ANNUAL REPORT TO THE MEMBERSHIP
2004

Defending the Right to be Heard
Every County. Every Client.
A Client-Centered Campaign for Public Defense Reform

New York State Defenders Association
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**N Y S D A M i s s i o n S t a t e m e n t**

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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Briana Wentworth, Backup Center Secretary
Marianne C. Yang, Immigrant Defense Project Director

Client Advisory Board
Marion H. Hathaway (Chair), New York City (Harlem Legal Services Client Board Member; Member, National Clients Council, Project Advisory Group)

Lenore Banks, Buffalo (Off-Board Judicial Specialist for League of Women Voters of New York State and NYSDA Liaison to the League)

Alison Coleman, Albany (Director, Prison Families of New York)

Charles Culhane, Buffalo (Poet and former prisoner)

Juan Dones, Sr., New York City (Counselor, ATI Programs, The Fortune Society)

Robert Flunory, Albany (Former prisoner)

Alice P. Green, Ph.D., Albany (Director, Center for Law & Justice)

Darryl P. King, Brooklyn (Wrongfully convicted former prisoner; Director, Criminal Justice Project, Fifth Avenue Committee, Brooklyn)

Velma Smith, Rochester (Director, Rural Opportunities, Brockport)

Paquita Y. Wheeler, Cornelius, NC (Client advocate with over 20 years experience)
Introduction:
Every County. Every Client.

The challenges facing public defense in New York are as sweeping in scope as the Empire State itself. This year, NYSDA took on those broad challenges in a client-centered campaign for public defense reform: **Defending the Right to Be Heard—Every County. Every Client.**

Our Client Advisory Board, partnering with the League of Women Voters of New York State and other groups that work for good government and justice, gathered information about New York’s current system of public defense. Thanks in large part to the work of NYSDA Community Organizer Karla Andreu, clients from several distinct communities were able to express their concerns. Despite Karla’s departure when Open Society Institute grant funding for her position ended, we continue to use what was learned—and to learn more—to help every county, every client.

Long-standing Association services also continue. For public defense lawyers and others, NYSDA provides, among other things, affordable, relevant Continuing Legal Education (CLE), a clearinghouse of information, and technical assistance to localities and offices. NYSDA provides these services in a variety of ways. Its web site, [www.nysda.org](http://www.nysda.org), is a source of legal resources and information available to defenders around the clock. Media representatives phone the Backup Center for background information to help them help the public understand criminal justice and legal issues, while solo practitioners call to bounce ideas around about upcoming trials. Prisoners write for explanations of their rights. Lawyers fax and email us questions about legal developments. Training occurs at statewide conferences, regional trainers, and even in individual offices. Directly or indirectly, NYSDA provides help for every county, every client.

Rapid developments in the law, dizzying changes in public defense systems, and economic and social trends across the state and the globe make legal representation increasingly complicated. Will the legislature pass a pending reform bill that could affect a client’s sentence? Who will represent clients in a new drug court implemented by the Office of Court Administration when the local public defense system is in crisis? How can a county contain rising public defense costs resulting from increased state arrests at a new federal “extended border” checkpoint? How do we set up a new public defense office? NYSDA works with officials, administrators, lawyers, and others, offering evaluation and analysis, a case management system, and more in ongoing efforts to answer these questions for every county, every client.
Finally, NYSDA, along with the Committee for an Independent Public Defense Commission, the League of Women Voters of New York State and many others, continues to support the creation of a statewide, independent public defense commission as a way to bring much-needed public defense reform to New York State. Even with NYSDA’s help, counties have not been able to provide the high-quality representation to which clients are entitled. A state effort is needed. Bills introduced by Senator Dale M. Volker (S. 1894) and Assembly Member Joseph R. Lentol (A. 5394) would establish a commission meant to **Defend the Right to be Heard—Every County, Every Client.**

**One Mission, Many Facets**

The mission of the New York State Defenders Association is to improve the quality and scope of legal representation provided at public expense to people unable to afford counsel. Since its formation thirty-seven years ago, NYSDA has developed many ways of furthering that mission.

Under a contract with New York State, the Association runs the Public Defense Backup Center in Albany, supplemented with other funding that also supports work such as the Immigrant Defense Project (IDP) in New York City. The Backup Center provides resources on a wide variety of legal and policy matters affecting publicly mandated representation, while the IDP helps public defense lawyers and others deal with questions about how the immigration status of noncitizens may be affected by other legal matters.

As a membership organization, NYSDA seeks to assist its members and to use their combined strength to preserve the right to counsel. Our membership consists primarily of assigned counsel, public defenders, and legal aid society lawyers, but also includes private attorneys, clients, and others who recognize the importance of the right to counsel.

Because the right to counsel operates in a complex legal system comprised of several competing interests and affected by the wider community, NYSDA identifies and works with other groups that have related interests or concerns. Such groups include national, state, and local bar associations, client advocates, good government groups, and many others.

The problems that NYSDA was formed in 1967 to address have grown rather than diminished. Urging a system to recognize and correct its own faults—urging human beings to recognize and cor-
rect flaws in a system that they created or perpetuate—is a difficult and often thankless task. Yet the many people who are the New York State Defenders Association, and those who are our friends, go about this work with hope tempered by patience. As lawyers who speak for our clients, as members of our communities who want security and safety for all our neighbors, as citizens of the world who know that where there is no justice there can be no lasting peace, we defend the right to be heard for every client in every county.

This report describes the work of the Association over the past year. It cannot begin to describe the work that remains.

**Cases and Comments:**

**Advocating for Counties and Clients**

Advocating for the rights and interests of public defense clients and public defense lawyers is a major part of the Association’s mission and contractual charge. NYSDA’s appearance before the public or any one of the branches of state government helps ensure that when issues affecting public defense and the criminal justice system are debated, the interests of its membership are heard.

**Legislative Testimony on Behalf of Mentally Ill Clients**

The New York State Assembly Standing Committee on Correction and Mental Health, Mental Retardation and Developmental Disabilities heard testimony in early 2004 on “Disciplinary Confinement and Treatment of Prison Inmates with Serious Mental Illness.” NYSDA’s Executive Director provided the committee with an analysis of pending bill A.8849. His supportive suggestions included clarifying that prisoners’ lawyers should be among the persons who could refer a prisoner held in disciplinary confinement for an assessment triggering protections for those suffering from mental illness.

**Protecting Fees of Assigned Counsel Practitioners**

Continuing to advocate for fair and adequate assigned counsel fees, without which qualified lawyers cannot be found to provide the representation that counties are required to furnish, the Association filed an amicus brief in the Appellate Division, First Department, regarding review of fees approved by the trial court. The New York State Association of Criminal Defense Lawyers and the National Association of Criminal Defense Lawyers joined NYSDA on the brief, written by Backup Center Staff Attorney Stephanie Batcheller. The position of the Association and others, that a rule of the Chief Administrative Judge (promulgated when some trial judges were regularly awarding fees above the statutory maximum and
purporting to allow administrative judges to review assigned counsel fee awards) was improper, prevailed in Levenson v Lippman, 5 AD3d 86 (1st Dept 2004). An appeal sought from that decision was denied as “unnecessary.”

Advocating for Incarcerated Clients

Advocating for Accurate Parole Information

A NYSDA amicus brief in the Court of Appeals advocated for reversal of a First Department decision (Moore v Travis, 304 AD2d 1001 [2003]) affirming denial of a prisoner’s petition for an order directing the Division of Parole to expunge inaccurate information from his parole file. Written for the Association by Harold V. Ferguson of The Legal Aid Society’s Criminal Appeals Bureau, the brief asserted that the ruling denied the parolee due process. Unfortunately, the Court of Appeals affirmed the ruling, asserting that the erroneous information had later been corrected and not relied upon. Moore v Travis, 810 NE2d 907 (2004).

Demanding Reasonable Phone Access For Prisoners

The Association, the Office of the Appellate Defender, and three named individuals have sued MCI Worldcom Communications, Inc. and the Department of Correctional Services over excessive fees charged for prisoner telephone calls. The Center for Constitutional Rights represents the plaintiffs.

Advisory Board Fosters Client Community Advocacy

The Association’s Advisory Board, chaired by long-time client advocate Marion Hathaway, spent the last year planning and participating in community hearings about public defense. These hearings aided in the refining of draft client standards for evaluating public defense representation and in the implementation of the “Defending the Right to be Heard—Every Client. Every County” campaign. These hearings involved NYSDA, the Advisory Board, and other groups interested in systemic justice issues, such as the League of Women Voters of New York State, with whom NYSDA first held public defense fact-finding hearings in 1998.

In October 2003, the Association released “A Preliminary Report on the Inadequacy of Defense Services Available to Farm Workers,” based on a hearing in Albion and on other farmworker interviews. Follow-up work continued by a working group that formed as a result of the hearing.

Two community meetings held by the Client Advisory Board, the League, Prison Families of New York, and the Center for Law and Justice brought to light public defense problems in Albany. A similar hearing was held with the assistance of the NAACP in Schenectady.
Changing the focus to Family Court issues, a hearing was held in Schoharie County.

While the Advisory Board no longer has the assistance of a staff Community Organizer, there are plans to continue focused investigation into the representation of targeted client communities by publicly-paid lawyers. Initial research indicates that one group of clients who may not be currently well-served is people who are deaf or hard of hearing.

The Client Advisory Board also participated in public education events this past year. Members of the board distributed information about public defense at the Somos El Futuro and Black and Puerto Rican Caucus conferences in Albany. Video clips of testimony by public defense clients, compiled with the technical assistance of David Austin, NYSDA's Director of Information Technology, and shown at the second conference, provided vivid descriptions of clients' needs.

**Continuing Contractual Services:**
**Daily Assistance to Counties and Clients, and Legal and Public Education**

The Association's staff continued the core services that have become integral to the state's county-based public defense system. This support was especially valued by recently-elected county officials, newly-appointed chief defenders, and never-before-arrested clients. NYSDA provides answers when answers exist, and continues to work with counties and clients on difficult issues that evade quick resolution.

By contract with the State of New York, NYSDA must establish and disseminate materials from a national litigation bank, publish periodicals, prepare and disseminate training materials to public defense attorneys and the public, and conduct training for public defense attorneys and the public, including public education about the criminal justice system. The Association used a variety of media and forums to achieve these goals in the last twelve months.

The substantive work of the legal staff is supported by the efforts of support staff at the Backup Center and IDP offices. Members, lawyers registering for CLE training, and others who contact the NYSDA offices may get initial help or information from Backup Center Secretary Briana Wentworth, Immigrant Defense Project Office Manager/Legal Assistant Yissel Feliz, Backup Center Legal Secretary Shahrul Ladue, or Executive Assistant Barbara Baggott. Accountant Mary Durgee takes care of the many fiscal details of an association receiving state funds (routinely delayed), membership
dues, grants, and contributions from individuals and entities who support the right to counsel.

**Direct Defender Services**

NYSDA's legal staff is available by phone, fax, and e-mail, and in person in the Backup Center office, to provide a variety of direct defender services to members, public defense lawyers, and others. Assistance takes many forms, including consulting about unusual legal issues, issue spotting, critiquing practice arguments before Court of Appeals appearances, and pointing out considerations that might have otherwise escaped notice. The Backup Center offered assistance in over one thousand matters in the last year in response to requests from nearly every New York county.

**Immigrant Defense Project**

Many urgent, often desperate, calls about the potential effect of a criminal charge on a noncitizen's immigration status were answered by Immigrant Defense Project Staff Attorney Benita Jain and other staff at the IDP, now directed by Marianne Yang. Defense lawyers, immigrant advocates, and others (including immigrants themselves) seeking backup support or counseling on criminal/immigration law issues should contact the Project on Tuesdays and Thursdays from 1:30 P.M. to 4:30 P.M. at (212) 898-4132, or write to the Project at 2 Washington Street, 7 North, New York, NY 10004. When IDP founder Manuel D. Vargas stepped down as Director, he agreed to continue an active role in the Project in the capacity of Consulting Attorney.

**Clearinghouse**

Obviating the need for every public defense office in the state to independently acquire research materials that are invaluable when needed, but needed only on rare occasions, the Backup Center collects legal and policy materials from a variety of sources. Thanks to the daunting talents of Director of Legal Information Services Ken Strutin, with the assistance of Legal Information Specialist Sheila Cui, public defense teams from any county can access a wealth of information. Updates of the NYSDA web site quickly make available developments in New York State and around the country. Among the many additions to the NYSDA web site in the past year were: a Chief Defender List in PDF format and a collection of links to offices with web sites; new comprehensive resource pages on Experts and Ethics; new Hot Topics pages on Public Defense, Gideon Day, Forensic and Medical Evidence, Courts and Legislation; and revamped Assigned Counsel and Research Links pages. A call to the Backup Center may yield further information from an extensive collection of printed materials.
These materials come from online sources, from legal and other publishing sources, and from participation by NYSDA staff in seminars and other training events. One example this year was attendance by a staff attorney at an Office of Court Administration seminar on Reentry and Recidivism.

Publications and Other Projects
All members receive the Association's newsletter, the Public Defense Backup Center REPORT. In addition, the REPORT is sent to the head of every public defense office in New York State, and to all prison law libraries. Posted on the NYSDA web site before print production has even begun, the REPORT is available to anyone with Internet access. Legal and public defense news items, case summaries, job notices, conference and seminar listings, as well as practice tips, annual legislative review of new laws, occasional book reviews, and more, help busy practitioners keep current, and help others understand the challenges posed by the current state of the legal system.

The case summaries from the REPORT are imported into NYSDA's Case Digest System (CDS) after publication. This legal research software is available by subscription in regularly updated CD-ROM format, and can be accessed free on the NYSDA web site. Containing case summaries as far back as 1987, the CDS allows users to quickly find relevant New York or United States Supreme Court caselaw.

As part of the Association's public education and advocacy efforts, Executive Director Jonathan Gradess wrote “Public Defense at the Crossroads: Listening to the Voice of Clients,” published on the web site of the Drum Major Institute for Public Policy (www.drummajorinstitute.org). He also participated in Martin Luther King, J r. Day events where prison issues were discussed, appeared on a public radio program dealing with the right to counsel near the anniversary of Gideon v Wainwright, and co-hosted an evening devoted to discussion of criminal justice issues at the Schuyler Inn in Menands. His co-hosts included Alison Coleman, Director of Prison Families of New York, who is on the Association's Advisory Board. It was at her invitation that a Backup Center Staff Attorney presented “How to Handle Your Loved One’s Attorney” at a PFNY retreat.

NYSDA also joined many other groups, including the Center for Law and Justice, of which Advisory Board member Alice Green is Executive Director, in presenting Albany screenings of “What I Want my Words to Do to You.” One screening of this film about women in prison, aimed primarily at New York legislators and their staffs, was held in the New York State Museum.
Chief Defender Convenings

A convening of Chief Defenders from across the state during the Association’s well-attended 36th Annual Meeting and Conference provided an opportunity for chiefs to discuss, among other things, varying local impacts of the 2003 legislative increase in assigned counsel fees and to hear a Backup Center presentation on the highlights and common misconceptions about that legislation.

A second Chief Defender Convening was held in Albany on March 30, 2004, offering another opportunity to hear updates from across the state during a time of rapid change in public defense systems and the legal system in general. Chiefs shared ideas and information on budget and staffing issues, including institutional staffing pressures created by efforts to limit assigned counsel fee costs, new “problem-solving courts,” etc. The continuing absence of experienced attorneys on some assigned counsel panels and other assigned counsel issues also generated discussion.

In addition to these statewide convenings, NYSDA participated in a regional chiefs meeting, the Western New York Chief Defenders.

Continuing Legal Education

An accredited CLE provider, NYSDA sponsored or co-sponsored a variety of trainers in the past twelve months, many relating to direct representation of clients, others helping lawyers responsible for public defense programs run those programs effectively and efficiently to benefit both clients and counties. Attorneys from across the state received affordable CLE of differing duration in many locations. For example, NYSDA joined with The Ontario County Defenders Association [TOCDA], to co-sponsor the 2004 Defenders Luncheon Lecture Series, a bi-monthly series of practice lectures for Finger Lakes area attorneys, each lecture affording one hour of CLE. By offering these one-hour trainings as well as its traditional day-long trainings such as the New York Metropolitan Trainer, NYSDA provided CLE to fit public defense lawyers’ busy schedules. Attendance numbers and evaluations reflected the popularity and continuing high quality of NYSDA-designed trainings. In the following glance at the past year’s CLE training, co-sponsors are indicated in parenthesis:

- **Assigned Counsel Criminal Appeals Mandatory Eligibility Training** (Appellate Division, Fourth Judicial Department)—Rochester, October 4, 2003

- **Assigned Counsel Family Court Appeals Mandatory Eligibility Training** (Appellate Division, Fourth Judicial Department)—Rochester, October 18, 2003

- **Criminal Defense Update 2003**—Rochester, November 15, 2003

- **Double-Blind and Sequential Line-Ups** (The Ontario County Defenders Association)—Canandaigua, February 27, 2004

- **18th Annual New York Metropolitan Trainer**—New York City, March 13, 2004

- **Management and Leadership Workshop for New Chief Defenders**—Albany, March 29, 2004

- **Bridges and Barriers: Integrating Community Mental Health and the Criminal Justice System** (Albany County Forensic Task Force)—Albany, March 30, 2004

- **Criminal Defense Tactics and Techniques VI**—Rochester, April 3, 2004

- **Federal Criminal Defense Update** (Office of the Federal Public Defender & the Federal Bar Association)—Syracuse, May 6, 2004

- **Practical Aspects of Practicing Criminal Law** (The Ontario County Defenders Association)—Canandaigua, May 7, 2004

- **Family Court Act Article 10: The Trial and Handling of Abuse and Neglect Cases** (Monroe County Public Defender Office & Hiscock Legal Aid Society)—Syracuse, May 7, 2004

- **Intensive Sentencing Advocacy: A Client-Centered Approach** (Erie County Bar Association Aid to Indigent Prisoners Society, Inc.)—Buffalo, June 3, 2004

- **Advanced Seminar II for In-House Immigrant Defense Experts**—New York City, June 4-5, 2004

- **Advanced Seminar II for In-House Immigrant Defense Experts**—Buffalo, June 11-12, 2004

- **Management and Leadership Workshop for New Chief Defenders Part II**—Albany, June 18, 2004
Lectures on sentencing were also presented by a NYSDA Staff Attorney in trainings sponsored by the Assigned Counsel Program for the First and Second Departments and the Nassau County Legal Aid Society.

In the past year, NYSDA has harnessed the power of digital technology by providing training resources through the Internet and on CD-ROM. Resources from the Criminal Defense Ethics Resources on the Internet presentation became the core of the new Ethics Resources page on the NYSDA web site.

**Crises, Changes, and Challenges: Technical Assistance for Counties and Their Public Defense Programs**

Whether through direct assistance to counties and their public defense programs or through participation in regional, statewide, or national programs for studying and improving the justice system and public defense, NYSDA is a major resource for localities.

**Case Management System Gains Popularity**

The Public Defense Case Management System (PDCMS), designed specifically for public defense and legal aid offices, has proven an essential defense program resource. In the past year, PDCMS was installed in the Erie County LAS Law Guardian Unit and the Essex County, Jefferson County, and Ulster County Public Defender Offices. Now implemented and supported in 16 offices, PDCMS takes Project Manager Darlene Dollard all over the state—sometimes by car, sometimes via the Internet. Among her site visits in the last year were the Schenectady, Essex, Saratoga, Jefferson, Ulster, and Rockland County Public Defender Offices, Nassau County Legal Aid Society, and the Legal Aid Bureau of Buffalo in Erie County. Managing Attorney Charlie O’Brien is also a vital part of the PDCMS team.

The PDCMS web page, created this year on the NYSDA web site under NYSDA Resources, provides detailed information about the system, its history and links to articles and resources on case management.

**Statewide and National Systemic Challenges: NYSDA Participates**

Through participation in a variety of committees, conferences, and meetings, NYSDA offers insights and information about public defense and related issues in the legal system. Such participation also allows the Association to continue gathering information for future analysis and dissemination. In the past year, the Association has been represented in a number of ongoing and one-time groups.
investigating, considering, reporting, or acting on issues of interest. Backup Center Staff Attorney Al O’Connor is a member of the Chief Administrative Judge’s Advisory Committee on Criminal Law and Procedure. Legal staff from both the Backup Center and the IDP attended the Office of Court Administration’s Indigent Defense Summit in White Plains in November 2003, where the Executive Director was on a panel about “Structuring an Indigent Defense System.” Backup Center Staff Attorney Mardi Crawford attended an October 2003 Conference at Hofstra Law School on the recently-revised ABA death penalty guidelines, having previously participated in an advisory capacity in the guidelines revision. Members of the Client Advisory Board and NYSDA staff made a presentation at the National Legal Aid and Defender Association annual conference in Seattle, WA about the public education campaign.

Other groups and meetings to which legal staff brought NYSDA expertise include: the Criminal Justice Subcommittee of the New York State Developmental Disabilities Planning Council, the Albany County Jail Diversion Project Committee, planning meetings for a proposed Internet resource site on prisoner reentry, and a Department of Probation and Correctional Alternatives meeting on probation officer intermediate sanctions.

NYSDA also provided technical assistance to State offices in the past year. Years of Backup Center experience in data collection provided a solid basis for conferring with the Office of Court Administration and the Office of the State Comptroller on public defense services issues.
**Contributors**

Donations and grants in amounts large and small, from firms, corporations, attorneys, prisoners, and others, support the work of the New York State Defenders Association through the Backup Center, the Immigrant Defense Project, and the Defender Institute. Corporate donations software help the efficient provision of services to public defense lawyers, counties, and others. NYSDA thanks the following contributors for their support in the past year.

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<tr>
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