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Southern New York State Division

RACE AND THE AMERICAN CRIMINAL JUSTICE SYSTEM

Shadow Report to the United Nations Committee on the Elimination of Racial Discrimination

Prepared by

The United Nations Association of the USA, Southern New York State Division

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In collaboration with

**Black Westchester Magazine
Blacks in Law Enforcement of America
The Correctional Association of New York
The Fortune Society
Hudson Link for Higher Education in Prison
Theodore D. Young Community Center, Town of Greenburgh, New York
Unitarian Universalist United Nations Office**

Introduction

The United Nations Association of the United States of America (UNA-USA) Southern New York State Division¹ convened a seminar in New York City on July 16, 2014 to explore performance by the United States of America as a State party to the International Convention on the Elimination of Racial Discrimination (ICERD), in particular on aspects of the U.S. criminal justice system as related to Articles 2 through 7 of that treaty. This event was one in a continuing series of human rights activities by the Division.

Seminar participants provided commentary and suggestions for inclusion in a shadow report to the United Nations Committee on the Elimination of Racial Discrimination (CERD) in its forthcoming (August 2014) consideration of the latest (2013) periodic report of the USA (CERD/C/USA/7-9). In addition the seminar had as its purposes to publicize the ICERD to the American public and relevant organizations, and to lay the basis for follow-up through UNA-USA and others who could advocate for political, economic and social changes to help reduce racial disparities in these important aspects of justice and human rights. Video coverage of the seminar is available at: www.youtube.com/unasouthernny .

In addition to the USA report, participants had access to the latest (2008) concluding observations of the CERD relating to its previous consideration of the USA (CERD/C/USA/CO/6), the recent (July 2014) list of themes by the CERD Country Rapporteur to help guide and focus the forthcoming official dialogue (CERD/C/USA/Q/7-9), and, as examples, the July 2014 shadow reports from the American Civil Liberties Union and The Sentencing Project.

The purpose of the UNA-USA seminar and the skills of its participants focused on examination of several key issues and suggestions of ways to improve the current situation. Rather than bringing extensive data and research for inclusion in the shadow report, the participants brought examples from their own and others' work, whether through non-profit organizations or government initiatives.

Some 35 non-profit leaders and UNA-USA members participated in the seminar, as did the Executive Producer of the long-running TV documentary series "Lockup"

¹ The United Nations Association of the United States of America (UNA-USA) is a membership organization dedicated to inform, inspire, and mobilize the American people to support the ideals and vital work of the United Nations. For 70 years UNA-USA has worked to accomplish its mission through its national network of Chapters, youth engagement, advocacy efforts, education programs, and public events. UNA-USA is a program of the United Nations Foundation. UNA-USA and its sister organization the Better World Campaign represent the single largest network of advocates and supporters of the United Nations in the world.

The UNA-USA Southern New York State Division works in the five boroughs of New York City and in the counties of Columbia, Dutchess, Greene, Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, Ulster and Westchester. It includes chapters in Brooklyn, the Mid-Hudson Valley, New York City (Manhattan), Queens and Westchester. The Division's active Young Professionals Group and Energy Project offer opportunities to become involved in major issues.

(<http://www.msnbc.com/lockup>). Among the non-profits that stood out were Blacks in Law Enforcement of America (BLEA - www.bleausa.org), The Correctional Association of New York (www.correctionalassociation.org), The Fortune Society (www.fortunesociety.org), the Hudson Link for Higher Education in Prison (www.hudsonlink.org), the Theodore D. Young Community Center (www.greenburghny.com/Cit-e-Access/webpage.cfm?TID=10&TPID=1749), the Unitarian Universalist United Nations Office (www.uu-uno.org), and the US Human Rights Network (www.ushrnetwork.org).

Among the recent government initiatives the group discussed and applauded were the U.S. Senate Bill “Record Expungement Designed to Enhance Employment Act of 2014” or the “REDEEM Act”(S-113s2567, July 8, 2014), introduced by Senators Rand Paul (R-Kentucky) and Cory Booker (D-New Jersey); the “Work for Success” initiative launched by New York State Governor Andrew Cuomo, launched as a pilot in February 2012 to help formerly incarcerated men and women find jobs (www.governor.ny.gov/press/02122014-work-for-success-initiative); and the Governor’s formation of the “New York State Council on Community Re-Entry and Reintegration,” announced in July 2014 (<http://www.governor.ny.gov/press/07082014-council-community-re-entry-reintegration>).

On the other hand, seminar participants regretted that an initiative launched by Gov. Cuomo in February 2014, to expand opportunities for prisoners to get college degrees (www.governor.ny.gov/press/02162014-college-ny-prisons), had so far met with strong opposition in the legislature, where it was claimed to be a “give-away” to criminals.

Key to the group’s deliberations were that both the Committee (CERD/C/USA/CO/6, para. 20) asserted, and the USA (CERD/C/USA/7-9, para. 68) admitted, there are “stark racial disparities in the administration and functioning of the criminal justice system, including the disproportionate number of persons belonging to racial, ethnic and national minorities in the prison population” (Committee, *Idem.*) This “stark” situation was seen as sharply discriminatory, grossly unjust and an affront to the ICERD, the founding documents of the United Nations and the founding documents of the United States of America.

Beyond this, and bearing in mind the employment challenges, poverty, disenfranchisement, and recidivism typical of prisoners after release from confinement, the group considered the current situation to be a costly waste of human and economic resources. They noted: (1) that in New York State (and elsewhere) officials use elementary school test results to help predict future needs for prison cells; (2) that the state’s inmate population is three-quarters African-American and Hispanic; (3) that the state’s recidivism rate is currently 40 percent; (4) that Gov. Cuomo estimated college courses in prison to cost about US\$5,000 a year versus \$60,000 a year to house each prisoner; (5) that programs that focus on education for prisoners (e.g., Hudson Link) sharply reduce likelihood of repeat criminality; and (6) that support for reintegration and employment is similarly vital.

Owing to the preponderance of racial bias in the American criminal justice system, seminar participants emphasized the importance, especially for African-American and Hispanic youth, of

not becoming entangled in it. Once in, it is difficult to get out and stay out, and the record creates lifelong damage. Recognizing that the system in general is currently less “protect and serve” and more “contain and control” the New York Chapter of Blacks in Law Enforcement of America recently published a pamphlet entitled “How do you survive police confrontation?” <http://69.195.124.224/~bleausao/community-outreach/stop-by-police/>

Allocation of resources to education and community services, police residence in and reflection of the communities they serve, community-police partnerships, and recruitment of ethnic minorities and women into police departments were all stated to help in crime prevention among youth and adults, in addition to the broader multi-sectoral actions needed in relation to education, health, housing, gun violence, and employment prospects.

Seminar participants welcomed the stated priorities, pledges and achievements of the current U.S. Administration, as reported to the CERD, in relation to concerns raised by the Committee in 2008 about right to counsel for indigent persons, sentences for powder vs crack cocaine, mandatory minimum sentencing, capital punishment, juvenile sentences without possibility of parole, disproportionate punishments, racial profiling, cultural competency training for authorities, police brutality and discriminatory policing, recruitment of minorities in law enforcement, and felony disenfranchisement.

However in the USA report the number of persons affected by the improvements, the funds allocated to research and action, and the depth of coverage remain extremely limited. In the case of police brutality, for example, the report states that the Administration has intensified enforcement of applicable laws since 2009 and the Department of Justice has successfully prosecuted cases where there was “sufficient evidence.” However only 254 defendants were convicted between FY 2009 and FY 2012 (paras. 89-91)

“These treaty bodies [on political and civil rights; racial discrimination and torture, the treaties which the USA has ratified] are important in that they allow people in our country to provide information on what we believe is the true situation on the ground.” Joshua Cooper, US Human Rights Network Universal Periodic Review
Geneva Coordinator

Part One. Points from the CERD list of themes for review with the USA

A. Discrimination against national or ethnic minorities

1. Overrepresentation of minorities among those arrested, charged, convicted, incarcerated and sentenced to death

Participants emphasized that the violations and discrimination within the American prison system are largely systemic in origin and not individualized. There was therefore a need to shift

public perceptions of persons in or released from prison, and related needs to be aware of the profit motivations of companies and of the communities where prisons are located, and to be alert to the costs and benefits – economic, social, political and human rights – of the current system and steps to change it. Seminar participants repeatedly remarked that the American prison system is “a big business,” and that African-Americans and Hispanics, especially young ones, are fuel to the system.

After opening presentations by four distinguished speakers, two of them former prisoners themselves, the participants divided into two groups: (1) to focus on education in prison and means to reintroduce formerly incarcerated persons into the community; and (2) to focus on youth, including those incarcerated, school discipline, drugs and related issues. Commentary and recommendations from the groups are given in Part Two of this report.

2. Racial and ethnic disparities in education, poverty, housing, health and exposure to crime and violence

The group affirmed that these disparities cause and are the result of racial differentiation and contribute to vicious circles that entrap African-Americans and Hispanics, girls and boys, women and men, and mentally and physically disabled. They considered education and opportunities to be investments, not costs, and urged collaboration between liberals and conservatives in government for policy and budgetary shifts that could result in improvements to lives and benefits to taxpayers.

Participants welcomed New York Governor Cuomo’s “Council on Community Re-Entry and Reintegration,” which is to promote collaboration among state, local and private agencies as well as community groups in order to address a range of issues pertaining to successful re-entry, including housing, employment, healthcare, education, behavior change and Veterans’ services. Three of those participating in the seminar are members of the Council or its sub-committees.

3. Criminalization of homelessness and its disproportionate impact on individuals belonging to national or ethnic minorities.

Participants linked this as well to mental illness in that a significant percentage of those who are homeless are mentally ill and, with de-institutionalization of mental health facilities, the prisons “pick up the slack” which worsens the situation for both the individuals and the prison environment.

4. Progress made, in law and in practice, to end the practice of racial profiling and surveillance by law enforcement officials

This was seen as having two elements. It is important to combat profiling through better implementation of existing laws, publicity and pressure on the authorities. It is also necessary to cope with existing realities through greater ability to deal with and survive encounters with

law enforcement – especially by young persons and those re-entering the community, as these are even more likely to be profiled.

5. Excessive use of force by law enforcement officials, including the deadly use of tasers and the use of lethal force by Customs and Border Protection officers at the United States–Mexico border, and the disparate impact on persons belonging to racial, ethnic or national minorities

The group focused on questions of excessive use of force primarily in the New York area, and cited many instances. The latest example occurred one day after the seminar, on July 17, when a black man died while being taken into custody by a group of white officers on a sidewalk in Staten Island. A bystander’s cellphone video shows one of the arresting officers apparently using a chokehold on the man, a tactic banned by the New York Police Department (NYPD) since 1994. The case is currently unfolding, but there was no mention of the chokehold in the original police report, where supervising officers declared that once in handcuffs the man did not appear to be in great distress. In the following days the New York Times interviewed the Chairman of the NYPD complaint review board who said the board had received complaints of about 1,022 instances of chokeholds since 2009, but in only nine of these had the board found enough evidence to determine that this had taken place.

www.nytimes.com/2014/07/20/nyregion/thousands-police-chokehold-complaints-are-focus-of-new-york-study-after-man-dies-in-staten-island.html?_r=0) Civic demonstrations and news coverage currently highlight the situation, which the Mayor says will fully be investigated. At the time of this writing the case has caught public attention, but the outcome is uncertain.

Police brutality and misconduct is an ongoing occurrence in the poor black, Latino and poor communities. BLEA considers this brutality and misconduct to be “**Police Criminality;**” any law enforcement officers who have the power to arrest, authority to use deadly force, and who have received comprehensive training, and who will then go into a community and abuse the powers they have from the state or federal government, are committing no less than a criminal act themselves. Police criminality is a crime and must be confronted, controlled and outlawed by all police departments throughout the United States. Out of the last 5 high profile cases of questionable police shooting the Department of Justice has failed to investigate.

6. Situation of non-citizens, including migrants, refugees and asylum seekers

The group recommended retracting the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IRAIRA) component which allows for ipso facto deportation of anyone convicted of a felony even if they have not been sentenced or have a suspended sentence and even if their families are US citizens and remain behind.

B. Training, education and other measures to combat prejudice and intolerance

1. Training programs or courses provided to Government officials, the judiciary, federal and State law enforcement officials, teachers, social workers and other public officials to raise awareness about the Convention and its provisions

Seminar participants strongly opposed the patterns of abuse that arise from lack of regulation and oversight of law enforcement and prison staff. They emphasized the need to link these concerns to a national conversation on prison reform.

2. Inclusion of the history and culture of different racial, ethnic and national groups in the State party, including indigenous groups, in the curricula and textbooks for primary and secondary schools

Participants recognized the importance of this. Several of the organizations represented in the seminar are engaged in related efforts. They recommended not only learning about these groups, but understanding and exposing the degree to which they are discriminated against, historically and to the present day.

Part Two. Results of seminar group discussions

A. Focus on education in prison and means to reintroduce formerly incarcerated persons into the community

The word "offender" is one that is increasingly - among advocates and service providers - seen as pejorative and to be avoided; instead it is important to use language that emphasizes the humanity of those with criminal justice involvement. Among the reasons for this change of language are that:

- Some of those locked up are truly innocent and have been offended against rather than having committed offenses;
- As David Rothenberg, founder of The Fortune Society, says, "A person is more than the worst thing he ever did";
- Someone may have committed an offense, but "offender" does not sum up who that human being is;
- Regarding drug law enforcement, given America's race-skewed choices about who ends up in the criminal justice rather than in the public health system, young persons of color with drug involvement are likely to be labeled "offenders" and treated as such - often for the rest of their lives - while young white persons with similar drug involvement are likely to be allowed to continue on with their lives untouched by the damage and stigma of criminal justice intervention.

1. Education in prison

- In the USA the elimination of federal and New York State funding for college education in prisons, almost 20 years ago, has had a strongly negative effect on morale and prisoner possibilities. Some religious, academic and other non-profit organizations have since attempted to fill the gap, in the belief that transforming lives through education can help break the cycle of crime and poverty.
- Given the evidence of very low recidivism among those provided a tertiary education, every effort should be made to expand such programs, adding more advanced options on to the primary and secondary level programs already in place.
- Pursue a policy and practice, based upon completion of educational courses, for “presumptive release” at the shortest possible duration of imprisonment, assuming that other qualifications as to the nature of the crime and the behavior of the inmate are met. This serves as an incentive for taking advantage of any available educational opportunities, with positive results in terms of behavior in prison and reduced likelihood of return.

“I would like to know that the kid that I see every day, when he comes out of jail, he’s trained in something. It only costs \$15,000 to go to Westchester Community College. Instead of sentencing a kid with 2 years to sit in Westchester County Jail, why don’t you sentence him to get a degree?”
Damon K. Jones, NY State Representative, Blacks in Law Enforcement of America

- Vocational education programs need more emphasis and must be market responsive— informed by market research on skills and products needed at both national level but also locally and in the communities to which formerly incarcerated persons will be released.
- For those with little opportunity for formal sector employment due to limited credentials or a poor economic climate and lack of formal sector institutions, entrepreneurial training (including financial literacy and marketing) and resources (such as credit and linkages to suppliers of primary inputs) should be provided.
- Other educational programs are also needed to assist with personal transition including: conflict resolution, health, sexuality, gender, relationships training etc.
- Any educational program—formal or vocational—should focus on critical thinking skills—the ability to observe and research and reflect critically on “reality” and how to

change it. This would strengthen inmates' expectations of themselves, encourage them to pursue training or other paths towards release, and help them cope with the challenges they will meet when they leave the prison.

"I got a 24 year sentence [at age 16 for murder] and served 16 of the 24 years.... I never thought the college [program in prison] would actually help me. Well, I'm home 10 years, I've just been appointed to the Governor's re-entry group...and I just finished a documentary that's now won 11 best film and best doc awards. I would not be here today if I didn't go to school."

Sean Pica, Executive Director, Hudson Link for Higher Education in Prison

- The mentally ill need special interventions if not formal education. Currently a significant proportion of inmates are mentally ill and even suicidal, owing in part to counterproductive prison measures of solitary confinement (internationally regarded as a form of torture).

2. Means to reintroduce formerly incarcerated persons into the community

- The very words "correction," "rehabilitation" and "re-integration" require implementation beyond the mechanisms for control and punishment. Otherwise the sequence of poverty and crime is very likely to repeat itself. The high rate of recidivism in the USA, with returnees primarily from minority populations and certain geographic areas, is evidence of public policy and budget allocations tied to systemic failure.

"Our main goal is to build that bridge between community and law enforcement....You have to have a proper relationship with the community if you want to stop crime. You have to have politicians that will really truly understand the correlation between poverty and crime and violence."

Damon K. Jones, New York Representative,
Blacks in Law Enforcement of America

- Three initiatives by New York's Governor Cuomo, mentioned above, deserve attention, enlargement and adoption. (1) The "Work for Success" initiative matches businesses and formerly incarcerated people in a program begun in February 2012 that has transitioned from pilot stage to a state-wide model. (2) The Council on Community Re-Entry and Reintegration, established in July 2014, is to identify legal barriers to successful re-entry, solicit feedback from a host of stakeholders, assess existing programs, develop coordination strategies among government, business and community groups, and submit recommendations to the Governor for review and potential implementation. (3) The initiative to provide support for associate and bachelor's college degrees in state prisons, is currently stalled in the legislature and needs encouragement.

- Businesses in the region of the prison and even those businesses supplying the prison (e.g. food, paper, clothing, etc.) should be urged and incentivized to providing practical hands on training in the prisons, including apprenticeships in the businesses during incarceration, and the guarantee of a job (based on performance in training) on release.

“An accredited college program is very easy to document to show how it’s working.It’s the best money we could possibly spend on a system that we know is failing.” Sean Pica, Executive Director, Hudson Link for Higher Education in Prison

- Networking opportunities should be established and strengthened among those released so as to build positive connections, opportunities and support.
- Special attention must be given to the needs of women, including health, family and livelihoods. Education and training should aim for job opportunities which can compete with the income otherwise derived from, notably, commercial sex work.
- The currently expanding practice of restricting the voting rights of those convicted and released needs to be reversed. Also, given the discriminatory treatment towards people of color in the arrest, conviction and sentencing stages, the current trend reduces even further the population which would likely support a more diverse group of candidates.
- True to its title, the REDEEM Act – Record Expungement Designed to Enhance Employment – would, if adopted by the U.S. Senate, aim to help keep young people who get into trouble out of a lifetime of crime and help adults who commit non-violent crimes become more self-reliant and less likely to commit future crimes. The legislation would: (1) offer adults a way to seal non-violent criminal records; (2) incentivize states to increase the age of criminal responsibility to 18 years old; (3) allow for scaling and expungement of juvenile records; (4) restrict the use of juvenile solitary confinement; and (5) lift the ban on SNAP (Supplemental Nutrition Assistance Program) and TANF (Temporary Assistance for Needy Families) benefits for those previously incarcerated for low-level drug crimes. These features directly relate to re-entry in relation to previously incarcerated persons and their families.
- All such efforts must be linked with advocacy and education for normative changes, i.e. improving the general public and employers’ understanding and perceptions of inmates, including assisting them to become productive members of the larger community and not primarily as a source of contracts and paychecks related to imprisonment.

- As pointed out by the REDEEM Act sponsors, the taxes paying for prison spending means fewer resources for law enforcement, rehabilitative programs and proven investments in children to prevent crime in the first place. The result has been a cycle of spending and incarceration that has led to “more than a quarter of a trillion dollars a year drained from our [the U.S.] economy going to unproductive uses.”
(http://www.paul.senate.gov/?p=press_release&id=1192)

“Once you’re in the system, likelihood of going back into the system goes up exponentially”If we give young and old people who are reentering society the opportunity to do things that are esteemable it will change their outlook on their society, their reality and I think they become productive members of society.”

William L. Carter, Director, Theodore D. Young Community Center

B. Focus on youth, including those currently or formerly incarcerated, school discipline, drugs and related issues

- The group emphasized that education and retention in the educational system from primary school onward is key to preventing dropouts, crime and institutionalization. They urged a re-prioritization and re-allocation of resources away from incarceration and toward education, thereby reversing the current approach to analysis of elementary school test scores as a factor in estimating future prison cell needs.
- The REDEEM Act, mentioned above, focuses several measures to benefit youth – to keep them out of the adult criminal system, keep them out of solitary confinement, and keep their records of non-violent crime out of sight. Seminar participants welcomed such steps and urged their adoption as a partial solution to the “perpetual consequences” normally seen, where police records are obstacles to education and employment long after sentence are served.
- The group emphasized the importance of education for pupils and students, training and support for teachers, physical and institutional resources for schools, safety and motivation without intimidation (police cars parked outside of schools), and meaningful prospects for employment and a productive life after schooling. Systemic improvements are needed for systemic problems.

“I believe that from the organizational standpoint our criminal justice system, the attack on public education I think is tied into young people becoming disheartened, disenchanting, disrespected.”

William L. Carter, Director, Theodore D. Young Community Center

- One participant described business, government, university and high school collaboration in the Hillside Work-Scholarship Connection, an upstate New York non-profit with in-school and after-school mentoring to help disadvantaged students complete their degrees. Shared responsibilities and resources, vision and motivation make this a success worth emulating.
- Disciplinary problems in schools lead to punishments, suspensions, arrests and incarceration – a sequence that students of color encounter much more often than their white peers. The USA report to the CERD (para. 74) spoke of investigating a “school to prison pipeline” in one city where children – mostly African-American children and children with disabilities – were systematically incarcerated for allegedly committing minor offences, and punished disproportionately without due process of law. Under the terms of a federal settlement, the school district will limit the use of discipline measures that remove students from the classroom, such as suspension; provide training to school personnel on non-discrimination and classroom management; request law enforcement assistance only when necessary to protect safety; and collect and analyze data on discipline referrals and consequences to identify and address racial disparities. This is an example that needs to be replicated widely. It takes shifting resources from intervention to prevention, and providing advice and support to teachers, administrators and students from entry to graduation (known as “K through 12”).
- Finally, it is well-documented that America’s “War on Drugs” has weighed heavily on people of color. Crime statistics show that compared to non-minorities, African-Americans have been far more likely to be arrested for drug crimes, and have received much stiffer penalties and sentences. Targeting of minorities, stiffer sentences for crack vs powder cocaine, mandatory minimum sentences, extremely harsh sentences for those previously imprisoned, forfeiture of property and related issues, plus a long-standing popular belief that much criminality was drug-related and a public demand for arrest numbers has combined into a significantly discriminatory apparatus, with hugely mounting incarceration rates for three decades starting about 1980.
- It was only in 2010 that President Obama was able to sign the Fair Sentencing Act (Public Law 111-220) which eased federal strictures on crack vs powder cocaine and reduced the mandatory minimum sentences. However it is state prosecutions that account for a vast majority of incarcerations for drug-related offenses. The problem continues, and need continues for efforts to shift national attention from a focus that is largely on the supply side (traffickers, dealers) rather than the demand side (treatment of addicts, education). This is a major example of misplaced priorities that waste money and squander human potential.

Seminar participants commented on the issues and offered recommendations for attention by CERD and by American authorities at federal, state and local levels. They desired that this seminar lead to follow-up advocacy and action within their own areas of competence.

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Acknowledgements

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Speakers

Joshua Cooper, U.S. Human Rights Network Universal Periodic Review Geneva Coordinator

Sean Pica, Executive Director, Hudson Link for Higher Education in Prison

Damon K. Jones, NY State Representative, Blacks in Law Enforcement of America

William L. Carter, Commissioner, Theodore D. Young Community Center,
Town of Greenburgh, New York

Discussion Groups

A: Focus on Education in prison and means to reintroduce formerly incarcerated persons into the community, with George Garland, facilitator, Raina Kadavil, scribe, and Corinne Whitaker, flip chart writer and drafter.

B: Focus on youth, including those currently or formerly incarcerated, school discipline, drugs and related issues, with Ryan Kaminski, facilitator, Benjamin Margolin, scribe, and David Stillman, flip chart writer and author of final report to CERD.

Participants

Michael Ambrozek

Amy Auguston

Oneica Benn

William L. Carter

Michelle Chapman

Michele Clarke-Ceres

Joshua Cooper

J. Yuhanna Edwards

Soffiyah Elijah

George Garland

Darin Green

Damon K. Jones

Raina Kadavil

Ryan Kaminski

Bruce Knotts

Cornelia Krusius

Watson Li

Benjamin Margolin

Sherrie Murphy

Sean Pica

Stanley Richards

Edward-Yemil Rosario

Audley Seymour-Foster

Brenda Smith

Jacqueline Spann

David Stillman

Jeanne Betsock Stillman

Elizabeth Tomaselli

Elise Warner

Corinne Whitaker

AJ Woodson

Troy Wolfe

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Jeanne Betsock Stillman, President
UNA-USA Southern New York State Division