



New York State Defenders Association

2000

Annual Report

to the
Membership

New York State Defenders Association
194 Washington Avenue, Suite 500
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www.nysda.org

New York State Defenders Association
Invigorating and Envisioning Public Defense—NYSDA in 2000

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Mission Statement

The New York State Defenders Association, a not-for-profit, membership organization, has been providing support to New York's criminal defense community since 1967. Its mission is to improve the quality and scope of publicly supported legal representation to low income people.



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Wendy Pogorzelski, Research Associate
Barbara Ryn, Criminal Justice Intern
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Kennard Strutin, Legal Information Consultant
Manuel D. Vargas, Director, Criminal Defense Immigration Project
Richard Corey Worcester, Law Intern

Introduction—*Invigorating and Envisioning Public Defense*



The two basic tenets of the New York State Defenders Association's mission are to provide support to New York's public defense community and to improve the quality and scope of publicly supported legal representation to low-income people. These are overlapping but not identical responsibilities. NYSDA in 2000 seeks to *invigorate* public defense by providing help to existing programs and individuals representing clients in courts across the state. At the same time, NYSDA seeks to *envision* public defense as it should be and to make that vision a reality.

Invigorating Public Defense in New York State

NYSDA's efforts to invigorate public defense take many forms. NYSDA is the only state-wide entity in New York dedicated to improving the quality of publicly provided legal representation. It is required by a contract with New York State to offer, through its Public Defense Backup Center, a variety of services—substantive, procedural, and professional. From automation that makes offices more efficient to training that makes lawyers more effective, the Backup Center offers immediate assistance to public defense providers and seeks new solutions to old, recurring problems.

Defender Automation

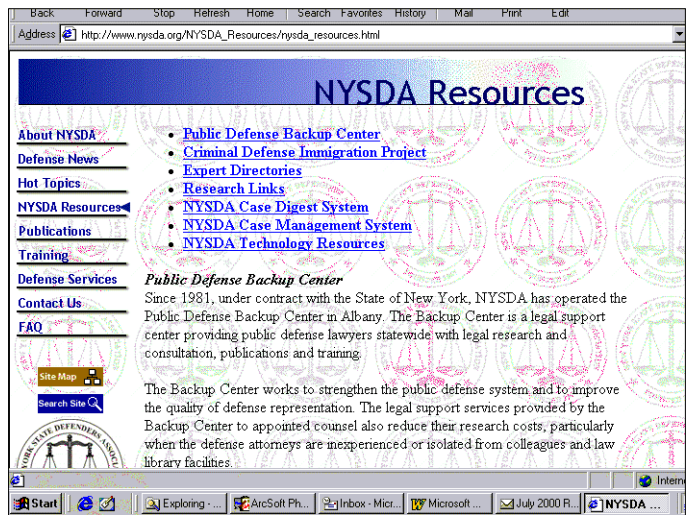
Public Defense Case Management System: Software specifically designed by NYSDA and New York public defense offices is now installed and running in select locations, with more to follow as quickly as the time and stamina of the PDCMS team will allow. A lengthy development process has now paid off with a product that works well and will continue to be supported. Managing cases—screening for conflicts, controlling staff caseloads and calendars, producing state-required reports, etc.—is easier and faster with the PDCMS. Public defense providers can apply that saved time and energy toward improving the representation their clients receive.



Backup Center Automation: Just as it developed the PDCMS to improve the efficiency of offices offering direct representation, the Backup Center is working to improve the efficiency of its own support services by upgrading its internal information systems. In the past year staff have worked to design, develop, and implement up-to-date software for tracking inquiries the Backup Center receives. In addition, increasing use of automated research tools and databases is helping the Backup Center anticipate future needs and design better solutions to the problems faced by public defense providers.

Case Digest System: New caselaw is becoming increasingly available electronically. Commercial legal publishers, law schools, and courts are offering opinions via the Internet on the day they are issued. This welcome deluge of data can, however, sometimes overwhelm rather than assist a public defense practitioner. Therefore, NYSDA continues to provide case digests tailored to the New York State public defense lawyer. Published first in the Association's newsletter, these selected New York and United States Supreme Court summaries are then pressed onto fully searchable disks, narrowing the realm of judicial information to a manageable size for quick reference and initial research.

www.nysda.org: Immeasurable amounts of information are available at NYSDA's web site. Backup Center computer experts work with the Information Consultant and NYSDA legal staff to keep the site current. The cooperation of other public defense agencies multiplies the information available. From a searchable expert database to research links, from legislation to media stories, from substantive legal issues to the latest developments regarding indigent defense systems, public defense teams—and the public—can get answers at www.nysda.org.



NYSDA's web site is ranked #32,154 out of 677,689 domains by WebsMostLinked.com.

Consultation and the Clearinghouse

Direct Defender Services: Criminal defense work is often about much more than the charges pending against clients. Without help, isolated public defense lawyers may become as overwhelmed as their clients by the economic and bureaucratic factors that entwine with the criminal prosecutions of poor persons. Direct defender services offered by the Backup Center include: answering questions from the field about conflicts of interest, new legislation, unusual legal issues, expert witness referrals, and more; responding to client inquiries about their rights; helping eligible clients and their attorneys to obtain publicly-provided experts and other litigation necessities; and locating resources in NYSDA's holdings, on the Internet, and in other programs. Resource-starved public defense programs, local prisoners who have no attorney to help them because they are incarcerated in one county while charged in another, and creative lawyers seeking consultation on new legal theories are just some of the hundreds of people from every county in the state who are served by the Backup Center.



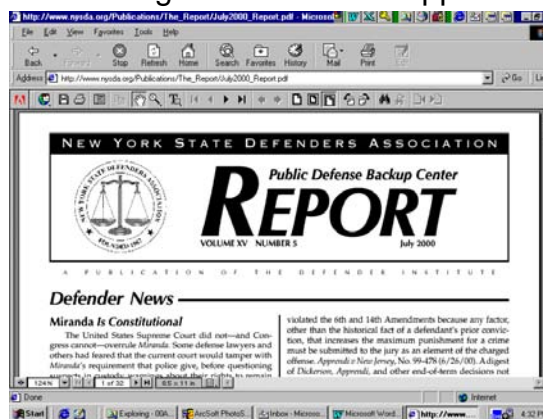
Criminal Defense Immigration Project: When the client is a noncitizen, defense lawyers are faced with another mass of information to consider before giving legal advice. Immigration laws passed in the '90s put more noncitizens at risk for removal, and the number of noncitizen clients is growing. As a result, new questions arise for public defense lawyers. What exactly is the client's immigration status, and how should that affect the defense strategy? Will an otherwise favorable disposition by guilty plea lead to the client's removal from the country? To ensure the quality of representation provided to noncitizens who cannot afford counsel, NYSDA's Criminal Defense Immigration Project offers backup support by phone, updated information on the NYSDA web site (www.nysda.org) and in other publications as set out below, and *amicus* assistance in selected cases.



Publications

Representing Noncitizen Criminal Defendants in New York State 2nd Edition: NYSDA, through its Criminal Defense Immigration Project, distributed hundreds of copies of the immigration law manual created in 1998 specifically for criminal defense attorneys representing noncitizens. Due to rapid changes in this area of the law, a completely updated second edition of the manual was completed in February 2000 and distributed to public defense offices around the state. It is available through the Backup Center.

Public Defense Backup Center REPORT: Defense Practice Tips, other procedural and substantive criminal law developments, reprints of substantive articles from other criminal defense publications, and motivational bits of public defense news from around the state and the country are just some of the items often included in NYSDA's monthly newsletter. The *REPORT* seeks to both invigorate current public defense and share visions of future improvements. Every issue contains digests of selected appellate cases that are then included in updates of the Case Digest System. The *REPORT* now appears on the NYSDA web site immediately upon completion. Print copies are mailed to members, New York State public defense offices, and prison law libraries.



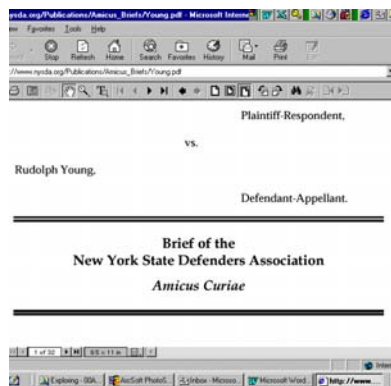
Amicus Activity

NYSDA files "friend of the court" (*amicus curiae*) briefs in important cases to invigorate advocacy on legal issues that impact NYSDA members, clients, the public defense and criminal defense communities, and society at large. Several briefs were filed in the last year.

Immigration Issues: The Association urged through its Criminal Defense Immigration Project that courts not retroactively apply a 1996 federal law providing new bases for

the removal of noncitizens. In some instances, noncitizen residents who came to the United States as children and have no ties to their country of origin have been deported for minor offenses committed here decades ago. NYSDA filed *amicus* briefs on this issue in the United States Court of Appeals for the Second Circuit in *Pottinger v. Reno*, (filed 3/16/00, joined by other *amicus*) and *Calcano-Martinez v. Reno* (filed 11/12/99).

Another immigration stance advocated by the Project is that New York youthful offender adjudications should not constitute “convictions” for immigration law purposes. To deport noncitizens based on youthful offenses found by a state court to warrant only moderate legal consequences is not in the best interest of noncitizens or of New York. The Association, which filed as *amicus* on this issue last year, was again granted *amicus* status before the Board of Immigration Appeals. *Matter of Das* (filed 9/15/99).



Vindictive Sentencing after Successful Appeal: A

decade ago, NYSDA supported as *amicus* a position adopted by the Court of Appeals—a longer sentence imposed after a successful appeal and reconviction is presumptively vindictive. *People v. Van Pelt*, 76 NY2d 156 (1990). Seeking to protect that position, the Association filed an *amicus* brief (accepted 9/21/99) in the case of Rudolph Young. He had successfully appealed a multi-count conviction, was acquitted on retrial of all but one count, and received for that count a

25-to-life sentence as a persistent felony offender. He had received, after the initial convictions, sentences that in the aggregate totaled 45 years to life, but on the only count for which he was again convicted, he had originally received only a two-to-four-year sentence. The Court found that this drastic increase was not error. *People v. Young*, 94 NY2d 171 (1999).

Attica Liability: In 1998, NYSDA signed on to an *amicus* brief in the 2nd Circuit in support of a district court finding that state officials had violated the 8th Amendment during the 1971 Attica prison uprising. In August 1999, the court reversed and remanded the case. In its concluding paragraph, the court noted that the State of New York, had, with the district court's acquiescence, delayed resolution, and added: “That strategy can no longer be tolerated. The district court should not hesitate to resort to appropriate sanctions to induce the defendants to cooperate in promptly resolving this matter.” In January 2000 the state agreed to set aside \$12 million for a settlement, about \$8 million specifically earmarked for prisoners.

MCLE Training

Good training invigorates lawyers and improves the legal services they provide. However, the cost of continuing legal education—which is mandatory in New York State—can be daunting for public defense providers, who face some problems not encountered in other practices. NYSDA provides affordable MCLE programs designed specifically for these lawyers.



Defender Institute Basic Trial Skills Program and Mini-BTSP: Fifty-five trial attorneys who represent low-income clients in 25 counties across the state came to Troy, NY in June 2000 for the Defender Institute Basic Trial Skills Program (BTSP). They left at the end of the week revitalized: “An effective means of learning about your clients and yourself. It helped you to recommit to what you're doing,” one participant said. Skilled, inspiring lawyers and communications experts from around the nation helped the participants envision effective advocacy and provided techniques for achieving that vision. Listening to and learning clients’ stories, then telling those stories in ways that juries can understand, is the heart of the BTSP.

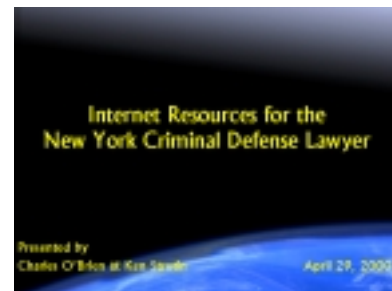


NYSDA held a “mini” version of the BTSP earlier in the year. This successful first-time effort, at The Bronx Defenders on February 3-5, 2000, trained 10 lawyers using core principles and techniques developed for the weeklong trial advocacy course.

Regional Trainings: The Empire State encompasses distances that, for many, deter attendance at one-day or half-day seminars in Albany or the City. NYSDA brought stimulating presenters with up-to-date knowledge and skill to several locations during the past year. The Association’s MCLE programs included “Creative Defense Lawyering: New Strategies and Techniques to Win, ” in 1999 in Rochester, NY and “1999 Criminal Law Update on Recent Developments in Criminal Law & Procedure and Recent Developments in the Right to Counsel” in Syracuse, NY. For those in the New York City area, NYSDA conducted “Recent Developments in the Right to Counsel Under the State Constitution” for the New York County Defender Services in 1999, and presented its 14th Annual Metropolitan Trainer at NYU Law School in March 2000.



Special-Issue and Joint Trainings: NYSDA cosponsored with the Association of the Bar of the City of New York three downstate trainings on Immigration Consequences, in May 2000. Other co-sponsored trainings included “Assigned Counsel Criminal Appeals Seminar,” “Assigned Counsel Family Court Appeals,” and the “Monroe County Trainer,” all in Rochester, NY in May 2000. The Criminal Defense Immigration Project Director participated in a New York State Association of Criminal Defense Lawyers MCLE panel presentation on “Immigration Consequences of Criminal Convictions” in 1999 in New York City.



The Backup Center’s Managing Attorney co-presented a lecture on “Internet Resources for Criminal Defense Lawyers” at NYSACDL’s 1999 MCLE program in

Poughkeepsie, NY. A Backup Center Staff Attorney made a PowerPoint presentation on “Jenna’s Law” at NYSACDL trainers in New York City and Buffalo in the fall of 1999.

32nd Annual Meeting and Conference: The MCLE presentations at the Association’s 1999 annual conference in Glens Falls, NY were high-quality and lively, with several presenters using computer-generated audio/visuals and one including a role-playing videotape. As always, materials from this conference and other trainings are available at a low cost to attorneys who could not attend. Information about the materials is publicized in the *REPORT* and on the NYSDA web site.



Envisioning Public Defense



In addition to providing immediate assistance to public defense providers and their clients, NYSDA is charged, by its membership and through its contract with New York State, with reviewing, assessing and analyzing public defense, identifying problem areas, and proposing solutions. In the past year, NYSDA has taken concrete steps to increase and improve this aspect of its work.

NYSDA Retreat

The NYSDA Backup Center staff participated in a January 2000 training/communication retreat to discuss goals and strategies for carrying out NYSDA’s mission. Brainstorming and other techniques were brought to bear on the unavoidable tension between the Backup Center’s ever-more-ambitious efforts to provide day-to-day services and the need to dedicate time and resources to the analytical side of the Association’s charge. The retreat was but one step in NYSDA’s efforts to envision public defense as it should be and infuse life into that vision.

Reinvigorating the Client Advisory Board

As a major step to envisioning public defense as it should be, the Executive Director has appointed new, active members to the Advisory Board. The Association’s by-laws mandate an advisory board, at least half of whom must be “poor people or their legitimate representatives.” This board is to advise the Executive Director concerning NYSDA’s community programs and assist in designing, executing, and evaluating those programs.

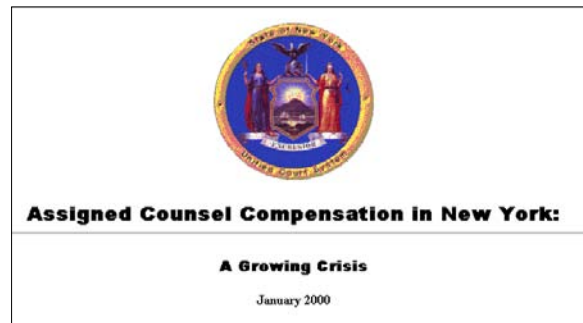
Public Defense Leadership

In the process of envisioning public defense as it should be, NYSDA is both relying on and building the leadership abilities of its board, its membership, and others dedicated to improving the quality of representation provided to poor people.

Chief Defender Convening: Bringing together public defense office heads from around the state to discuss and suggest action on public defense issues and reforms, NYSDA conducted a Chief Defender Convening in Albany, NY in December 1999. The chiefs agreed on a set of governing principles for public defense services, a list that now informs the Association's envisioning of defense services (see pg. 11).

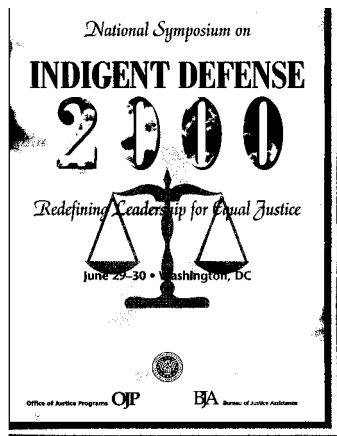
Chief Judge Judith Kaye and Deputy Chief Administrative Judge for Justice Initiatives Juanita Bing Newton accepted an invitation to participate in part of the convening. An early point of agreement between several chiefs and Chief Judge Kaye was her emphatic support for an increase in assigned counsel fees. In addition to discussing ramifications of the fee issue, public

defense lawyer managers from a variety of programs described to both judges several ways that poor people and their lawyers fare badly in the current system. Judge Newton responded approvingly to a suggestion that a committee of chief defenders advise the court about the effects of court procedures and plans on public defense.



New York Public Defense in National Context:

Indigent Defense 2000. Judge Newton and other New York State officials with a variety of interests in public defense joined NYSDA's Executive Director in Washington, DC in June 2000 for a national discussion of issues similar to those raised at the convening. The Office of the Assistant Attorney General and the Bureau of Justice Assistance,



Office of Justice Programs, United States Department of Justice sponsored the conference. States that have no unified system for providing public defense were urged by the sponsors to send delegates who had a statewide view. The other members joining NYSDA in a delegation were the president-elect of the New York State District Attorneys Association, the Executive Director of the Division of Parole, and the Executive Director of the Center for Community Alternatives, an alternative to incarceration program based in Syracuse, NY.

NYSDA's Managing Attorney was invited as a conference presenter to describe the Backup Center as a model for improving indigent defense in other states. Other defense teams and chief defenders from New York State also attended Indigent Defense 2000. NYSDA has been involved in a number of national meetings in the past year in a continuing effort to see New York issues in a national context.

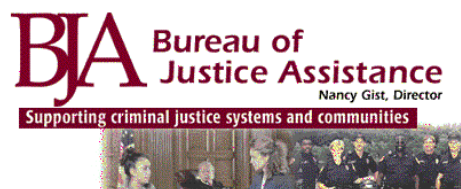
National Legal Aid and Defender Association. The Backup Center's Managing Attorney and Information Consultant attended NLADA's annual conference in Long Beach, CA last November. They presented training on using the Internet for legal research, attended substantive legal training sessions, and talked with colleagues from around the country about public defense trends, including a movement toward statewide systems.



National Defender Leadership Laboratory. The Executive Director went to Washington, DC in April 2000 to participate in a program sponsored by the Vera Institute of Justice's National Defender Leadership Project. The lab, not a roundtable discussion but a technique-oriented training, taught public defense managers how to take a more active role in explaining or advocating for their programs in their communities, in the media, and elsewhere. Central to effective

advocacy for a public defense program is a vision of not only what it is, but also what it is supposed to be.

1999 National Survey of Indigent Defense Systems. NYSDA has served as state representative/contact for the Bureau of Justice Assistance public defense project, which has undertaken the first national survey of public defense systems since 1983. By doing so, NYSDA has sought to ensure that New York is properly represented in the results, to build relationships with national and state public defense entities, and to obtain information helpful for its own role of invigorating and envisioning public defense.



Criminal Justice Research, Technical Assistance, and Legislative Analysis

The national survey above is being tabulated thirty-seven years after the United States Supreme Court's decision in *Gideon v. Wainwright* ushered in institutionalized provision of public defense services across the nation. Similar information on a state and local level is needed as well. A wealth of experience by individual providers cannot make up for a dearth of accurate, up-to-date data about how these services are—or are not—working. Long deprived of enough funds to function day-to-day, public defense offices rarely have time, energy, or money to do the type of “customer satisfaction” research that private law firms are turning to with increasing frequency. NYSDA, as it seeks to envision public defense as it should be, is also working to gather the data necessary to understand public defense as it currently is.

Hearings with the League of Women Voters: Continuing a process begun in late 1998, the Association is working with the League of Women Voters of New York to raise the visibility of public defense issues and to collect the data to support recommendations for change. Full transcripts of fact finding hearings on indigent defense held across the state are now available on the NYSDA web site. The Backup Center's Criminal Justice Research Unit has combed these transcripts for information regarding a number of specific issues. NYSDA has presented the results of their work in a number of venues described below.



An additional fact finding hearing was held at the NYSDA office in April 2000 on the effects incarceration has on the families of prisoners.



Testimony, Advocacy, and Comment: NYSDA has advocated in many forums in the past year for changes needed to make public defense in New York State what it should be. During the fall of 1999, the Executive Director worked with an Assigned

Counsel Fees Group created under the direction of the Deputy Chief Administrative Judge for Justice Initiatives seeking to develop a comprehensive proposal on assigned counsel fees.

NYSDA's Executive Director, assisted by the Research Associate, made a presentation in March 2000 to the Orange County Magistrates Association setting out legal and policy issues to consider when establishing eligibility guidelines for defense services.



Three months later, that same team presented testimony at a Public Hearing held in New York City by the New York State Assembly committees on Codes, Children and Families, and Correction, on the Effects of Incarceration on Families of Inmates. These two presentations demonstrate the breadth of NYSDA's vision of what public defense should be—it should be available to all persons unable to afford counsel from the first moment that the criminal justice system touches them, and must be involved not just with the legal procedures that lead to case disposition but with the realities of what the disposition will mean for the client.

In response to a request from the First Department's Committee on Representation of the Poor, the Executive Director provided written testimony on June 14, 2000. He said that any governing body for public defense should be independent, should enforce standards of representation that include client satisfaction as a measure, and should not be controlled by the judiciary or any other government branch. He also

urged the Committee to view its work in the context of the statewide disarray in providing defense services.

Public Education: In addition to responding to individual inquiries from members of the public and the press about case-specific and systemic issues, NYSDA proactively acts to educate the public about indigent defense. For example, in February 2000 the Executive



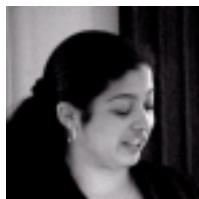
Director made a guest appearance on radio station WRPI to talk about public defense services. He was a guest lecturer at Queens College in March 2000. Appearing on a June 6 public panel on assigned counsel fees, sponsored by The Fund for Modern Courts, he was joined by two members of the Indigent Defense 2000 delegation—



District Attorneys Association president-elect Robert Carney and Judge Juanita Bing Newton.

Activities with the Gideon Coalition: In an annual event that includes a public education component as well as legislative advocacy, the Association again participated in activities of the

Gideon Coalition. Composed not just of public defense programs but also bar associations, the League of Women Voters of New York and others, the Coalition marked the anniversary of the *Gideon v. Wainwright* decision by coming to Albany in March 2000 to advocate for improved public defense.



GOVERNING PRINCIPLES FOR PUBLIC DEFENSE SERVICES

To insure that public defense attorneys in criminal cases provide zealous, high quality representation, free of conflict, the system providing such counsel must:

- Have a hiring or selection process and a funding or payment system that assures professional independence.
- Effectively and efficiently screen for eligibility for the appointment of counsel.
- After a request for counsel has been made, immediately appoint and notify counsel of the appointment.
- Assure that the complexity of a case shall be matched to the ability of the attorney appointed.
- Assure that counsel's workload will be matched to his or her capacity and that provisions will be made for overload.
- Allow counsel to have timely and confidential access to his or her client.
- Assure that counsel has access to adequate research materials, investigators, expert witnesses, and sentencing specialists.
- Assure a role for the client community in its design, maintenance and evaluation of quality.
- Assure that counsel is reasonably and timely compensated.
- Provide adequate training and continuing legal education for all appointed counsel.
- Allow counsel to participate in all aspects of improving the quality, cost, and effectiveness of the entire justice system.

Adopted by New York's Chief Defenders at their Convening in Albany, New York
December 16, 1999

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Annual Report of Directors

Pursuant to Not-for-Profit Corporation Law 519



Pursuant to Section 519 of the Not-for-Profit Corporation Law, the Board of Directors herewith submits to the membership the Corporation's most recent certified financial statement.

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