

NEW YORK STATE DEFENDERS ASSOCIATION

# FORTY-THIRD ANNUAL REPORT

to the Membership



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# NEW YORK STATE DEFENDERS ASSOCIATION FORTY-THIRD ANNUAL REPORT TO THE MEMBERSHIP



# Turning Action Into Victories, Putting Victories Into Action

## Introduction

“Actions speak louder than words.” So goes the common truism. But a “legal action,” including a criminal prosecution or a family court petition, consists simply of words. And the words uttered or written at the end of a legal action—“guilty,” or “petition granted,” for example—may cause a woman to lose her freedom or a man to lose custody of his child. So words matter.

Many government bodies used words in the past year that will affect public defense practice and public defense clients. Congress used words (and numbers) to appropriate \$10 million in FY 2010 for the John R. Justice Program, which will provide student loan forgiveness for some public defenders (and prosecutors). The United States Supreme Court used words to decide *Padilla v Kentucky*, saying that criminal defense counsel must advise noncitizen

clients about potential immigration consequences of a guilty plea. The New York State Court of Appeals used words to reinstate the lawsuit brought against the State and five counties for deficiencies in public defense services. The Chief Administrative Judge used words to create a rule implementing caseload standards for New York City. And the New York State Legislature used words to pass Leandra’s Law (concerning driving while intoxicated with a child in the car), and also a bill creating a new Indigent Legal Services Board and an Office of Indigent Legal Services.

NYSDA took action—using words—to support some of these when they were proposed and to oppose or seek modification of others. In some instances, we achieved at least partial success. Like many victories, ours initially took the form of words. But victories must be put into action before they merit real celebration.

The work of NYSDA is to turn action into victories and to put victories into action that improves the quality and scope of public defense services. Through the Public Defense Backup Center, which began receiving state funds in 1981, NYSDA provides a variety of services to public defense lawyers, governmental bodies, the client community, and the public. In many instances, the Backup Center does not learn the outcomes of the services it provides. But, sometimes victories are shared.

One lawyer who contacted the Backup Center for consultation this year called back and said, “I’m a solo practitioner and you were like my co-counsel.” Her client had been released, and the family had been so happy they were crying when they thanked her.

Actions into victory, victory into action.



This 43rd Annual Report describes other NYSDA actions and victories in the last year.

### **Training and Education**

Lawyers need training to properly represent their clients. Chief Defenders, whether they lead public defender offices, legal aid societies, or assigned counsel programs, also need updates and information about developments affecting the provision of public defense services. Government officials, the media, client communities, and the public need news and knowledge about the importance of and problems relating to public defense. NYSDA provided a range of training and education in the last twelve months to meet these needs.

### **Continuing Legal Education**

NYSDA is an accredited provider of Continuing Legal Education. Throughout the year and across the state, NYSDA provided training relevant to the practice of public defense attorneys. The two-day annual conference in Saratoga Springs in July 2009

offered attorneys a full year's worth of mandatory CLE credits. Regional training events were held in Rochester, New York City, Poughkeepsie, Albany, and Binghamton. NYSDA sponsored or co-sponsored many other trainers, including events focused on assigned counsel criminal appeals, family court representation in trial and appellate courts, evidence foundations, defending drunk-driving cases, forensic science, and prosecutorial misconduct. NYSDA's Criminal Defense Immigration Project, discussed further below, presented numerous CLE trainings around the state as well. Training Coordinator Diane Geary attended to hundreds of details to make them happen.

An annual NYSDA training highlight is the Defender Institute Basic Trial Skills Program (BTSP), held on June 13-18, 2010, in Troy, NY. Once again, a faculty of nationally-recognized lawyers and communications experts worked with new attorneys from across the state in hands-on exercises designed to

increase client-centered skills that help lawyers effectively represent public defense clients. Lawyers who attend the BTSP gain both skill and that other vital attribute, confidence. One attorney who attended the 2009 BTSP program called several months later to let everyone at NYSDA know that because of BTSP, he had been confident and prepared for his first post-conviction hearing, which had gone as well as he could have hoped. Action into victory.

### **Other Educational Events**

NYSDA hosted a Convening of the Chief Defenders of New York State on July 26, 2009 during the Annual Meeting and Conference in Saratoga Springs and another in Menands, NY on December 4, 2009. These gatherings give individuals responsible for public defense provision in separate localities an opportunity to identify common problems, exchange ideas about solutions, and discuss budgetary, systemic, and other issues affecting public defense statewide.



Such issues included, in this past year, student loan forgiveness for attorneys who go into public defense; compliance with requirements for obtaining state funding; new rules of professional conduct; and state legislation intended to reform public defense services. In July 2009, discussions included the ramifications of legislation to implement public defense caseload limits in New York City, which had passed earlier in the year, discovery reform, and proposed legislation known as the Public Defense Act of 2009. In December 2009, additional topics included information on how offices might benefit from a new fellowship program (the Equal Justice Corps) of the national organization Equal Justice Works, the status of conflict defender offices following a court decision finding one such office to be illegal, possible amendments to the Indigent Legal Services Fund, and possible regionalization initiatives.

Backup Center staff members made or assisted in presenta-

tions in other training and educational events, including a panel at a Cardozo Law School “Conference on New Perspectives on *Brady* and Other Disclosure Obligations” in New York City and presentations about public defense services at Kingsborough College in Brooklyn, NY and Dominican College in Orangeburg, NY. Reaching out to the client community, Executive Director Jonathan E. Gradess participated in an interview during the radio program in New York City called *On the Count: The Prison and Criminal Justice Report*, on WBAI. He was also interviewed on *Beyond the Headlines*, on 106.3 FM with Pastor Gil Monroe, and the *Morning Show* with Errol Louis on WWRL.

The Legal Information Services Director, Ken Strutin, presented “Social Networking Sites as Litigation Tools” in a trainer entitled “Blogging, Friending & Tweeting: What Attorneys Should & Should Not Do” for the Association of the Bar of the

City of New York and at an event called “The Ins and Outs of Social Networking” at the New York County Lawyers Association. He also wrote a number of articles for publications such as the *New York Law Journal*.

### Client Advisory Board

To help ensure that the client community has a voice in work done on its behalf, NYSDA’s by-laws mandate a Client Advisory Board. This Board works directly with the Executive Director and advises the Association on issues of client relations and community programs, including advocacy for reform. The Client Advisory Board made a presentation at the New York State Association of Black and Puerto Rican Legislators Annual Legislative Conference in Albany, on February 13, 2010. The Chair of the Advisory Board, Jay Coleman, also presented to the Chief Defenders information on new efforts to assist in the creation of local client advisory boards.



## Criminal Defense Immigration Project

The Association's Criminal Defense Immigration Project (CDIP), an initiative providing specialized information regarding the representation of non-citizen clients in criminal matters, also provides training and education. In addition to a number of CLE programs on the intersection between criminal law and immigration law, CDIP Director Joanne Macri made numerous presentations around the state. She assisted the Brooklyn Bar Association, Brooklyn Bar Association Volunteer Lawyers Project, Brooklyn Defender Services, and the Brooklyn Women's Bar Association in developing and conducting a CLE training for the Haitian Immigrant Legal Assistance Program for over 100 lawyers, followed by legal clinics on Temporary Protected Status. She also discussed immigration fraud and enforcement issues with the NYS Attorney General Civil Rights Bureau at the Somos El Futuro legislative conference in Albany, and with the staff

of the Consular General of the Dominican Republic at the office of the Dominican Republic Consulate in New York City.

## *Padilla v Kentucky*

Since March 31, 2010, a major part of Macri's training work has focused on the implications and applications of *Padilla v Kentucky*. As noted in NYSDA's newsletter, the *Public Defense Backup Center REPORT* (the *REPORT*), *Padilla* "held, as a matter of constitutional law, that criminal defense counsel have an affirmative obligation to advise noncitizen clients of the potential immigration consequences resulting from a guilty plea." NYSDA had signed on to an *amici curiae* (friends of the court) brief in *Padilla* in June 2009. That action helped lead to victory in the case. The training being done in the wake of the decision is helping turn that victory into action—ensuring that noncitizen clients are properly advised of the immigration consequences of criminal proceedings.

## Newsletter, Website, and Clearinghouse

The *REPORT*, which described the *Padilla* decision as noted above, provides information on a variety of substantive and procedural legal issues as well as other information relevant to public defense lawyers and their clients. By posting the *REPORT*, edited by Staff Attorney Susan Bryant, on the website ([http://www.nysda.org/html/the\\_report.html](http://www.nysda.org/html/the_report.html)), NYSDA makes the time-sensitive information in each new issue available more quickly. Readers who prefer to or must have in print the information provided by the *REPORT*—case summaries, news, topical articles, job and training notices, and more—receive it that way. The case summaries are also added to the Case Digest System and placed on a separately-searchable section of the website ([http://24.97.6.164/as\\_CDS6/](http://24.97.6.164/as_CDS6/)) to maximize their research value. Other information was also added to the website throughout the year.





In addition to the hundreds of pages of information made publicly available at [www.nysda.org](http://www.nysda.org), the Backup Center maintains internal databases and print collections accessible by staff to respond to those who seek assistance. Sources include materials provided during training events, research done in response to specific inquiries, and on-going information collection and analysis by staff, including Research Director Melissa Mackey. These clearinghouse collections—and the institutional memory of dedicated individuals who have remained on staff for many years—make NYSDA uniquely able to provide information and analysis regarding systemic and historically important issues. Maintaining the computer networks that help research, legal, and support staff efficiently take action with words falls to David Austin, Director of Information Systems, and Brian Parrella, Information Systems Intern. Office Coordinator Dawn Allert worked to maintain office functionality and efficiency while also keeping membership

records, reaching out to new members, and taking care of other office logistics.

### **Direct Defender Services**

NYSDA's Backup Center received over 2,700 requests for assistance over the last year, by way of phone calls, letters, faxes, and email. Secretary Bridget Baggott helped put requesters in touch with a staff person able to assist them. Many of the requests, which come from public defense lawyers and others across the state, could be handled immediately by referrals to the searchable database of potential experts on the NYSDA website or to recent newsletter items, training materials, and other information from the clearinghouse. Responding to other requests entailed legal research or consultation among the full legal staff, including Staff Attorneys Stephanie Batcheller and Mardi Crawford and Legal Intern Kathleen Zack, to ensure the most helpful and accurate assistance possible. For solo practitioners assigned to unusual situations, new lawyers still learning their way through

the complexities of client representation, and anyone facing a new issue, the legal staff at the Backup Center provided the collegial support that overwhelmed public defense providers needed to do their jobs. One lawyer reported back after receiving direct defender services;

*The cases definitely helped me in court. It seemed like the judge was going to follow probation's [recommendation] of max jail sentence until I stated (1) I wanted a hearing and (2) [what] the issues were.... Not sure if you wanted to read all this. But—wanted you to know all your help really helped my client.*

Action into victory.

### **Technical Assistance**

In addition to information to help public defense attorneys provide good representation in individual cases, NYSDA assists public defense programs, county and state officials, and others in broader ways.

The Backup Center provides analysis, advice, and innovations to local offices to help with a



range of administrative, budgetary, regulatory, and mandate issues. In the past year, in addition to the topics addressed at the two Chief Defender Convenings described above, NYSDA provided information to—and solicited input from—the state’s Chief Defenders on a variety of subjects. These communications occurred through both broadcasts via email and in the course of specific inquiries by individual Chiefs.

One issue that arose in the last year and will affect many public defense clients is the implementation of “Leandra’s Law.” This legislation mandates installation and maintenance of an “ignition interlock device” on any vehicles owned or operated by someone placed on probation or conditional discharge for violation of a law prohibiting driving while intoxicated. Many legal and practical questions for both clients and counties arise from the new law. NYSDA has helped public defense lawyers and programs begin to think about these questions. They range from how

clients are to be determined to be financially unable to afford to pay for such devices to what entities are chosen to monitor the output of the devices. Backup Center work on this issue will continue.

NYSDA’s premier, on-going technical assistance project is the Public Defense Case Management System (PDCMS). This software is designed to help public defense offices efficiently and economically keep track of cases, quickly identify conflicts of interest that would preclude their representation of specific clients, and compile reports required by state and local officials. PDCMS support was maintained throughout the year by Project Manager Darlene Dollard and Information Systems Specialist Jacky Kirkpatrick. Their work included installing the latest major update—version 10—in offices that did not yet have it. At the end of June 2010, the PDCMS was installed and supported in 38 defender offices in 31 counties. Version 10 is now installed at 25 sites.

PDCMS allows an office to compile information that can be useful in making budget requests to county funders. The Backup Center can also help Chief Defenders with other information needed for budget submissions. One new office head wrote:

*My appearance before the... committee went very well. Thanks to the research you sent me, I was able to wow the supervisors .... In fact, the... committee was actually interested in exploring the possibility of authorizing another PD position to do family court.*

Words into action, action leading toward possible victory.

Another form of technical assistance NYSDA can provide is site visits to offices or counties with new, unusual, or severe problems. Most recently, the Executive Director and Managing Attorney made a site visit to Washington County, where public defense difficulties have been particularly visible in recent years.



NYSDA also worked with a variety of organizations and government entities in the past year, including the Office of Court Administration's Committee on Criminal Procedure. Managing Attorney Charles F. O'Brien continued to participate on the First Department's Indigent Defense Organization Oversight Committee. Other meetings and conferences in which staff participated in the last twelve months, demonstrating the range of NYSDA activities, included: Mental Health Association of New York State Conference in Albany; National Legal Aid and Defender Association Annual Conference in Denver, CO; a 2010 National Symposium on Indigent Defense in Washington, DC; American Council of Chief Defenders spring meeting and seminar in Arlington, VA; Eighth Judicial District Chief Defenders meeting in Batavia, NY; and Albany County Forensic Task Force meeting (on Crisis Intervention Teams for police encounters with persons with mental illness) in Albany.

## **Advocacy**

NYSDA fulfilled its contractual mandate to review, assess, and analyze issues affecting public defense and make recommendations for solving identified problems in a number of ways this past year. These included: publishing a paper on implementation of a new statutory requirement for caseload limits in New York City, testifying at legislative hearings, and filing an amicus brief.

### **Paper Published on Implementing Caseload Standards**

The Backup Center published "Recommendations Regarding the Chief Administrator's Implementation of Caseload Standards for New York City" (March 2010), available on the NYSDA website at [http://www.nysda.org/10\\_NYSDARecCaseloadNYCStds.pdf](http://www.nysda.org/10_NYSDARecCaseloadNYCStds.pdf). The comments, while addressing specific issues with regard to new statutory authority for the Chief Administrative Judge to set caseload caps for New York City, also urged that implementation

be done with an eye to eventual expansion of authority to set caps statewide.

### **Legislative Hearing Testimony**

Executive Director Gradess testified at a New York State Senate hearing on "IOLA and the Future of Civil Legal Services in New York State," telling legislators that the legal needs of people without financial means are vital and intertwined. He called for the State to commit to providing \$40 million annually from the general fund for civil legal services statewide and to work for broader reform. Referring to the right-to-counsel decision in *Gideon v Wainwright*, he also pointed out that securing a "civil Gideon" would be a pyrrhic victory until "Gideon" means provision of adequately funded, high-quality, holistic representation in every case—a far cry from what many providers can offer today. The full testimony is posted at <http://www.scribd.com/doc/24912669/JEG-Testimony-on-IOLA-and-the-Future-of-Civil-Legal-Services1-7-2010>.



New York State's failure to make good on the promise of *Gideon* was again noted in Gradess's testimony at a legislative budget hearing the next month:

*My budget testimony a year ago opened with the State's on-going neglect of public defense and the frightful results of that neglect. In the intervening year, our broken public defense system has continued to harm clients every day....*

He praised the Governor's inclusion of a public defense reform bill in the proposed Executive Budget, and asked the Legislature to make changes in that proposal necessary to ensure it would lead to improvement of public defense services. Explicitly repeating NYSDA's position that the State must ultimately create an independent public defense commission overseeing a statewide, state funded and state administered defense system, Gradess said NYSDA was prepared to work with the Executive, Legislature, and Judiciary to make the current,

smaller proposal "the best that it can be."

### **Amicus Brief in *Hurrell-Harring v State of New York***

NYSDA filed an *amicus* brief in the Court of Appeals concerning the importance of allowing a New York Civil Liberties Union (NYCLU) lawsuit about deficiencies in public defense services to proceed. Other organizations also filed briefs as *amici*. NYSDA's brief, written by Staff Attorney Al O'Connor, exemplified the Backup Center's ability to bring cogent, focused, venue-specific support to bear on important policy decisions.

In stating NYSDA's interest as *amicus*, the brief noted that "[f]rom its position as the only statewide public defense organization within New York's decentralized indigent defense system, NYSDA has witnessed firsthand the steadily eroding quality of representation offered to indigent criminal defendants in our state" and that NYSDA "long ago concluded, as has the Commis-

sion on the Future of Indigent Defense Services, that the 'right to the effective assistance of counsel, guaranteed by the federal and state constitutions is not being provided to a large portion of those who are entitled to it.'" (citation omitted). However, the brief did not reiterate descriptions of the public defense crisis already set out in the complaint and other papers. Rather, it focused on refuting a technical and erroneous argument relied on by the Appellate Division in ordering the NYCLU's suit dismissed.

The brief pointed out that ineffective assistance of counsel claims cannot be adequately resolved in the litigation of criminal cases, rather than in a civil action such as the NYCLU suit. This is so "because overburdened and underfunded public defense lawyers in many counties do not file the post-conviction motions necessary" to have ineffective assistance claims heard. The full brief can be read on the NYSDA website at <http://>



[www.nysda.org/2010\\_hurrell-harringbrief.pdf](http://www.nysda.org/2010_hurrell-harringbrief.pdf). On May 6, 2010, the Court of Appeals issued a decision reinstating the NYCLU's suit. Action into victory.

### **Legislation Authorizing Indigent Legal Services Board and Office of Indigent Legal Services**

The Governor's proposal for public defense reform garnered support—though with substantial changes—in the Assembly and Senate. While still short of the full overhaul of public defense NYSDA and others believe must come, the legislation that became law on June 22, 2010 is an historic step. It is summarized on the NYSDA website (<http://www.nysda.org>):

*The New York State Legislature has passed, and Governor David Paterson has signed, a provision adding a new article 30, "Indigent Legal Services," to the Executive Law. The provision, which also amends State Finance Law §98-b and County Law §722(3), is found in Part E of the Public*

*Protection budget, chapter 56 of the Laws of 2010.*

*The legislation creates an Office of Indigent Legal Services and a nine-member Indigent Legal Services Board in the Executive Branch. The purpose of the Office and Board is to monitor, study, and make efforts to improve the quality of services provided under County Law article 18-B (which covers public defenders, legal aid offices, assigned counsel, and, now, conflict offices, and includes Family Court representation). The Office will make recommendations about distribution of state funds to localities for public defense, and the Board will make the final decision on those recommendations.*

This legislation follows a decade of NYSDA advocacy for systemic change. Action into victory.

### **Putting Victory Into Action**

The coming year holds great challenges and great promise for NYSDA and its mission. The

resources and expertise of the Backup Center will remain at the disposal of all those it has traditionally served as they continue their work and as they anticipate and experience creation of the new Board and Office. NYSDA's resources will also be at the disposal of the Board and Office once constituted.

Passage of Chapter 56 of the Laws of 2010, Part E was one victory, but we must put this victory into action, and do so quickly. A system must be brought into being in which frustration and humiliation will no longer be a too-common client experience.

To secure true reform, NYSDA will be seeking the redoubled support of all those who make its work possible, many of whom are listed below. It will also be redoubling its dedication to public defense clients across the state. Passage of this important public defense reform came in a budget rife with painful cuts that will affect many public defense programs and other entities vital



to the communities from which public defense clients come. For every public defense lawyer and client that NYSDA is able to help, there are many who remain unaided. As the mother of an immigrant noted:

*I wish more people could be aware of your association, Again I [don't] know what we would have done without Joanne. [E]very where and everyone I called only made me more frustrated and confused until [the lawyer] put me in touch with Joanne! She not only helped [the lawyer] with the motion to vacate (successfully) she became our only ray of hope!*

NYSDA will continue working to turn action into victory, and victory into action.

**People Take Action for NYSDA**

The actions of many people make NYSDA's work possible, including those listed in the pages that follow: Our members—lawyers, clients, and concerned citizens. Our Board of Directors and Client Advisory Board. Our contributors. Our staff, including Accountant Mary Durgee, who ensures that our funding, including donations and grants, is carefully tracked,

Executive Assistant Barbara Baggott, who has served the Association for 29 years, and Diane DuBois, who is training to transition into that position.

NYSDA works for many people: Our members. Those who seek our services. The clients of lawyers we assist, the clients assisted, and their families and communities. The public officials and members of the media who receive information from the Backup Center. And ultimately everyone benefits from NYSDA's work because it furthers justice for all. ♪

**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.



# People Taking Action for NYSDA

## NYSDA Board of Directors

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## ***NYSDA Client Advisory Board***

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(Life Skills Educator, Center for Employment Opportunities, and formerly incarcerated person)

Marion H. Hathaway, *Chair Emeritus*  
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(Long time client advocate)

Lenore Banks  
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(Director, Prison Families of New York)

Charles Culhane  
Buffalo, NY  
(Poet, and formerly incarcerated person)

Juan Dones, Sr.  
New York, NY  
(Counselor, and formerly incarcerated person)

Robert Flunory  
Utica, NY  
(OASAS Certified Recovery Coach, Resident Aide, and formerly incarcerated person)

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

Kevin Halpin  
Albany, NY  
(Residential Counselor, 820 River Street Community Residence, and formerly incarcerated person)

Darryl P. King  
Brooklyn, NY  
(Wrongfully convicted formerly incarcerated person with 25 years of experience in prison system; formerly Director, Criminal Justice Project, Fifth Avenue Committee, Brooklyn)

Velma Smith  
Rochester, NY  
(Senior Executive Director, PathStone New York State)

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

## ***NYSDA Staff***

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Joseph Lopiccolo  
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Brian Lorenzo  
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Jonathon R. Lorge  
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Ron G. Lugbill  
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Kevin A. Luibrand  
Evan M. Lumley  
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Jason Machicote  
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Stephanie A. Mack  
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Brian S. MacNamara  
Joanne Macri  
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Paul G. Madison  
Karen M. Madsen  
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Mark J. Mahoney  
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Brendan O'Donnell  
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Terrance Pratt  
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Deborah Pretlow  
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Christopher A. Privateer  
Andrew J. Proto  
Kelley Provo  
George E. Pugh  
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Andrew M. Purrott  
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John Ramos  
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Beth Ratchford  
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John Ray  
Professor Martha Rayner  
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Merble Reagon  
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Darwin Roque  
Luis Rosado  
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Sharon P. Rose  
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Emily Rosmus  
Alan Ross  
Mary R. Ross  
William L. Rost  
William M. Roth  
Arnold Rothbaum

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Richard A. Rothermel  
Lori Ann Roueche  
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Stephen V. Rubeo  
Stuart D. Rubin  
Francis D. Ruddy, Jr.  
Dana Rudikoff  
Joel B. Rudin  
Anne B. Rudman  
Paul Ruine  
Fares Rumi  
Krystal A. Rupert  
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Wendy Grace Russo  
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Donald R. Schechter  
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Lance Sessoms  
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Simone Shaheen  
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Laurie Shanks  
Elliott C. Shapiro  
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Michael J. Shultes  
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Tiffany M. Sorgen  
Bernard Sorrentino  
Anselmo Soto, Jr.  
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Magdalena Hale Spencer  
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D. Daniel Stevanovic  
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Geoffrey S. Stewart  
Lynne F. Stewart  
Douglas P. Stiller  
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Helen W. Zimmermann  
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Joseph D. Zumbo  
Van Zwisohn

## Photo Captions

### Cover:

(From top) Juan Dones (l) listens to Marion Hathaway during a Client Advisory Board Meeting in 2009. Robert D. Lonski (l), Wilfred R. O'Connor Award recipient, and Melissa Reese, Kevin M. Andersen Memorial Award recipient, with their awards at NYSDA's 2009 Annual Meeting and Conference. Andre Vitale (far l), Julie Cianca, Donald Scalia, and Erik Teifke discuss their Evidentiary Foundation Demonstration at the NYSDA trainer in Binghamton, NY in April 2010.

### Page 1:

Lawyers attend NYSDA CLE training sessions.

### Page 2:

(From left) Donald M. Thompson (l) presents at the NYSDA trainer in Binghamton, NY in April 2010. Marion H. Hathaway receives from Jonathan E. Gradess on December 3, 2009 a plaque bearing the NYSDA Board of Directors resolution thanking her for her many years of service as Chair of the Client Advisory Board. Nationally-known defense attorney Henderson Hill, from Charlotte, NC, speaks during the Defender Institute Basic Trial Skills Program in Troy, NY in June, 2010.

### Page 3:

Participants and faculty take action and react at the Defender Institute Basic Trial Skills Program in Troy, NY in June, 2010.

### Page 4:

(For left photo, see captions for cover.) Robert D. Lonski (r), of NYSDA's Board of Directors, talks with Vincent E. Doyle III, past Chair of the New York State Bar Association's Committee to Ensure Quality of Mandated Representation, at NYSDA's 2009 Annual Meeting and Conference in Saratoga Springs.

### Page 5:

(From left) Roberta "Bert" Nieslanik, Alternate Defense Counsel, Grand Junction, CO, presents at the 2009 Annual Meeting and Conference. Marvin E. Schechter makes a point about the National Academies Report on Forensic Science during the same conference. NYSDA's Director of Legal Information Services, Ken Strutin, exhibits speaker Andrea Lyon's autobiography at the 24th New York Metropolitan Trainer.

### Page 6:

(From top) Lawyers attend the regional CLE trainer "Criminal Defense Update 2009" on November 1, 2009 in Rochester, NY. Chief defenders and NYSDA staff await the beginning of the Chief Defender Convening during the 2009 Annual Meeting and Conference in Saratoga Springs.

### Page 7:

(At left) Former NYSDA Staff Attorney Tehra Coles (c), on staff at the Albany County Public Defender Office, and other lawyers attending the Defender Institute Basic Trial Skills Program in June 2010, watch the end of the graduation ceremony. (Top right) NYSDA Client Advisory Board member Darryl King (l) and Chair Jay Coleman prepare for the Advisory Board's panel on "Public Defense Representation from the Client's Point of View" at the Black and Puerto Rican Caucus Legislative Weekend on February 13, 2010. (Bottom right) The bright sunshine of a July day backlights attendees at the 2009 Annual Meeting and Conference in Saratoga Springs.

### Page 8:

(From left) A moment at the 2010 Defender Institute Basic Trial Skills Program is well documented. Jennifer Dysart and James Doyle talk with attending lawyers after their presentation on "Understanding and Presenting Identification Evidence: The Science and

Law," in Rochester, NY. Seann Riley, Deputy Director of The Bronx Defenders, stood in for his Executive Director, Robin G. Steinberg, who received NYSDA's 2009 Service of Justice Award but was unable to attend the Awards Dinner.

### Page 9:

(Top left) Patrick M. Connors speaks with lawyers attending his presentation, "Transition to the 'New' New York Rules of Professional Conduct," at the 2009 Annual Meeting and Conference. (Top right) The 24th New York Metropolitan Trainer at NYU provides an opportunity for attending lawyers to participate in post-trainer discussion. (Bottom left) Faculty at the 2010 Defender Institute Basic Trial Skills Program rousingly cheer the week and show off "Bert's Magic Elixir" bracelets. (Bottom right) NYSDA Staff Attorney Stephanie Batcheller (c) holds a basket for CLE sign-outs at the 24th New York Metropolitan Trainer.

### Page 10:

Participants and faculty of the 2010 Defender Institute Basic Trial Skills Program smile all together at the conclusion of the week-long trainer.

### Page 12:

(From left) Executive Assistant Barbara Baggott smiles during the 24th New York Metropolitan Trainer at NYU. Managing Attorney Charlie O'Brien admires his new office after an internal move. Training Coordinator Diane Geary checks a list at the "Criminal Defense Update 2009" trainer held at RIT in Rochester.

### Page 13:

Rosanne Van Heertum, Director of Development of The New York Bar Foundation, and James Ayers, Esq. present a grant to NYSDA, accepted by Criminal Defense Immigration Project Director Joanne Macri and NYSDA's Executive Director Jonathan E. Gradess.



# NYSDA MEMBERSHIP APPLICATION

I wish to join the **New York State Defenders Association** and support its work to uphold the Constitutional guarantees of all citizens accused of crimes to legal representation and to advocate for an effective system of public defense representation for the poor.

Enclosed are my membership dues:  \$75 Attorney  \$15 Law/Other Student/Inmate  \$40 All Others

Name \_\_\_\_\_ Firm/Office \_\_\_\_\_

Office Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_ Zip \_\_\_\_\_

Home Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_ Zip \_\_\_\_\_

County \_\_\_\_\_ Phone (Office) (\_\_\_\_) \_\_\_\_\_ (Fax) (\_\_\_\_) \_\_\_\_\_ (Home) (\_\_\_\_) \_\_\_\_\_

E-mail Address (Office) \_\_\_\_\_ E-mail Address (Home) \_\_\_\_\_

**At which address do you want to receive membership mail?**  Office  Home

Please indicate if you are:  Assigned Counsel  Public Defender  Private Attorney  
 Legal Aid Attorney  Law Student  Concerned Citizen

*Attorneys and law students please complete:* Law School \_\_\_\_\_ Degree \_\_\_\_\_

Year of graduation \_\_\_\_\_ Year admitted to practice \_\_\_\_\_ State(s) \_\_\_\_\_

I have also enclosed a tax-deductible contribution:  \$500  \$250  \$100  \$50  Other \$ \_\_\_\_\_

Checks are payable to **New York State Defenders Association, Inc.** Please mail coupon, dues, and contributions to: New York State Defenders Association, 194 Washington Ave., Suite 500, Albany, NY 12210-2314.

<p><i>To pay by credit card:</i> <input type="checkbox"/> Visa <input type="checkbox"/> MasterCard <input type="checkbox"/> Discover <input type="checkbox"/> American Express</p> <p>Card Billing Address: _____</p> <p>Credit Card Number: _____ Exp. Date: ____ / ____</p> <p>Cardholder's Signature: _____</p>
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**Annual Report of Directors  
Pursuant to Not-for-Profit Corporation Law 519**

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



**NEW YORK STATE DEFENDERS  
ASSOCIATION, INC.**

AUDITED FINANCIAL STATEMENTS

Years ended December 31, 2009 and 2008

# NEW YORK STATE DEFENDERS ASSOCIATION, INC.

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## INDEPENDENT AUDITOR'S REPORT

To the Board of Directors  
New York State Defenders Association, Inc.

We have audited the accompanying statements of financial position of New York State Defenders Association, Inc. (the "Association") as of December 31, 2009 and 2008, and the related statements of activities and changes in net assets, and cash flows for the years then ended. These financial statements are the responsibility of the Association's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of New York State Defenders Association, Inc. as of December 31, 2009 and 2008, and the changes in its net assets and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

*UHY* LLP

Albany, New York  
April 16, 2010

**NEW YORK STATE DEFENDERS ASSOCIATION, INC.**  
**STATEMENTS OF FINANCIAL POSITION**  
**December 31, 2009 and 2008**

	<u>2009</u>	<u>2008</u>
<b>ASSETS</b>		
Cash	\$ 1,429,440	\$ 1,477,544
Grant and other receivables	178,446	68,171
Deposits	7,777	9,770
Prepaid expenses	17,602	17,833
Furniture and equipment, less accumulated depreciation 2009, \$190,368; 2008, \$332,871	<u>46,482</u>	<u>73,368</u>
Total assets	<u><u>\$ 1,679,747</u></u>	<u><u>\$ 1,646,686</u></u>
<b>LIABILITIES AND NET ASSETS</b>		
<b>LIABILITIES</b>		
Accounts payable and accrued expenses	\$ 11,346	\$ 11,194
Accrued salaries and vacation pay	108,986	99,064
Deferred grant and contract revenue and advances	527,189	600,197
Deferred membership dues	<u>50,068</u>	<u>48,918</u>
Total liabilities	697,589	759,373
<b>COMMITMENTS AND CONTINGENCIES</b>		
<b>NET ASSETS</b>		
Unrestricted	<u>982,158</u>	<u>887,313</u>
Total liabilities and net assets	<u><u>\$ 1,679,747</u></u>	<u><u>\$ 1,646,686</u></u>

*See notes to financial statements.*

**NEW YORK STATE DEFENDERS ASSOCIATION, INC.**  
**STATEMENTS OF ACTIVITIES AND CHANGES IN NET ASSETS**  
**Years Ended December 31, 2009 and 2008**

	<u>2009</u>	<u>2008</u>
<b>Revenue:</b>		
New York State appropriation	\$ 1,535,834	\$ 1,331,654
Other grants and contracts	52,618	444,225
Membership dues	99,984	92,525
Interest	8,386	8,894
Contributions	5,646	6,730
Conferences, publications and other income	296,654	309,086
Management fees	73,960	76,699
	<u>2,073,082</u>	<u>2,269,813</u>
<b>Expenditures:</b>		
Salaries	937,562	1,062,519
Contracted services	195,268	302,177
Other employee benefits	190,871	185,543
Conference facilities and travel	160,159	98,444
Occupancy	112,721	137,224
Payroll taxes	74,227	84,712
Printing and publications	44,824	37,625
Office and computer supplies	39,895	42,126
Library and professional dues	33,420	36,383
Postage and shipping	23,982	20,993
Depreciation	21,716	21,607
Miscellaneous	21,453	16,648
Telephone and communications	19,436	28,954
General insurance	11,202	11,745
Equipment rental and maintenance	9,885	12,498
	<u>1,896,621</u>	<u>2,099,198</u>
Change in net assets before project transfer	176,461	170,615
Immigration Defense Project Transfer	<u>81,616</u>	<u>-</u>
Change in net assets	94,845	170,615
<b>Net assets, beginning</b>	<u>887,313</u>	<u>716,698</u>
<b>Net assets, ending</b>	<u>\$ 982,158</u>	<u>\$ 887,313</u>

See notes to financial statements.

**NEW YORK STATE DEFENDERS ASSOCIATION, INC.**  
**STATEMENTS OF CASH FLOWS**  
**Years Ended December 31, 2009 and 2008**

	<u>2009</u>	<u>2008</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Change in net assets	\$ 94,845	\$ 170,615
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation	21,716	21,607
Changes in:		
Grant and other receivables	(110,275)	1,013,556
Prepaid expenses and deposits	2,224	(893)
Accounts payable and accrued expenses	152	(45,795)
Accrued salaries and vacation pay	9,922	5,394
Deferred contract revenue and advances and membership dues	(71,858)	427,487
Net cash (used in) provided by operating activities	<u>(53,274)</u>	<u>1,591,971</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Purchase/disposal of furniture and equipment, net	<u>5,170</u>	<u>(30,204)</u>
Net cash provided by (used in) investing activities	<u>5,170</u>	<u>(30,204)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Net payments on line of credit	<u>-</u>	<u>(120,000)</u>
Net cash used in financing activities	<u>-</u>	<u>(120,000)</u>
<b>NET (DECREASE) INCREASE IN CASH</b>	<b>(48,104)</b>	<b>1,441,767</b>
<b>CASH:</b>		
Beginning of year	<u>1,477,544</u>	<u>35,777</u>
End of year	<u>\$ 1,429,440</u>	<u>\$ 1,477,544</u>
<b>SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION</b>		
Cash payments for interest	<u>\$ -</u>	<u>\$ 1,360</u>

See notes to financial statements.



**NEW YORK STATE DEFENDERS ASSOCIATION, INC.**  
**NOTES TO FINANCIAL STATEMENTS**  
**December 31, 2009 and 2008**

**NOTE 1 — ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Organization**

New York State Defenders Association, Inc. ("The Association") is a not-for-profit organization which is exempt from Federal income taxes under Internal Revenue Code Section 501(c)(3). The Association was incorporated in 1967 for the primary purpose of promoting an interchange of ideas and experiences concerning functions in the field of criminal defense. The Association has an agreement with the New York State Division of Criminal Justice Services ("DCJS") whereby New York State will fund the Association to provide various back-up services required by public defenders, legal aid society attorneys, and private defense attorneys who volunteer to accept assignments to represent public defense clients.

A summary of the Association's significant accounting policies follows:

**Revenue Recognition**

All revenues and expenditures are recorded on an accrual basis. Appropriations and grant revenues are recognized as income when related qualifying costs are incurred. Deferred contract revenue and advances represent revenue received in advance. Deferred membership dues represent membership dues received in advance.

**Furniture and Equipment**

Furniture and equipment are recorded at cost. Depreciation is recorded on the straight-line basis over estimated useful lives ranging from three to seven years.

**Estimates**

The preparation of financial statements in accordance with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts. Actual results could differ from those estimates.

**Net Assets**

Net assets are classified as unrestricted, temporarily restricted, or permanently restricted depending on the existence and/or nature of any donor imposed restrictions. The Association's net assets were all unrestricted as of December 31, 2009 and 2008.

**Cash**

The Association places its cash with a high quality credit institution. At times such deposits may be in excess of the FDIC insurance limit.

**Subsequent Events**

In preparing these financial statements, management has evaluated events and transactions for potential recognition or disclosure through April 16, 2010, the date the financial statements were available for issuance.

**Income Tax Positions**

The Association's income tax positions are that it continues to be exempt from income taxes and does not have net unrelated business income that would be subject to income taxes.

**NEW YORK STATE DEFENDERS ASSOCIATION, INC.**  
**NOTES TO FINANCIAL STATEMENTS**  
**December 31, 2009 and 2008**

**NOTE 2 — DEFERRED REVENUE/APPROPRIATIONS RECEIVABLE (ADVANCED)**

The Association's Public Defense Backup Center ("Center"), funded through DCJS, has a budget of \$1,516,000 extending from April 1, 2009 to September 15, 2010 of which \$1,316,000 was received in 2009 (\$1,316,000 extending from April 1, 2008 to September 15, 2009, which was received in 2008). New York State makes periodic advances to the Association for operating costs incurred. Funds of \$1,316,000 were approved during 2009 for the budget period ended September 15, 2009 and \$200,000 were approved in 2010. Funds of \$1,316,000 were advanced during 2009 for the budget period ended September 15, 2010 (\$1,316,000 advanced during 2008 for the budget period ended September 15, 2009).

Expenditures associated with this program were \$1,535,834 for the year ended December 31, 2009 (\$1,331,654 in 2008). Management and general expenditures were \$85,276 for the year ended December 31, 2009 (\$125,913 for 2008).

Expenditures for other programs during 2009 were \$357,127 (\$641,631 in 2008).

**NOTE 3 — NOTES PAYABLE – BANK**

The Association has a line of credit with First Niagara Bank, with a maximum of \$500,000 available as of December 31, 2009 and 2008, and an interest rate of prime plus 1%, with a floor of 4%, which expires in June 2010. The line is secured by all business assets. As of December 31, 2009 and 2008, there was no outstanding balance on this line of credit.

**NOTE 4 — LEASE OBLIGATION – ALBANY, NEW YORK**

The Association entered into an operating lease agreement for office space in Albany, New York effective February 15, 1999 and amended in February 2001 for a term of seven years, with an option to renew for an additional five-year period and a second option for an additional three-year period. The Association exercised the first option to renew the lease for the five-year period commencing March 1, 2006. Rent expense for the office location was \$106,365 for 2009 and \$105,495 for 2008. Future annual minimum rental payments under this lease are \$106,964 for 2010 and \$17,827 for 2011, totaling \$124,791.

**NOTE 5 — LEASE OBLIGATION – NEW YORK CITY**

The Association formerly rented office space in New York City on a month-to-month basis. Rent expense for this location was \$23,923 for 2008. This month to month lease was cancelled in January 2009 when the Association transferred an immigrant defense program to an unrelated nonprofit agency.

**NOTE 6 — TAX DEFERRED ANNUITY PLAN**

The Association established a tax deferred annuity plan in accordance with Section 403(b) of the Internal Revenue Service Code during 1994. The employer contribution is determined by the Board of Directors annually, but will not be less than 3% of employee compensation. The employer's contribution, included in other employee benefits, was \$48,843 for 2009 (\$52,737 for 2008).

**NEW YORK STATE DEFENDERS ASSOCIATION, INC.**  
**NOTES TO FINANCIAL STATEMENTS**  
**December 31, 2009 and 2008**

**NOTE 7 — RELATED ORGANIZATION**

Three members of the Board of Directors of the Association currently serve as members of the Board of Directors of New York State Defenders Justice Fund, Inc. (Justice Fund). Justice Fund is a separately incorporated New York not-for-profit organization exempt from federal income taxes under section 501(c)(4) of the Internal Revenue Code. The purposes of Justice Fund include, among other things, to heighten public awareness as to issues of public defense services and to advocate and lobby for improvements in the criminal justice system generally and public defense services in particular. The organizations employ some of the same employees and the Association provides management services to the Justice Fund in accordance with a cost allocation plan and fee agreement which is approved by the Association and the Justice Fund. In 2009, the Justice Fund paid the Association a management fee of \$73,960 (\$76,699 in 2008) and reimbursed costs of \$239,218 (\$211,920 in 2008) which were incurred on behalf of the Justice Fund. At December 31, 2009 the Association was due \$32,854 from the Justice Fund for reimbursed costs.

**NOTE 8 — TRANSFER OF IMMIGRATION DEFENSE PROGRAM**

On January 1, 2009, the Association transferred program services related to the Immigration Defense Project (IDP) to an unrelated nonprofit agency based in New York City. In conjunction with this transfer, total costs of \$81,616 were incurred by the Association.

The Association transferred assets comprised of \$67,701 cash (net IDP donations, net IDP stipends, net IDP other income and net immigration manual sales), \$11,921 net book value of equipment located in the IDP NYC office and \$1,994 rental deposit on the former NYC office space. In addition, \$30,000 in cash for grant advances reported as deferred grant revenues in 2008 was also transferred.

**NOTE 9 — CONTINGENCIES**

The Comptroller of New York State has the right to audit expenditures for prior periods relating to the Association's Public Defense Backup Center and pass-through federal funding. In the opinion of management, all expenses covered by such contracts meet the requirements of the grant and adjustments, if any, that may result from such future audits would be immaterial.





