
Annual Report to the Membership 2005



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Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State

*Adopted by the Board of Directors,
New York State Defenders Association
July 25, 2004*

*Approved by the Chief Defenders of New York State
July 25, 2004*

NYSDA 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.

Officers

Edward J. Nowak, *President*
Public Defender, Monroe County

Norman Effman, *Vice President*
Executive Director, Attica Legal Aid Society,
and Public Defender, Wyoming County

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Supervising Attorney, Criminal Defense
Division, The Legal Aid Society (Bronx)

Norman Shapiro, *Vice President*
Private Attorney (Goshen)

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Executive Director, Women's Center for
Education and Career Advancement (New York
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Marsha Weissman, *Treasurer*
Executive Director, Center for Community
Alternatives (Syracuse)



Directors

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Alternate Public Defender, Albany County

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Private Attorney, Hammock & Sullivan
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Chief Attorney and Executive Director, Legal
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Robin G. Steinberg
Executive Director, The Bronx Defenders

William P. Sullivan, Jr.
Private Attorney, The Sullivan Law Firm (Ithaca)

E. Vincent Warren
Senior Staff Attorney, ACLU National Legal
Department (New York City)

Staff

Jonathan E. Gradess, *Executive Director*
Charles F. O'Brien, *Managing Attorney*
Barbara Baggott, *Executive Assistant*

Dawn Allert, Backup Center Office
Coordinator

David L. Austin, Director of Information
Systems

Bridget Baggott, Backup Center
Administrative Assistant

Stephanie Batcheller, Backup Center Staff
Attorney

Prince Brown, Immigrant Defense Project
Administrative Assistant

Mardi Crawford, Backup Center Staff Attorney

Sheila Cui, Legal Information Specialist

Darlene Dollard, Project Manager

Mary Durgee, Accountant

Benita Jain, Immigrant Defense Project Soros
Justice Fellow

Shahrul Ladue, Backup Center Legal Secretary

Tom Leith, Immigrant Defense Project Law
Student Intern

Alfred O'Connor, Backup Center Staff
Attorney

Yogi Patel, Immigrant Defense Project Law
Student Intern

Alessandra Payne, Backup Center Intern

Janine Samuel, Immigrant Defense Project
Intern

Jerald Sharum, Backup Center Legal Intern
Magdalena Hale Spencer, Backup Center
Legal Intern

Christopher Stevens, Backup Center Intern
Ken Strutin, Director of Legal Information
Services

Cynthia Thompkins, Immigrant Defense
Project Law Student Intern

Manuel D. Vargas, Immigrant Defense Project
Senior Counsel

Marianne C. Yang, Immigrant Defense Project
Director

Jennifer Zuccaro, Backup Center Volunteer
Librarian

Client Advisory Board

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

Lenore Banks, Buffalo (Off-Board Judicial
Specialist, 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 convict-
ed former prisoner)

Velma Smith, Rochester (Director, Rural
Opportunities, Inc. [Brockport])

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

Introduction: A Standards Year

For the first time, New York has statewide standards for all mandated legal services. At its July 25, 2004 meeting, the NYSDA Board of Directors adopted, on the recommendation of the Chief Defenders of New York State, *Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State* (NYSDA Standards). The Association's Client Advisory Board, which has been drafting and refining "Client-Centered Representation Standards" (Client Standards) for some time, presented those standards publicly on Gideon Day in March 2005. Meanwhile, in April 2005, the House of Delegates of the New York State Bar Association passed *Standards for Providing Mandated Representation* (State Bar Standards). Together, these sets of standards are helping show the way toward better practice.

Why Create New York Defense Representation Standards?

The law is rife with standards. Standards of proof, standards of care, reasonable person standards, and many others dictate judicial and administrative determinations. Standards govern how neutral fact-finders weigh the lives and liberties of individuals against state interests in curtailing them. Judicial conduct standards tell judges what to do—and refrain from doing—to remain neutral arbiters of the law. All lawyers must comply with general professional ethical standards. In a particular case, an individual can complain after the fact that due process standards violated by the individual's lawyer require reversal of the resulting decision. What more could be needed?

Specific standards are needed for the unique governmental function of defending persons unable to afford counsel against the government. Court decisions addressing individual claims of ineffective counsel do not address systemic problems. Too often, New York public defenders, legal aid attorneys, and assigned counsel have been discouraged from providing their clients the zealous representation to which every client is entitled. Public defense lawyers have been denied money from limited county budgets, excoriated due to public misperceptions of the role of mandated counsel, and hamstrung by decades-long legislated growth of prosecution and law-enforcement power and resources. Some county officials and even judges have failed to understand that public defense counsel's duty is to clients, not to the county fisc. And until now, there were no New York standards to which public defense lawyers could point, saying, "But it says I have to do this."

National standards for public defense representation have long existed, including standards promulgated by the American Bar

"State provision of quality legal services to those who cannot otherwise afford legal services . . . serves the ends of justice and affirms the faith of our citizens in our government of laws. . . . These standards are meant to ensure that the methods of selecting, overseeing, and compensating such lawyers enable the lawyers to represent their clients ethically and professionally."

—NYSDA Standards,
Statement of Purpose.

"Standards to guarantee proper performance of this singular governmental function are essential."

—NYSDA Standards,
Statement of Purpose

“Mechanisms should be created to provide formal procedures for soliciting the views of the client community on specific issues affecting statutorily and constitutionally mandated legal services.”

—NYSDA Standards,
Standard II.G.

“All plans and programs for providing publicly-funded services should be designed to guarantee the integrity of the relationships between lawyers and clients. All processes for providing counsel should be free from political influence and conflicts of interest. The lawyers provided should likewise be independent and conflict-free.”

—NYSDA Standards,
Standard II.A.

Association and the National Legal Aid and Defender Association. But while federal courts and even some New York appellate courts have cited those standards, many New York decisionmakers were unswayed by references to them. Some felt those standards to be “aspirational” rather than binding or even persuasive.

The NYSDA Standards Are Not Aspirational

The NYSDA Standards were created with input from chief defenders across the state and across the political spectrum. These standards are not aspirational, but rather a compilation of what those in the best position to know agree is required of programs and practitioners providing mandated representation.

Client Perspective Must Also Be Heard

NYSDA’s Client Advisory Board is mandated by the Association’s bylaws. The ten-member board consists of a “widespread cross-section of persons, at least 50 percent of whom are poor people or their legitimate representatives.” The “Client-Centered Representation Standards” drafted by the Advisory Board articulate a consumer perspective. The importance of this perspective is recognized in the NYSDA Standards themselves, which note in the Statement of Purpose that clients of publicly-paid attorneys cannot use the free market to secure the best possible representation.

Demand That the Standards Be Met

The NYSDA Standards were, upon their adoption, sent to all public defense programs in the state and posted on the NYSDA website. The standards support public defense program requests for funding in parity with the prosecution. They constitute a framework for a system providing high-quality legal services to eligible clients. But they are not self-executing. For the standards to work, lawyers, chief defenders, clients, judges, and everyone who believes in justice for all must cite them, recite them, and demand that they be met. If this has been “A Standards Year,” the next twelve months should be the year for standards-bearers to carry them to every county and every court.

Ultimately, there must be a mechanism to enforce these standards or a set of standards drawing from them, the State Bar standards, and others. As the rest of this Annual Report will show, NYSDA has in the last year provided many services called for in the standards. The Association has also continued to call for an Independent Public Defense Commission to oversee mandated legal services statewide. Join us in carrying that standard to victory!

NYSDA: Articulating Standards, Acting to Improve Public Defense

The New York State Defenders Association (NYSDA) is a membership association with the primary goal of improving the quality and scope of mandated legal representation in New York State. Under a contract with the State of New York, the Association runs the Public Defense Backup Center in Albany and, supplemented with other funding, the Immigrant Defense Project (IDP) in New York City (Brooklyn).

For at least twenty-two years NYSDA has been moving toward the adoption of standards for public defense in New York, a committee of the Board of Directors having been set up in 1983 to work toward that goal. In the meantime, NYSDA cited standards from other jurisdictions when seeking to end deficiencies in New York’s system for providing public defense. Now able to cite state standards, NYSDA continues to note deficiencies and urge their eradication, while helping individual lawyers and programs improve their services.

Much of what follows will be familiar to readers of past Annual Reports. Day-to-day activities of the Backup Center continue, still at a reduced state funding level following the cuts suffered several years ago. IDP continues to assist immigrants and their lawyers in the face of unrelenting pressures and daunting odds. What is new in this year’s Annual Report are quotes linking this daily work to the NYSDA Standards. From its lauded training programs to its expanding website, NYSDA seeks to help public defense lawyers meet the high standards of representation that are every client’s due.

Training and Advocacy: CLE and More

NYSDA Provides Relevant, Affordable CLE

NYSDA continues to provide affordable training that is relevant to public defense lawyers. The Association is designated an “Accredited Provider” by the New York State Continuing Legal Education Board. In the past twelve months, the Association has sponsored or co-sponsored a wide variety of training events—a total of twenty—offering CLE credit. Primary staff responsibility for these many trainings was carried out by Managing Attorney Charles F. O’Brien and Legal Secretary Shahrul Ladue.

Daylong regional trainers were held or co-sponsored in Rochester, Syracuse, New York City, and Albany. Among the topics presented were updates on New York appellate decisions and legislation, immi-

“Attorneys should have the opportunity to attend programs to keep them abreast of changes in law and procedure, make them aware of relevant developments in science, technology, and social science, and continue development of their advocacy, negotiation, and communication skills. The training should be relevant to the types of cases handled by publicly funded lawyers. . . .”

*—NYSDA Standards,
Standard VI.B.*

gration and other collateral consequences of criminal proceedings, closing arguments, identification law, jury selection, grand jury practice, and motion practice. More specific topics included “Taking on the Breath Test: The Low Budget Cross,” “Prosecutorial Misconduct: An Ethical Dilemma,” and “Ain’t Misbehaving: The Law of Criminal Contempt.” One event, co-sponsored with the Albany County Forensic Task Force and others, focused on mental health issues: “2nd Annual Bridges and Barriers Forensic Conference: Integrating Community Mental Health and the Criminal Justice System.” Other daylong trainers focused on specialized areas such as mandated representation in Family Court, Family Court appeals, federal law, and the immigration issues noted elsewhere.

A variety of smaller trainings—focused on single topics or held at single defense programs—were offered in the past year. Sentencing advocacy was a major topic, particularly in light of changes in the Rockefeller Drug Laws and mandated reclassification hearings under the Sex Offender Registration Act. A Chief Defender wrote, following one such presentation, “I just wanted to let you know that [Backup Center Senior Staff Attorney] Al O’Connor’s PowerPoint lecture on the intricacies of New York sentencing law was superb! Our entire attorney staff—junior & senior—gave him rave reviews. It was evident to all that his depth and breadth of knowledge and communication skills set him apart from most other CLE lecturers.”

A CLE Luncheon Lecture Series in Canandaigua, co-sponsored with The Ontario County Defenders Association, presented a variety of speakers. Issues explored were “Sentencing for Dollars,” “In the Eye of the Beholder: A Look at *Brady* Material or The Duty of a Prosecutor to Disclose Favorable Evidence to the Accused,” and “Speedy Trial Challenges Under New York State Law.”

At the Thirty-Seventh Annual Meeting and Conference in Saratoga Springs, NY, NYSDA presented thirteen and a half hours of CLE, continuing the tradition of annually providing a full year’s worth of mandatory CLE credits at the conference. This allows those attending to obtain all necessary CLE credits, in relevant areas, in the company of public defense colleagues.

“Attorney training should include intensive entry-level training, regular in-service training, and opportunities to participate in regional and national training. . . .”

—NYSDA Standards,
Standard VI.B.

After a year’s hiatus, the Defender Institute’s Basic Trial Skills Program returned in June 2005. Fifty-six defenders from across the state spent an intense week building their trial skills and a resounding commitment to client-centered representation. Guided and inspired by one another as well as their dedicated coaches—trial lawyers and communications experts from across the country—they are expected to practice the “high-quality, zealous legal representation” that is the objective of the NYSDA Standards.

Chief Defender Convenings

Attorneys-in-Charge from Legal Aid programs, Public Defenders, and Assigned Counsel Administrators from across the state are afforded the opportunity to discuss issues of “quality, cost, and effectiveness of public defense and the entire justice system” when convened by the Association. As noted in the Introduction, the Chief Defenders approved, at their July 25, 2004 Convening, the standards that were then adopted by the NYSDA Board. The Chiefs also joined the Board in supporting an independent public defense commission. These historic steps reverberated throughout the state in the months that followed. Individual chief defenders have cited the NYSDA Standards in support of budget proposals, showing that their requests were not idiosyncratic or unreasonable. The standards have been cited in hearings before the New York State Commission on the Future of Indigent Defense Services, appointed by Chief Judge Judith Kaye.

Absent a state-sanctioned body to oversee mandated legal services in New York with input from practitioners, the Chief Defender Convenings provide opportunities for those responsible for defense services in their counties to have a wider voice. At the February 3, 2005 Convening, all who attended had an opportunity to enlighten The Spangenberg Group (TSG) about public defense problems in New York State. A consulting firm providing assistance to the Kaye Commission, TSG is expected to produce a report that will affect decisions made about the future of mandated legal services in New York. The February Convening, held shortly after TSG became involved and well before any hearings were scheduled, provided public defense programs statewide with an informal opportunity to air issues.

Other Educational and Advocacy Efforts

In addition to CLE training and Chief Defender Convenings, NYSDA participated in a variety of other educational and advocacy events in the last year. The Backup Center is contractually obligated to “review, assess and analyze the public defense system, identify problem areas and propose solutions in the form of specific recommendations to the Governor, the Legislature, the Judiciary, and other appropriate instrumentalities.”

NYSDA participated in the New York State Judicial Institute’s “Partners in Justice: A Colloquium on Developing Collaborations Among the Courts, Law School Clinical Programs and the Practicing Bar,” helping ensure that the public defense perspective was articulated at the May 2005 event. That perspective is also being advanced

“Mechanisms should be created to provide all individuals involved in the provision of publicly-funded legal services an opportunity to participate in evaluating and improving the quality, cost, and effectiveness of public defense and the entire justice system.”

—NYSDA Standards,
Standard II.F.

“All local plans and programs for providing public legal services should be independent and free from political influence, while accountable for the provision of high-quality, zealous services. This requirement applies to offices or programs of all types permitted by law, whether they are free-standing or governed by local or regional boards. . . .”

—NYSDA Standards,
Standard II.B.

by the Association in meetings of the New York State Sex Offender Grant Steering Committee.

Members of the Backup Center legal staff participated in meetings of the Capital District Center for Sex Offender Management, the Chief Administrative Judge's Advisory Committee on Criminal Law and Procedure, the Criminal Justice Subcommittee of the New York State Developmental Disabilities Planning Council, and the Chief Defenders of the Eighth Judicial Circuit. Legal staff also attended a symposium, "Encouraging Engagement: The Role of Leverage in the Delivery of Mental Health Services," co-sponsored by the New York State Office of Mental Health and the Sage Colleges/Sage Graduate School, as well as a Prison Families of New York gathering. NYSDA presented testimony at a hearing on Megan's Law before the State Senate Majority Conference.

Executive Director Jonathan E. Gradess testified before the New York State Assembly Committee on Codes concerning capital punishment, at a joint hearing of the New York State Assembly Ways and Means Committee and the New York State Senate Finance Committee, and before the New York State Commission on the Future of Indigent Legal Services (as did members of the Client Advisory Board). He also participated on a panel concerning public defense services at the National Legal Aid and Defender Association's Annual Conference in 2004 and co-hosted periodic informal discussions about criminal justice at the Schuyler Inn in Menands, NY, a training site for former prisoners. Assisting the Executive Director in all these activities and many more was Executive Assistant Barbara Baggott.

NYSDA has collaborated with The Legal Aid Society of New York City, in cooperation with bar association representatives and several large law firms, in an effort to assign and accept *pro bono* representation for individuals entitled to reclassification hearings under the settlement of a federal lawsuit concerning implementation of the Sex Offender Registration Act. The effort seeks to ensure that high quality representation is provided, particularly in more time-consuming cases such as those involving collateral immigration issues and reentry problems.

In response to a request from Schenectady County officials for assistance in efforts to improve public defense services there, the Association obtained the assistance of the Criminal Courts Technical Assistance Project of American University's School of Public Affairs Justice Programs Office, funded by the federal government. NYSDA participated in on-site evaluations and in ongoing analysis of the information obtained.

Amicus Advocacy

In December 2005, NYSDA and other *amici* sought to persuade the Court of Appeals that a trial court’s authority to set fees for assigned counsel pursuant to County Law §§ 722-b and 722-c was not subject to regulation by a rule of the Chief Administrative Judge, a rule created for the admitted purpose of providing budgetary relief to counties funding assigned counsel programs. In *Levenson v Lippman*, the Court of Appeals upheld the rule, despite the persuasive reasoning of the brief filed on behalf of NYSDA, the New York State Association of Criminal Defense Lawyers, and the National Association of Criminal Defense Lawyers. The brief is available on the NYSDA website.

Also available is the *amicus* brief in *Courtroom Television Network, LLC v The State of New York et al.* The Association’s position, that New York State Civil Rights Law § 52 prohibiting television cameras in court proceedings is constitutional, prevailed. Backup Center Staff Attorney Stephanie J. Batcheller wrote both briefs.

An *amici* brief authored by Buffalo attorney Mark Mahoney was filed on behalf of The Legal Aid Bureau of Buffalo Inc., the New York State Association of Criminal Defense Lawyers, and NYSDA in *People v Jason Williams*. The defendant prevailed in the Court of Appeals on the basis that the police, acting outside their jurisdiction, had not made a lawful “citizen’s arrest.”

Dealing With Collateral Consequences: The Immigrant Defense Project

Effective representation of non-citizens drawn into state judicial proceedings requires access to specialized knowledge of how those proceedings may affect a given client’s immigration status. NYSDA’s Immigrant Defense Project (IDP), based in New York City, has been providing immigration law backup support and counseling since 1997. The IDP staff assists New York defense lawyers and others who represent or assist immigrants in criminal justice and immigration systems, as well as immigrants themselves. In the last year, IDP responded to over 1,500 requests.

In July 2005, IDP moved into new office space, subletting from the Center for Community Alternatives office: Immigrant Defense Project, 25 Chapel Street, Suite 703, Brooklyn, NY 11201. Hours for hotline calls from attorneys and immigrants about criminal law/immigration issues are Tuesdays and Thursdays, 1:30 to 4:30 p.m. (messages left outside those hours are returned as time permits). **The new IDP hotline number is (718) 858-9658 ext. 201.**

“Actions that must be insulated from political influence and conflicts of interest include, but are not limited to: paying salaries or fees. . . .”

—NYSDA Standards,
Standard II.B.4.

“[Counsel] should be fully aware of, and make sure the client is fully aware of, all direct and potential collateral consequences of a conviction by plea. . . .”

—NYSDA Standards,
Standard VIII.A.7.

"[Counsel should, throughout the case,] consider the potential effects of particular actions upon sentencing if there is a finding of guilt, and be alert for ways to best present the client and the client's case. Counsel should obtain expert assistance whenever it is needed for any aspect of case preparation and presentation. . . ."

—NYSDA Standards,
Standard VIII.A.8.c.

"[Counsel] should consider the need for and availability of sentencing specialists and seek the assistance of such specialists whenever possible and warranted. . . ."

—NYSDA Standards,
Standard VIII.A.8.d.

With grant assistance from Funding Exchange, Ford Foundation, JEHT Foundation, New York Community Trust, and Open Society Institute, IDP has also:

- updated and distributed publications such as the manual *Representing Noncitizen Criminal Defendants in New York State* and "Removal Defense Checklist in Criminal Charge Cases" (the latter is available at www.immigrantdefenseproject.org).
- filed or joined *amicus* briefs in cases of importance to non-citizens. In November 2004 the United States Supreme Court decided *Leocal v Ashcroft*, in which IDP had filed an *amicus* brief. The high court unanimously held that certain DUI offenses that result in serious injury are not crimes of violence aggravated felonies, which require virtually mandatory deportation. Recently, IDP submitted an *amicus* brief in *In re Grant* to the Board of Immigration Appeals asserting that the New York offense for misdemeanor sale of marijuana in the fourth degree should not be considered an "illicit trafficking" aggravated felony. An IDP letter submission to the Second Circuit Court of Appeals regarding *Durant v INS* persuaded that court to withdraw language holding that a second drug possession offense is an "illicit trafficking" aggravated felony.
- continued its Detainee Defense Initiative, through which it has recruited *pro bono* counsel from firms, including Wilmer Cutler Pickering, Cleary Gottlieb, Hughes Hubbard, and Simpson Thacher, and from law schools, including NYU and CUNY, to represent immigrants in cases that raise important high-impact issues. Last year, the Second Circuit favorably decided one such case, *Falconi v INS*, granting *nunc pro tunc* relief to immigrants wrongfully denied a 212(c) pardon from deportation due to government error.
- continued a collaboration with other immigrant defense organizations in the nationwide Defending Immigrants Partnership to maintain and expand a network of in-house immigration experts and materials.
- offered other training to both attorneys and community members at events sponsored by entities such as Neighborhood Defender Service of Harlem, National Lawyers Guild, New York State Association of Criminal Defense Lawyers, and New York Immigration Coalition, and presented at various schools including NYU Law School, CUNY Law School, and John Jay College of Criminal Justice.
- testified before the New York City Council Committee on Immigration regarding New York State's lack of a workable law requiring that defendants be notified of potential immigration

consequences before pleading guilty and pending state legislation on this issue.

- trained New York and other criminal and family court judges at trainings sponsored by the National Association of Women Judges, as well as staff attorneys at the Court of Appeals for the Second Circuit.
- provided legal support to its on-site partner, Families for Freedom (FFF), a multi-ethnic organization whose membership is comprised of immigrants facing deportation and their loved ones. Last year, IDP offered several legal clinics at FFF membership meetings, analyzed legislation, developed written materials, and provided workshops to support its organizing efforts.
- developed, with FFF, a model training program for community based organizations, “Deportation 101: Detention, Deportation and the Criminal Justice System.” IDP and FFF have already used this program to train over 200 staff and members of community-based organizations with immigrant constituencies.
- initiated a public education campaign, utilizing mainstream and ethnic TV, radio and print media, to inform New York immigrants who were unlawfully ordered deported for pre-1996 convictions of an upcoming deadline to reopen their deportation cases. IDP developed and distributed *pro se* resource materials and fielded hundreds of inquiries from immigrants and advocates about the impact of the new rules.

The IDP staff includes Director Marianne C. Yang, founder and current Senior Counsel Manuel D. Vargas, and Soros Justice Fellow Benita Jain, assisted by Administrative Assistant Prince Brown, Law Student Interns Tom Leith, Yogi Patel, and Cynthia Thompkins, and Intern Janine Samuel.

Maintaining Necessary Facilities: The Backup Center

To assist county public defense programs, some of which lack even basic tools for research and other functions vital to client representation, the Backup Center provides a variety of research services to lawyers and public defense offices. The Backup Center also assists government officials and others by providing information about public defense requirements. The varied functions of the Backup Center, described below, would not be possible without support staff such as Office Coordinator Dawn Allert, Accountant Mary Durgee, and others mentioned below. Interns, including Alessandra Payne and Christopher Stevens, also provide assistance while learning the importance of public defense services.

“Funding must be sufficient to obtain and maintain appropriate facilities for all necessary activities. These include but are not limited to: . . . legal research . . . and appropriate means of communication with . . . clients and others.”

—NYSDA Standards,
Standard III.D.

Clearinghouse

For every county-funded public defense program to acquire research materials dealing with all new or unusual issues would be wasteful if not impossible. Therefore, the Backup Center continues to collect a wide variety of materials for dissemination when needed. Many materials are made available on the extensive NYSDA website. Additional materials from the clearinghouse are available to defense lawyers across the state upon request.

Director of Legal Information Services Ken Strutin oversees clearinghouse efforts; he is constantly finding ways to increase information accessibility. He created and maintains an electronic news clipping archive currently totaling over 15,000 items. Targeted topics for news monitoring include the rapid developments in sex offense laws and Rockefeller Drug Law reform. He also provides website updates.

Legal Information Specialist Sheila Cui works diligently to obtain materials to build the collection. She also assists staff in responding to direct defender services requests (discussed below) for information on legal issues, forensic/scientific developments, potential expert witnesses, and much more. In the past year, the Backup Center also piloted an electronic document development and conversion effort. This has given staff full-text access to in-house publications and new acquisitions totaling over 20,000 documents. A pilot project to convert “Original Documents” such as NYSDA training materials to electronic form is also underway. Eventually, this will make providing information quicker and more affordable. The efforts of library interns, including Jennifer Zuccaro who has now become a Volunteer Librarian, have made these conversion and development projects possible.

Publications

In addition to collecting materials, the Backup Center anticipates help needed by lawyers in individual cases and tries to meet those needs by publishing materials prepared at the Backup Center and elsewhere. In the past year, a new edition of *Parole Representation in New York State*, updated by David Werber of The Legal Aid Society’s Parole Revocation Unit, was published. Requests for publications are often filled by Backup Center Administrative Assistant Bridget Baggott, who provides many other services such as coordinating acknowledgement of prisoner correspondence.

As already noted, the NYSDA Standards were sent to every public defense office in the state. They have also been made available at trainings and other events.

The Association’s newsletter, the *Public Defense Backup Center REPORT*, is posted on the website. All members, all chief defenders,

and every prison law library receive printed copies. The *REPORT* offers Practice Tips (including Immigration Practice Tips), legal and public defense news items, occasional book reviews, and other information. Recently the *REPORT* began including a summary of pending Court of Appeals decisions, courtesy of Robert S. Dean of the Center for Appellate Litigation.

Every issue of the *REPORT* includes summaries of New York appellate and United States Supreme Court decisions relevant to providers of mandated representation. These are prepared with the assistance of the entire legal staff, including Backup Center Legal Interns Magdalena Hale Spencer and Jerald Sharum. The summaries are then imported into NYSDA's Case Digest System (CDS). This legal research software is available by subscription in CD-ROM format and is regularly updated. The CDS, with case summaries dated back to 1987, is also available free on the NYSDA website.

www.nysda.org

The Association's website, www.nysda.org, received 345,326 hits in 2004—about two and a half times more than in 2000. The website, as well as the internal computer systems at the Backup Center and IDP, are maintained by Director of Information Systems David L. Austin. He adds information provided by the clearinghouse to the website and troubleshoots problems experienced by website visitors. He also seeks out effective—and cost effective—security measures to protect the Backup Center network and NYSDA information systems, and system upgrades to accommodate the growth of information and services that NYSDA provides.

Direct Defender Services

In addition to providing materials from the clearinghouse, the Backup Center's legal staff provides a variety of services to members, public defense lawyers, Chief Defenders, and others. Requests come from nearly every county, by telephone, fax, direct e-mail and the website. The approximately 1200 requests in the last year covered a wide range, including: research or consultation on unusual issues and interpretation of new statutes; and contact information for potential expert witnesses or for programs to assist probationers, prisoners, or parolees.

Following one example of the Backup Center legal staff's work, an attorney wrote, "Re: Gamma Hydra controlled substance & analog issues . . . You did some very important research for me and you provided me with a list of local experts. . . . I used your informational research . . . [and, with other information, we] arrived at a DisCon plea with the file being sealed. . . . It was a great boost to be able to get the help that the backup center and Attorney Mardi Crawford was able to provide."

"Required resources include but are not limited to: the office facilities and support staff necessary to an efficient legal practice . . . and access to legal information such as an adequate law library and computerized research tools."

—NYSDA Standards,
Standard VIII.A.3.

"The provision of constitutionally and statutorily mandated legal services is an ongoing function, and the efficient and effective provision of such services is dependent on administrative and individual planning."

—NYSDA Standards,
Standard III.B.

“Counsel should act to avoid all potential and actual conflicts of interest that would impair counsel’s ability to represent a client, and avoid handling matters where such conflicts arise. . . .”

*—NYSDA Standards,
Standard VIII.A.4.*

“Workloads should be continuously monitored, assessed, and predicted so that whenever possible, excessive workload problems can be anticipated and preventive action taken.”

*—NYSDA Standards,
Standard IV.C.*

The Backup Center also aided public defense program managers and government officials by providing information on public defense budgets, structure, and responsibilities. These efforts constitute part of NYSDA’s contractual duties to the State and its mission to improve the quality of public defense services statewide.

Public Defense Case Management System

To assist public defense offices with the many facets of case management, including early discovery of potential conflicts of interest and workload monitoring, NYSDA has developed the Public Defense Case Management System (PDCMS). This software has been installed in 20 offices across the state. New sites include the Essex County Public Defender Office, Schenectady County Conflict Office, Schenectady County Assigned Counsel Office, and Nassau County Legal Aid Society. Pending installations include Niagara County Public Defender Office and Seneca County Public Defender Office. Additionally, NYSDA submitted the successful bid for the Albany County RFP and will be installing the PDCMS in both the Albany County Public Defender Office and Alternate Public Defender Office later in 2005. The PDCMS staff, particularly Project Manager Darlene Dollard, was also kept busy this past year installing the PDCMS on new hardware obtained by many of the existing PDCMS sites. In addition to providing PDCMS support to all sites, staff conducted advanced PDCMS training sessions for the Ulster County Public Defender Office, Schenectady Public Defender Office, and Legal Aid Bureau of Buffalo.

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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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