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.

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JUSTICE ISN'T FREE
INTRODUCTION—
NYSDA'S ODYSSEY TOWARD EXCELLENCE

Preparation is essential to quality legal representation. It is priceless, but not without cost. Preparation takes time, and time is our most valuable commodity.

Investigating a case takes time. Legal research takes time. Drafting effective pleadings tailored to an individual case—because no case is just like another—takes time. Building trust between client and attorney, client and drug treatment provider, attorney and sentencing specialist—these and many other aspects of a client’s case take time.

Excessive caseloads steal time. Trying to represent too many people keeps a lawyer from spending enough time on many clients’ cases. Juggling too many cases leads to multiple delays in court proceedings.

Insufficient money for public defense means lawyers often have no time to prepare. Lack of funds means they either have no help from investigators, paralegals, sentencing specialists, etc., or those members of the defense team are likewise without time to do a quality job. The resulting inefficiency burdens the entire legal system and leads to injustices that damage clients, frustrate defense providers, and erode public trust.

The New York State Defenders Association (NYSDA) supports overburdened public defense providers through its Public Defense Backup Center. NYSDA spends time identifying and summarizing relevant new legislation and case law, so public defense lawyers can get the information at a glance. Backup Center staff consults with lawyers who have no law library, no available colleagues, and no time, helping them with unique legal issues, hard-to-find resources, and the stress that comes from the burden they carry.

NYSDA also informs governmental entities and the public about the needs of the public defense community and public defense clients. NYSDA analyzes and describes the deleterious effects of underfunding public defense services, providing disparate funding to public defense and prosecution programs, and other bad policies. NYSDA testimony highlights the constitutional and statutory guarantees of quality public defense, and the too-frequent violations of those promises. Since the inception of the Backup Center in 1978, and its receipt of state funding beginning in 1981, NYSDA’s support to the field has included the following: handled more than 20,000 requests for assistance; trained lawyers; implemented technological innovations like a case manage-

“I just wanted to drop you a quick note thanking you for all of your help with my assigned counsel case. Thanks to you, I was well prepared for… trial, but right before we picked a jury, the prosecutor made an unbelievable plea offer, which my client accepted. … Thanks to you I was prepared and confident enough about my case to negotiate a fair settlement for my client. I greatly appreciate your assistance!”
ment system designed specifically for New York public defender offices; offered a hotline and other services for criminal defense lawyers with noncitizen clients (whose criminal cases present special issues); and provided information and assistance to a wide variety of defense, governmental, and public organizations, agencies, and individuals.

But these efforts have not succeeded in giving public defense providers across New York what they need most—enough time. Public defense programs cannot give their lawyers and staffs enough time to properly prepare every case, enough time to secure for people with little or no money the right to equal justice. Assigned counsel cannot afford to spend time out of court preparing a case when even in-court time, which pays more, routinely fails to cover overhead costs. Not even the most skilled practitioner, the most compassionate treatment provider, and the most efficient support staff can create the extra hours in a day needed for what public defense providers are called upon to do.

And so, in 2001, NYSDA has focused more than ever on the need to move all public defense in New York, not just select cases, not just select offices—not just those who find time to call NYSDA for help—toward the goal of providing high-quality representation in every case. While the Backup Center continues to perform its function of providing assistance when called upon, the Association has, with the support of its membership, Board of Directors, and Advisory Board, rededicated itself to an odyssey toward excellence.

Two major steps in that odyssey were taken in the last year. At the 33rd Annual Meeting and Conference in Kerhonkson, the Board of Directors adopted eleven governing principles for public defense services. In March 2001, NYSDA issued a position paper setting forth the need for reasonable compensation rates for assigned counsel, state subsidies to localities for the state responsibility of providing public defense, and the creation of an independent Public Defense Commission to oversee both the distribution of state funds and the provision of defense services across New York State.

NYSDA and its members invite all New Yorkers to join us on the journey.

THE BACKUP CENTER

Housed in an Albany office a few blocks from the governmental offices of the Empire State Plaza and bordering one of Albany’s low-income neighborhoods, the Public Defense Backup Center provides resources to public defense lawyers, public officials, and others in every county across the state. Help is available by mail, telephone, facsimile, e-mail, and the World Wide Web.
DELIBERATING HELP TO THE FIELD

Consultation and the Clearinghouse

● Direct Defender Services

The Backup Center responded to over a thousand requests for assistance in the last year. Staff attorneys were available Monday through Friday. They consulted with lawyers, made expert witness and other referrals to defense teams, and provided referrals to or information about possible services for individuals. Legal interns assisted with legal research on difficult issues for defense providers. Library and legal information staff searched the Backup Center’s own Clearinghouse collections and other sources for needed information.

In addition to legal consultation and research, attorneys in litigation received help from the Backup Center’s Social Science Research Unit, which supplies relevant and timely social science and statistical research upon request. The Research Unit handled approximately fifty such requests in a year, working collaboratively with Backup Center staff attorneys or responding directly to requests as international in scope as one from Vancouver, B.C., or as local as several from the Albany County Public Defender Office. Examples of topics on which information has been provided include: sentencing proportionality reviews; crime and arrest statistics; public opinion data; materials in opposition to cameras in court applications (information on this topic is much in demand, with “Cameras in the Courtroom” being the most-used on-site search request last year); and other research relating to the operation of the criminal justice system.

The Backup Center has also had the benefit this year of a full-time law librarian to manage the in house collections, both print and electronic. With the support of the Legal Information Consultant and Library and Information Science Interns, the librarian assists the legal staff in providing direct defender services.

The Backup Center disseminates information produced in house as well as information collected from other defense organizations and sources. Attorneys who miss a particular training may order the materials, extending the reach of the Association’s education programs.

● Criminal Defense Immigration Project

Two days a week, the attorneys of NYSDA’s Criminal Defense Immigration Project respond from their New York City office to inquiries from attorneys and others across the state about immigration law implications of criminal and delinquency proceedings. Information generated by the Project is available on the NYSDA web site as well, with that page receiving over 6,000 hits in the year 2000.
In one instance, the Project Director provided backup legal support to habeas corpus counsel for a long-time lawful permanent resident immigrant, Jerry Arias-Agramonte, who had resided lawfully in the United States with his family for 33 years. He was placed in removal proceedings upon returning from his father’s funeral abroad based on a 1977 drug conviction for which he was sentenced to two years of probation. The federal district court found jurisdiction and granted relief. Arias-Agramonte v. Commissioner of INS, 2000 WL 1059678 (S.D.N.Y. 2000).

The Project has also come to the assistance of Melita Oliveira, a New Jersey resident convicted of possession under New York’s Rockefeller drug laws thirteen years ago. She was granted clemency in December 2000 by Governor George Pataki, only to learn that the INS planned to deport her. After the Project persuaded the INS to join in a joint motion to the Board of Immigration Appeals (BIA) to reopen her past exclusion proceedings based on new legal and factual developments, she was released. The BIA has agreed to reopen her case.

After several years of efforts by NYSDA Executive Director Jonathan Gradess with support from the Project, the INS released from custody Peter Joseph Henry. A New York resident who the INS alleges but has never proven to be a noncitizen, he was held in a series of Louisiana jails because the INS could not identify a country to which he should be deported.

**Wrongful Conviction/Innocence Project**

A new NYSDA project to be housed at the Backup Center is the Wrongful Conviction/Innocence Project. Funded in part by a grant from the Cardozo School of Law Innocence Project, the NYSDA Project’s mission is to create an infrastructure to develop and use legal and investigative resources to exonerate and release from confinement innocent persons wrongfully convicted of crimes. The Project will identify and train students and faculty, particularly from law, journalism and social work schools, as well as members of the defense community, to investigate and litigate claims of innocence. While priority will be given to cases where DNA evidence is or may be available for testing and can establish beyond question the defendant’s innocence, other claims of innocence may be considered as well. The participation of law students and students of other related disciplines will be an essential component of the Project’s ability to effectively investigate innocence claims. Students will work with experienced attorneys, gaining training and practical experience. The Project will improve and develop the capabilities of the students and attorneys who work with them, thereby strengthening the ability of the legal system to do justice in the future as well as to right past wrongs.
Publications

- **Resolving the Assigned Counsel Fee Crisis: An Opportunity to Provide County Fiscal Relief and Quality Public Defense Services**

The rates of compensation paid to lawyers acting as assigned counsel for people financially unable to obtain representation on their own have been inadequate for years, having been last raised in 1986. This inadequacy has caused many attorneys to cease accepting appointments in such cases. It has also led to increasing caseloads and decreasing quality of representation. The resulting crisis, documented and lamented by NYSDA and others for years, received increasing public and governmental attention in the last year. The leaders of the legislative and executive branches of state government appointed a task force in January to study assigned counsel rates and related issues. In March, NYSDA presented to the task force a position paper, *Resolving the Assigned Counsel Fee Crisis: An Opportunity to Provide County Fiscal Relief and Quality Public Defense Services*. As the title indicates, the report calls for more than an increase of fees. Extensively documented, and disseminated to the Legislature, county officials, NYSDA members, and many others, it is intended to spur discussion of the many problems in New York’s county-by-county, underfunded method of providing public defense services. It calls for not only more public defense money, but for an independent, statewide commission that would do the following: establish and monitor compliance with standards for defense services; evaluate and improve methods of providing those services; administer state funds to assigned counsel and organized defense providers; provide direct representation for eligible persons where required or requested; and make recommendations to the Governor, Legislature, and Judiciary for improvements in public defense.

- **Public Defense Backup Center REPORT**

NYSDA has devoted more staff this year to its newsletter, now in its sixteenth year, increasing the amount of information presented. Whether accessed on the web site or received in the mail as a benefit of membership, the *Public Defense Backup Center REPORT* offers case summaries, a variety of news relating to criminal defense and related topics, and information on conferences and seminars in every issue. Book reviews, practice tips such as the “Admissibility of Expert Identification Testimony in New York After People v Anthony Lee” and Immigration Practice Tips from the NYSDA Criminal Defense Immigration Project, and Legislative Updates appear periodically.

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“I wanted to congratulate you on the December 2000 issue of the REPORT. Not that they all aren’t good—but this issue had several articles analyzing current issues which were particularly interesting. Thanks!”

“I noticed in your . . . ‘REPORTS’ of this year two pieces which gave important information involving mentally ill in the criminal justice system . . . Thanks so much for covering these topics so well!”
Amicus Activity

- Immigration Issues

The “friend of the court” (amicus curiae) briefs filed by the Association this year focused on immigration issues. In a very important immigrants’ rights decision, the United States Supreme Court rejected claims by the government that 1996 relief-eliminating amendments had stripped the courts of jurisdiction to decide questions of statutory interpretation such as the lawfulness of the government’s retroactive application of those amendments. The Court then found that the government’s application of the 1996 amendments to persons who had pled guilty to deportable offenses before the amendments were made was contrary to law. *Immigration and Naturalization Service v St. Cyr*, 121 S. Ct. 2271 (2001).

The Court relied in part on an *amicus curiae* brief prepared and submitted by NYSDA’s Criminal Defense Immigration Project attorneys on behalf of the National Association of Criminal Defense Lawyers (NACDL), NYSDA, and thirteen other defense organizations. The brief, based on experience and expertise on the role immigration issues play in choices made by immigrant defendants in criminal proceedings, informed the Court of the reliance of many lawful permanent resident immigrants on the right to seek relief from deportation when they pled guilty to deportable offenses prior to the 1996 amendments. The majority agreed that taking away this right had an impermissible retroactive effect. Citing the *amici* brief, the Court noted that even if defendants were not initially aware of the relief, competent defense counsel would have advised them about the provision’s importance.

NYSDA, along with The Legal Aid Society of the City of New York (LAS) and the New York State Association of Criminal Defense Lawyers (NYSACDL), had also submitted an *amicus curiae* brief that was cited by the United States Court of Appeals for the Second Circuit in support of its decision in *St. Cyr v. INS*, 229 F.3d 406 (2nd Cir. 2000).

Other *amicus* cases also addressed Congress’s 1996 amendments to immigration law. NYSDA, along with the American Immigration Lawyers Association and the National Immigration Project, filed an *amicus* brief in support of a petition for rehearing in a case where the Second Circuit had held that under the 1996 amendments certain misdemeanors can now be deemed aggravated felonies. *United States v. Pacheco*, 225 F.3d 148 (2d Cir. 2000). Rehearing was denied on December 12, 2000. After considering another *amicus curiae* brief, filed by NYSDA, with NACDL, the National Legal Aid and Defender Association, NYSACDL, and LAS, the Second Circuit affirmed district court rulings that the government improperly denied immigrant respon-
dents—convicted before the 1996 amendments to the Immigration and Nationality Act—the opportunity to apply for the waiver of deportation that existed under pre-amendment law. *Pottinger v. Reno*, 2000 U.S. App. LEXIS 33521 (2d Cir. 2000). And in *Zgombic v. Farsquharson* in the Second Circuit, NYSDA’s *amicus* brief asserts that the government improperly applied 1996 immigration amendments barring relief from removal to an individual whose criminal conduct triggering removal preceded enactment of these amendments, even if the conviction took place after enactment.

The published decision in *Matter of Miguel Devison-Charles*, Interim Decision #3435 (BIA September 12, 2000, January 18, 2001) is now binding on immigration judges and the INS, rehearing having been denied. The Board of Immigration Appeals (BIA) held that New York youthful offender dispositions are not convictions for immigration purposes. NYSDA had submitted an *amicus* brief, joined by NYSACDL, and LAS, opposing reconsideration, which has now been denied.

**Other Issues**

The Association signed on to *amicus* briefs on non-immigration related issues as well. One was authored by David Crow of The Legal Aid Society’s Criminal Appeals Bureau in *People v. Anthony Lee*, a Court of Appeals case dealing with the admissibility of expert testimony on the reliability of eyewitness identification. Although the conviction was ultimately upheld, the Court’s decision on May 8, 2001 (96 N.Y.2d 157) was an important one, attracting attention in the national press. In *Lee*, New York joined the growing number of jurisdictions that have declared admissible expert testimony on the reliability of eyewitness identification. The Court held that testimony by an expert on the factors that affect reliability of eyewitness testimony cannot be precluded on the ground that it invades the province of the jury or is within the ken of the average juror. The Court of Appeals had never previously ruled on this issue. Before *Lee*, a few trial judges had allowed expert testimony, but most had not. The Appellate Divisions had uniformly upheld preclusion of defense expert identification testimony. *Lee* now offers the defense a real opportunity to present expert testimony on the vagaries of eyewitness identification.

A second *amicus* brief that NYSDA joined was authored by The Legal Aid Society’s Prisoners’ Right Project in an appeal from the dismissal of a tort action in *Sanchez v. State of New York*. In *Sanchez*, a state prisoner who was seriously injured in an attack by another inmate sued the state alleging that negligent supervision by a correction officer led to the assault. A Court of Claims judge dismissed the action, holding that an inmate-on-inmate assault is not reasonably foreseeable as a matter of
law unless the injured prisoner can demonstrate with extraordinary precision that prison officials had notice of the specific nature of the threat or the identities of the parties involved. John Boston and Mary Lynne Werlwas argue in the amicus brief now pending in the Appellate Division, Third Department that this standard is too restrictive, and that tort actions by injured inmates should be governed by the same principles of foreseeability that govern actions by all other litigants.

Other Cases

Under a new rule allowing electronic briefs in the Court of Appeals, NYSDA produced the first such brief to be filed. The CD-ROM format was well suited to this initial case, which had a 600-page appendix and a brief citing a plethora of precedents. Hypertext links allowed readers to click on a reference and immediately read the cited decision or statute. At issue in the e-brief was the failure of prior appellate counsel to file an advocacy brief in any format on behalf of a client who had received a sentence of fifteen years to life following a jury trial at which counsel made numerous objections. NYSDA's Court of Appeals brief described many errors in the former appellate attorney's brief, which had asserted there were no non-frivolous issues in the case. The e-brief also noted that the case involved one of twenty cases in which the lawyer had claimed no error could be found. The Court agreed that the "brief" filed by original assigned appellate counsel deprived the defendant of the effective assistance of counsel on appeal. The Court also said that appellate lawyers who seek to be relieved as counsel for an indigent client on the ground that the appeal is "wholly frivolous" must continue to adhere to so-called Anders procedures. People v Roger Stokes, 95 N.Y.2d 633 (2001).

NYSDA also participated in a case in which the Court of Appeals made it substantially easier for pro se inmate-litigants to comply with the short four-month Statute of Limitations when seeking judicial review by a means called Article 78 proceedings. The court held that prisoners' pleadings initiated by order to show cause are properly "filed" the moment legal papers are received in the court clerk's office. The process used previously had frequently resulted in lengthy delays and unjust dismissals of prisoners' proceedings. However, the Court also held that the language of the state statute in question precluded adoption of the "mailbox rule" that treats a pro se prisoner's legal papers as "filed" the moment they are delivered to prison officials for mailing to the court. The petitioner had missed the deadline by two days, so his Article 78 proceeding was properly dismissed. Prisoners' Legal Services was lead counsel in the case. Grant v Senkowski, 95 N.Y.2d 605 (2001).
MCLE Training

The New York State Continuing Legal Education Board has renewed NYSDA’s “Accredited Provider” status through February 27, 2004. Providing affordable, relevant CLE trainings around the state is a major Backup Center objective. In the last year, eighty-eight credit hours were offered.

Defender Institute Basic Trial Skills Program

Attorneys from twenty-one public defense programs attended the renowned trial skills training held by the Association’s Defender Institute in June 2001. The client-centered curriculum of the Basic Trial Skills Program teaches lawyers how listening to their clients, understanding their clients’ lives, and preparing every aspect of a case leads to success.

A faculty of attorneys, trial specialists, professors, and actors from around the nation worked with participants on many trial skills. Videotaped exercises included interviewing clients, questioning actual potential jurors, examining witnesses, and telling the client’s story during summation. Lectures, workshops, and demonstrations, along with review of each participant’s videotaped performance, provided new attorneys with a breadth and depth of experience that will serve them, and their clients, well.

Regional Trainings

So that public defense attorneys need spend a minimum amount of time and money on CLE while receiving relevant, high-quality training, NYSDA presents a number of regional trainings throughout the year. In the past twelve months, the Association provided two CLE trainings on Criminal Defense Tactics and Techniques in Rochester. The 15th Annual New York Metropolitan Trainer was held in New York City in March.

The Association co-sponsored, with the Onondaga County Assigned Counsel Program, a Criminal Defense Update trainer at Syracuse University. NYSDA also joined with the Office of the Federal Public Defender, Districts of Northern New York and Vermont, in presenting a Federal Criminal Defense Update in Albany.

In addition, NYSDA staff participated as trainers in a number of conferences and trainings this last year, including events sponsored by the following: First Department Assigned Counsel Plan CLE (2 programs, New York City) and New York State Association of Criminal Defense Lawyers (1 program, New York City).

“It has accomplished the goal of making me fearless with regard to doing trials. I feel like saying, ‘Bring it on!’”

“I’ve gained so much confidence in my own abilities, strengths and talents I can’t wait to get home to my clients, and give them what they deserve.”
Immigration Trainings

The Association’s Criminal Defense Immigration Project has provided a wealth of training in the past twelve months. Immigration consequences of criminal convictions are of tremendous importance to noncitizen defendants, and defense lawyers need to keep abreast of legislative and judicial changes in this area of law. Lawyers, immigrants, and others received training in a variety of settings, from NYSDA’s 33rd Annual Conference to several criminal defense clinics at law schools in the metropolitan New York area, from trainings for the Bronx Defenders and other defense and bar organizations to training for other professionals and immigrants themselves at locations such as the Hebrew Immigrant Aid Society, Citizenship New York City, and the Immigration and Naturalization Service Asylum Office. The Project’s Director also presented training on this issue, with particular focus on racial, class, and gender biases, at the University of North Carolina Law School in Chapel Hill last March.

The Project offered, at a national conference in California, a presentation on how criminal defense lawyers can work with immigration counsel during the representation of a noncitizen criminal defendant. Training on other intersections of criminal and immigration law was also offered in forums both in state and nationally, and at community and educational facilities as noted further, below.

33rd Annual Meeting and Conference

Perhaps the high point of the well-received 12.5 credit hours of CLE presented at NYSDA’s Annual Meeting and Conference in July 2000 was “The Science of Eyewitness Identification.” This training provided explanations for false identifications (especially those derived from lineups), and bases for challenging identification evidence. Other sessions included the always-popular “Recent Developments in Criminal Law and Procedure,” “Common Problems, Uncommon Responses,” and “Evidence: Hearsay Case Law Update.” Like other NYSDA trainings, this CLE event generated enthusiasm from participants and a packet of materials available to those who were unable to attend.
grams from across the state gather to discuss common issues—have focused on the need for improvements in the system for providing public counsel in New York State.

In December 2000, representatives from the League of Women Voters of New York State and the New York State Association of Criminal Defense Lawyers joined the Chiefs for a morning-long discussion of efforts such as fact-finding hearings in the client community, litigation on assigned counsel fees, and others. The Chiefs agreed to participate in a project to create standards for the provision of public defense. Other issues discussed in the afternoon included discussion of a draft of the “Ten Tenets of Fair and Effective Problem Solving Courts,” by the American Council of Chief Defenders (ACCD), a section of the National Legal Aid and Defender Association. The matter was referred to a subcommittee. The Ten Tenets have now been finalized by ACCD; the subcommittee of the New York Chiefs continues to work on issues relating to drug courts and other specialty courts.

In May 2001, the Chiefs again convened to discuss options for resolving the public defense crisis documented in NYSDA’s position paper (described above) and other reports, including one from the Committee on Representation of the Poor of the Appellate Division, First Department. Among repeated themes in the discussion were acknowledgment by county officials and judges that assigned counsel rates need to be increased, and a desire on the part of localities that the State fund what is after all a state mandate. (In the months following this Convening, two associations representing nearly half of New York’s counties passed resolutions supporting a fee increase, state funding of public defense, and the creation of a statewide, independent public defense commission.) The need for standards, possible methods for ensuring the independence that is necessary for provision of quality defense services, and how programs can best respond to the crisis were discussed at length.

**Cameras in the Courtroom**

In September 2000, the New York State Bar Association announced the creation of a Special Committee on Cameras in the Courtroom to reevaluate and make recommendations to the House of Delegates about audio-visual media coverage in New York’s courts. NYSDA’s Social Science Research Unit responded to specific inquiries from the Special Committee regarding existing research on the effect audio-visual coverage has on courtroom participants. The Backup Center’s voluminous holdings of materials on the issue were also tapped by the Special Committee.
Social Science Research Unit

One ongoing responsibility of the Social Science Research Unit (Research Unit) is to collect data regarding the funding of indigent defense and prosecutorial agencies at the county level. These data are used primarily by Chief Defenders and officials at all levels of government to make policy and legislative decisions regarding staffing, caseload, salary, aid programs and other funding related issues. In past years these data were gathered from the various sources individually, a very time-consuming process. This year marks the start of a trial project whereby the data are solicited directly from the county budget office. The initial response from counties has been favorable.

The Research Unit has collaborated annually with the State Office of Court Administration to make cost projections of proposed increases in rates paid to attorneys under Article 18-b of the County Law. This task became even more important this year as support appeared in all branches of the state government for an increase. In an effort to provide more precise estimates, the Research Unit has developed an improved formula that allows estimates to be made right down to the county level. These more precise estimates are extremely important to state policy makers and legislative leaders as they weigh the impact of various proposed funding schemes.

As in past years, the Research Unit has endeavored to keep Chief Defenders abreast of developments in Albany and Washington that affect their ability to serve clients. Most notable among these are the analyses of state budget proposals and updates to the Legal Services Corporation eligibility guidelines. Chief Defenders often request information relating to caseload figures, salary and budget information and other systemic issues.

Testimony, Committees, and Meetings

As part of its state contract, NYSDA is charged with the duty to “review, assess and analyze the public defense system in the State, identify problem areas and propose solutions in the form of specific recommendations to the Governor, the Legislature, the Judiciary and other appropriate instrumentalities.” In furtherance of this goal, the Association’s Executive Director testified in December 2000 before the Senate Democratic Task Force on Criminal Justice Reform in Albany about problems with prison Special Housing Units, Transitional Services, and the Rockefeller Drug Laws. He testified before the Senate Finance and Assembly Ways & Means committees in February 2001 about the defense services budget.
The Director of NYSDA’s Criminal Defense Immigration Project testified in May 2001 before the New York City Council on immigrants’ lack of access to legal services. The next month he testified at hearings held by the New York State Assembly on the same issue.

NYSDA staff also met with Deputy Chief Administrative Judge Joseph J. Traficanti about drug courts and participated in a wide variety of professional and governmental conferences and committees, including: a Legislative Panel on State Funding of Defense Services during the NYS Association of Counties conference; a committee concerning a Mental Health Association of NYS jail diversion project for the mentally ill in Albany County; an Elder Abuse Conference in Albany; the Division of Criminal Justice Services (DCJS)-Juvenile Criminal History Project; the “Fifty for Fairness” group headed by the Deputy Chief Administrative Judge for Justice Initiatives; a DCJS Conference, “The Future-Criminal Justice Through Collaboration;” and others.

Client Advisory Board
The client Advisory Board met three times in the past year. This group provides the Association with perspectives on public defense services from the client community. It makes recommendations for NYSDA’s actions, assists the Association in gathering and disseminating information involving client needs, and participates in Association activities, as is discussed further, below.

Community Legal Education
The Association strives to educate the public about the constitutional and statutory underpinnings of the public defense system, the functions of that system, and problems revealed by NYSDA’s experience with and analysis of that system. As with all education, learning occurs in both directions—individuals and organizations learn from NYSDA’s presentations, materials, web site, etc., while NYSDA learns from their reactions and information.

Activities with the Gideon Coalition
- Gideon Day

NYSDA continues to be a participant in the Gideon Coalition, a group of more than 50 organizations allied for the sole purpose of improving the quality of public defense representation in New York State. Commemorating the anniversary of the right to counsel decision in Gideon v. Wainwright, the Coalition annually meets in Albany to seek increases in funding for defense services and assigned counsel rates and to highlight other systemic problems. On March 20, 2001, seventy representatives of the Coalition discussed these issues with over 100 state legislators and staff in Albany.
The Coalition members, supported by NYSDA’s position paper, discussed the need to increase assigned counsel rates, but not at the expense of institutionalized defender organizations. In addition, the Coalition representatives explained the impact of increasingly high caseloads on the already over-burdened and under-resourced public defense system. Marion Hathaway, chair of NYSDA’s Client Advisory Board and part of the leadership delegation, advocated the cause of clients and the client community by stressing the necessity of a formal feedback mechanism to any system committed to providing quality representation.

While Coalition representatives met with legislators, an information table on the Empire State Plaza concourse provided information to the public. Next to the table was a three-dimensional mural called “The Tree of Justice” by Albany artist Ellen McPherson. The tree and surrounding imagery depicted the transformation from a public defense system incapable of providing justice without resources to one with resources in which justice flourished.

NYSDA and Gideon Coalition Information Tables
The Gideon Coalition and NYSDA shared information tables, with NYSDA focusing on client input, at the Black and Puerto Rican Legislative Caucus weekend, the NYS Community Action Association conference, and the NYS Assembly/Senate Puerto Rican/Hispanic Task Force’s 14th Annual Conference. Additional upcoming public events have been targeted to continue this essential component of NYSDA’s work with the Coalition.

Immigration Project
NYSDA’s Criminal Defense Immigration Project conducted a series of presentations on “How the Immigration Laws Affect Young People” at high schools and other locations. Other relevant topics were presented in similar settings. In June 2001, the Project participated in a press conference regarding implications of recent immigration-related United States Supreme Court decisions for New York City immigrants. Among the cases discussed was the decision in which the Court cited the Project’s _amicus_ brief, described above.

Other Events
NYSDA participation in the conferences of such organizations as NAMI-NYS (formerly called the New York State Alliance for the Mentally Ill) and CURE-NY (Citizens United for Rehabilitation of Errants) in the past year provided an opportunity for members of the public with concerns about the criminal justice system to hear about NYSDA’s resources and views. Material from these conferences was
then added to the Backup Center’s holdings, widening its base of information for referrals.

Defender Automation

www.nysda.org

Having established a web site in 1995, NYSDA is conscious of the growing information needs of its members and the larger defense community. In the past year, many pages on the NYSDA web site acquired new features. For example, the newest publications can now be downloaded in the “Features” section of the newly redesigned homepage. A “Select Hot Topics” area makes the newest and most frequently used of these pages immediately accessible. (The following Hot Topics pages were added in the last year: Apprendi, CD-ROM Briefs and Electronic Filing, Clemency, Domestic Violence Courts, and Drug Courts.)

“Resource Highlights,” another new feature on the homepage, gives direct access to the most popular resources. The Directory of Experts and Investigators database, for example, contains contact information for nearly 400 experts supplied by the New York City Assigned Counsel Plan; NYSDA staff created a PDF version of the entire database for convenient printing and downloading.

The Assigned Counsel page has been retooled to make available a vast amount of unpublished decisions, motions, and reports over the past year. Significant articles, editorials, resolutions, public statements, proposed legislation, decisions granting increases in assigned counsel rates, and more have been systematically collected and added to the web site. Much of this material is not available in any electronic database and is very difficult to obtain in print, making the Assigned Counsel page a vital resource for court appointed attorneys, legislators, and judges.

The Defense News page is home to many unique practice-oriented publications. Periodic updates include “New York Court of Appeals Update,” by Robert S. Dean (Center for Appellate Litigation); “New York Legislative Review,” by Al O’Connor (NYSDA); and “The Defender” newsletter by Alex Bunin (Federal Public Defender for the Districts of Northern New York and Vermont).

A newly revamped Training Calendar page includes events from national and local organizations. Recent NYSDA Amicus Briefs are also posted. Public defense and related employment listings are routinely updated on the redesigned Jobs page.

Among the practice checklists and guides on the Criminal Defense Immigration Project page are: “Quick Reference Chart for Determining Key Immigration Consequences of Common New York Offenses”; “Aggravated Felony Practice Aids”; “‘Particularly Serious Crime’ Bars
on Asylum and Withholding of Removal”; and “Removal Defense Checklist in Criminal Charge Cases.” NYSDA’s Criminal Defense Immigration Project prepares these guides along with Practice Tips, Relevant Immigration News/Alerts, and Project Resources that appear regularly.

Major redesigns are of little value if the information on a site is out of date. The NYSDA site was updated weekly, and use of the site is growing rapidly. In 2000, there were 16,987 unique visitors (individuals, not counting repeat uses), while there have already been over 23,500 in 2001. Users obviously return often, as there were 13,617 views in December 2000 alone. A new request form for web users to use in submitting questions to the Backup Center was designed to work with NYSDA’s case intake system, speeding up the Backup Center’s response to web requests.

- Public Defense Case Management System

Since NYSDA initially released the Public Defense Case Management System (PDCMS), it has been installed and successfully integrated in seven public defense offices throughout New York. NYSDA has worked closely with the office staff to ensure the system is successfully implemented in each office. Through the efforts of the PDCMS Project Manager, in the past five years NYSDA has given over thirty PDCMS demonstrations and has made over twenty-five site visits to defender offices to install or upgrade the system, troubleshoot for problems and train end users.

Designed specifically for New York public defense offices, the system enables defenders to collect and record crucial information for tracking clients, keeping current on court appearances and reporting on daily case activity. The PDCMS allows defenders to enter a full range of data on each client and case or just basic case information, depending on office resources. For example, the system can be used to enter, track and dispose of all charges against a defendant, or record only a client’s top charge. Case information can be recorded on a variety of case types, including: criminal, family, parole, and appeal. Case-related events and notes can also be added to describe specifically all aspects of a case from arrest and arraignment through disposition and sentence. Since all cases, opened or closed, for each client are displayed on a single screen, attorneys representing a client in separate cases in different courts (e.g. superior, local or family court) can quickly get a fuller picture of their client’s legal problems to facilitate more comprehensive packaging of plea dispositions. All individuals associated with a particular case (co-defendants, witnesses, victims, etc.) can be recorded to identify potential conflicts of interest an office may have in future cases.
The PDCMS can also generate documents (letters, motions, etc.) by a data merge into word processing software (Word or WordPerfect). Court scheduling reports and appeal reports as well as ad hoc reporting is available. The NYS Division of Criminal Justice Services Aid to Defense quarterly progress report and the NYS Unified Court System UCS-195 report can also be generated.

During the past year, NYSDA upgraded PDCMS in four defender offices: Rockland, Schenectady, Monroe, and Genesee counties. The PDCMS staff also installed the system in the Rensselaer Public Defender Office and at the Putnam County Legal Aid Society. Proposals were prepared and submitted in response to Requests For Proposals (RFP) for public defense case management systems in both Albany and Dutchess counties. Albany County recently selected NYSDA's system and will be installing the PDCMS in the Albany County Public Defender Office within the next few months. NYSDA looks forward to a positive response from the Dutchess County RFP process. Additionally, an installation contract is pending in Wayne County, a PDCMS upgrade is pending in Chemung County, and the PDCMS staff is waiting to hear from other counties interested in the system.

Since its release, defender offices using the PDCMS have highly praised the system and the quality of training and support. It has been very satisfying to work with defender staff during implementation and see the positive impact the system has had on each office. To find out more about the system or receive a demonstration, please e-mail Darlene Dollard at ddollard@nysda.org.

- Case Digest System

The Case Digest System (CDS) is a powerful, easy-to-use computer program designed specifically for New York defense lawyers. It quickly searches and retrieves digests from 15 years of criminal case summaries, representing over 7000 cases, taken from NYSDA's monthly newsletter, the Public Defense Backup Center REPORT. The CDS also contains the New York City Assigned Counsel Expert Witness Directory, a statewide listing of defender office addresses and telephone numbers, and NYSDA's Subject Matter Index. Within the last year, the CDS updated its format, now being produced on CD-ROM (Windows 95/98).
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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.