

# ANNUAL REPORT TO THE MEMBERSHIP

## 2002

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New York State Defenders Association  
194 Washington Avenue, Suite 500  
Albany, NY 12210-2314

[www.nysda.org](http://www.nysda.org)

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**New York State  
 Defenders  
 Association**

**ANNUAL REPORT  
 TO THE  
 MEMBERSHIP  
 2002**

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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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### OFFICERS

Edward J. Nowak, *President*  
Norman P. Effman, *Vice President*  
Peter L. McShane, *Vice President*  
Norman Shapiro, *Vice President*  
Merble H. Reagon, *Secretary*  
Marsha Weissman, *Treasurer*

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### DIRECTORS

Cary Bricker  
John H. Ciulla, Jr.  
Karloff C. Commissiong  
Edward R. Hammock  
Susan R. Horn  
Gary A. Horton  
Kathryn M. Kase  
David L. Lewis  
Robert D. Lonski  
Michele Maxian  
Leonard E. Noisette  
John W. Parker, III  
Louise Perrotta  
Stephen J. Pittari  
David Steinberg  
Robin G. Steinberg  
William P. Sullivan, Jr.  
E. Vincent Warren

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### ADVISORY BOARD

Marion H. Hathaway, *Chair*  
Alison Coleman  
Robert Flunory  
Alice P. Green  
Edith N. Jones  
Darryl P. King  
Paquita Y. Wheeler

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### STAFF

Jonathan E. Gradess, *Executive Director*  
Charles F. O'Brien, *Managing Attorney*  
Barbara Baggott, *Executive Assistant*  
  
Saadia Aleem, *Immigrant Defense Project Staff Attorney*  
Dawn Allert, *Office Coordinator*  
David L. Austin, *MIS Director*  
Stephanie Batcheller, *Backup Center Staff Attorney*  
Mardi Crawford, *Staff Attorney*  
Darlene Dollard, *Project Manager*  
Mary Durgee, *Accountant*  
Malena Hanukov, *Legal Intern*  
Jessica Henchey, *Legal Intern*  
Shahrul Ladue, *Legal Secretary*  
Alfred O'Connor, *Staff Attorney*  
Debernee Pugh, *Volunteer Research Associate*  
Kennard R. Strutin, *Legal Information Consultant*  
Manuel D. Vargas, *Immigration Defense Project Director*

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### THE BACKUP CENTER

Housed in an office a few blocks from the governmental offices of the Empire State Plaza and bordering one of Albany's low-income neighborhoods, the Public Defense Backup Center provides resources to public defense lawyers, public officials, and others in every county across the state. Help is available by mail, telephone, facsimile, e-mail, and the NYSDA web site.

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## INTRODUCTION: THE GOOD, THE BAD, AND THE CONTINUING FIGHT

**F**or NYSDA and public defense services, as for everyone, events of the past twelve months produced joy and admiration, pain and sorrow, and more than enough to do every day. The Association continues to advocate in many forums for the rights of public defense clients, even as direct and indirect threats to those rights mount in the wake of September 11, 2001. Problems that existed for public defense systems before the attacks have worsened. NYSDA is proud to be among those who, while grieved by the attacks that touched every aspect of American—and international—life, refuse to abandon our constitution, our principles, or our clients. This report celebrates the good that occurred in the past twelve months, notes the bad, and briefly describes the important daily work of the Backup Center during that time.

### The Good

The Fiscal Year 2002 state budget that passed in May contained funding for NYSDA's Backup Center and other public defense programs traditionally receiving state money. Through the Backup Center, NYSDA continues to provide high-quality MCLE training, direct defender services, publications, and other support to the defense community.

NYSDA's Immigrant Defense Project (IDP) secured grants and other assistance so that criminal defense lawyers and their noncitizen clients can continue to get information on how criminal proceedings may affect immigration status. IDP Director Manny Vargas received the New York State Bar Association (NYSBA) Criminal Justice Section's "Award for Outstanding Contribution to the Delivery of Defense Services in New York State" and two other awards recognizing the outstanding work done by him and the attorneys and interns under his leadership.

Backup Center Staff Attorney Stephanie Batcheller was also honored, receiving a special President's Commendation from the New York State Association of Criminal Defense Lawyers (NYSACDL) for her work on briefs filed for NYSDA, NYSACDL and others as *amici*. The briefs clearly set out the illegal nature of a rule issued by the Chief Administrative Judge that allow review of trial court grants of extraordinary fees to assigned counsel. Batcheller has returned to the Backup Center after the FY 2001 budget crisis forced her departure.

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*"I got very valuable help from NYSDA and its web site. Not only was there more information and access to documents than I had hoped for, but the staff was very gracious and helpful. I was having trouble researching a particular issue—but I got eve[ry]thing I needed from NYSDA."*

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*“Thank you for your help and inspiration.”*

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*“Without continued funding for the New York State Defenders Association and Prisoner Legal Services, the state is putting itself and the credibility of the criminal justice system at risk.”*

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NYSACDL recognized the work of NYSDA Executive Director Jonathan E. Gradess as well, presenting him with a Gideon Award on January 24, 2002. In his acceptance speech, he addressed the growing public defense crisis and called for a statewide, independent public defense commission, an idea that is gaining wide support.

Both the New York State Senate and Assembly saw bills introduced to raise assigned counsel fees, and to create an independent public defense commission to ensure quality defense services for persons eligible for publicly-paid counsel. Across the state, editorial boards and others recognized the need to improve how New York State provides public defense by supporting reasonable compensation for public defense lawyers and public defense independence from the Executive and Judiciary.

Judges in federal court, and state Family and Supreme courts recognized that low fees are unacceptably eroding the ability of criminal and Family Courts to provide justice to litigants. NYSDA monitored fee litigation regularly over the past year, and posted new developments on its comprehensive web site, [www.nysda.org](http://www.nysda.org).

The admirable courage of some lawyers in facing threats to the bedrock of our constitutional system of justice was a lonely good thing in the legal and emotional aftermath of the destruction of the World Trade Center. That the Legal Aid Society offices next to Ground Zero sustained no direct hit, and that all staff there were unharmed, though forced to relocate, was another.

## **The Bad**

The defense community suffered a widening ripple of effects from 9/11. Lawyers in New York City valiantly coped with the disaster while continuing to meet clients' needs. Soon after the attacks, legal issues began to arise. State and federal legislation curtailed civil liberties, wounded immigrant communities, and increased the already-great pressure on criminal defense lawyers representing unpopular clients. On the segment of NYSDA's Defense News web page dedicated to the impact of the disaster, unprecedented governmental interference with attorney-client interviews lead a list of post-9/11 practices that put the constitution in peril. Defense lawyers challenge these practices as advocates, and even as clients. NYSDA member Susan Tipograph's representation of New York City attorney Lynne Stewart, charged with federal offenses based on Stewart's representation of Sheik Omar Abdel-Harman, exemplify the situation.

The economic devastation caused by 9/11 became an excuse to let public defense remain in crisis. No assigned counsel fee or independent public defense commission bill passed both houses of the

Legislature. Like portions of the state budget—FY 2001 funds for the Backup Center and other public defense programs were withheld until the 11th month of the fiscal year—these matters were relegated to a low tier of importance despite ongoing and increasing harm to poor people and justice.

As a result, the number of lawyers able to accept assignments at 1986 rates that fail to cover overhead costs dwindled further. Trial court orders finding that this intolerable situation amounted to “extraordinary circumstances” allowing payment of higher fees raised hopes that were promptly dashed by administrative judges wielding the rule mentioned earlier.

Budget cuts affected more than assigned counsel. Prisoners’ Legal Services of New York, Inc. laid off staff and closed its Poughkeepsie office. NYSDA laid off staff, suspended publication of its newsletter for several months, and canceled the June, 2002 Defender Institute Basic Trial Skills Program. Funding for FY 2002 keeps the doors open, but does not restore all services.

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*“Without the Backup Center support small firms being paid at assigned [counsel] rates will not be able to meet their overhead expenses and do the time consuming and lengthy research that some cases involve for adequate representation.”*

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## The Continuing Fight

The Association accomplished much in the last year. Thanks to the generosity and support of many members and others, the Backup Center’s extensive clearinghouse holdings are still available to assist defense lawyers, government officials, and others with questions about public defense.

## Our Members and Supporters

During the many bad times of the last year, members and others who believe that NYSDA makes an important and unique contribution to justice in New York State backed up the Backup Center. Some provided visible, vocal support; letters calling for Backup Center funding are quoted throughout this report. Despite the limiting of services and increase in membership dues that resulted from the funding crisis, most people renewed their membership. Assigned counsel lawyers renewed even though their fees continued to stagnate. Institutional defenders renewed despite their own budget problems. Prisoners renewed notwithstanding their constrained circumstances and severe cuts in the already limited time and attention NYSDA could devote to inmate services. For their help to the Association and to the cause of justice, the New York State Defenders Association is very grateful.

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*“Because of the great support your office has given to us over the past year, especially during our computer crisis, we have chosen NYSDA to be this year’s recipient [of an annual office donation] ‘to an organization that is important to the community.’”*

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## FIELDING REQUESTS: DIRECT DEFENDER SERVICES

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*“The Defender’s Association has a significant research bank and staff to help us access same. Without them, every [public defense] office would be re-inventing the wheel every time they were hit with a problem that was new to them.”*

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Despite curtailing intake for several months to close existing files under the threat of total defunding, the Backup Center responded to hundreds of requests, from more than half of New York counties, for information, consultation, and research in the last half of fiscal year 2001. With the help of members and others who made known the Backup Center’s importance to attorneys, clients, and local public defense programs, funding (in a reduced amount) was ultimately obtained for 2001, and for 2002. This allowed the Backup Center’s remaining staff to continue to provide legal and criminal justice information to lawyers, government officials, and others. The Backup Center provided lawyers with information on where to contact expert witnesses and how to deal with specialized evidence such as DNA and eyewitness reliability. Interns, the Legal Information Consultant, and staff lawyers used in-house databases and computer searches to find legal authority for unique factual and legal situations. Clearinghouse holdings of data on the criminal justice system in New York and nationally allowed the Backup Center to respond to technical assistance requests even though the Social Science Research Unit remained largely unstaffed. Materials from several training events added to the depth of the clearinghouse collection.

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## AMICUS ACTIVITY

### Assigned Counsel Fee Review Challenged

In the fall of 2001, NYSDA joined with NYSACDL and the National Association of Criminal Defense Lawyers to file *amici curiae* briefs in two cases involving challenges to the Chief Administrative Judge’s rule permitting concurrent, *sua sponte* review and modification of trial court orders granting extraordinary compensation by local administrative judges. The first case, *Levenson v Lippman*, involved challenges by lawyers in the First Department. The second case, *Hinman v Mark*, was filed in the Fourth Department. In both cases, the respective departments of the Appellate Division shunned the issues on jurisdictional grounds. The matters are all now going forward as declaratory judgment actions in the Supreme Courts, seeking to have the rule declared an unconstitutional exercise of the Chief Administrative Judge’s authority under the New York State Constitution.



## Prisoners Caught in Parole Denial Loop

Given the time that administrative, then judicial, appeals of a parole decision can take, prisoners challenging denial of parole may see the Parole Board again before a final appellate decision is rendered. In August, 2001, NYSDA filed an *amicus* brief in the Court of Appeals arguing that a denial of appeal at the second Board appearance should not render moot improprieties in the first denial. In *Moissett v Travis* (97 NY2d 673), the Court found against the prisoner, in effect allowing error in parole proceedings to remain unreviewed.



## Pretextual Traffic Stops Permit Discriminatory Police Power

The United States Supreme Court refused, in 1996, to suppress evidence found by police who used a minor traffic infraction as a pretext to stop someone in the absence of constitutional grounds to stop them otherwise. After that decision, *Whren v United States* (517 US 806), New York courts continued to find pretextual stops improper as a matter of state constitutional law. In 2001, NYSDA and 100 Blacks in Law Enforcement Who Care filed briefs as *amici* in the Court of Appeals arguing that *Whren* allows police to “comply with objective rules relating to ‘reasonable suspicion’ for traffic stops, and yet selectively and invidiously exercise their powers in myriad ways.” In *People v Robinson* (97 NY2d 341) the Court found that stopping a driver who police have probable cause to believe committed a traffic violation does not violate the state constitution regardless of the primary motivation for the stop.



## Police Failure to Transmit Papers to DA Delays Proceedings

Outside New York City, the duty to transmit a filed accusatory instrument falls to the police in certain instances. NYSDA filed an *amicus* brief on narrow, but important, issues concerning the proper construction of the applicable statutes in a speedy trial case where the police failed to do so. The brief argued that a finding of “exceptional circumstances” in this context would only encourage violations and result in delays, inefficiency and unfairness to criminal defendants. Nevertheless, the Court of Appeals made such a finding on July 2, 2002 in *People v Smietana* (2002 NY LEXIS 1904).



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*“This program should not be over looked nor underestimated. I can not stress enough how important NYSDA (The Backup Center) has been for me and many people that I know.”*

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## **Punishment for Post-Plea Denial of Guilt Chills Claims**

A defendant pleaded guilty in exchange for a sentence bargain, with the condition that if he lied during a presentence interview, a harsher sentence could be imposed with no opportunity to withdraw the plea. He then denied to a probation officer during the presentence interview that he had committed the charged offenses, and received a sentence more than triple the one bargained for. NYSDA filed an *amicus* brief in the Court of Appeals. Among the arguments presented was that allowing a court to reserve the right to unilaterally increase the sentence under those circumstances is fundamentally incompatible with the obligation to supervise the plea bargaining process. Clearly, the threat of increased punishment will inhibit defendants from making even well-founded post-plea claims of coercion or innocence. The Court on July 1, 2002 found the practice acceptable in *People v Hicks* (2002 NY LEXIS 1884).

## **Repeal of Relief from Deportation Due to Criminal Convictions Should not be Retroactive**

Seeking to build on an amici victory last year, NYSDA, through its Immigrant Defense Project (IDP; see page 7), joined NYSACDL and The Legal Aid Society as *amici* in a Second Circuit Court of Appeals immigration case. The issue concerns retroactive application of the Congressional decision in 1996 to repeal a provision of the immigration laws that allowed discretionary relief from deportation for criminal convictions in certain cases. The specific question is whether the repealer applies to immigrants who faced criminal charges and elected to go to trial—perhaps based on the belief that even if convicted they could seek relief from deportation—before the new law’s enactment. The case, still pending, is *Rankine v Reno* (01-2135 (L), 01-2483 (CON)).

## **NY Manslaughter II Should Not Require Deportation as an Aggravated Felony**

The IDP also submitted an *amicus curiae* brief in support of the petitioner in another Second Circuit case, *Jobson v Ashcroft* (No. 02-4019). The brief argues that New York manslaughter, second degree, should not be deemed a “crime of violence” for aggravated felony purposes. (Conviction of an aggravated felony generally results in mandatory deportation.) Manslaughter II convictions can be based on recklessness, and death that results from an act or failure to act that does not involve force may lead to a conviction. Therefore, the offense should not be found to meet the immigration law’s definition of a “crime of

violence.” The brief also argues that the judges should not have considered the presentence report to determine if the conviction was for “a crime of violence.”

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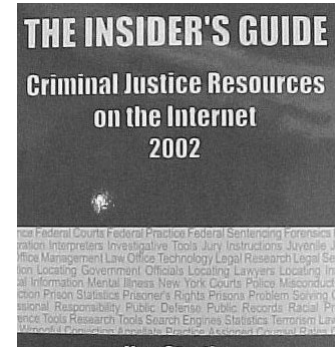


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## PUBLICATIONS

### *The Insiders Guide: Criminal Justice Resources on the Internet 2002*

Whatever the question, there is probably an answer—or at least a lead—on the Internet. But how does a public defense lawyer, investigator, or paralegal find it without spending too much time? By going first to NYSDA’s new publication, *The Insiders’ Guide: Criminal Justice Resources on the Internet 2002*. Contained within its 174 pages and accompanying CD-ROM is an annotated collection of new and proven web sites and publications concerning criminal justice and public defense. Most of the sources are free (e.g. “Navigating the Maze of Criminal Records Retrieval–Updated”) and some fee-based (e.g. “rapsheets.com”). There is an array of tools for locating lawyers, judges, inmates, and people in general. NYSDA sent a copy of the Guide to every public defense program in the state. *The Insider’s Guide* is available at an affordable rate from the Backup Center.



### *Public Defense Backup Center REPORT*

The state budget crisis and resulting staff cuts at the Backup Center interrupted publication of NYSDA’s monthly newsletter in the latter part of 2001. However, the July-December issue published at the end of the year provided 54 pages of news, practice tips, and case digests. Three double issues in the first half of 2002 continued to keep practitioners abreast recent case law, developments concerning assigned counsel fees, upcoming seminars, and much other information. NYSDA Members, Chief Defenders, and prison law libraries receive print copies of the *REPORT*, which also appears on the NYSDA web site.

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## IMMIGRANT DEFENSE PROJECT

NYSDA’s Immigrant Defense Project (IDP), based in New York City, responded to over a thousand requests for backup legal support during the past twelve months. These requests came from criminal justice system advocates and immigration system advocates, as well as from individual immigrants and their supporters. The IDP was able to continue its services despite the state budget crises thanks to a

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*“Just recently, I was preparing a newsletter to my [assigned counsel panel] members, and I included in it two items from the [Public Defense Backup Center] Report, to wit: effect of immigration status on criminal defendants; and a treatise on the latest issue in identification testimony of experts.”*

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*“As the primary provider of public defense services in [our] County, our attorneys rely heavily on services from the Backup Center. We receive assistance from the Center in the forms of research assistance, access to an extensive brief and memorandum bank, critical advice regarding immigration consequences of decisions [that] are made when providing criminal defense services to clients, referrals to expert witnesses and statistical research. Access to the Backup Center allows our program locally to save considerable sums of money.”*

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combination of grants and other assistance. A fellowship funded by the law firm of Kirkland & Ellis, and the volunteer assistance of part-time law school and pre-law interns made possible some staffing in addition to the Director in 2001. Recent grantors include the New York Foundation, Fund for New Citizens of the New York Community Trust, and Open Society Institute.

IDP resource materials reached lawyers, other advocates, and immigrants through print and Internet distribution of such items as the updated *Removal Defense Checklist for Criminal Charge Cases*, and an “Immigration Practice Tips” column in NYSDA’s newsletter. The IDP’s Detainee Defense Initiative provided or arranged pro bono legal assistance for many indigent New York immigrants whose past encounters with the criminal justice system led to detention and/or threat of detention and removal from the county. The IDP also engaged in *amicus* activity, with the assistance of the law firm of Wilmer, Cutler & Pickering, which drafted and submitted two briefs as *pro bono* counsel to NYSDA (see p. \_\_).

The Director of the IDP, Manuel D. Vargas, received a number of awards in the last year. This recognition included the following:

- New York State Bar Association Criminal Justice Section’s “Award for Outstanding Contribution to the Delivery of Defense Services in New York State”
- New York Association of Criminal Defense Lawyers’ “President’s Commendation”
- New York Attorney General’s “Award for Distinguished Public Service in the Legal Profession.”

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## TRAINING

### Accredited MCLE Provider

NYSDA retains “accredited provider” status with the New York State Continuing Legal Education Board. Providing relevant and accessible training at a cost that public defense lawyers can afford is a major Backup Center objective.

### 34th Annual Meeting and Conference

The training provided at Lake George July 27 and 28, 2001 reflected the breadth of knowledge defense practitioners require. “The Mental Health System and Civil Commitment: Representing the Criminal Defendant” provided information on how defendants can be hurt—or helped—at the intersection of mental health and criminal law.

Lawyers heard experts dissect and describe the biological and legal marvel of the era, during “DNA: Biology and Technology,” to help defense teams deal with human tissue evidence. “Navigating the Shoals of Confidentiality in Public Defense: The Ship You Sink May be Your Own” provided useful information and needed ethics CLE credits.

### **16th Annual New York Metropolitan Trainer**

About 250 attorneys attended NYSDA’s annual trainer at New York University Law School in March, 2002. Like training at the annual conference, the sessions targeted criminal defense, particularly public defense, and included a variety of topics. Lawyers learned how to “Avoid Ethical Pitfalls,” obtained updates on search and seizure law and appellate decisions, widened their view of clients’ needs with “Interaction of Criminal and Family Court Representation,” and gained insights into “The Right to Present a Defense.”

### **Other Regional and Specialized Trainers**

In Monroe County, NYSDA put on a Criminal Defense Update in December 2001 and, with the Appellate Division, Fourth Judicial Department, presented Assigned Counsel Criminal Appeals Mandatory Eligibility Training (in September) and Assigned Counsel Family Court Appeals Mandatory Eligibility Training (in October). Also in October, NYSDA presented PowerPoint For Criminal Defense Practitioners at the Dutchess County Public Defender Office. A two-day version of the acclaimed week-long Defender Institute Basic Trial Skills Training traveled to the Neighborhood Defender Service of Harlem in November. Criminal Defense Tactics and Techniques IV was held in Rochester in April 2002.

#### **Immigration/Criminal Law Training**

NYSDA’s Immigrant Defense Project (see page 7) trained criminal defense and *pro bono* lawyers on criminal/immigration issues, at several venues throughout the year. MCLE credits were offered for some. In addition to a recent training in Buffalo on Immigration Consequences of Criminal Convictions, the IDP participated in trainings sponsored or co-sponsored by the New York State Association of Criminal Defense Lawyers (NACDL), the New York Lawyers for the Public Interest, the National Lawyers Guild, the Center for Constitutional Rights, The Legal Aid Society, and the New York Law School Justice Action Center. Judges, immigrants themselves, and law students also learned about the intersection of criminal and immigration laws during several IDP presentations in New York City and elsewhere.

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*“In my work as Public Defender, one of my most valuable resources has been the New York State Defenders Association, in particular the Backup Center . . . I can also assure you that any monies allocated to the Defenders Association results in cost savings to County Public Defenders Offices.”*

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*“...so keep the faith  
and under no  
circumstances stop  
fighting for the  
changes you have been  
advocating for, I  
believe you will  
eventually see them  
materialize; you have  
lots of people that  
believe in you...”*

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## **WRONGFUL CONVICTION/INNOCENCE PROJECT**

Funded in part by a grant from the Cardozo School of Law Innocence Project and driven by knowing that innocent people remain in prison, NYSDA worked toward establishing ways to help the wrongfully convicted. Efforts included convening representatives from several upstate law schools in Albany in March and collecting resources for practitioners who work on innocence cases. Creating and maintaining a network of professionals willing to work for fundless and often friendless prisoners professing innocence would be a major step toward addressing wrongful incarceration. The Backup Center monitored developments in innocence claims. One concrete result is that information about wrongful convictions in New York and across the country, and about Innocence Projects, appears on the Innocence/Wrongful Convictions page of the NYSDA web site.

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## **TECHNICAL ASSISTANCE AND PUBLIC DEFENSE LEADERSHIP**

### **Chief Defender Convening**

The Chief Defenders of New York State (heading public defender, legal aid, and assigned counsel programs) met during the Association's 34th Annual Meeting and Conference in Lake George, NY on July 26, 2001. The ambitious agenda included an update on public defense reform (with local reports on developments), a discussion of draft standards, family court matters, and jury selection issues. A major focus of the meeting was drug courts and other specialty courts, which are proliferating in New York as elsewhere.

### **Assigned Counsel Compensation Reform**

In addition to NYSDA's *amicus* activity opposing the Chief Administrative Judge's rule allowing review extraordinary compensation granted to assigned counsel by trial courts (see page \_\_), the Backup Center provided various forms of assistance to assigned counsel lawyers dealing with fee issues. A Sample Extraordinary Circumstances Fee Application Pursuant to section 722-B of the N.Y. County Law (provided courtesy of NYSACDL) is posted on the NYSDA web site. Backup Center legal staff consulted with a number of 18-b attorneys about applications and other fee issues this year, and provided information and assistance in pending litigation over fees, including *New York County Lawyers Association v New York*.

## Miscellaneous Meetings

### *Advisory Board*

NYSDA's Advisory Board provides the Association with perspectives from the client community on public defense services. The group last met during the last Annual Meeting and Conference, in July 2001. Individual advisory board members talked with NYSDA staff about specific criminal justice issues throughout the year.

### *Other Meetings*

Backup Center staff participated in a variety of meetings concerning public defense over the past twelve months. For example, the Executive Director attended a New York State Association of Counties Legislative Conference, spoke at a Public Affairs Roundtable Breakfast in Albany, participated in the Capital District Community Conference on Criminal Justice at Albany Law School, attended a national indigent defense training conference held in Harriman, NY, met with Prison Families of New York Inc (PFNY), to discuss the legal rights of prisoners' families, co-hosted (with PFNY and Fr. Peter Young) informal gatherings of people interested in criminal justice issues, met with members of the Community Action Association, and participated in an Advisory Board on Standards of the National Legal Aid and Defender Association. With other staff, he attended meetings (in person or via conference call) regarding litigation involving public defense.

A Backup Center staff lawyer attended several "consensus-building" meetings held as part of a pilot process initiated by the Mental Health Association of New York State for an Albany County project to divert mentally ill persons from the criminal justice system to treatment. The American Bar Association's Death Penalty Representation Project and Standing Committee on Legal Aid and Indigent Defense asked a Staff Attorney to participate in two meetings about updating the *ABA's Guidelines for Appointment and Performance of Counsel in Death Penalty Cases*.

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*"While a student at Albany Law School, I was a work-study employee at the New York State Defenders' Association. Through my work and presence there, I became aware of what a valuable resource that organization is to legal practitioners in this state, and that its existence helps to ensure that fairness governs our criminal justice system. . . . [W]ithout its continued financial report, the attorneys of this state will be severely disadvantaged."*

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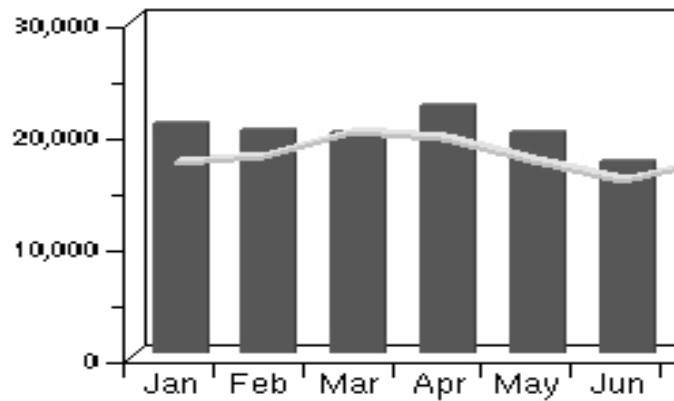


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## DEFENSE AUTOMATION

### **www.nysda.org**

NYSDA's web site receives about 20,000 hits per month. Among our most-visited pages are the Hot Topics, such as Assigned Counsel Rates, Eyewitness Evidence, Rockefeller Drug Laws, Juvenile Law and Family Court, and Prisoners Rights. Other favorite pages are Defense Services, Defense News, and Jobs. Recent additions to the site



*Number of Internet hits, first six months of 2002*

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*“NYSDA provides cost efficient accredited Continuing Legal Education, which could not be duplicated on a county by county basis, particularly in smaller counties. . . . Technical support such as the development of the Public Defense Case Management System, is again something that cannot be duplicated.”*

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include the Innocence and Wrongful Convictions page (under NYSDA Resources) and the Domestic Violence Courts page (under Hot Topics). In the last year we added pages on NY Public Defense Funding (under Defense Services) and Terrorism Laws (Hot Topics). The Publications area is more accessible, since the departments of the *Backup Center REPORT* have been broken out into their own sections). Current Developments Outside New York, identifying key new items from other states, were added to Defense News and the Hot Topics pages. Visitors to [www.nysda.org](http://www.nysda.org) can bookmark their favorite pages directly, or make our site the start page in their web browser to stay current with the latest developments.

### **Public Defense Case Management System**

NYSDA’s Public Defense Case Management System (PDCMS) is now in use in eight public defense offices from Buffalo to Rockland County. Designed specifically for public defense offices in New York State, PDCMS provides collection and recording of crucial information. Defense offices can track clients, keep current on court appearances, and report on daily case activity. Depending on office staffing resources, the system can be used for just basic case information or for a wide range of case management data. Major functions of the system include helping identify potential conflicts of interest, generating letters, motions, and other documents by a data merge into word processing software, and producing reports such as the New York State Unified Court System UCS-195.

During the last 12 months, NYSDA installed the PDCMS in the Legal Aid Society of Buffalo. Staff also worked with offices already using the system to install upgrades or solve problems created by office changes in hardware or software, and continued to work with Wayne County and others to perfect installation contracts. Offices in Dutchess and Suffolk counties saw on-site demonstrations of the



system, which was also on view at the Information Exchange and by appointment during the 2001 Annual Meeting and Conference. Unfortunately, bids to install the system were lost in Albany County due to uncertainty of NYSDA funding for support, and in Dutchess County. NYSDA sent PDCMS information to a number of counties in anticipation of future demonstrations and potential installation contracts.

### Case Digest System

Putting fifteen years of NY criminal cases in searchable form on CD-ROM, the NYSDA Case Digest System (CDS) now contains over 7,000 case summaries taken from the *Public Defense Backup Center REPORT*. Also included are the New York City Assigned Counsel Expert Witness Directory, a Chief Defender list, with addresses and phone number of public defense offices across New York State, and NYSDA's Subject Matter Index. Two updates of the CDS were provided in the past year.




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## COMMUNITY LEGAL EDUCATION AND THE GIDEON COALITION

NYSDA is one of 80 organizational members of the Gideon Coalition, which advocates for public defense reform. In March, 2002, the 39th anniversary of the right to counsel decision in *Gideon v. Wainwright*, the Coalition sponsored a public information table at the Empire State Plaza in Albany on "Gideon Day," providing information about the needs of public defense programs. The table was surrounded by investigative journalist Scott Christianson's documentary display, "INNOCENT: Inside Wrongful Conviction Cases in New York." At the same time, 60 people took part in the annual Gideon Day activity of asking legislators to restore defense funding cut in the Executive Budget and raise fees for assigned counsel.

At a press conference, public defense lawyers described the unfairness and inefficiency that results from underfunding public defense. Kate Jones of the National Association of Criminal Defense Lawyers (NACDL) and Jim Harrington, President of the New York State Association of Criminal Defense Lawyers (NYSACDL) described systemic constraints on adequate representation at the national and state levels. Tom Liotti, Chairman of the New York State Bar Association's Criminal Justice Section, condemned the state's low assigned counsel fees for forcing hundreds of New York lawyers to quit assigned counsel panels.



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*“NYSDA is an integral part of the criminal justice system. The system will not be able to effectively function without them.”*

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Michael Whiteman, former counsel to Governor Rockefeller and Chair of the Committee for an Independent Public Defense Commission, also spoke at the Gideon Day press conference. Assemblyman Marty Luster talked about the legislation he introduced to create such a commission as well as to raise fees. (Sixty-six Assembly members ultimately signed onto this bill which, like the one sponsored by Senator Dale Volker, did not pass. An Assembly bill raising assigned counsel fees but making no provision for a commission passed the Assembly, but a similar bill died in the Senate.)

Lenore Banks, the League of Women Voters of New York State liaison to NYSDA, attended the press conference. The League made an independent public defense commission bill one of their legislative priorities for 2002.

## **NYSDA MEMBERS 2002**

Composed primarily of attorneys, NYSDA's membership also includes other professionals, students, and others who support its work to uphold the Constitutional guarantees of legal representation to all accused of crimes and to advocate for an effective system of public defense representation for the poor.

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