defendant's position was supported by The Legal Aid Society of New York City and the Association in a joint *amicus* brief, written by John Schoeffel of the LAS's Criminal Appeals Bureau, filed in September, 1998.

### **Youthful Offender Adjudications Should Not Support Deportation**

Through briefs written by Manny Vargas, Director of NYSDA's Criminal Defense Immigration Project, the Association advocated in July of 1998 (*Matter of Ancellin-Taylor*) and again in March, 1999 (*Matter of Pereira*) that the Board of Immigration Appeals find a New York Youthful Offender adjudication does not constitute a criminal conviction within the meaning of the federal immigration laws. The second brief was filed following the Board's ruling in *Matter of Roldan-Santoyo*, Int. Dec. #3377 (BIA 3/3/99) that dismissal of a case following the defendant's successful completion of probation does constitute a conviction for immigration purposes.



Photo credit: Schuyler Photography

## **Candidates for Election to the Board of Directors**

The Nominating Committee has selected the following candidates for election to the Board of Directors at the 1999 Annual Meeting of the Association.

### **For a one-year term:**

Andrew C. Fine  
Robert M. O'Leary  
Louise Perrotta

### **For a two-year term:**

John H. Ciulla, Jr.  
Michele Maxian  
Norman Shapiro  
William P. Sullivan, Jr.

### **For a three-year term:**

Norman P. Effman  
Peter L. McShane  
Leonard E. Noisette  
Edward J. Nowak

Following is a short biographical sketch on each nominee for office.

**John H. Ciulla, Jr.** is Public Defender of Saratoga County. A graduate of Albany Law School, Mr. Ciulla is a member and past president of the Saratoga County Bar Association and a member and past delegate of the New York State Bar Association. He was the 1997 recipient of the NYSBA Denison Ray Indigent Criminal Defender Award. Mr. Ciulla was first elected to NYSDA's Board in 1992.

**Norman P. Effman** is Executive Director of the Wyoming County-Attica Legal Aid Bureau and Public Defender of Wyoming County. Mr. Effman received his J.D. from SUNY Buffalo in 1968. He serves on the Executive Committee of the New York State Bar Association Criminal Justice Section and co-chairs its Committee on Correctional Systems. He was the recipient of the NYSBA Criminal Justice Section Award for Outstanding Contribution to the Delivery of Defense Services in 1984 and its Award for Outstanding Contribution in the Field of Correctional Services in 1996. Mr. Effman has lectured on post-trial criminal practice for the New York State Bar Association and is a contributing author to New York Criminal Practice Handbook. Mr. Effman was first elected to the NYSDA Board in 1995.

**Andrew C. Fine** is Senior Supervising Attorney in the Criminal Appeals Bureau of The Legal Aid Society of New York, and a member of NYSDA's Amicus Committee. He has been a member of NYSDA's Board since 1990.

**Michele Maxian** is Attorney-in-Charge of the Criminal Defense Division of The Legal Aid Society of New York. Ms. Maxian, a graduate of Rutgers University Law School, has been a criminal defense and civil rights attorney for over 20 years. She regularly provides training at NYSDA programs on a variety of criminal practice topics. Ms. Maxian was first elected by the Board to fill a vacancy in January 1999.

**Peter L. McShane**, a Vice-President of NYSDA's Board of Directors, is a Supervising Attorney in the Criminal Defense Division of The Legal Aid Society of New York, Bronx County. He received his J.D. from New York University School of Law in 1973. Mr. McShane is a member of the faculty of NYSDA's Defender Institute and has served on NYSDA's Board of Directors since 1980.

**Leonard E. Noisette** is Director of the Neighborhood Defender Service in New York City. He received his J.D. from New York University School of Law in 1984. Mr. Noisette serves on NYSDA's Membership/Development Committee and is a member of the Defender Institute faculty. He currently serves as the Association's designee to the Board of the New York State Association of Criminal Defense Lawyers. Mr. Noisette serves on the Board of Directors of the National Legal Aid and Defender Association, is a frequent lecturer for the criminal defense clinics at New York University and City University of New York law schools, and has taught at NLADA's Defender Institute. Mr. Noisette was first elected to the NYSDA Board in 1995.

**Edward J. Nowak**, President of NYSDA's Board of Directors, is Public Defender of Monroe County. Mr. Nowak received his J.D. from Albany Law School in 1974. He also serves as Chairman of NYSDA's Amicus Committee, and he is a member of the Executive Committee of the New York State Bar Association's Criminal Justice Section and co-chair of its Subcom-

mittee on Discovery. Mr. Nowak has been a member of NYSDA's Board of Directors since 1980.

**Robert M. O'Leary** is Public Defender of Broome County. A 1974 graduate of Hofstra University School of Law, Mr. O'Leary has served as a lecturer for the New York State Bar Association and the Broome County Bar Association in their continuing legal education programs. He is also an adjunct faculty member of Binghamton University and Broome County Community College, where he teaches courses in criminal justice and paralegal studies. Mr. O'Leary was first elected to NYSDA's Board in 1990.

**Louise Perrotta** is a Senior Staff Attorney in the Trial Bureau of the Legal Aid Society of Suffolk County. She received her J.D. from Hofstra University School of Law in 1977. Ms. Perrotta serves as Co-Chair of NYSDA's Membership/Development Committee. She is a member of the Suffolk County Criminal Bar Association, the National Association of Criminal Defense Lawyers, the New York State Association of Criminal Defense Lawyers, the National Legal Aid and Defender Association and the Catholic Lawyers Guild. Ms. Perrotta was first elected to the NYSDA Board in 1992.

**Norman Shapiro**, a Vice-President of NYSDA's Board of Directors, is a private practitioner in Goshen, New York. He received his LL.B. from Brooklyn Law School in 1952 and his J.D. in 1967. Mr. Shapiro is a member of NYSDA's Membership/Development Committee and the DOJ/NIJ Technical Working Group on Crime Scene Investigation. He has been an Assistant Professor of Police Science at Orange County Community College and a member of the active class of the International Association of Arson Investigators. Mr. Shapiro has been a member of NYSDA since 1968.

**William P. Sullivan, Jr.**, a private practitioner from Ithaca, New York, is also a member of NYSDA's Membership/Development Committee. Mr. Sullivan received his J.D. from State University of New York

at Buffalo in 1968. He is a member of the Board of Directors of the New York State Association of Criminal Defense Lawyers and serves as the Sixth Judicial District representative to the Executive Committee of the New York State Bar Association Criminal Justice Section. A member of the National Association of Criminal Defense Lawyers and the Tompkins County Criminal Justice Association, Mr. Sullivan has been an adjunct instructor of criminal justice at Tompkins Cortland Community College and a participating attorney with the Cornell University Law School Criminal Justice Clinic. He was first elected to the NYSDA Board in 1992.

### **Proposed 1999-2000 New York State Defenders Association, Inc. Board of Directors**

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#### **Term expires 2002:**

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COUNTY \_\_\_\_\_

TELEPHONE ( ) \_\_\_\_\_ FAX ( ) \_\_\_\_\_

E-MAIL (Office) \_\_\_\_\_

HOME ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

TELEPHONE ( ) \_\_\_\_\_ E-MAIL (Home) \_\_\_\_\_

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|---|--|---|
| <input type="checkbox"/> Assigned Counsel | <input type="checkbox"/> Public Defender | <input type="checkbox"/> Legal Aid Attorney   |
| <input type="checkbox"/> Private Attorney | <input type="checkbox"/> Law Student     | <input type="checkbox"/> Concerned Laysperson |

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Year of Graduation \_\_\_\_\_

Date Admitted to Practice \_\_\_\_\_ State(s) \_\_\_\_\_

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**E-mail:** [info@nysda.org](mailto:info@nysda.org)



**Annual Report of Directors Pursuant to Not-for-Profit Corporation Law 519**

Pursuant to Section 519 of the Not-for-Profit Corporation Law, the Board of Directors herewith submits to the membership the Corporation's most recent certified financial statement.