

# From My Vantage Point\*

by Jonathan E. Gradess

## ***Clients and the Client Community Deserve a Say in Defense Services***

In our recent report written for the Task Force to Study Compensation Rates for Law Guardians and Assigned Counsel (“Resolving The Assigned Counsel Fee Crisis: An Opportunity to Provide County Fiscal Relief and Quality Public Defense Services,” see p. 3) we urged that clients and the client community have a say in the design, maintenance and evaluation of the quality of public defense services, possible mechanisms for which are discussed below. This was not a new position for our Association.

### **Clients and Their Communities Have Taught Us Much**

In 1979, our Board declared its belief that clients should play an important role in the defender system and in NYSDA. We created a Client Advisory Board as part of our corporate by-laws and opened membership in our Association to non-lawyers, including prisoners. That same year we created a Board position for a non-lawyer representative and began the development of a community legal education program in a host of client community organizations. We thereafter worked with the National Clients Council, the Alliance For Legal Rights, the Economic Opportunity Commission of Nassau County and other Community Action Programs not only to shape programs and joint responses to issues affecting defense services but also to learn directly from people who have the real stake in public defense reform.

In those days we urged the National Legal Aid and Defender Association to follow our lead. We developed community legal education materials, and, as early as 1981, incorporated client satisfaction surveys into our evaluations of defender systems. We have been host to important client community activities, have facilitated small grants to client advocacy groups, and have conducted hearings with clients’ family members. In the campaign to abolish civil death for life termers our Association was the home for the Working Group On Lifer’s Right to Marry, an organization comprised of hundreds of individuals whose rights were finally vindicated in *Langone v Coughlin*, 712 FSupp 1061 (No. Dist. N.Y. 1989) [ban on lifer’s right to marry held unconstitutional].

Our client members have often acted as an early warning system, helping us learn about community problems before those problems emerged in criminal court proceedings. For example, in the mid 1980s, before crack cocaine was being prosecuted, we were being informed of

\* The REPORT will periodically feature a column by the Association’s Executive Director on major issues concerning public defense in New York State.



both its scope and existence by client community groups on Long Island. More recently, letters from prisoner members of NYSDA formed a basis for much of my testimony before the New York State Senate Democratic Task Force on Criminal Justice Reform on Dec. 7, 2000 concerning Special Housing Units, the Rockefeller Drug Laws, and Transitional Services.

### **Client-Centered Representation Works—and Requires That Clients be Heard**

The Defender Institute’s Basic Trial Skills Program (BTSP), which we began in cooperation with the Chief Defenders, has trained hundreds of lawyers to be more sensitive to their clients. With its focus on client-centered representation, BTSP has taught attorneys to overcome the obstacles that race, class, and sex sometimes place in the way of healthy client-attorney relationships. Since its inception in 1987, BTSP has proven invaluable because it makes participants better lawyers. The teaching of client-centered representation is not an idealistic goal but a practical skill. I believe that involving clients and the client community in the broader aspects of public defense will have a similar, salutary effect on the representation individual clients receive.

Representing a person, not a file, in every case keeps lawyers from inadvertently working to their clients’ detriment. For example, if lawyers do not find out that clients are noncitizens, they may urge as “the best possible deal” plea bargains that result in deportation. If they do not know that a young client has suffered abuse, they may miss a winning defense. If lawyers do not take the time and effort to gain their clients’ trust, these and other important facts will not be disclosed.

Gaining trust takes more than saying, “I’m your lawyer, trust me.” Clients and others who see defense lawyers with an office in the same building as the prosecutor and court, who see lawyers greeting district attorneys and court officers with more warmth than they bestow on clients and their families, who learn that their lawyers talk to the prosecutor about a plea bargain before even speaking to a client, will doubt that the lawyers have their clients’ best interests in mind or at heart.

That is why the Defender Institute's trial skills training focuses as much on client interviews as it does on cross-examination. That is why the National Advisory Commission's *Report on Courts* said in 1973 that public defenders should avoid excessive and unnecessary camaraderie around the courthouse and with law enforcement officials (Standard 13.9) and should be sensitive to the problems of the client community and locate, when possible, in client neighborhoods and not where the office would be excessively identified with the other components of the judicial system (Standard 13.13). That is why the National Study Commission on Defense Services said in 1976 that defense systems should devise means of systematically obtaining client feedback and using the information gained to enhance the system's sensitivity to client needs and improve the quality of representation provided (Guideline 5.10).

### **Defining a Formal Role for Clients and the Client Community**

Today, as the challenge lies before us to create a new public defense system, it is no accident that we urge "[a] formal role for clients and the client community in the oversight of public defense services. . . ." Last July our Board passed a resolution that informs the position expressed in our recent legislative report. The *Statement On Client Involvement and Satisfaction, Quality Representation and Vigorous Advocacy* states in part:

New York needs a public defense system that is exclusively focused on providing committed and competent representation to people who cannot afford legal counsel. Public defense providers should seek the advice and continued assistance of the client community in assessing and insisting upon a system providing for such representation.

The system for providing public defense services should have a client advisory board that assists administrators in planning and helps in the design, maintenance and administration of the system. Client satisfaction should be a primary component of defender professionalism as well as an important measure of defender performance. Tools for the assessment of client satisfaction should be developed and methodically used by defender offices.

Quality of representation should not be exclusively measured by outcome, but also by the strength and measured value of the client-attorney relationship.

As the opportunity to improve public defense services statewide continues to unfold (see my last column and *DEFENDER NEWS* at p. 2), we look to our members, the Chief Defenders, and the public defense community to speak out on the need for a client and client

community voice, and on the best ways to implement this resolution.

No one expects clients or their representatives to participate directly in defense programs' day-to-day administrative decisions. But clients need more than one token seat on a large board in whose meetings they are neither considered nor consulted. There are many possible formal mechanisms through which clients and their representatives can let public defense lawyers, staff, and administration know what clients need and what the program is doing right, and wrong. Our clients are a richly diverse group. It is important for everyone who works for public defense clients to hear their points of view, which are no more monolithic than the opinions of those in the public defense community itself. The mechanism for delivering those views may be a genuine presence on a program's board, a separate client advisory board, regularly scheduled meetings of a program director with designated clients or client representatives, or some other means. Whatever its form, it must give clients a voice that is heard and heeded, resulting in representation of clients, not of files.

Efforts and examples already exist. The client community work done at the Neighborhood Defender Service of Harlem, the evaluation of client satisfaction done at Bronx Defenders (see *Backup Center REPORT*, Vol. XV, #5), the Genesee County Public Defender's efforts to elicit client comment, the weekly Monday night jail interviews by the entire Monroe County Public Defender staff, and that office's "suggestion box" all move us in the right direction.

New developments outside the defense community also offer new paradigms and pitfalls for the relationship of attorneys to their clients. Collaborative criminal justice initiatives are requiring attorneys to re-examine and perhaps re-define their roles. Drug courts, for example, focus the attention of the court, treatment providers, the prosecution, and the defense on an entire range of impediments to client drug abstinence. Job, housing, family, and health problems must be addressed. There is pressure on defense lawyers not only to become familiar with these aspects of their clients' lives, but to become "team members," to embrace as a therapeutic tool, rather than ward off, the coercive power of the court. The observations and opinions of individual clients and families, and groups involved in non-legal advocacy for clients and their families, should play a key role in our efforts to analyze our clients' best interests in these new environments.

I am confident there are many bold ideas in the client and defense communities for defining a formal role for clients and the client community in the provision of public defense services. We want to hear them all and use the best. Please write me, call me, or e-mail me ([jeg@nysda.org](mailto:jeg@nysda.org)) at the Backup Center regarding your views on this important principle. ♪