

From My Vantage Point*

by Jonathan E. Gradess

Stronger?

The aphorism—"that which doesn't kill us makes us stronger"—may turn out to be right. But if so, it will come at a very high human price. For the moment the Backup Center seems poised to survive last year's fiscal crisis, but we are reeling, having lost a third of our staff.

Loss

It's hard to think about being stronger from loss when the loss is Sybil McPherson, who performed defender intake, ran Gideon Day, helped with community legal education and smiled willingly at every assigned task. She struggled in the heavy Albany snow to get to work in her wheelchair, raised consciousness in the state about disabilities, and carried the spirit of City University of New York Law School and Neighborhood Defender Service of Harlem to our office eight years ago.



Former NYSDA Staff Attorney Sybil McPherson with her son, Sayeed, at NYSDA's 2001 Annual Conference.

It's hard too to think we'll be stronger when the loss is Stephanie Batchellor. Stephanie is a career defender. She was a public defender in Georgia, a federal public defender in Maryland, and an appellate defender in Rochester before she came to the Backup Center. Her last task before leaving was to file the second of two *amicus* briefs challenging the legality of Judge Lippman's administrative order permitting administrative judges to cut trial court assigned counsel vouchers. (See p. 3.) Sybil and Stephanie raised sons in the Backup Center family. Their sons grew up with us. We stepped over their Duplos and listened to

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

their jokes and watched them try their mothers' patience on snow days. Now two good lawyers—and two families—are gone from the Backup Center because our state has negligent partisan defects at the core of its budget process.

Those defects are why Kate Dixon, who could retrieve internet information for defenders in nano-seconds, is on the unemployment line; they are why Jim Pogorzelski, who silently and happily comforted the computer phobic in our office, is no longer here to help; those defects are why Sejal Zota, a young, energetic and talented lawyer, left our immigration project; they are why Nancy Steuhl, our conference coordinator and secretary, is not seated at our reception desk.

Thanks to this year's budget fiasco our entire social science unit is also gone. We are already lost in a forest of needs and requests hard for us to fill without Tom Brewer and his research interns, Debernee Pugh and Jennifer Poe, all victims of this year's budget wars.

As we continue to await last year's money and seek funds to pursue our work, our office lives. But the price has been too high and it is hard to think, as the aphorism goes, that we will grow stronger from this loss of friends and colleagues whose only professional mistake was to cast their lot with defenders and their clients.

Undeterred!

NYSDA has lost valuable people and valuable time. It has been hard for us to plan and hard to act. We have lost more than \$1,000,000 in funding, and how much will be restored is still up in the air. And yet we will not be deterred from pursuing our Association's course. We were here before the current government configuration. We will be here after this configuration has moved on.

NYSDA was founded 35 years ago, in 1967, by fighting defense lawyers who saw and claimed the future for their clients. They knew the state needed an entity to birth a new form of zealous advocacy for poor people and they formed NYSDA to shepherd in the new day. In that year, George Pataki had just graduated from Yale as an undergraduate, Shelly Silver was still in law school, Joe Bruno was working for Nelson Rockefeller. In that year, the ink was hardly dry on the *Miranda* decision, New York had all but abolished the death penalty, the "new" Penal Law had just become effective and Judith Kaye was four years admitted to the bar.

None of us can tell the future by reading the past, but there is power in persistence. The Backup Center was once staffed with VISTA volunteers. It borrowed law books, and was funded by church money. It will do so again if necessary, because we aren't going away. We have a job to do and we are going to do it, for you and for our clients.

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One of those jobs is to create a new public defense system.

Independent Public Defense Commission

I'm happy to announce that I was recently invited to join the Committee for an Independent Public Defense Commission. I'm honored to join with others who believe we can no longer wait to affirmatively improve the state's ailing public defense system. The Independent Public Defense Commission would set standards and bring accountability to the defense of those unable to afford counsel. The Committee supporting this commission is growing, as is support for the commission. New York City has been invited to join with upstate New Yorkers to examine and support this idea. The Committee's bill will shortly have legislative sponsors. The League of Women Voters has made the Independent Public Defense Commission one of its five legislative priorities. *The New York Times* has endorsed the idea, as have 29 counties and scores of defense providers.

At bar association meetings throughout New York City in January, the idea of an independent public defense commission was being called for, debated and discussed. The New York State Association of Criminal Defense Lawyers (NYSACDL) unanimously endorsed the idea at its January 25th board meeting.

Additionally, 24 local bar associations have endorsed a statement of principles concerning the governance of indigent legal services. In pertinent part the statement calls for a study of the system that would require the

development of mechanisms that "[articulate] minimum quality standards [and insulate] all indigent legal services providers from political influence" protecting "their professional independence in the representation of their clients." The long march toward reform has taken important steps.

On January 24th I was honored to be one of the recipients of the NYSACDL's Gideon Award. In referring to the Independent Public Defense Commission, I asked but one thing of those assembled. We must come to speak with one voice on the issue of client representation. The divisions, the turf, the barriers to joint action must cease. We must stop allowing ourselves to be played by those who would choose to see us in factions. The clash between the private and public bar, the critical remarks made by public defenders about assigned counsel lawyers, the conflict between part time and fulltime providers, between the Legal Aid Society and the alternative providers in New York City, between those who worship the past and those with faith in the future, all must cease. We must come together and fight together. Our clients deserve a great deal more than this from us, but they certainly deserve nothing less. ♡



Jonathan Gradess (I) with (clockwise) his son Sam, Evan O'Brien, and Jason Batcheller, at the Basic Trial Skills Program, 2001.

Pro Bono Counsel Needed for Death Row Prisoners

Over 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, 50 F Street NW, Suite 8250, Washington DC 20001; e-mail: rmaher@abadprp.org. For information, also see the Project's web site: <http://www.probono.net> (Death Penalty Practice Area).