

# From My Vantage Point\*

By Jonathan E. Gradess

## Keeping NYSDA Open in a Changed World

The world has changed.

Our leaders have used our collective September sadness and grief as a launching pad for an outright attack on the constitutional and moral values we cherish and they swore to protect. Our nation's fear has invited the hate genie once again from its bottled moorings and a new anti-immigrant, anti-client, anti-defense lawyer sentiment is brimming over the top of the war cauldron. Racial profiling has become the mode of current investigation; the INS refuses to disclose the location of non-citizen clients; the Department of Justice indicates it will no longer report the numbers of people taken into custody; more people are in detention than at any time since World War II; and 5000 unrepresented students are about to be called to answer for themselves because of the color of their skin, their name, or their nationality.

Meanwhile the Bureau of Prisons unilaterally has eliminated the 400-year-old principle of preserving against government eavesdropping the sanctity of the relationship between attorney and client. We face the spectre of clients being sent to foreign countries for detention and trial under a Military Order of the President. That order permits the death penalty and life imprisonment to be imposed by military officers appointed by the Secretary of Defense, who is also to write the rules of procedure for the pretrial, trial and post-trial phases of these tribunals. The President has the exclusive say about who is subject to the order and will have the final say over an individual's conviction and sentence unless that too is delegated to the Secretary of Defense for decision.

New York has passed sweeping anti-terrorism legislation so broad in scope that it subjects 16-year-olds who pull false fire alarms to prosecution as D violent felons. The next scheduled round of debate—here in Albany in December—is expected to advance a bioterrorism agenda. Meanwhile the shrinking budget negotiations and spiraling economy have left our office, other defender programs, 18B reform, pay equity with prosecutors, loan forgiveness, and the recommendation for a Public Defense Commission in the dust. Aid to Prosecution has nevertheless been extended to all counties and the State Police budget may even be increased. As prison intake has slowed and convictions have fallen, correctional offi-

cers are being deployed as security at the Empire State Plaza. Thus while state and federal legislation increases the exposure of public defense clients to unprecedented procedures and punishments, defenders across New York face the prospect of budget cuts or inadequate or non-existent program restorations.

There is no question that our world has changed, but many things happening now have long been desired by some in power. In the face of measures that erode civil liberties, our job will remain one of protecting our clients from the broad overreach of a system that continues to need and want scapegoats, that provides resources to law enforcement and prosecution far out of balance with those for public defense, and does all these things at the expense of, and in the name of, ordered liberty.

The Backup Center and our Association have not passed through the past eight months unscathed. Our closed intake, reduced program, and uncertainty have been costly to us and to public defense clients. Bittersweet is the news that we dodged a bullet Friday, November 16th; we have been able to hold open our doors but only at the expense of layoffs.

As we await an anticipated December distribution of the amounts available from the Supplemental Budget passed in late October, we have had to make cuts in each department of the Backup Center. Our four recent layoffs, plus three people lost since August, come from our Research Unit (2), Immigration Project (1), automation team (1) and support staff (2). We will also lay off an additional staff attorney in December. By then our program—smaller by a third—will be different and so will our relationship with clients, members, counties and the State government.

For all the years we have been open and funded by the State to administer the Backup Center, we have supported defense lawyers and county defense programs with research services, inexpensive training, free software and computer technical support, lower prices for materials, and below market (or free) rates for studies, assistance and service. Primarily state-funded, we have carried out a state function—resource support to assure the right to competent defense counsel.

This year—as the world changed—we found ourselves organizationally threatened and quite nearly out of business. While we now believe that next month we will be back, smaller, we know things will have to be different. How exactly this all will manifest itself we will explore together with you, our board, and the clients we serve. From what our members and defenders are telling us, we know it is vital that our services to them and to clients never again face this kind of jeopardy. One thing is clear: in a world that has changed, we need to keep our doors open, wide open. This we intend to do. ☪

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