

From My Vantage Point

The Reports Are In, It Is Now Time For Action

By Jonathan E. Gradess*

Judge Kaye Makes Historic Call

The Chief Judge, of her own accord, without a compelling lawsuit or other external compulsion, has called for a major overhaul of the public defense system. This happened in the Court of Appeals on June 28, 2006. Though predicted and expected for the last several months, it was nonetheless historic.

In releasing the report of her Commission on the Future of Indigent Defense Services and the Final Report of The Spangenberg Group on the Status of Indigent Defense Services in New York State (<http://www.courts.state.ny.us/whatsnew>), Judge Kaye called upon all of us. We must come together, to break the stranglehold that fiscal limitation, systemic design flaws, historical accident, and human disregard have placed about the necks of our clients and their defense.

Both the Commission report and the supporting report of The Spangenberg Group call for performance standards and oversight. Both demand independence for the defense function. Each reports the need to end county financing and to finance the system from the State's General Fund. In calling for the establishment of a state public defense system headed by a chief defender and supported by regional defenders, and retaining the best offices and personnel from our current system, the Kaye Commission and our Chief Judge have invited us to participate as a community in bringing about needed social change.

This opportunity is unique for us and we must not squander it.

Work to Shape Much-Needed Change

We can worry with some political and criminal justice officials who will resist reform efforts for fear of losing local patronage positions and the control of "their" way of doing things, or we can stand with the client community demanding justice and zealous representation. We can sit silently, waiting to pounce on a weakness, a flaw, or an oddity in the evolving model of a new system, or we can roll up our sleeves and participate in building the future. We can fear the unknown and belittle a dream of success, or we can cast aside prejudice and self interest and together build the best state public defense system in America.

Change does not happen by itself; we choose change. And real change is always a little scary. The choice lies

in our hearts and in what we know about the actual nature of our practices. Ask the question, "Do I represent my clients—all my clients—the way I should?" The honest answer to this question will lead you where we need to go.

There will be new voices in opposition now that our long awaited call for reform has been enunciated at the highest level of public judicial authority. Social change is like that. When you reach critical mass with an idea—when you feel an idea's time come—new opposition that has been steeling itself for a fight emerges.

As defenders, our job is clear. We must bring into being a new creation. We must be ready to openly and happily answer every question that emerges. We must call upon naysayers and supporters alike to justify their positions. We must do so in a spirit of collegial and social dialogue. And we must do so knowing that we are on the verge of transforming a decrepit, deficient, underfunded, politicized monstrosity into something real, lasting and effective—a well structured and resourced system of which lawyers and their clients, as well as politicians and their constituents, can be proud. ☺

Pro Bono Counsel Needed for Death Row Prisoners

Nearly 3,500 people are on death row across the United States. Hundreds of them have no legal help. Many states do not appoint lawyers to handle capital habeas cases. Many that do pay only token fees and provide few or no funds for necessary investigation and expert assistance. Shortened Federal habeas time limits are running out for many prisoners who have no way to exhaust their state remedies without the assistance of attorneys, investigators, mental health professionals, and others. Competent representation can make a difference. A significant number of successful cases have been handled by pro bono counsel. To competently handle a capital post-conviction case from state through Federal habeas proceedings requires hundreds of attorney hours and a serious financial commitment. The **ABA Death Penalty Representation Project** seeks lawyers in firms with the necessary resources to devote to this critical effort. Having in mind the level of commitment required, criminal defense lawyers and practitioners in civil firms able to take on a capital post-conviction case and provide the level of representation that many death row prisoners did not receive at trial are invited to contact the project: Robin M. Maher, Director, ABA Death Penalty Representation Project, 727 15th St. NW, 9th Floor, Washington, DC 20005; e-mail: maherr@staff.abanet.org; 202-662-1738. For more information, also see the Project's web site: www.probono.net/deathpenalty.

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