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## An Uncharted Path

*Pleading guilty to negligent homicide usually leads to prison. But Jacalyn Colburn '82, '96JD knows that on occasion, true justice calls for something else.*

*By Sandra Hume '92*

**T**he first thing Jim Dozois remembered after the accident was waking up and finding himself on top of his car. It was dark and snowy; broken glass was strewn everywhere. It took him some time to realize he had been in an accident. When he looked around for Joshua Hall, who had been in the car with him, he couldn't find him. Dozois finally located Hall draped through the car's rear window. As soon as he touched him, he knew he was dead. "Oh, my God," he said over and over. "I killed my best friend."

Two days later, on Monday morning, March 26, 2001, Jacalyn Gallup Colburn '82, '96JD headed to the Merrimack County jail to meet Dozois. Normally, as the managing attorney for the public defender's office, she assigned lawyers to cases. But vacations and sick days and court schedules had conspired, and there was no staff attorney available. So she went herself.

From the perspective of the defense, the details of the case weren't promising. Police estimated the car had been traveling at 95 mph when it went out of control on Rt. 114 in Weare, N.H. The black 1997 Volkswagen GTI had flipped three times, hit a snowbank, flown 15 feet in the air and smashed into a telephone pole, landing upside down. Police reported they had smelled alcohol on the breath of the 23-year-old driver. He had been read his rights in the X-ray room at Concord Hospital and charged with a Class A felony, negligent vehicular homicide.

In her years as a public defender, Colburn had become used to visiting defendants in jail who were defiant, or mentally unstable, or under the influence. When she was shown into a holding room, Dozois was sitting on the floor, sobbing. He hadn't used his one phone call: he was too ashamed, and he didn't know what to say. Colburn had never seen anyone look so utterly alone.

**C**olburn first joined the public defender's office in 1996, when she was fresh out of Franklin Pierce Law Center (now UNH School of Law). This career change came on the heels of a decade spent working in real estate development. Her husband and fellow WSBE grad Michael Colburn '82 was going to stick with the business they'd built together. Her faculty adviser, Jim Duggan (who today sits on the New Hampshire Supreme Court), was with the public defender's office at the time, and that seemed as good a place as any to start. "When you go to the defense side," she remembers Duggan telling her, "you'll find out very quickly whether you can do it, because not everyone can."

As a law student, she worked on whatever cases were available to her in the public defender's office. Taking advantage of two student programs, she was able to take on her first jury trial while still a student. Though she felt prepared—even over-prepared—she was pitted against a seasoned prosecuting attorney, and she was shocked when her client was acquitted. She decided that defense might be something she could do.

New Hampshire has 120 public defenders who handle the cases of defendants who can't afford to hire a private lawyer or choose not to. Twice a year Chris Keating, executive director of New Hampshire's public defender's office, guest-teaches a criminal justice class at Plymouth State and asks the students two questions: "If you needed a defense lawyer, would you want a public defender to represent you?" And then, when the answer is no, as it invariably is, "Why not?"

"It's assumed that people who end up with a public defender are at a tremendous disadvantage," says New Hampshire Superior Court chief justice Robert Lynn. "But if you ask people in the know, that's just not true. Our public defenders are first rate, every bit as good as any privately retained lawyer I've seen."

Keating estimates that Colburn, as his director of legal services from 2001-2009, had a hand in hiring 100 of the state's current public defenders. Yes, Colburn says readily, public defenders are usually fresh out of law school and at the bottom of the pay scale. But just because the pool of applicants is inexperienced doesn't mean that you can't be choosy. Every summer, about 500 resumes will arrive for only a handful of open positions. Colburn's hiring philosophy—which Keating shared—was that she recruited character, not skill sets. "You want the raw material. If they have a good work



ethic and a good professional ethic, you can teach the trial skills."

**T**he Dozois case was unusual in many respects. Not only were Dozois and Hall best friends, but Dozois had been living with the Halls at their home in Henniker, N.H. For years, Dozois had moved around Massachusetts with his family, wherever his mother could find work. Then, when he started his freshman year at New England College in 1995, he had met Josh Hall. They immediately became fast friends. Hall's parents, Doug and Patty, treated Dozois like a third son.

While Dozois was in jail, before his arraignment, the anguished Halls had tried to call him, but the call was not allowed by the authorities. At the arraignment, which was conducted by video, Dozois could see Doug and Patty Hall sitting in the courtroom, and his mother and father. Midway through the proceedings, Dozois collapsed, overcome with emotion.

Out on bail, Dozois attended Josh Hall's packed memorial service at the request of Doug and Patty. Friends spoke, recounting favorite memories of Josh Hall but also telling Dozois they would all get through the tragedy together. Sitting behind the Halls, Dozois cried through the service.

**C**olburn found that working as a public defender wasn't without sacrifice. The New Hampshire public defender's office handles 28,000 cases a year, from first-degree murders down to probation violations, with a single lawyer usually responsible for 65-70 open cases at a time. Colburn considered herself lucky that her 10 previous years in the workforce had already trained her in work-life balance; also her kids were in school and her husband was supportive and flexible. "But it was still pretty tough. When you're a young public defender, realistically you could work for 120 hours a week and not be done. You're never caught up."

In 2000, just four years after joining the public defender's office, Colburn was named managing attorney. The following year Keating became executive director of legal services. Looking for a new director, he wanted someone he could trust to be solely in charge of all the state's attorneys, their cases, their mentoring and their relationships with the courts. His new director of legal services would need to have a reputation for fearlessness, be already recognized for courtroom talent and have earned the hard-won respect of the "notoriously suspicious and anti-authoritarian public defender attorneys." He picked Jackie Colburn.

**F**rom the beginning, Dozois was adamant: he wanted to plead guilty. "Jimmy said he didn't want to go through a trial and did not want to put the Halls through any more anguish," Colburn told the Concord Monitor. But in negligent homicide cases where the defendant pleaded guilty, the inevitable outcome was prison time.

"Putting Jimmy in prison wasn't going to solve anything," she says. "He was already punishing himself more than any judge ever could." Moreover, Hall's parents, although grief stricken, agreed with Colburn. They still loved the boy whom they had treated as their own son for years. "We didn't think he could survive a prison environment for any great length of time," Doug Hall later told the Concord Monitor. "And we really felt that two lives would be lost instead of one." Was there any way that something—anything—positive could be stitched from such a tragedy?

Maybe there was. Over the next 18 months, as Colburn went back and forth between Dozois, the opposing counsel, and—with the prosecution's hard-won permission—the victim's bereft parents, an idea began to take shape.

**N**ew Hampshire's public defense program is highly regarded—or so Kimberly Thayer '01JD had heard. And when she worked as a law clerk at both the New Hampshire superior and supreme courts and was able to observe other lawyers in action, she saw for herself how that reputation was justified. "Over four years, I was continually impressed with the performance of the public defenders," she says. "It was quality advocacy."

Becoming a public defense attorney herself in 2005, she experienced firsthand the genesis of that quality: Five weeks of intense training, structured mentoring from a seasoned attorney and being sent right into the courtroom to try cases. "I don't think I could have gotten that kind of training elsewhere. Some lawyers have to wait two years before they see the inside of a courtroom. But we hit the ground running."

This is by design. Colburn believes that in order to be comfortable in the courtroom, you have to be in the courtroom. And that mentoring? Also by design. Informal mentoring had existed before, but now mentoring was part of managing attorneys' job descriptions, and new hires had their mentors alongside them whenever they appeared in court.



**T**he thing was, none of the principals involved—not even Josh Hall's parents—wanted Dozois to go to prison. So Colburn prepared for what amounted to two separate cases. One path was the best defense she could build to get her client acquitted, should a trial become necessary. But she had higher hopes for her second path, based on a radical idea: What if rather than going to prison, the young man were instead required to tell his tale to the people who had the best chance to benefit from it? In the end, the sentence she suggested for Dozois included probation and the loss of his driver's license, and in exchange for additional prison time (he'd already served one month), a unique form of community service: 16 speeches to New Hampshire high school students about what he had done.

Judge Edward Fitzgerald '69, '83JD, who presided over the case, had never seen a sentence like this proposed for such a severe crime. "Traditionally, community service sentences arise for things like drug offenses," he says. "But this was far more serious than that. Someone had been killed."

The hearing where the prosecuting attorney outlined the agreed-upon sentence was wrenching. Hall's parents were there, his father asking through tears for compassion for the man who had killed his son. Dozois spoke of his helplessness: "Because I am still here and because Josh is not and because so many have suffered already, I have trouble understanding what good could become of me." Sitting next to him, Colburn did what she'd never before done in court: she cried.

**D**escribing her, friends and colleagues of Jackie Colburn frequently reach for the same words, usually in tandem with their balancing counterpart: tough but compassionate, stubborn but creative, smart but always looking for the simplest solution. Most importantly to Keating, she was the consummate professional, "absolutely modeling the expectation for how our attorneys should conduct themselves."

Indeed, for all her sociability, flexibility and compassion, Colburn is widely known as uncompromising when it comes to ethics. Keating remembers the day she decided enough was enough with a particular attorney whose performance, she thought, had crossed the ethical line. "She met him one morning at the courthouse and as he walked up the steps she said, 'Give me your files.' She told him he was done and to go back to his office and clean out his desk. And she went into court with his files and tried his cases."

**C**olburn knew she was taking a chance. She'd never proposed anything like this before. "Judges have to consider four things for sentencing: rehabilitation and punishment of the defendant, specific deterrents—meaning what am I going to do to sentence this person so this never happens again?—and general deterrents, meaning what message will this send to the broader community? There was no guarantee that the judge was going to decide that the sentence we proposed actually met those four goals."

But in the end, he did. "The key for me was the cooperation that Jackie was able to generate with the victim's parents," says Fitzgerald. He was also satisfied with the terms of the proposed presentations. Never before had he seen a community service proposal from a defense attorney that was so specific and thorough. "Any question I had, she had an answer for it."

For the next year and a half, Jim Dozois spoke over and over to rooms full of hundreds of high school students. Through tears, he relayed the events of the night the accident happened and spoke about his incarceration. Colburn spoke, too. Hall's father was there, and he often talked about his son.

Fitzgerald also attended the talks. Although he spoke occasionally, he mostly preferred to hang back unnoticed in the audience, so he could gauge reactions and determine whether the goals of sentencing were being met. He decided they were. "Jim's presentation was far more powerful than I had anticipated. I can't tell you how many students I saw who were reduced to tears." Colburn estimates that Dozois told his story to 5,000 students and believes that lives were probably saved.

**N**o fewer than 25 lawyers have approached Colburn asking for copies of Dozois' presentation, the details of the sentence, or both. It's thought of as the gold standard in alternative sentencing, where the goals of sentencing are met without sending the defendant to prison. It's not appropriate in all cases—some criminals need to be removed from society—and it's not always fully successful. In one 2005 case, a judge sent a Salisbury, Mass., man guilty of causing a fatal car crash back to jail for not creating the court-approved video that was part of his sentence.



In 2009, Colburn left the public defender's office and was sworn in as an associate justice with Hillsborough County's Superior Court. Now sitting as a judge, has her viewpoint changed on creative solutions like the one she proposed for Jim Dozois?

She wishes she saw more of it, actually. But it's not creativity on the part of the lawyers that's lacking, but rather the resources that make such plans a realistic possibility. Particularly for criminals with drug problems, which she sees most often, ongoing budget issues mean that resources are fewer than even 10 years ago. To Colburn, that's one of the most frustrating parts of her job. Even when prison is appropriate for punishment, it's not so effective for rehabilitation. "The reality is that the vast majority of criminals who we're sending to jail are eventually coming back into the community. I can lock someone up for three to six years, but what's going to happen in six years? We have to find ways to be creative in alternative sentencing or to provide programming so that these people don't come out of jail in the same vein they went in."

Also in 2009, Colburn was presented with the Frank Rowe Kenison Award, which recognizes exceptional contributions to New Hampshire citizens through the legal system. The ties she's forged on her way to the bench remain strong. Thayer, now a staff attorney with the Strafford County public defender's office in Dover, considers her an inspiration. When Colburn left the public defender program last year, Thayer remembers, there was a gathering in her honor in Concord. "Jackie got up to speak and looked around at maybe 100 people and said she could probably name everyone in the room. I really think she could have."

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Editor's note: This story drew upon a Concord Monitor series, "I Killed My Best Friend," by Stephanie Hanes, who is now a freelance journalist based in Baltimore, Md.  
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