

# From My Vantage Point

By Jonathan E. Gradess\*

## Toward Independence

I'm writing this over a month before the 4th of July. If technology and fate allow, it will be available on the web in a few days. If you read it only after it has been through the long process of printing, labeling, and mailing the *REPORT*, Independence Day celebrations will be imminent. That will be appropriate, as the topic of this column is independence of the defense function, without which many of the rights and liberties hailed every July 4th exist only in reproductions of the Bill of Rights. Perhaps the temporal difference between web delivery and mail delivery of my words is appropriate too, serving as a metaphor for the point between the past and the future at which public defense in New York State stands.

At the current moment we are between a past with compromised defense delivery mechanisms and a future with a whole new system. And the moment is telling us much about what we are afraid of and what independence really means.

## Independent Thought Comes First

Amitai Etzioni, the famed writer on social change, reminds us that there is always some lag associated with the process of social change, a differential rate of acceptance by people and institutions regarding the unfolding future. This is particularly present when the change is bringing new forms of freedom. And—to borrow a page from a friend's professor—people with much to conserve sometimes become the most conservative in times of change.

That is part of what the defender community in New York is experiencing. There lies before us a most promising adventure, not complicated or difficult to comprehend, but hard to believe in. It is risky newness, delightfully disruptive, and fundamentally challenging. It requires us to suspend some of our suspicion, some of our presupposition, and almost all of our skepticism.

I take at face value that everyone in public defense cares about improving the quality of representation in the system. But their caring is expressed through their capacity to believe whether or not we can win a new system, whether or not that system will reflect our shared or personal values, and indeed whether we will all be able, when the time is right, to measure up to the very values

we espouse. To them I would say: If you have faith that together we can build the system that should be—a system of realized values and meaningful service—you gain independence from your fear and your commit.

If your fear overwhelms your faith, you hold back.

In addition to those who have committed and those who are holding back, there is a small third group that may let self interest in the status quo govern their response, making them willing to manufacture legends about the past and misconceptions about the future. They may delay change, but they cannot successfully shroud the truth about a system that is simply not functioning. The past had led us to a system that is unconstitutional, morally impoverished and broken. We must think independently of those who proclaim otherwise.

## Independence of The Defense Function

Independence from nay saying thought is important. So is the structural independence of the defense function, which I have written about before, which the speakers at the New York State Bar Association's summit on public defense emphasized (see pp. 5–6), and which is a prominent feature of the "must have" list developed by the Chief Defenders of New York State and recently adopted by the NYSDA Board of Directors (see sidebar, next page).

At the core of the concept of independence of defense is the critically important requirement of insulation—insulation of the defense function from the executive and judicial branches functioning in their administrative capacities, insulation from the judiciary functioning day to day in the courtroom and insulation from the vicissitudes of politics, peer pressure, supervisory overreaching, and bean-counting. The fears of those most interested in reform are fears that thorough insulation and independence cannot be achieved within a house built by state government.

But if such independence ever existed in the delivery of defense services at the local level, it long ago disappeared. Across the state, public defense programs are instructed or feel compelled to cut local costs by forgoing investigators and other necessary support services, by providing horizontal representation that harms clients but provides more efficient courtroom "coverage," and even by not representing everyone who is entitled to counsel.

A statewide system will no doubt also face political efforts to curtail its budget and its services. But a standards-driven, unified system will be better equipped to confront those efforts than are current splintered, isolated programs.

In 2007, let us move toward independence, day by day. ♪

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