40th Annual Report to the Membership

New York State Defenders Association
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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.

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

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

Peter L. McShane, Vice President
Supervising Attorney, Criminal Defense Division, The Legal Aid Society (Bronx)

Norman Shapiro, Vice President
Private Attorney (Goshen)

Merble H. Reagon, Secretary
Executive Director, Women’s Center for Education and Career Advancement (New York City)

Marsha Weissman, Treasurer
Executive Director, Center for Community Alternatives (Syracuse)

Directors
Gaspar M. Castillo, Jr.
Private Attorney, Castillo and Associates (Albany)

John H. Ciulla, Jr.
Public Defender, Saratoga County

Edward R. Hammock
Private Attorney, Hammock & Sullivan (Flushing)

Susan R. Horn
Executive Director, Frank H. Hiscock Legal Aid Society (Syracuse)

Gary A. Horton
Public Defender, Genesee County

Seymour W. James, Jr.
Attorney-in-Charge of the Criminal Practice, The Legal Aid Society Criminal Defense Division (New York City)

Alba Susan Johnson
Executive Director, Prisoners’ Legal Services of New York (Ithaca)

David L. Lewis
Private Attorney, Lewis & Fiore (New York City)

Robert D. Lonski
Administrator, Erie County Bar Association Aid to Indigent Prisoners Society, Inc.

Russell Neufeld
Private Attorney (New York City)

Leonard E. Noisette
Director, Neighborhood Defender Service of Harlem (New York City)

Louise Perrotta
Senior Staff Attorney, Legal Aid Society of Suffolk County

Stephen J. Pittari
Chief Attorney and Executive Director, Legal Aid Society of Westchester County

Richard W. Rich, Jr.
Public Advocate, Chemung County

Richard A. Rothermel
Public Defender, Otsego County

Lisa Schreibersdorf
Executive Director, Brooklyn Defender Services

Magdalena Hale Spencer
Cornell Law School (Ithaca)

Robin G. Steinberg
Executive Director, The Bronx Defenders

E. Vincent Warren
Executive Director, Center for Constitutional Rights (New York City)
Staff

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

Phyllis L. Alberici, Projects Coordinator
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
Susan Bryant, Backup Center Staff Attorney
Mardi Crawford, Backup Center Staff Attorney
Sheila Cui, Legal Information Specialist
Alina Das, Immigrant Defense Project, Soros Advocacy Fellow
Andrew Davies, Research Associate
Darlene Dollard, Project Manager
Mary Durgee, Accountant
Diane Geary, Assistant Training Coordinator
Benita Jain, Immigrant Defense Project Staff Attorney
Jacqueline Kirkpatrick, Training Coordinator
Scott Lipnick, Backup Center Legal Intern
Joanne Macri, Immigrant Defense Project Director
Lucas Nasciemento, Immigrant Defense Project Legal Intern
Alfred O’Connor, Backup Center Staff Attorney
Laurie Northrup, Backup Center Library Intern
Devendra Potnis, Backup Center PDCMS Intern
Ken Strutin, Director of Legal Information Services
Manuel D. Vargas, Immigrant Defense Project Senior Counsel

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)
Jay Coleman, Albany (Re-entry specialist and former prisoner)
Charles Culhane, Buffalo (Poet and prisoner)
Juan Dones, Sr., New York City (Counselor, ATI Programs, The Fortune Society, and former prisoner)
Robert Flunory, Hudson (former prisoner)
Alice P. Green, Ph.D., Albany (Director, Center for Law & Justice)
Kevin Halpin, Hudson (Automotive Service Advisor and former prisoner)
Darryl P. King, Brooklyn (wrongfully convicted former prisoner and former Director, Criminal Justice Project, Fifth Avenue Committee)
Velma Smith, Rochester (Director, Rural Opportunities, Inc.)
Paquita Y. Wheeler, Cornelius, NC (Client advocate with over 20 years experience)
Fighting for Quality for 40 Years—Introduction

The Beginning

Four decades ago, a group of attorneys from small towns, small and large counties, and big cities signed a certificate of incorporation for the New York State Defenders Association. They joined together to confront funding and management issues emerging from the 1965 legislative framework set out in 18-B of the County Law. They met regularly, and organized lectures and training. They eventually sought and received state funding for the Public Defense Backup Center, the first in the nation, from which most of the services described in this Annual Report emanate.

Their organization grew.

One decade ago, the Association published a 30th Anniversary issue of *The Defender* magazine. It looked back at NYSDA’s beginnings and looked forward to a challenging future. Reminiscences by founding members and others provided a history (from whence came many of the phrases found at the beginning of this Introduction). Articles discussed recurring systemic issues (racism in the criminal justice system, the death penalty, the need for a defender office culture of excellence), provided legal practice tips in major areas (search and seizure, sentencing advocacy, jury practice), and described new information technology tools to help public defense lawyers (in both management and legal practice). Authors expressed hopes for improvement in public defense, and acknowledged ongoing threats to justice.

A few years later, a major funding cut in 2001 threatened the Backup Center’s very existence.

Riding Out Rough Times

With one-third less staff, the Association sought to continue its full range of services as well as its work to improve the public defense system as a whole. Since then, the number of training events has increased. Direct defender services responses have continued to rise. The Public Defense Case Management System (PDCMS), described in the future tense in the 30th Anniversary
Defender, is now installed in nearly 30 offices. And while the cuts severely impacted publication of the Public Defense Backup Center REPORT, this newsletter continues to provide vital information to an increasing number of readers. NYSDA’s website, www.nysda.org, has grown in size and scope, bringing NYSDA fully into the information age.

The Client Advisory Board continues to advise the Executive Director and assist in the design, execution and evaluation of community program activities as mandated in the Association’s by-laws.

Today, the Association has over 1,500 members, the most in its history, and provides more services than ever.

Building the Ability to Help Lawyers and Clients

The Backup Center continually strives to improve its ability to serve long-time defenders and new lawyers, line attorneys and defender managers, and ultimately clients and the client community. Wise use of technology, targeting specific issues for concentrated efforts, and reaching out to others in new ways increases our productivity:

- Plans to digitize the Backup Center’s extensive holdings of information relevant to practitioners and policymakers will allow those holdings to grow—and be distributed upon request—without a need to physically expand.

- Hosting the Upstate Coordinator for Reentry.net/ny in the Backup Center increases sharing of information about services that can help lawyers help clients improve their abilities to remain in the community and out of the criminal justice system.

- A new project, for which a planning grant was just received, will help defense lawyers and public defense offices understand and provide cutting edge advocacy for the increasing number of military veterans whose combat experiences and injuries lie at the root of their involvement in the criminal justice system.
Meanwhile, NYSDA’s Immigrant Defense Project has renewed its commitment to helping defense lawyers and immigrants statewide deal with the ever-increasing but frequently unanticipated collateral consequences of criminal proceedings involving noncitizens. The fourth edition of the “Immigration Manual,” Representing Immigrant Defendants in New York, recently came off the presses and was distributed to every public defense program in the state. Its author, Manuel D. Vargas, received this year’s American Immigration Lawyers Association Jack Wasserman Memorial Award. IDP recently welcomed a new Director, Joanne Macri, and relocated to a Manhattan office (see new contact information on p. 9).

Finally, fulfillment of the Association’s plan announced in the 2006 Annual Report to create an affiliate 501(c)4 corporation, the New York State Defenders Justice Fund (Justice Fund), is allowing the public defense community to participate in the political process now underway to institute the recommendations issued last year by the Kaye Commission. Through the Justice Fund, NYSDA is working with many others, including the New York State Bar Association, the Committee for an Independent Public Defense Commission, the New York Association of Criminal Defense Lawyers, the League of Women Voters of New York State, and the Committee for Modern Courts, for creation of a statewide public defender system headed by an independent public defense commission, as outlined in the Kaye Commission recommendations highlighted in last year’s Annual Report.

For 40 Years, Today, and Every Day

Everything we have done in the last 40 years, we have done in pursuit of our mission—to improve the quality and scope of publicly supported legal representation to low income people. Everything we do—from the daily provision of direct defender services and information about legal issues (eyewitness identification, confrontation of witnesses, right to counsel, and more) and recurring issues (racism in the criminal justice system, increasingly harsh collateral consequences of criminal convictions, and more) to joining the Campaign for an Independent Public Defense Commission—we do for those who
need high quality public defense representation and for those who provide that representation.

We will continue to serve lawyers, defender managers, and other clients and communities. We will continue to devise increasingly effective ways to provide our services. And we will continue to advocate for justice. Every day.

The Past Year at a Glance

In 40 years, NYSDA has provided a wide range of services. In this report, our services are loosely categorized as services for lawyers, for defender managers, and for clients and communities. The scope and effect of these services intertwine—training a lawyer obviously helps that lawyer’s clients—and all serve our mission, to improve the quality and scope of publicly supported legal representation.

For Lawyers—NYSDA presented high-quality, relevant, affordable continuing legal education (CLE) on many topics, in several locations around the state, this past year. Backup Center legal staff were available daily to respond to attorney requests for information on new law, strategy consultation, and other assistance. Lawyers obtained NYSDA training materials and other publications on a variety of topics from the Backup Center at reasonable prices (and some at no cost), in print or on the website, www.nysda.org.

For Defender Managers—As noted in the Introduction, NYSDA now supports the PDCMS in nearly half of New York’s counties. This case management software simplifies record-keeping and information management, making offices more efficient. NYSDA offered other technical assistance in the past year as well, such as consulting with individual Chief Defenders about budget, staffing, office structure, and other issues, providing information on statutory requirements for filing of reports, and obtaining evaluations of office funding, structure, and performance for the purpose of improving the quality of representation offered. Finally, the Association convened the Chief Defenders of New York twice to share information on topics of mutual interest, including public defense reform.
**For Clients and Communities**—The IDP Hotline and website provided information over the last year not only to lawyers with noncitizen clients but to immigrants themselves. Additionally, IDP’s advocacy efforts have resulted in judicial decisions preventing many from being unnecessarily deported. The Backup Center recognized and sought to increase resources for other unique client groups as well, and provided information and referrals to many public defense clients and client community members in the past year.

The Client Advisory Board, mandated by the Association’s by-laws, met four times during that period. The impact of the Advisory Board’s Client-Centered Representation Standards, posted on the website, is growing; for example, the standards were included in the materials for the New York State Bar Association’s recent day-long training for public defense attorneys. With momentum for public defense reform intensifying, the Advisory Board’s role has never been more important.

In the past 12 months, NYSDA’s work for lawyers, defender managers, and clients and communities advanced the mission for which the Association has worked for 40 years.

**A Detailed Look at the Last Year**

For lawyers, defender managers, and clients and communities, NYSDA provided a wide variety of services this past year. In addition to services targeted to these separate but related groups, NYSDA worked to further the interest of all by fulfilling its contractual obligations to the State to undertake public education efforts regarding the criminal justice system and to “review, assess and analyze the public defense system” and propose solutions to identified problems by making recommendations to appropriate instrumentalities.

**Assisting Lawyers**

The help NYSDA provided to lawyers this last year included Continuing Legal Education (CLE), direct defender services (research, information, and consultation), and resources made available in many formats and distributed through a variety of means.

“Some of my recent assigned matters have proved particularly challenging, and your staff’s timely, courteous and detailed suggestions have made all the difference in my approach to these matters. Kudos to them all!”

—Attorney
Continuing Legal Education (CLE)
NYSDA presented many high-quality, relevant, affordable continuing legal education events this last year. The Defender Institute held its nationally-recognized, client-centered Basic Trial Skills Program (BTSP) the week of June 10, 2007. The Association offered two days of CLE training during its 2006 Annual Meeting and Conference in Corning, New York. NYSDA also sponsored or co-sponsored a number of one-day trainers including trainings focused on appeals, federal defense, immigration, and family court representation as well as multi-topic regional trainers across the state, from Rochester to New York City, and two luncheon programs. Training coordinator Jacqueline Kirkpatrick and assistant training coordinator Diane Geary handled myriad logistical details, from preparing training announcements to completing the evaluations critical to maintaining both training quality and mandatory CLE certification.

Direct Defender Services
Lawyers on cell phones asking for immediate information on legal issues that had just arisen in court, solo practitioners with difficult issues seeking collegial consultation on strategy, attorneys in need of experts on a particular type of evidence—they all called upon the Backup Center this year. Requests—by fax and email and through the website as well as by phone—came from every region of the state. Legal staff, including Backup Center staff attorneys Stephanie Batcheller, Al O’Connor, and Mardi Crawford, responded with a variety of information. The assistance provided included copies of NYSDA training materials and other publications, information from the extensive Backup Center holdings, and suggestions based on the staff lawyers’ own experience. Joining the Backup Center legal staff just as this Annual Report was being completed was staff attorney Susan Bryant, whose experiences in legal practice and legal research skills should be of great help to attorneys in the upcoming year.

Assisting the legal staff in researching direct defender services requests and other issues was the Legal Information Services staff, including director of legal information services Ken Strutin, legal information specialist Sheila Cui, and library intern Laurie
Northrup. While many printed materials were sent to attorneys, at reasonable prices or at no cost, Backup Center staff was often able to provide quicker responses by emailing digital material or directing the requestors to information on the Association's website.

**www.nysda.org and the Case Digest System**

The website, [www.nysda.org](http://www.nysda.org), made an ever-increasing amount of up-to-date information available to attorneys at all times. A text-searchable set of relevant case summaries initially published in the *Public Defense Backup Center REPORT* can be found on the site under NYSDA Resources. The summaries, prepared by NYSDA staff including, this summer, legal intern Scott Lipnick, are also available by subscription on CD-ROM. This Case Digest System provides a quick, simple way to identify relevant New York and United States Supreme Court decisions, and comes with a wealth of other information.

**Immigrant Defense Project—Helping Defense Lawyers Represent Immigrant Defendants**

While all types of mandated representation cases require skill and knowledge, criminal charges against noncitizens involve unique and severe consequences, including removal (deportation). Because not every defense lawyer can devote time and resources to developing an expertise in this complex area, IDP offered training and hotline assistance from the IDP staff, including staff attorney Benita Jain and Soros advocacy fellow Alina Das, assisted this summer by legal intern Lucas Nasciemento. The Project welcomed a new director, Joanne Macri, this last year. NYSDA and IDP thank former director Marianne Yang for her many contributions to the Project. Many thanks also to the Center for Community Alternatives for the space they provided in the past. IDP recently relocated to Manhattan.

This year saw the publication of the Fourth Edition of *Representing Immigrant Defendants in New York* (to order, contact the Backup Center), written by IDP founding director and current senior counsel Manuel D. Vargas. For his longstanding skill and commitment to seeking immigration reform, instrumental in the positive decision issued by the US Supreme Court in *Lopez v Gonzalez* ( __US__, 127 SCt 625
[2006]), Vargas received the 2007 American Immigration Lawyers Association Jack Wasserman Memorial Award.

Lawyers’ calls to the Immigrant Defense Project hotline (now 212-725-6422) yielded specialized legal advice and information that few defense offices have readily at hand. Attorneys also found relevant resources on the IDP website, www.immigrantdefenseproject.org.

**Informing Defender Managers**

Public defenders, assigned counsel administrators, and legal aid program heads received informational updates from NYSDA and technical assistance in many forms over the last twelve months, as set out below.

**Public Defense Case Management System (PDCMS)**

NYSDA now supports the PDCMS in nearly 30 offices. This specialized software, developed by NYSDA, allows offices to efficiently screen for conflicts of interest when new clients are assigned, produce routine documents, and generate required reports. The PDCMS team, including project manager Darlene Dollard, programmer Marcos Leite, and PDCMS intern Devendra Potnis, fully supports this vital application. The team has worked over the last several months to migrate the application to the latest version of Magic’s eDeveloper v.10, while also demonstrating the system to new potential users, installing it in new offices, and responding to existing users when the application was damaged by computer crashes or required modification to perform on new hardware. When the office conducted an extensive web-based survey of PDCMS users concerning their satisfaction with the application, training and support services, an overwhelming number of survey responders praised NYSDA and the PDCMS. Typical of the comments we received: “I can’t offer enough positive praise about the PDCMS and the folks at NYSDA. We’d be lost without them and their software.”

**Evaluations, Consultations and Convenings**

NYSDA offered public defense offices other technical assistance in the past year, including individual consultations with new Chief Defenders, responses to requests from experienced
Chiefs, and emailed or faxed updates. The Backup Center kept public defense offices apprised of developments implementing new legislation requiring provision of counsel in Supreme Court in matters where representation would be provided if being heard in Family Court. Staff, including managing attorney Charlie O’Brien, consulted with defender managers about specific issues such as the State’s reporting requirements for county receipt of funds from the Indigent Legal Services Fund, filing of reports, and obtaining evaluations of office funding, structure, and performance for the purpose of improving the quality of representation offered. Research associate Andrew Davies aided in gathering statistical data and other information helpful to defender managers. Further, the Association convened the Chief Defenders of New York twice to share information on topics of mutual interest, including issues regarding public defense reform.

Working For Clients and Communities
All of NYSDA’s work to improve public defense in New York is ultimately for the benefit of all clients. In addition, several of our resources, such as the website, are available to clients and communities. NYSDA also recognizes the needs of unique client groups and seeks ways to address those needs to the benefit of the clients, their lawyers, and the communities most directly affected by these clients’ needs. This past year, these efforts included the following.

Immigrant Defense Project
In addition to assisting defense attorneys representing immigrant defendants, the IDP hotline and website provided referrals and basic information to immigrants themselves. Further, through case monitoring, amicus activity, and related work, IDP sought to ensure that immigrant defendants received due process of law and were not wrongly deported.

Examining Veterans’ Criminal Justice Issues
The Association recently sought and received a planning grant from the Lucius and Eva Eastman Fund for a Veterans Defense Project to provide support and training for Public Defenders representing the growing number of combat veterans diagnosed with Post Traumatic Stress Disorder and Traumatic

“Thank you for the wonderful work that you and the NYS Defender Association do on behalf of those who otherwise would have limited access to effective legal representation.”
—Long Island attorney

New IDP Contact Info:
3 West 29th St., Suite 803
New York, NY 10001
HOTLINE (Main Number):
(212) 725-6422
Fax (800) 391-5713
Brain Injury. Phyllis L. Alberici, who joined the Backup Center as projects coordinator in 2007, has done extensive work in developing this new initiative, focusing on counties with large military populations.

Collaborating with Others Addressing Clients’ Needs

Another, more general client need that the Association seeks to address is that of reentry into the community following incarceration and/or supervision on probation or parole. Contributing to a growing national interest in this issue, NYSDA has for several years encouraged development of reentry programs. The most recent example of NYSDA’s cooperative efforts is hosting, in the Backup Center, of Reentry.net upstate coordinator Grant Zanker.

IDP has worked on the similar issue of immigrant reintegration, training and collaborating with reentry services providers, lawyers, and alternative sentencing/treatment courts to help incarcerated immigrants overcome barriers to reintegration into the community.

The Association presented testimony before the Task Force on the Future of Probation, a body appointed by the State’s Chief Judge. NYSDA Executive Director Jonathan E. Gradess urged that probation services be returned to their roots—client service and creative advocacy with the goal of keeping clients away from further criminal involvement, to the benefit of clients and communities and the overburdened justice system. He also testified before the State Commission on Sentencing Reform, and participated as a panel member at the State Bar’s “Summit on the Future of Indigent Defense in New York” and the Warren M. Anderson Legislative Breakfast Seminar Series presentation on “The Future of Public Defense in New York: Options for Reform.” In the past year, NYSDA also presented information and recommendations in other forums dealing with issues that affect clients, with staff participating in, for example, the Office of Court Administration’s Penal Law and CPL Advisory Committee and the Division of Criminal Justice Services’ Sex Offender Management Grant Assessment and Treatment Workgroup.

Positive results were obtained in the last several months with regard to obtaining fair telephone rates for state prisoners, a
large percentage of whom were public defense clients. In February 2007 the Court of Appeals found that four constitutional claims pressed in a lawsuit against unreasonably high rates, with NYSDA as one of the plaintiffs, were timely made and must be considered. Before oral argument in that case, the new Governor announced that a State kickback from phone rates would be ended in the phone contract that became effective April 1. The New York Campaign for Telephone Justice continued to seek equitable telephone rates for families receiving collect calls from prisoners; in June 2007, legislation passed the Assembly and Senate that would require the Department of Correctional Services, in determining the “best value” of prison telephone service, to emphasize “the lowest possible cost to the telephone user.”

Providing Information to Clients and Families

NYSDA’s mission and activities regularly lead clients and their loved ones to the website and phone number of the Backup Center and IDP. While focusing on its mission to help all clients by improving the public defense system and assisting public defense lawyers, NYSDA does what it can to refer or provide basic information to individuals seeking representation or assistance in understanding the proceedings they face, particularly clients left with no guidance before mandated representation begins or after it ends. As one example, the Association’s newsletter is sent without charge to the law library of every state prison, and is available on the NYSDA website. Nonattorney memberships are available for greatly reduced dues. Being a member of NYSDA does not provide legal representation, but supports its work on behalf of all clients. (see subscription form, p. 27).

Client Advisory Board Activities

The Client Advisory Board, established by the Association’s by-laws, met four times in the past twelve months. As noted in the Introduction, the impact of the Advisory Board’s Client-Centered Representation Standards has been growing; the State Bar included those Standards in its CLE materials for public defense lawyers in June 2007, and a public defense blog noted their importance. In March 2007, Advisory Board Chair Marion Hathaway attended the State Bar’s “Summit on the Future of
Indigent Defense in New York” in Albany. NYSDA’s staff continues to look forward to the counsel provided by its Client Advisory Board.

**Behind the Scenes—Support Staff Make it All Possible**

None of NYSDA’s services would be possible without the work of its office staff. This past year, the following staff members, in addition to those noted throughout this report, contributed to NYSDA’s work. Backup Center administrative assistant Bridget Baggott efficiently routed calls and made referrals, as well as providing support for the wide variety of events and projects in which NYSDA engages. Office coordinator Dawn Allert worked to maintain office functionality and efficiency, and kept membership records while reaching out to potential new members. Accountant Mary Durgee ensured that funds from many sources, including membership dues, donations, grants, and the Backup Center’s state contract, were efficiently and accurately handled, allowing the work of all other staff to proceed. Director of information systems David L. Austin kept NYSDA’s extensive information systems working, from the office computer network for both the Backup Center and IDP to the website database (which recently required a complete rebuild). And executive assistant Barbara Baggott helped in the work of the executive director, and the Backup Center as whole, in ways too numerous to recount.

**Fighting for Quality for 40 Years—Conclusion**

NYSDA’s work in the past 12 months—for lawyers, defender managers, immigrant defendants, and clients and communities, including its participation in the Campaign for an Independent Public Defense Commission—advanced the mission the Association has honored for 40 years. We thank all those who have supported that mission these past four decades, and this past year. We look forward to your continued support in the years ahead. ☝️
NYSDA Members 2007

Composed primarily of attorneys, NYSDA's membership also includes other professionals, students, and others who support the Association’s 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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