About the Cover
This 2012 Annual Report looks back at the last year and the last 45 years. The cover graphic looks back through the NYSDA seal etched in glass toward the Backup Center’s front door, revealing a desktop filled with officework necessities and a clock. These items succinctly symbolize public defense: much good work to do, and the need for resources and time in which to do it.
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“It has been a long, uphill struggle from 1967, when a handful of us recognized the urgency to come together to improve public defense services in New York. That job of improvement, and its attendant need for constant communication, is still ahead.”
– Wilfred R. O’Connor, NYSDA President from 1978 to 1989

**NYSDA: Serving Public Defense for 45 Years**

The activities of the New York State Defenders Association (NYSDA) described in this Annual Report reflect both continuity and change. Daily tasks at NYSDA’s Public Defense Backup Center encompass many different types of support that public defense lawyers have come to expect and need. Providing that support in the face of growing and changing demands, along with how to deal with outside developments that affect the Association and its overall mission, are frequent topics at NYSDA as it completes its 45th year.

Questions abound, always. How have we dealt with an issue in the past? Should we approach the problem differently in the future? Can implementing new information technology save us time on a particular task? Are we using modern communication and emerging dissemination technology to maximize distribution of ever-increasing amounts of information? What paradigm shifts have occurred, what paradigm shifts should we seek, and what steps should we take to get there?

**Promoting Quality Representation**

The “long, uphill struggle” to improve public defense services noted by former NYSDA President Bill O’Connor continues. He wrote those words in 1979 for the premier issue of the Association’s initial periodical, *The Defender*. That issue also contained revised by-laws. The Association’s objectives as stated in its by-laws include: “coordinate, upgrade, make uniform, and thus, improve the quality of the delivery of legal services to persons in the State of New York unable to afford counsel.”

**Mission Statement**

The mission of the New York State Defenders Association is to improve the quality and scope of publicly supported legal representation to low income people.

This report addresses briefly some current and past answers to these and other questions. It acknowledges the passionate and sometimes divergent viewpoints that emerge around the core issue of New York State’s failure to guarantee high-quality mandated representation to every person eligible for public defense services. And it describes NYSDA’s work over the last year to fulfill the requirements of its by-laws and contract by promoting quality representation and confronting injustice.

**Pursuing Legislative and Systemic Reform**

The Association moved its headquarters thirteen years after its incorporation, from its birthplace on Long Island to the state capital. The move would allow NYSDA “to provide more positive and direct assistance at the legislative level” as well as to lawyers in the field, as O’Connor wrote in announcing the move in 1980. The need to fix flaws in
the 1965 legislation delegating to counties the responsibility for providing public defense services – article 18-B of the County Law – had already become apparent.

NYSDA’s relocation to Albany was assisted by the New York State Association of Counties (NYSAC), of which NYSDA was an affiliate; NYSAC made office space available until state funding could be secured.

The early NYSDA/NYSAC relationship illustrates a constant theme in NYSDA chronicles. While always seeking common ground with others who have interests in how public defense is provided, NYSDA did not and does not hesitate to put the interests of clients first. Asked in 1979 to comment on a NYSAC Platform Document, O’Connor dissented from a plank that called on the State to develop no more standards for local correctional facilities without local input and no further mandate on criminal justice services without an assurance of total reimbursement of local cost. He urged NYSAC “not to take a position that suggests it will place the administrative costs of implementing constitutionally mandated services above the ultimate law of the land.”

A similar divergence in interests arose over 25 years later as a serious statewide movement for an Independent Public Defense Commission and a statewide defender system emerged. NYSDA’s critical participation in that movement was based on its recognition that county-by-county efforts are not enough to “coordinate, upgrade, make uniform, and thus, improve the quality” of public defense services. NYSAC supported the goal of state takeover of public defense services, passing a resolution to that effect in 2008, but grew fearful that the State would ultimately make counties pay for improvements to public defense. NYSDA struggled to address the concerns of NYSAC and many others whose practical interests in public defense services triggered opposition to proposed reforms, but did not waiver in its commitment to fundamental systemic change.

In 2007, NYSDA’s Board passed a “Resolution Supporting the Recommendations of the Commission on the Future of Indigent Defense Services in its Final Report to the Chief Judge of the State of New York.”

http://www.nysda.org/docs/PDFs/Resolutions/07_ResolutionSupportingKayeCommission.pdf

The detailed resolution, after recapping earlier resolutions and developments, fully supported the recommendation that the State create a statewide defender office to “insure accountability, enforceability of standards, and quality representation.”


In 2010, the State – while not instituting full state funding or control – created an Office of Indigent Legal Services (ILS Office). The Office distributes money for county public defense services from the State’s Indigent Legal

—Ironically, the very legislation which was intended to provide representation for all people regardless of income, has, to a great extent, institutionalized the provision of inadequate services ... If the words of the Sixth Amendment are to stand for anything more than an empty promise, we must go beyond the ‘bare minimum’ provided by Article 18-B.”

Services Fund, with the approval of the Indigent Legal Services Board. Members of the ILS Board, other than the ex officio Chair, are appointed by the Governor; several appointments are on the recommendation of other government and interested entities, including NYSAC, the New York State Bar Association, and legislative leaders. The Backup Center meets with ILS Office staff and provides information and assistance at their request. In addition, the Director of the Office, William J. Leahy, addressed attendees at the Chief Defender Convenings and the Annual Conference in the last year.

NYSDA continues to assess as well as publicize initiatives put forward by the ILS Office and Board, including the announcement by the Board’s Chair, Chief Judge Jonathan Lippman over a year ago that ensuring counsel at arraignment is a priority. Most recently, NYSDA posted on its website the Office’s new Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest, effective July 1, 2012. http://www.nysda.org/docs/PDFs/2010-2012/StandardsandCriteria.pdf. Issuing the standards is a requirement of the Office’s enabling legislation, Executive Law § 832(3)(d). Promulgation of the new standards, like other actions by the ILS Office and Board, brings with it potential implementation issues as well as broader questions about public defense transformation and the ways in which NYSDA will help bring that about in this new era.

Meanwhile, this past year, NYSDA and NYSAC again found common ground. NYSAC filed a memorandum in support of legislation backed by NYSDA to grant public defense lawyers timely access to criminal history reports. Advocating for this proposal, which will benefit counties and clients, was just one way NYSDA sought in the last twelve months to improve public defense quality. While the bill has not yet passed, NYSDA will remain persistent in the quest for reforms small and large, and in working with others to improve the quality of public defense – just as it has over the past 12 months and 45 years.

NYSDA Recognized for Promoting Quality

Recognition awarded over those years to the Association and those who do the work described below include:

- The Criminal Justice Section of the New York State Bar Association (State Bar CJS) in 1985 recognized NYSDA's President for his “Outstanding Contribution to the Delivery of Defense Services” and in 1989 presented to the NYSDA Defender Institute the award for “Outstanding Contribution to Criminal Law Education”;
Director its Distinguished Public Service Award for his Outstanding Contributions to Public Service;

- www.nysda.org received a Golden Web Award for 1999-2000;

- NYSACDL presented a special President’s Commendation to Backup Center Staff Attorney Stephanie Batcheller in 2002 for her work on amici briefs filed on behalf of NYSDA, the National Association of Criminal Defense Lawyers, and others;

- NYSACDL presented NYSDA’s Executive Director with the Gideon Award in 2002 in recognition of his work to improve New York public defense;

- NYSDA’s initiative for ensuring quality representation to clients who are not United States citizens has received a number of awards, including three awards in 2002 to the then-NYSDA Immigrant Defense Project Director by the State Bar CJS, NYSACDL, and the New York State Attorney General, as well as the American Immigration Lawyers Association’s Jack Wasserman Memorial Award in 2007;

- The Center for Digital Government in 2006 awarded NYSDA’s Project Manager for the Public Defense Case Management System the Best of New York 2006 Leadership Award for Demonstrated Excellence in IT Operations, Support and Service;

- The State Bar CJS presented its Outstanding Contribution to Criminal Law Education award in 2011 to the current Director of NYSDA’s Criminal Defense Immigration Project; and

- The State Bar’s Committee to Ensure Quality of Mandated Representation presented a 2011 Award for Outstanding Achievements in Promoting Standards of Excellence in Mandated Representation to NYSDA’s Managing Attorney.

Other accomplishments and recognitions are posted on the Web. http://www.nysda.org/Accomplishments.html

**Backup Center Services**

All public defense offices and lawyers are ethically required to take cases only if they can offer the “legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation” or associate themselves with lawyers who can. Rules of Professional Conduct, Rule 1.1(a) and (b). The services provided by the Public Defense Backup Center help individual lawyers and counties ensure compliance with that rule, improve the quality of representation offered to public defense clients, and also serve as mandate relief. While NYSDA cannot provide every resource public defense lawyers need daily, the Backup Center does provide centralized research and consultation on new, unique, and key issues and when unexpected situations arise. This improves the quality of representation in individual cases; it also helps counties maximize their public defense budgets by avoiding the need to duplicate resources.

Technical assistance on public defense issues, from providing information on new legislation and regulations to evaluation of a program to help solve a systemic problem, has a similar impact.

**Direct Defender Services and Training**

Shortly after first obtaining state funding for the Backup Center, in 1981, NYSDA reported that in four months of operation, 241 requests for assistance were received from 48 counties of New York State; 140 were training requests. NYSDA’s newly minted training program presented training on Criminal Law and Procedure (Narcotics) during the summer meeting in Canandaigua, NY on July 16-19, 1981. It had begun planning a number of other events as well. A list of training...
materials that had been produced or collected for distribution upon request was included in that first Backup Center Update.

Now, the Backup Center gets requests for assistance from almost every county – over 1800 requests were received in fiscal year 2011-2012 – and offers Continuing Legal Education (CLE) credits as an accredited New York CLE provider. In addition to its statewide Annual Meeting and Conference in Saratoga Springs in July 2011, for which 241 participant CLE certificates were presented, NYSDA held or co-sponsored multiple regional trainings and local seminars around the state on a variety of topics. Venues included Poughkeepsie, Utica, New York City, White Plains, Rochester, Albany, Brockport, Lake Placid, Fonda, Binghamton, Syracuse, Troy, and Canandaigua. Trainings covered both specialized topics, such as adult representation in family court, federal law, appeals, and immigration law as it relates to public defense cases, as well as criminal law updates. The Defender Institute’s week-long Basic Trial Skills Program (BTSP) returned after a year’s break due to budget constraints. Throughout the last twelve months, the Backup Center continued its long tradition of providing affordable training relevant to public defense attorneys.

Further, the four decades since the initial Backup Center Update have seen a great growth of training materials. Available information no longer fits on a list like that published in 1981.

The Clearinghouse

In 1981, an issue of The Defender included a description of “The Clearinghouse.” Defined as “a tool by which a mass of information is acquired, sorted through, and put to some use,” the clearinghouse was said to include the following areas: “brief bank, central subject bank, expert referral, training, organizations, legislative area file, special projects, technical assistance, and systems data.” Today, NYSDA’s electronic library contains thousands of holdings. Lawyers and others can do some of their own “sorting through” the clearinghouse by accessing areas of the NYSDA website including expert and case summary databases, training calendar, NYSDA reports and studies, and breaking news. At the Backup Center, staff gather a wide range of materials for the collection and can access and provide them electronically. In this digital age, when so much of the Backup Center’s work depends on discounted or donated software, in-kind donations are very welcome; NYSDA thanks Power Admin LLC, TechSoup, and XWall for their generosity.

Just as available materials have grown, the number of public defense lawyers who can avail themselves of NYSDA’s services has also grown. To publicize its services initially, the Backup Center produced in its first four months two mass mailings to all 3610 New York State public defense attorneys, informing them of the Backup Center’s existence and services newly available to them. Today, most of the over 6000 lawyers who provide public defense services in New York can receive training brochures and other materials from NYSDA instantly via email.

The Backup Center REPORT, Case Digest System, and www.nysda.org

NYSDA’s first periodical, The Defender, began as a newsletter of eight or fewer pages. With the advent of state funding, its length grew to over 20 pages, and by 1982 it had become a full-fledged quarterly magazine of 50 or more pages. However, in an effort to provide defenders with more timely case summaries, in October 1986 the Public
Defense Backup Center

REPORT arrived on the scene, supplementing the features and training articles in The Defender. Eventually, the REPORT evolved into the primary vehicle for disseminating information to the field; the last issue of The Defender was a special 30th Anniversary edition published in 1997.

The REPORT endures. It is sent to all public defense offices, all NYSDA members, all prison law libraries, and is posted on the Association’s website. Many of the same sections found in the REPORT’s first issue continue today – Defender News, Job Opportunities, Conferences and Seminars, and the all-important Case Digest section that had initially appeared in The Defender.

Early case digests – taken from the REPORT and made available by subscription on five-by-eight-inch cards – were manually “searchable” using a NYSDA-developed Subject Matter Index. In 1994, NYSDA announced “the development and release of a computerized case digest system ... [that] renders the manual case digest system obsolete.” Case updates – still taken from the REPORT – were provided on diskettes. In 2000, Case Digest System (CDS) subscribers learned that CD-ROMs would be the new medium. And in 2009, only 15 years after the card system was computerized, the expansion of NYSDA’s website made it reasonable to end the CDS subscription service. Case summaries, which still appear in the REPORT, are available in a searchable database at http://www.nysda.org/CaseSummaries.html.

In the mid 1990’s, NYSDA was engaged not only in developing the electronic version of its CDS, but also exploring the possibility of developing a World Wide Web presence. The September 1995 issue of the newsletter reported that NYSDA had a website, becoming “one of the first criminal defense organizations to join information technology and criminal defense advocacy” in that way. The site – www.nysda.org – was redesigned in 1999, coincidentally the year that the Backup Center moved to new office space in Albany. Among other benefits, that move “ended the frequent down time created when the old cabling faltered ....” according to that year’s Annual Report.

Over the last year, NYSDA has been again redesigning its website. The site was streamlined and outdated material has been removed. Material now available on the site addresses several audiences, reflecting a variety of objectives: providing adequate information to the public related to the defense of persons unable to afford counsel; providing community education developed in conjunction with affected individuals and organizations; publishing periodicals; and promoting an interchange of ideas and experiences concerning public defense. Information on the site includes deeply technical legal materials, such as those found at “Ignition Interlock Devices/Leandra’s Law” under Hot Topics. It also includes links to “Lawyers and Legal Services, Prisoners’ Rights and Resources, the Criminal Justice System, and other topics,” on the Advisory Board page.

Public Defense Case Management System

The Association’s leadership with regard to automation of public defense resources extended beyond its CDS and website. The September 1988 issue of The Defender, “devoted to the automation of the defense component of the criminal justice system,” con-
tained practical approaches to automating operations and “how to generally think about computers and data management.” As noted in the 1991 Annual Report, NYSDA had urged defenders to move toward automation, and to fully cooperate with the State’s Systems Improvements for Enhanced Community Safety (SIFECs) Task Force. NYSDA’s active participation in SIFECs (later Integrated Systems Development), which began in 1989, and a series of grants, led eventually to the well-regarded Public Defense Case Management System (PDCMS) deployed today in 46 defender offices in 34 counties. The beta version of PDCMS was installed in the Monroe County Public Defender Office in September 1995. Screen shots of CDS, PDCMS, and the website festooned the 1996 Annual Report.

**Other Defender Information Technology**

Among other past and present ways NYSDA has demonstrated the value of information technology to public defense services:

- NYSDA filed the first e-brief in the New York State Court of Appeals, in August 2000; substantively, it advanced the right to effective assistance of appellate counsel.
- The Backup Center provided technical assistance to defender offices in implementing use of dtSearch software to efficiently locate information on their in-house systems.
- NYSDA participated in the Office of Court Administration’s e-filing committee and is committed to assist defender offices in successfully planning for and managing new technology.

**Other Technical Assistance and Cooperation**

The PDCMS is the foremost current example of technical assistance provided by NYSDA. Over the years, major technical assistance has taken a variety of forms. As one example, in the 1980s, three counties contracted with NYSDA to undertake comprehensive studies of their public defense systems, resulting in reports assessing the assigned counsel programs of Schenectady (1984), Ontario (1985), and Clinton (1986) counties. In the 1990s, the Backup Center studied the negative impact of audio visual coverage and assisted defender litigation against cameras in court. NYSDA assisted counties individually in understanding the requirements for receiving payment from the Indigent Legal Services Fund (ILSF) after its establishment in 2005. The Backup Center also analyzed the statutory mechanisms intended to ensure that ILSF monies were spent to improve services, not supplant local funds, and published its findings in a preliminary, and then a final, report. www.nysda.org/docs/PDFs/Pre2010/MOE_Analysis_Mar09.pdf

Requests for information or assistance by an individual Chief Defender, county official, or other person with interest in a particular locality’s public defense system may often be handled by dissemination of existing standards, reports, or other materials. Other times, the response requires substantial research, which may then be used in responding to later, similar requests. For example, one public defender requested assistance in confronting
caseload issues, resulting in preparation of a recent report entitled “Determining Measures to Prevent Excessive Workloads in St. Lawrence County.”

Backup Center staff participate in a variety of committees, task forces, and other entities, providing a public defense perspective on criminal justice proposals.

NYSDA also provides testimony at legislative hearings and submits memoranda on pending bills. The subject matter involved can range from bills specifically designed to affect public defense services to bills that would affect public defense providers, clients, or the client community. In some instances, the effect of existing or proposed legislation or regulations may be so negative that NYSDA must do all it can to confront the injustice.

**Criminal Defense Immigration Project**

Confronting injustice is sometimes synonymous with promoting quality representation. Congress passed laws in 1996 that led to draconian and complex immigration consequences for people in criminal proceedings who did not hold United States citizenship. Too many defense lawyers did not know about or understand the new laws. NYSDA launched a Criminal Defense Immigration Project (CDIP) in 1997 to help defense lawyers zealously and effectively represent clients. As a result of that project, which later became the stand-alone Immigrant Defense Project in New York City, and of NYSDA’s current CDIP, many more immigrants have been properly advised about potential immigration consequences before deciding how to proceed in their cases. This year, CDIP activities were once again financially supported in part by a greatly-appreciated grant from the New York State Bar Foundation.

NYSDA’S Criminal Defense Immigration Project Hotline Number is (716) 913-3200

The Director of CDIP conducts training sessions and staffs a hotline that defense lawyers can call for information or consultation about the intersect between their clients’ criminal cases and immigration law. Because quality representation is vital for immigrants in both criminal matters and immigration matters, CDIP’s Director also co-chairs the New York State Bar Association’s Special Committee on Immigration Representation. The Committee’s new report, which includes a set of written standards for representation of immigration cases, was adopted by the State Bar’s House of Delegates.

**Client Advisory Board**

The 1979 revision of NYSDA’s by-laws called for a permanent advisory board; at least half the members must be poor people or their representatives. This Client Advisory Board advises the Executive Director, who appoints it, and assists in designing, executing, and evaluating the Association’s community programs. Its Chair reports annually to the Board of Directors. As currently constituted, over half the Client Advisory Board members are people who were formerly incarcerated, giving them personal knowledge of the criminal justice system and public defense.

**Chief Defender Convenings**

Just as it works with members of the client community to hear their concerns and provide educational information, the Backup Center works with Chief Defenders to hear their concerns and provide information, as well as to stimulate an exchange of ideas and experiences. In 1983, NYSDA held New York State’s first Chief Defender Convening. The list of concerns created and prioritized at that Convening following an open discussion included: the burden created on overburdened public defense providers when they are required to do appeals; lack of adequate funding; entry level and continuing education training; client eligibility determina-
tions; adequate fees for assigned counsel and auxiliary services providers; early entry of counsel; and conflicts of interest.

The Backup Center activities described in this report address some of those concerns, including training. Both NYSDA and the Chief Defenders continued to grapple with others. For example, proposals for regional provision of appellate services urged by NYSDA in the years following the first Convening did not succeed, but form the backdrop for current efforts. And in the on-going drive for a statewide system, the Chief Defenders created a “Must Have” list, published in the March-May 2007 REPORT, that included independence of appellate representation.

Another occasion on which the Chief Defenders formally took a position was their unanimous approval of the Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State before those standards were adopted by the NYSDA Board in 2004.

The last item on the initial Chief’s list – representation in conflict cases – took on new urgency in the last year. Chiefs from counties desiring conflict defender offices raised this issue at Chief Defender Convenings, but were on hold pending promulgation of standards by the ILS Office. This encouraged NYSDA’s provision of assistance to the Office in creation of the Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest.

In addition to ongoing, systemic issues, the topics discussed at Chief Defender Convenings include legal updates, scientific and technological advancements, and societal issues that affect public defense clients and their representation. How drug courts and other specialty courts help or hurt clients is a recurring question, as is the representation of clients with a variety of distinctive needs, such as veterans whose combat experience has influenced the behavior underlying charges against them.

Discussions of injustice in many forms, and ways to confront it, recur in Convenings.

Confronting Injustice

From its inception, NYSDA has confronted injustice in many forms and many forums. Such advocacy fulfills the Association’s contractual obligation to review, assess, and analyze issues and make recommendations for solving identified problems.

The purpose of public defense representation is to prevent the injustice that occurs when individuals are deprived of a liberty interest – their freedom, their family, their good name – by the government, without the guiding hand of counsel. People who cannot afford to hire a lawyer also cannot afford to make their voices heard in political and social structures that affect the criminal justice system. Therefore, in hearings, written reports or memoranda, and other ways, NYSDA calls out, on their behalf, unfair laws, unfair practices, and unfair proposals that affect public defense clients and the justice system generally.
**Injustice in Prosecution**  
**Questioning of Defendants without Counsel**

In 2012, NYSDA joined others in an amicus brief opposing the Queens District Attorney’s practice of questioning individuals in custody who are ready to be arraigned but have not been able to retain a lawyer. Under this “pre-arraignment interrogation program,” unrepresented individuals are diverted into an interrogation room where a prosecutor advises them that there is an urgent need for them to divulge information about the subject matter of their arrest right then. Only after this interrogation are the individuals allowed to proceed to arraignment, where a judge appoints counsel, makes a probable cause determination, informs them of the charges, and sets bail.

Lawyers at the New York Civil Liberties Union Foundation wrote the amicus brief criticizing this unjust practice. The brief was filed in the Appellate Division, Second Department.

NYSDA’s power as an amicus, and all its advocacy, is strengthened by its membership. The support of all the members and contributors listed in this Annual Report give the Association a strong voice when confronting justice.

**Injustice in Sentencing**

In an era when few criminal cases proceed to trial, fairness in sentencing is particularly vital. Over the years, NYSDA has confronted not only sentencing injustice occurring in courtrooms, but sentencing laws that are unfair at root.

Unfair mandatory and harsh sentences do not arise in a vacuum. NYSDA advocacy to prevent sentencing injustice has taken many forms, stressing the need for reasonable laws, adequate procedures, and effective representation. Some of that advocacy has been in governmental forums. Executive Director Jonathan E. Gradess wrote in an early issue of *The Defender*: “In 1978, we testified before the Executive Advisory Committee on Sentencing … arguing that the presumption of incarceration which attaches itself to New York’s sentencing scheme was dysfunctional – constitutionally and practically ....” Testimony was provided in 1979 to the Executive Advisory Committee on Sentencing about holding evidentiary hearings before imposition of sentence.

In 2000, NYSDA solicited information from its prisoner members and included many of their comments in testimony presented at a legislative public Hearing on Special Housing Units, the Rockefeller Drug Laws, and Transitional Services for Inmates. The testimony recommended: individualized sentencing; a requirement that all sentences imposed be the least restrictive necessary to protect the public safety; full funding of defense-based Alternatives to Incarceration Programs and drug treatment programs; and repeal of the Rockefeller Drug Laws (RDL) and other mandatory sentences, among other reforms.

Having supported reform of the RDL for years, NYSDA has been pleased to offer information and training to help lawyers effectively represent clients when the reforms obtained to date come into play. In the last year, information about implementation of RDL reform was published in the *REPORT*, as were case summaries involving RDL and other sentencing issues. NYSDA also co-sponsored training with the Center for Community Alternatives on “Making the 2009 Drug Law Reform Act a Reality.”

Convincing lawyers to fully prepare for sentencing proceedings is an effective way to confront injustice. The value of preparing, and the injustice
that can result from lack of preparation, was clearly illustrated in a March 1982, response to an article in The Defender about the vital role lawyers should play in sentencing. Then-Backup Center Staff Attorney Frank Blando wrote that early in his career as a defense lawyer he had focused on trials, not sentencing. He described being “asked to handle a routine sentencing for a defendant who had copped a plea” and looking through the probation report, which “could have applied to any of the eight other defendants in the courtroom.” He had nothing to add, he wrote, because “I hadn’t gone out of my way to find anything favorable.” That night, he received a phone call from an acquaintance asking about visiting hours at the jail; the acquaintance’s son, who was deaf, wanted to visit the defendant, a friend who had gone to the trouble to learn sign language so he could help deaf people in the area. “This charitable work was nowhere indicated in the probation report,” Blando wrote. Learning from the injustice he perceived after the fact, Blando changed his practice: “I devote the proper time to my client, visit the probation department, obtain recommendations and attempt to set up a program as an alternative to incarceration ....”

NYSDA has advocated for many ways to ameliorate sentencing injustice. In 2005, a staff lawyer testified in support of retaining – and using, rather than ignoring – statutory authority for a local conditional release process. That process had allowed people serving local sentences to be discharged due to changed circumstances, such as unexpected child-care emergencies or sudden illness of the prisoner or a close family member. Such review power, the testimony noted, would also allow relief where a sentence appeared “to be motivated by bias, prejudice or personal animus.”

Racial Injustice Pervades the System

The most prevalent form of bias in the justice system, as reflected in numerous studies, overwhelming data, and the experience of those who work within the system, is racial bias.

A number of legal issues may arise involving race, from the questionable validity of cross-racial identification to dismissal of jurors. Updates on these issues appear in practically every set of case digests prepared for the REPORT, in response to direct defender services requests, and in other forms. But, looming over these discrete legal areas involving race is an overall racial injustice that continues. Long decried, often described, the skewed racial divide in jails, courtrooms, prisons, and probation/parole populations constitutes a forest that does not change despite many efforts to affect it by concentrating on individual trees.
NYSDA works to address the issue in many ways. Over half the members of the Client Advisory Board are African Americans, many of whom were formerly incarcerated and can bring their first-hand experiences with racism to bear on NYSDA planning.

NYSDA’s Basic Trial Skills Program explicitly includes issues of race as part of the exercises presented. In the early 1990s, the New York State Judicial Commission on Minorities endorsed BTSP for its efforts in “enhancing the competence and racial sensitivity of public defenders,” hoping it would become a state and national model. As noted in last year’s Annual Report, the Commission reaffirmed its support, urging financial support of the program.

In the 50th Anniversary issue of The Defender, then-Staff Attorney Sybil A. McPherson wrote about race, an “age-old” problem that must be confronted. Attacks on the right to counsel leave public defense providers “struggling to keep their programs funded, and cases covered,” she said, effectively curtailing their ability to focus on larger issues like racism. Her article called on defenders to “Begin Anew, Here and Now, to Fight.” To report racially-biased comments by those with power over their clients. To talk about race “with family, friends, and colleagues – and not just the black ones.” To become comfortable talking about systemic racism with clients, something BTSP exercises are meant to promote.

McPherson’s 1997 comments foreshadowed Prof. Michelle Alexander’s 2010 bestseller, The New Jim Crow: Mass Incarceration in the Age of Colorblindness. Like Alexander, McPherson recognized that ignoring race in an effort to be colorblind or race neutral “has resulted in racially disproportionate arrests, prosecution and incarceration rates.”

Quality Representation Means Confronting Injustice

Quality representation of people threatened with incarceration, loss of parental rights, and other forms of liberty will not alone end all injustice. But well-prepared, skillful lawyers who enter cases early, zealously protect every client at every step, and confront injustice without flinching, can do a lot.

This Annual Report is dedicated to those lawyers – past, present, and future. It is dedicated to the late Steve Pittari, who believed that injustice would not cease until all public defense clients received respect and high-quality representation. And it is dedicated to those clients.
The People Who Make NYSDA’s Work Possible

New York State Defenders Association, Inc.

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I wish to join the New York State Defenders Association and support its work to uphold the constitutional and statutory guarantees of legal representation to all persons regardless of income and to advocate for an effective system of public defense representation for the poor.

Enclosed are my membership dues: □ $75 Attorney □ $40 Non-Attorney □ $15 Student □ $15 Prisoner

Name _________________________________________ Firm/Office __________________________________
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At which address do you want to receive membership mail? □ Office □ Home

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

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.

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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, 2011 and 2010
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, 2011 and 2010, 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, 2011 and 2010, 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 20, 2012
NEW YORK STATE DEFENDERS ASSOCIATION, INC.
STATEMENTS OF FINANCIAL POSITION
December 31, 2011 and 2010

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASSETS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash</td>
<td>$1,088,957</td>
<td>$1,292,608</td>
</tr>
<tr>
<td>Grant and other receivables</td>
<td>170,094</td>
<td>33,307</td>
</tr>
<tr>
<td>Deposits</td>
<td>7,777</td>
<td>8,077</td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>10,005</td>
<td>17,864</td>
</tr>
<tr>
<td>Furniture and equipment, less accumulated depreciation</td>
<td>2011, $202,307; 2010, $189,470</td>
<td>29,361</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td><strong>$1,306,194</strong></td>
<td><strong>$1,388,596</strong></td>
</tr>
</tbody>
</table>

| **LIABILITIES AND NET ASSETS** |     |     |
| **LIABILITIES**               |     |     |
| Accounts payable and accrued expenses | $ 51,909 | $ 20,116 |
| Accrued salaries and vacation pay | 119,071 | 121,269 |
| Deferred grant and contract revenue and advances | 463,887 | 378,295 |
| Deferred membership dues       | 50,728 | 48,048 |
| **Total liabilities**          | 685,595 | 567,728 |

| **COMMITMENTS AND CONTINGENCIES** |     |     |
| **NET ASSETS**                   |     |     |
| Unrestricted                     | 620,599 | 820,868 |

| **Total liabilities and net assets** | **$1,306,194** | **$1,388,596** |

See notes to financial statements.
NEW YORK STATE DEFENDERS ASSOCIATION, INC.
STATEMENTS OF ACTIVITIES AND CHANGES IN NET ASSETS
Years Ended December 31, 2011 and 2010

<table>
<thead>
<tr>
<th>Revenue:</th>
<th>2011</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York State appropriation</td>
<td>$1,291,170</td>
<td>$1,315,879</td>
</tr>
<tr>
<td>Other grants and contracts</td>
<td>167,250</td>
<td>220,000</td>
</tr>
<tr>
<td>Membership dues</td>
<td>101,942</td>
<td>100,826</td>
</tr>
<tr>
<td>Interest</td>
<td>3,078</td>
<td>4,155</td>
</tr>
<tr>
<td>Contributions</td>
<td>26,596</td>
<td>7,405</td>
</tr>
<tr>
<td>Conferences, publications and other income</td>
<td>386,745</td>
<td>359,889</td>
</tr>
<tr>
<td>Management fees</td>
<td>-</td>
<td>18,182</td>
</tr>
<tr>
<td><strong>Total revenue</strong></td>
<td><strong>1,976,781</strong></td>
<td><strong>2,026,336</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenditures:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries</td>
<td>1,165,888</td>
<td>1,124,108</td>
</tr>
<tr>
<td>Contracted services</td>
<td>194,091</td>
<td>224,444</td>
</tr>
<tr>
<td>Other employee benefits</td>
<td>293,683</td>
<td>249,294</td>
</tr>
<tr>
<td>Conference facilities and travel</td>
<td>110,592</td>
<td>157,102</td>
</tr>
<tr>
<td>Occupancy</td>
<td>112,462</td>
<td>114,768</td>
</tr>
<tr>
<td>Payroll taxes</td>
<td>87,002</td>
<td>95,051</td>
</tr>
<tr>
<td>Printing and publications</td>
<td>38,255</td>
<td>47,945</td>
</tr>
<tr>
<td>Office and computer supplies</td>
<td>47,677</td>
<td>37,716</td>
</tr>
<tr>
<td>Library and professional dues</td>
<td>33,255</td>
<td>34,789</td>
</tr>
<tr>
<td>Postage and shipping</td>
<td>22,496</td>
<td>26,142</td>
</tr>
<tr>
<td>Depreciation</td>
<td>15,740</td>
<td>19,196</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>14,325</td>
<td>17,496</td>
</tr>
<tr>
<td>Telephone and communications</td>
<td>19,094</td>
<td>19,207</td>
</tr>
<tr>
<td>General insurance</td>
<td>10,353</td>
<td>10,314</td>
</tr>
<tr>
<td>Equipment rental and maintenance</td>
<td>10,645</td>
<td>10,054</td>
</tr>
<tr>
<td>Loss on disposal of equipment</td>
<td>1,492</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total expenditures</strong></td>
<td><strong>2,177,050</strong></td>
<td><strong>2,187,626</strong></td>
</tr>
</tbody>
</table>

| Change in net assets                         | (200,269)    | (161,290)    |
| **Net assets, beginning**                    | 820,868      | 982,158      |
| **Net assets, ending**                       | **$ 620,599**| **$ 820,868**|

See notes to financial statements.
NEW YORK STATE DEFENDERS ASSOCIATION, INC.
STATEMENTS OF CASH FLOWS
Years Ended December 31, 2011 and 2010

<table>
<thead>
<tr>
<th>CASH FLOWS FROM OPERATING ACTIVITIES</th>
<th>2011</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change in net assets</td>
<td>$ (200,269)</td>
<td>$ (161,290)</td>
</tr>
<tr>
<td>Adjustments to reconcile change in net assets to net cash used in operating activities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation</td>
<td>15,740</td>
<td>19,196</td>
</tr>
<tr>
<td>Loss on disposal of assets</td>
<td>1,492</td>
<td>-</td>
</tr>
<tr>
<td>Changes in:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grant and other receivables</td>
<td>(136,787)</td>
<td>145,139</td>
</tr>
<tr>
<td>Prepaid expenses and deposits</td>
<td>8,159</td>
<td>(562)</td>
</tr>
<tr>
<td>Accounts payable and accrued expenses</td>
<td>31,793</td>
<td>8,770</td>
</tr>
<tr>
<td>Accrued salaries and vacation pay</td>
<td>(2,198)</td>
<td>12,283</td>
</tr>
<tr>
<td>Deferred contract revenue and advances and membership dues</td>
<td>88,272</td>
<td>(150,914)</td>
</tr>
<tr>
<td>Net cash used in operating activities</td>
<td>(193,798)</td>
<td>(127,378)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CASH FLOWS FROM INVESTING ACTIVITIES</th>
<th>2011</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchases of furniture and equipment, net</td>
<td>(9,853)</td>
<td>(9,454)</td>
</tr>
<tr>
<td>Net cash used in investing activities</td>
<td>(9,853)</td>
<td>(9,454)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NET DECREASE IN CASH</th>
<th>2011</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(203,651)</td>
<td>(136,832)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CASH:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Beginning of year</td>
<td>1,292,608</td>
<td>1,429,440</td>
</tr>
<tr>
<td>End of year</td>
<td>$1,088,957</td>
<td>$1,292,608</td>
</tr>
</tbody>
</table>

See notes to financial statements.
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 assigned counsel lawyers who 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, 2011 and 2010.

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 20, 2012, 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. The Association's information returns for the years ended December 31, 2008 and later are subject to examination.
NOTE 2 — DEFERRED REVENUE/APPROPRIATIONS RECEIVABLE (ADVANCED)

The Association’s Public Defense Backup Center (“Center”) had a budget of $1,821,000 extending from April 1, 2011 to March 31, 2012. DCJS approved and funded the Center in the amount of $1,339,000, of which $1,153,000 was received in 2011.

The Center had a budget of $1,816,000 extending from April 1, 2010 to March 31, 2011. DCJS approved and funded the Center in the amount of $1,185,000, which was received in 2010.

DCJS funds of $200,000 were received during 2010 for the budget year ended March 31, 2010.

Expenditures associated with this program were $1,820,099 for the year ended December 31, 2011 ($1,795,709 in 2010). Management and general expenditures were $99,026 for the year ended December 31, 2011 ($112,319 for 2010).

Expenditures for other programs during 2011 were $257,925 ($279,598 in 2010).

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, 2011 and 2010, and an interest rate of prime plus 1%, with a floor of 4%, which expires in June 2012. The line is secured by all business assets. As of December 31, 2011 and 2010, there was no outstanding balance on this line of credit.

NOTE 4 — LEASE OBLIGATION

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 and the second option to renew the lease for an additional five year period commencing March 1, 2011. Rent expense for the office location was $105,569 for 2011 and $106,489 for 2010. Future annual minimum rental payments under this lease are $106,705 for 2012 through 2015 and $17,784 for 2016, totaling $444,604.

NOTE 5 — 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 $91,632 for 2011 ($73,199 for 2010).

NOTE 6 — 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.
NOTE 6 — RELATED ORGANIZATION (Continued)

The organizations employed some of the same employees and the Association provided management services to the Justice Fund in accordance with a cost allocation plan and fee agreement which was approved by the Association and the Justice Fund.

The Justice Fund was inactive during 2011. The Justice Fund had reimbursed the Association a total of $8,803 in 2011. There were no management fees in 2011. The Association’s net reimbursable expenses made on behalf of the Justice Fund were $106. At December 31, 2011 the Association had a payable to the Justice Fund of $124, which was included in accounts payable and accrued expenses.

The Justice Fund had reimbursed the Association a total of $77,053 in 2010. Management fees in 2010 were $18,182, and the Association’s reimbursable expenses made on behalf of the Justice Fund were $34,713. At December 31, 2010 the Association had a receivable from the Justice Fund of $8,697, which was included in other receivables.

NOTE 7 — 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. 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.