

From My Vantage Point

By Jonathan E. Gradess*

NYSDA Works

What help do you, struggling as a public defense lawyer or chief defender in any county in the state, get from NYSDA? What do you, as a client, client family member, or client representative, gain from the Association's existence? What does your tax money, used to fund much of the Backup Center's work, accomplish?

This column will not plead with you to become a NYSDA member, although that would be great. Rather, the concrete examples of NYSDA's work below expand on my last column, "Islands of Hope," (*Backup Center REPORT*, Vol. XX, No. 3, June-July 2005). There, I reflected on the year leading up to the 2005 Annual Meeting and Conference. I noted that the death penalty remains blocked in New York State, that NYSDA and the State Bar Association both passed standards for public defense representation while support for an independent statewide public defense commission grew, that the Legislature and Governor delivered some legislative reform, and that participants in the 2005 Defender Institute Basic Trial Skills program inspired one another—and me—with their commitment to quality public defense representation.

Here, I describe what we are doing to help link those islands of hope, and others, and to help each grow. The goal is to raise a new continent of justice out of the current sea of disparity and despair.

Can NYSDA Give You a New Set of Wheels?

While we are not a car dealership, NYSDA services mean you don't have to reinvent the wheel on every criminal practice issue or let your cases ride on the worn-out treads of outdated law. If you have Internet access, you can check out recent developments in Hot Topics at www.nysda.org. Links there will take you to news stories about the latest reform of the Rockefeller Drug Laws, procedures and developments regarding state funding through the Indigent Legal Services Fund, and much more. This newsletter, the *Backup Center REPORT*, provides not only news items about public defense and criminal and family law issues, but case summaries of relevant current appellate decisions, practice tips, and more. The *REPORT* is mailed to all members, including prisoner members, as well as to Chief Defenders and prison libraries, and is posted on the web. Faxes and emails are sent to Chief Defenders regarding funding and other developments that affect offices across the state. NYSDA's Public Defense Case Management System helps public defense offices perform necessary tasks like checking for potential conflicts, keeping track of court dates, and analyzing workload. And NYSDA trainers, held in several

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regions around the state, many on an annual basis, allow public defense lawyers to get affordable (even more so for members), relevant MCLE credits.

But I said this would not be an advertisement for NYSDA membership. Nor is it a plea for support of NYSDA's budget in the next state funding cycle, although such support would be welcome. Rather, I want to point out how the services mentioned here, and the others that NYSDA provides throughout the year, weave a tapestry of needs fulfilled and needs as yet unmet.

Advocating for Change

Our trainings, conferences, consultations with public defense lawyers and clients, and other activities bring information to us as well as disseminate information. Clients call us because their lawyers don't have time to accept their calls or visit them in jail. Clients' families call us because lawyers don't have time to talk to family members, even family members with relevant information like the names of potential witnesses, a client's mental health history, or other information important to the case. Public defense lawyers call us because they lack the resources to research a unique pretrial issue or prepare for trial involving technological or scientific evidence. Offices call because they are being denied the resources to staff new specialty courts or meet increased demands for services in the wake of new prosecutorial or police policies.

The information we learn about systemic problems informs our advocacy for public defense improvement. We present testimony to the Legislature or other bodies, publish reports, write letters to county officials and others about changes necessary to bring a particular system into compliance with statewide and national standards. We hope that our efforts also help build a public defense community dedicated to meeting clients' needs in an effective, efficient way. We hope that we are encouraging the notion that good public defense systems provide high quality legal services not only in difficult cases but also in what may be mistakenly thought of as "routine guilty plea cases." There are no routine cases, only cases that are important matters affecting the lives and liberties of individual human beings and, because of their numbers, are the real measure of how justice (or injustice) is done.

Gaining Ground, Losing Ground

NYSDA's Public Defense Backup Center has been doing what it does for more than a quarter of a century. Contrasting with the islands of hope I offered in my last column are the waves of problems eroding much of any progress we have made. In my testimony before the Kaye Commission in February, I tried to describe the ocean of injustice that surrounds us. I stated bluntly that at this point in my 36-year career in public defense—most of that career spent trying to improve the system of representation

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for the poor—things are worse in many, many respects than when I began.

NYSDA's Services Illustrate the Need for An Independent Public Defense Commission

The pride that I feel, and hope all of you share, in what NYSDA is and does cannot blind me to the fact that we are not enough. Only an entity that has oversight authority and the power of the purse can bring about the change needed to achieve our goal of high quality legal representation for all persons eligible for public defense representation in every county of the state. I have written here many times about the need for a statewide Independent Public Defense Commission. In this column, I wanted to make clear to you that our call for that Commission is a direct outgrowth of all we do at the Backup Center. I hope also that what NYSDA does has helped each of you, and will help you in the future. I hope that you will help us bring about the creation of a body that can do what we cannot.

About Katrina

This column was conceived before the massive tragedy wreaked upon New Orleans and the Gulf Coast by a natural disaster compounded rather than ameliorated by governmental reaction. My use of water analogies is not meant to disparage or exploit the suffering of Hurricane Katrina victims. Like all of you, I grieve for the loss of life, homes, and livelihoods there. I cannot help but note that the disregard that allowed New Orleans to be swept away is not unlike the disregard we have seen in the trickle-down policy failures that have for years assaulted our clients.

Let us mourn the dead and the destroyed lives of those who survived. Let us remember them and their losses, and honor them not by promises but by daily efforts to see and rectify the economic, racial, and social disparities that currently ensure more people suffer every day. As defenders, let us renew our work to bring real justice to every client. As New York residents, let us demand that our state put money into public defense and other programs to guarantee everyone in New York justice, freedom, and a chance to pursue happiness. As Americans, let us make known that we will no longer accept administration policies of deceit and death. ♪

Katrina Legal Aid Resource Center

The National Legal Aid and Defender Association, the American Bar Association, Probono.net, and the Legal Services Corporation present:

www.katrinalegalaid.org

A website with resources for people affected by the hurricanes, for legal aid and defender programs helping them, and for private attorney volunteers.

Immigration Practice Tips

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Bottom line: *Knapik* and *Gill* provide defense attorneys potential safe havens to avoid or minimize immigration consequences for their noncitizen clients. In removal proceedings that take place in the 2nd and 3rd Circuits, a conviction by guilty plea or trial to a New York *attempted* reckless crime should not be deemed a crime involving moral turpitude, even though the completed crime would be deemed moral turpitude. Practitioners should remember, however, that even if a conviction does not trigger the crime involving moral turpitude ground of removability, the same conviction might trigger another ground of removal, such as the “aggravated felony” ground. ♪

Job Opportunities *(continued from page 10)*

of Defender Legal Services, NLADA, 1140 Connecticut Avenue NW, Suite 900, Washington, DC 20036. Email to DDLS@nlada.org. Position is open until filled.

The Quixote Center, a non-profit social justice organization, seeks an exceptional, savvy, and experienced **Field Organizer** to launch our Equal Justice USA (EJUSA) program's Southeast Field Office. The EJUSA program is a recognized leader in the national movement to halt executions and raise public awareness about systemic inequities corrupting the imposition of the death penalty in the United States. The Field Organizer will work from home or in local office space and can be based anywhere in Tennessee, South Carolina, Georgia, or Alabama. Other states may be possible for the right candidate. The Field Organizer will work with campaigns in each of the above target states to help state-based groups develop anti-death penalty and moratorium campaigns and build their movements. The position will involve travel. The Quixote Center is a non-hierarchical workplace. All full-time staff receive equal base salaries and benefits regardless of tenure or position and decisions are made by consensus. AA/EOE. For a full job description see www.ejusa.org. Minimum Commitment: two years. Salary: \$32,000/year (plus up to \$6,000/year additional for staff with dependents). Excellent benefits, including 4 weeks vacation, 12 sick days, 12 paid holidays, employer-paid health insurance, retirement plan, and prof. development. Target start date: December 2005. Send résumé, cover letter, writing sample, three references, to Shari Silberstein: sharis@quixote.org; fax: 301-864-2182; or mail: Quixote Center, PO Box 5206, Hyattsville, MD 20782.

The Legal Action Center (LAC) is seeking to hire 3 new attorneys: **Senior Staff Attorney – Litigation and Legal Counseling, Staff Attorney – Litigation and Legal Counseling, and Staff Attorney – Criminal Justice Policy/National H.I.R.E. Network.** LAC is a non-profit public interest law firm and policy organization with offices in New York City and Washington, DC that specializes in the areas of alcohol and drug addiction, AIDS and criminal justice. Details available at www.lac.org. ♪