

§ Benchmarks

JOURNAL OF THE NEW YORK STATE UNIFIED COURT SYSTEM

Judicial Pay Increase Tops State of the Judiciary Agenda

THE PRESSING NEED FOR A JUDICIAL SALARY increase was the lead item in Chief Judge Judith S. Kaye's 13th State of the Judiciary address Feb. 6. In the past seven years, every state but New York has raised judicial salaries to address inflation, and New York judges have had only two increases in the past 18 years.

"New York's system for determining compensation for its public officials needs reform," said Judge Kaye. "Our absolute top priority during this legislative session must be a judicial pay increase. Today, I announce that the judiciary is submitting a proposal to establish a permanent mechanism for the regular salary review of officials in all three branches of government."

Under the proposal, as in last year's attempt to secure a judicial pay increase, judges would receive an immediate increase, including an adjustment to re-establish parity for Supreme Court justices with federal District Court judges, retroactive to April 1, 2005. What's new about this year's legislative proposal, however, is that it provides a mechanism for annual cost of living adjustments (COLAs) for all three branches of government beginning April 1, 2007. That mechanism would be a 13-member temporary commission, established every four years and dissolved upon issuance of its report, whose sole task would be to study relevant economic data and determine annual COLAs for judges, legislators and senior executive branch officials for a four-year period. The COLAs would take effect April 1 of each year barring legislative action to modify or suspend them. Members of the Quadrennial Commission on Executive, Legislative and Judicial Compensation would be appointed by the governor, legislative leaders and the chief judge; most would be members of the general public. Adoption of such a proposal would promote public confidence in the process — and its results — as well as enable highly qualified candidates to seek and remain in public sector positions.

Reviewing the accomplishments of the past year and previewing this year's initiatives, Judge Kaye proclaimed New York's judiciary in good standing. She said she would commit the remaining year of her 14-year term to various pursuits, including judicial selection reform, increased access to justice, a new court-restructuring approach and public confidence in the courts.

On the subject of judicial selection reform, Judge Kaye announced the release of the latest Feerick Commission report, which focuses on the nominating convention process for state Supreme Court justices. She also announced recent Court of Appeals approval of rules establishing independent judicial qualification commissions in each judicial district, based on earlier Feerick report recommendations. These commissions will evaluate qualifications of candidates for all elective judicial office and issue public findings. The court approved other rules relating to judicial campaign conduct (see story below).

Among other reports released were the long-awaited report from the Matrimonial Commission, which calls for substantial changes — administrative and statutory — in how divorce-related matters are handled in the courts (see story, p. 3), and the report of the Commission to Examine Solo and Small Firm Practice, which makes numerous recommendations to better meet the needs of such practitioners (see story, p. 3). The Chief Judge's remarks also touched on the interim

"The goals of solid performance and sound innovation have been the guideposts of the past 13 years, and they will continue to motivate us in the year ahead."

finding of the Commission on the Future of Indigent Defense Services that the existing "patchwork" approach to providing such services should be replaced with a coherent statewide system. A final report is due this spring (see story, p. 2).

Among many initiatives relating to children, Judge Kaye announced a new Office of Family Services, headed by former Second Department Appellate Division Justice and Matrimonial Commission chair Sondra Miller. The office will serve as a think tank to develop best practices as well as a source of scholarship and research. The Chief Judge highlighted collaborative achievements with governmental partners and Family Court stakeholders, such as last year's permanency legislation and efforts to improve foster care. She announced



PHOTO: COLLEEN BRESCIA

Chief Judge Judith S. Kaye receives applause at State of the Judiciary

the opening of an office for Court-Appointed Special Advocates (CASA) within the courts' ADR unit, along with the availability of court system grants, to help expand CASA to more counties.

Judge Kaye gave special mention to two 10-year successes — the Commercial Division, now in nine locations, and the Center for Court Innovation, the courts' independent research and development arm, which develops and supports the state's problem-solving courts.

As always, the Chief Judge's annual address stressed the need to simplify the state's "archaic" court structure. Noting that this year "marks a full century since Dean Roscoe Pound's historic speech to the American Bar Association calling for states to unify their trial courts for the sake of efficiency and substantive justice," Judge Kaye observed that New York still has a complicated, overlapping system of 11 trial courts, notwithstanding operational measures taken to simplify the system. Taking a fresh approach, the Chief Judge announced she will form a Special Commission on the Future of the New York State Courts, charged with proposing a streamlined system.

"The goals of solid performance and sound innovation have been the guideposts of the past 13 years, and they will continue to motivate us in the year ahead," said Judge Kaye.

The full text of the address and the reports mentioned in this article are available at: www.nycourts.gov/reports. ■

Feerick Commission Report Urges Overhaul of Convention System

Court of Appeals Approves Screening Panels

NEW YORK'S ELECTIVE JUDICIAL process may never be quite the same. Two recent developments were in the works for some time, but another caught even insiders by surprise.

As expected, Chief Judge Judith Kaye announced in her State of the Judiciary address Feb. 6 that the Court of Appeals had approved rules establishing independent screening panels for all elective judicial positions. Also as expected, she announced the

release of the Feerick Commission's third and final report on judicial elections, which focused exclusively on the judicial nominating convention system. The Commission to Promote Public Confidence in Judicial Elections, chaired by former Fordham Law School Dean John D. Feerick, previously issued reports in December 2003 and June 2004.

The unexpected backdrop for both announcements, however, was the

decision of a federal District Court just one week earlier that declared New York's convention system unconstitutional and enjoined its use, directing that primaries be held to choose candidates for the state Supreme Court until the legislature acts. However the developments in that case ultimately unfold, the new rules approved by the Court of Appeals and the latest commission recommendations also significantly affect the status quo.

The new rules, based on earlier Feerick Commission reports, create a statewide system of judicial election qualification commissions, independent bodies to evaluate early on all those seeking elective judicial office. The commissions will publish a list of those found qualified as well as those who declined to participate; the information will also be available in official voter guides. A 15-member commission will be established in **CONTINUED ON PAGE 6**

Summary Jury Trials Cut Caseload

BY ANITA WOMACK-WEIDNER

A CHAUTAUQUA COUNTY MAN suffered brain damage when he was thrown from his snowmobile on a trail during a night ride and struck by another snowmobile on the same path. The injured man sued the snowmobiler who struck him, seeking \$2.7 million in damages.

Rather than proceed to a traditional trial, however, the parties agreed to an alternative dispute resolution option — a summary jury trial (SJT). SJTs are abbreviated, one-day trials with few witnesses, summary presentation of evidence and a six-person

a potent tool for relieving calendar congestion,” said 8th Judicial District Administrative Judge Sharon Townsend. “Jurors benefit by fulfilling their civic duty with a minimum of inconvenience; courts benefit by freeing up valuable space on their calendars; and parties benefit by resolving their disputes in a prompt and cost-effective manner.” In the last three years of the Chautauqua project, not a single case proceeded to regular trial.

Under the Chautauqua rules, there are strict time limits on voir dire. Each side has a maximum of two peremptory challenges. Jury selection is often completed in 60 to

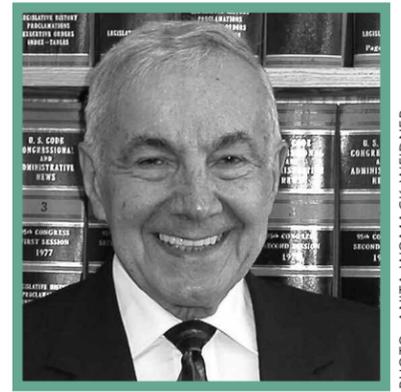
called “summary jury trials” in 1980 to encourage court settlements in the face of crowded dockets and trial calendar backlogs.

Summary jury trials have been used in at least 17 states and several federal jurisdictions to resolve large and small damage cases, including commercial disputes, negligence and medical malpractice actions, product liability cases, and even anti-trust and fraud cases.

Cases recommended for binding SJTs in the 8th district program manual include: relatively small damage cases where the cost of medical experts is prohibitive; cases involving large amounts where negotiations are close; and cases where injuries may result in verdicts exceeding policy limits and defense counsel seeks to cap the verdict.

Nonbinding SJTs typically include: damage cases where an advisory verdict would promote settlement; cases where damages are the only issue; and cases where one party has an unrealistic settlement position. Even with a nonbinding verdict, court officials say the parties get a good indication of what may happen at a traditional trial and may settle.

Between October 1998 and December 2004, of the 183 cases in the Chautauqua SJT project, 101 cases settled before the summary jury trial date and two were stayed by bankruptcy before the SJT. Of the 80 that proceeded to a summary jury trial, 21 were resolved by binding verdicts. Of the 59 that went to nonbinding verdict, 43 then settled, 10 were discontinued, and six proceeded to a regular trial. At least 10 Erie County judges have participated in the 8th district program, with 120 summary jury trials in 2002-2004, 98 binding and 22 nonbinding. Judges in Niagara, Genesee, Cattaraugus and Allegany have also tried the SJT process. Every case resolved by an SJT, whether by verdict



Judge Joseph Gerace

PHOTO: ANITA WOMACK-WEIDNER

or settlement thereafter, is one less case on the regular trial docket, reducing pending caseload numbers.

While lawyers and judges who have used SJTs believe in its effectiveness, its acceptance is not widespread. Judge Gerace estimates that if SJTs were used statewide, the courts would see a significant savings in juror costs alone.

“Summary Jury Trials, used with great success upstate, should be expanded and tested in downstate jurisdictions as well,” First Deputy Chief Administrative Judge Ann Pfau wrote in her report “Comprehensive Civil Justice Program 2005: Study and Recommendations.”

The SJT procedure has been used successfully on an experimental basis in Albany, Putnam, Onondaga, Orange, Saratoga and Monroe Counties and is being considered in others, including Clinton, Montgomery, Dutchess, New York, Schenectady, and Ulster. Just last year, a voluntary nonbinding program was adopted by local rule in Kings County. In February, plans for a voluntary binding SJT program advanced in the Bronx, with the endorsement of the county bar association.

“Any judge who is interested in meeting standards and goals, any lawyer, any client who would like their cases tried early, ought to look at the summary jury trial,” said Judge Gerace.

For more information about the 8th district program, visit: www.nycourts.gov/courts/8jd/sjt.shtml. ■

“The summary jury trial is a potent tool for relieving calendar congestion.”

— 8TH JUDICIAL DISTRICT ADMINISTRATIVE JUDGE SHARON TOWNSEND

jury. But for the jury, the process is similar to arbitration. SJTs are used to expedite resolution of both large and small cases. In the snowmobile incident, the litigants settled the case for \$400,000 prior to the SJT date, demonstrating that scheduling an SJT — just as scheduling a traditional trial — fosters settlement, only far earlier in the litigation process.

Retired 8th District Supreme Court Justice Joseph Gerace— who was a member of the UCS Jury Trial Project and now serves as a judicial hearing officer — is leading the effort to make SJTs a way of life in New York State. The 8th district pioneered the use of summary jury trials in New York eight years ago, beginning with Judge Gerace’s Chautauqua County SJT project. An SJT is typically scheduled within 60 days of the last settlement effort.

“By successfully resolving nearly all of the cases in which a summary jury trial is used at only a fraction of the resources ... the summary jury trial is

90 minutes. Each side gets a 10-minute opening and closing statement and one hour to present its case. Attorneys are typically limited to two live or videotaped witnesses; additional testimony may be submitted by deposition transcript or sworn affidavit. Each counsel may prepare a notebook of materials for the jurors (previously reviewed by the other side) and walk the jury through the exhibits. Medical testimony is submitted by written report, PowerPoint presentation, physician affidavit or video. The judge gives a streamlined charge to the jury, which renders its verdict by the end of the day.

SJT verdicts may be binding or nonbinding, depending on the parties’ agreement and the order of the court. Current rules require consent of the parties in both binding and nonbinding cases. Often in binding cases the parties will stipulate to high/low limits of recovery.

U.S. District Court Judge Thomas Lambros of Ohio pioneered what he

INSIDE

- 1 ■ **Judicial Salaries Top State of the Judiciary Agenda**
■ Screening Panels Approved; Latest Feerick Report on Convention System
- 2 ■ **Summary Jury Trials Cut Caseload**
■ Interim Report on Indigent Defense Services
- 3 ■ **Chenango’s Multi-Hat Judge**
■ Matrimonial Commission Calls for Sweeping Changes
■ Solo & Small Firm Practice Report
- 4 ■ **Bronx Office for the Self-Represented Opens**
■ National Adoption Day
- 5 ■ **Court Reporters: Keepers of the Record**
■ NY’s First Listening Conference
- 6 ■ **Court Construction Update**
- 7 ■ **Historic New York State Courthouses and Trials**
■ Did You Know?
- 8 ■ **Judicial Institute Highlights**
■ UCS Katrina Fund Update
■ Black History Month

Interim Report Recommends Statewide Indigent Defense Office

THE CONSTITUTIONAL RIGHT OF A poor person charged with a crime to obtain effective counsel in New York remains “high in theory, but low in fulfillment,” and some form of statewide oversight of indigent defense services is needed, an interim report released in December states.

The report of the Commission on the Future of Indigent Defense Services, co-chaired by Burton Roberts, former Bronx Administrative Judge, and Professor William Hellerstein of Brooklyn Law School, outlines the continuing crisis in indigent defense. “There has never been a time in New York’s history when the poor, as a class, have been afforded the legal representation essential to a proper defense,” according to the commission. Members found no statewide standard defining “adequate” services, and many public defender offices cited a chronic lack of resources.

Commission members found that a statewide office is essential to both the independence of an indigent defense system and the ability to pro-

vide a consistently high level of representation. New York is one of only six states with no statewide responsibility or oversight in this area. The report recommends an indigent defense commission that would appoint a chief defender and regional defenders, with local offices created as needed.

The commission concluded that state funding was critical. “That will ensure that there is in place a system that meets the highest standards of legal representation and professionalism and that the right of the effective assistance of counsel for an indigent defendant does not turn on the mere happenstance of geographic location or the adequacy of local fiscal resources.”

The Spangenberg Group, a nationally-recognized research and consulting company that focuses on improving indigent defense systems, did extensive field investigation for the commission. A final report is due this spring.

For the report and more information, visit: www.nycourts.gov/ip/indigent-defense-commission/index.shtml. ■

BENCHMARKS is a publication of the New York State Unified Court System, Office of Court Administration

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Judge Sullivan Serves as Multi-Hatter in Chenango County

BY ANITA WOMACK-WEIDNER

EVERY MONDAY MORNING, JUDGE W. HOWARD Sullivan leaves his loft apartment in Norwich, N.Y., and walks with an armful of freshly-baked bread in bags with his private label into the Chenango County courthouse.

His staff, and even some defendants, know that Judge Sullivan will arrive with loaves of white bread with potato flakes he made over the weekend. Although he is known as a compassionate man, no one questions his ability to uphold the law.

"It is important to remove from society those who commit serious crimes and to find effective age-appropriate ways of redirecting the others who will be back in our community," said Judge Sullivan. "[However] I always keep in mind that I am a public servant. I am a listener and try to make people feel that they have been treated fairly."

But Judge Sullivan hears more than just criminal cases – he is a "multi-hat" judge, presiding not only over County Court but also Surrogate's and Family Court.

Excluding New York City, every county in the state has at least one elected County Court judge. Where there is no statutory provision for the election of a Surrogate or Family Court judge for a particular county, the law provides that the County Court judge will serve in those courts as well. Such judges are often referred to as the county judge. There are 57 multi-hat judges across the state: 38 who preside over all three courts; 13 who are County Court judges and Surrogates; and six who are both County and Family Court judges.

Deputy Chief Administrative Judge for Courts Outside New York City Jan H. Plumadore, who previously served as a multi-hat judge in Franklin County, says the concept of a multi-hat judge has been around since the 1800s.

In the course of a week, and often the same day, Judge Sullivan goes back and forth between the County Courthouse, a historic two-story structure in the middle of town, and the Chenango County Office Building across the street, which houses Family Court and Surrogate's Court. "I handle murder cases, life support cases, abuse cases, domestic violence cases, estates involving multi-millions of dollars, and a multitude of other cases," said Judge Sullivan.

As part of his County Court duties, Judge Sullivan presides over the drug treatment court started in Chenango County two years ago. He also serves as an Acting Supreme Court justice in the absence or at the request of the County's only Supreme Court justice, Kevin Down. Prior to his election to County Court in 1999, Judge Sullivan was a City Court judge for 22 years.

Such a multi-court structure does not mean that each court's docket is necessarily light. In the August-September term of last year, the Chenango Family Court caseload was higher than that of several surrounding counties; all except one have two

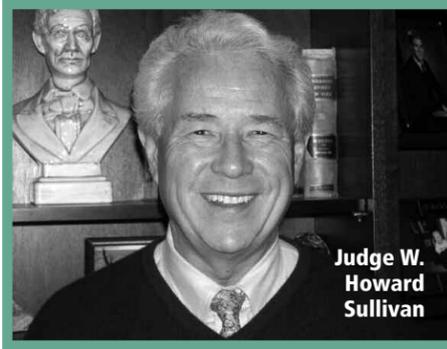
county judges that share the multi-court caseload.

On the day this writer visited, Judge Sullivan entered Surrogate's Court in the Chenango County Office building just after 9 a.m. to hear an update on a case involving an estate. At 9:30 a.m., across the street at the County Courthouse, he presided over an arraignment, then conferenced several criminal cases. At 10:15 he heard a civil motion involving a name change. At 10:30 a.m. he attended a drug court meeting regarding the status of everyone in the program. And, at 11:30 a.m. he presided over the drug treatment court and

held a graduation ceremony for those who were being successfully discharged.

After lunch, it was time for Family Court. First there was an initial appearance regarding a child custody case, followed by several other custody matters involving modification or enforcement of an order and an initial appearance regarding an order of protection.

In theory, Mondays and Fridays are primarily set aside for County and Surrogate's Courts, while Tuesdays through Thursdays are Family Court days except during County Court trial terms. "Of course, responsibilities inherent to two courts do not cease because the day 'belongs' to another court, and so the three hats never really come off and the job is more often a difficult juggling act," said Court Attorney Thomas Kelly. ■



Judge W. Howard Sullivan

Report on Solo and Small Firm Practice

More than 83 percent of New York attorneys are solo practitioners, while another 14.7 percent work in offices of fewer than 10 attorneys. Charged with identifying ways that the court system can better support the unique needs of these solo and small firm practitioners, a 30-member commission issued a report in February that makes numerous recommendations to improve the practice of law for the vast majority of the New York bar.

The Committee to Examine Solo and Small Firm Practice, chaired by Rochester solo practitioner June Castellano, looked at issues such as case-processing and calendaring, court rules, technology and attorney professionalism, as well as the most basic issues of law office economics.

Many of its recommendations focus on the solo practitioner's most precious commodity — time.

The report recommends using staggered calendaring for motions and pre-trial conferences where appropriate; promoting the use of teleconferencing and videoconferencing; and adopting uniform standards for filing by electronic means. Another recommendation would allow attorneys to communicate with courts by email for certain information. On a practical level, the report suggests that every courthouse provide space where attorneys can work, with computers and both plug-in and wireless Internet service.

Many measures involve maximizing the use of the courts' Web site and online documents, such as the ability to download conference forms, returnable by fax or email; the creation of an online database of common litigation and estate documents that can be downloaded in English and Spanish; and the posting of local rules and filing procedures as well as court directories.

In addition, the commission endorsed the expansion of summary jury trials and other initiatives that keep litigation costs down.

The commission also proposed that a task force be created to look at the availability and affordability of malpractice insurance, as well as a commission on attorney-advertising.

The report is available at: www.nycourts.gov/reports. ■

Matrimonial Commission Calls For Sweeping Changes

AFTER A 20-MONTH STUDY OF every aspect of New York's divorce process, the Matrimonial Commission, chaired by former Second Department Appellate Division Justice Sondra Miller, has recommended sweeping changes in the culture and practice of matrimonial litigation.

The commission's report includes a wide range of recommendations, such as improved judicial training, selection and case-management; increased use of alternative dispute resolution (ADR); increased access to representation; better coordination between Supreme and Family Courts; increased use of social workers; uniform criteria for forensic appointments; and expanded training for attorneys for children.

Recognizing the success of matrimonial rules adopted following a 1993 report of an earlier commission focused on attorney conduct in divorce litigation — especially case-management rules — the commission found that more could be done to avoid protracted litigation, saving the parties time, money and emotional anguish. Key recommendations include adoption of early case-screening with provision of appropriate services; renewed focus on early preliminary conferences; more "dedicated" matrimonial parts with support staff and services; uniformity of process and forms among counties; and introduction of a three-tiered time line for cases based on the degree of conflict present — four months for low-conflict cases, eight months for moderate-conflict

cases and 12 months for high-conflict cases. The period would be tolled during any ADR efforts.

Even terminology used in matrimonial disputes was the subject of review, resulting in the recommendation that references to "visitation" be changed to "parenting time" and "law guardian" changed to "attorney for the child."

The commission concluded that custody should be left to the discretion of the judge, with no presumption of joint or sole custody, as should the decision whether to appoint an attorney for the child. A majority recommended that the decision to request an opinion or recommendation on custody from a forensic

Recommendations include a three-tiered time line for cases based on the degree of conflict present.

expert should also be left to the judge's discretion, and that the order of appointment should specify the scope of the expert's report.

Among recommendations requiring legislation, a majority of the commission support no-fault divorce, providing that final judgment is entered only after resolution of all economic and custody issues.

In the course of its work, the commission held public hearings, conducted surveys and heard from individuals personally affected by divorce, judges, attorneys, bar association representatives, academics and forensic experts.

The report is available at: www.nycourts.gov/reports. ■

Office for the Self-Represented Provides Information to Public

THOUSANDS OF NEW YORKERS SEEKING GUIDANCE about how to deal with legal problems now have a new office to help them. The Bronx County Office for the Self-Represented, a collaborative effort of the Unified Court System and the Bronx Borough President's Office, opened Dec. 7 in Bronx Supreme Court to provide procedural and other court-related information to a growing number of residents with legal issues.

The Bronx office is the sixth such office to open in downstate New York, with existing offices operating in New York, Kings, Queens, Richmond and Westchester Counties. Nearly 40,000 people walked through the doors of these offices in 2004 seeking help, officials said. The Bronx office is the first to operate as a partnership with an executive agency.

Offices for the self-represented and similar information sites, such as the recently opened Suffolk County Library Resources for the Public Program, answer questions about court operations and procedures as well as make certain forms available for pro se, or self-represented, litigants. The staff does not complete the forms, nor are they permitted to offer legal advice.

"Helping the sharply increasing number of self-represented litigants is an issue that every state is having to deal with," said Deputy Chief Administrative Judge for Justice Initiatives Juanita Bing Newton. "It is also an issue that the bar has to deal with in terms of pro bono service, and it's an issue that government needs to deal with in terms of providing adequate funding for civil legal services. Offices for the self-represented and other informa-

tion sites are just one piece of a comprehensive program that is evolving in New York and across the United States to help people who are often forced to represent themselves."

Judge Newton's office is charged with developing initiatives and programs to ensure meaningful access to the courts for all New Yorkers. Her work focuses on five areas: permanent funding for civil legal services; adequate funding for indigent defense services; voluntary pro bono services; the needs of self-represented litigants; and public education and outreach.

With regard to the self-represented, Judge Newton has designed and implemented a broad program of initiatives to ensure that the courts are user-friendly, and that court and other legal and referral information is readily available to the pub-

It is an office for information that the public badly needs.

lic. In August 2003, her office created a Web site, www.nycourthelp.gov, to provide quick access to information, including courthouse locations, court jurisdictional guides, court forms, answers to commonly-asked questions, law library locations and links to law research sites, lawyer referrals and other legal services. More than 600,000 visits have been made to the Web site, which became available in Spanish in October.

In addition, 3,000 court employees statewide, including town and village court staff, have been trained to provide informational assistance to the

public. Judges, including New York City Civil and Housing Court judges, have received training in dealing with the special issues presented in cases involving self-represented litigants. A major program to increase pro bono assistance is also underway statewide in collaboration with the bar and other stakeholders in the civil justice system.

Judge Newton stressed that recent court surveys conducted by her office have confirmed that most people who represent themselves do so not by choice but because they cannot afford an attorney. Roughly one million individuals eligible for legal assistance are rejected each year because legal aid programs lack sufficient resources to handle them, according to the September 2005 report "Documenting the Justice Gap in America" by the Legal Services Corporation (LSC), which funds local legal aid groups throughout the country. LSC has also reported that for every client served by an LSC-funded program, at least one was turned away. Only a small percentage of the legal problems experienced by low-income individuals (one in five or less) are actually addressed with the assistance of a private or legal aid lawyer, according to LSC.

"We have to keep our eyes on the prize, and the prize is providing help and information to people who come to our courts," said Judge Newton. "Some are there because they are litigants who can't afford lawyers, and some are there because they have some type of issue and they're just trying to get information. So calling it an Office for the Self-Represented is almost too limiting a name. It is an office for information that the public badly needs." ■

More Than 400 NY Foster Children Find Homes on National Adoption Day

BY ANITA WOMACK-WEIDNER

HUNDREDS OF NEW YORK STATE FOSTER CARE children received the gift of family in November as part of National Adoption Day.

Created six years ago and designated as the Saturday before Thanksgiving, National Adoption Day marks the date set aside each year when an unprecedented number of judges, court staff, attorneys, child welfare agencies and advocates across the country spend the day finalizing the adoptions of thousands of foster care children and honoring the families who adopted them.

Brooklyn Family Court was the site of this year's national kick-off celebration, where 117 adoptions were completed in one day. Emmy-nominated actress Victoria Rowell — who spent 18 years in foster care — was the special guest. A total of 309 adoptions were finalized in New York City during a week-long effort; over 100 were finalized outside New York City. Approximately 3,300 adoptions were completed nationwide.

According to the New York State Office of Children and Family Services, more than 40 counties across the state participated in National Adoption

Day — finalizing adoptions and holding conferences, fundraisers and information sessions on adoption and foster parenting. Some locations promoted adoption awareness throughout the entire month of November.

A number of counties participated in Heart Gallery, a national program started in New Mexico in 2001, designed to raise awareness about children who need permanent homes by displaying professional portraits that capture the children's individuality. The program has demonstrated unprecedented success in finding adoptive homes for foster children. The Western New York Heart Gallery was hosted by Buffalo, the Capital Region's by Albany. The Mid-Hudson Region Heart Gallery made "stops" in participating counties throughout November. A photo display was also featured in Manhattan's Grand Central Station.

There are over 119,000 foster children nationwide looking for permanent homes, including over 4,300 children currently freed for adoption in New York. According to new findings by the Urban Institute, in a report released at the Brooklyn event by the National Adoption Day Coalition, interest in adoption among women ages 18-44 rose 38 percent in the United States between 1995 and 2002 and is at an all-time high.

"All children deserve safe, permanent homes with families who love and care for them," Chief Judge Judith S. Kaye said in a press release. "As we continue to improve the process for foster care adoptions, identifying and eliminating bureaucratic logjams while always ensuring safety, we help



New family celebrants in Erie County, above and top



Actress Victoria Rowell holds a newly-adopted boy in Brooklyn

Participating counties include: Albany, Allegheny, Bronx, Canandaigua, Cattaraugus, Chautauqua, Chemung, Clinton, Columbia, Dutchess, Erie, Franklin, Fulton, Genesee, Herkimer, Kings, Livingston, Madison, Monroe, Nassau, New York, Niagara, Onondaga, Ontario, Orange, Orleans, Putnam, Queens, Rensselaer, Richmond, Rockland, St. Lawrence, Schuyler, Seneca, Steuben, Suffolk, Tioga, Tompkins, Ulster, Washington, Wayne, Westchester and Wyoming.

children move more quickly into the security and stability of their own 'forever families,' where they can thrive."

For more information about National Adoption Day and Heart Gallery, visit: www.nationaladoptionday.org and www.adoptuskids.org. ■

Court Reporters: The Keepers of the Record

BY ANITA WOMACK-WEIDNER

WHEN FORMER U.S. AMBASSADOR Franklin H. Williams needed a court reporter in 1988 to record the first three public hearings of the commission investigating the under-representation of minorities and bias in the New York State court system, Sandra K. Scruggs, certified shorthand reporter, was hired.

Seventeen years later, Scruggs — now a Buffalo senior court reporter after passing a series of civil service exams — received the diversity award for recruiting minority court reporters from the Franklin H. Williams Judicial Commission on Minorities, which continues Williams' work. She has mentored a dozen people in over 15 years, including five who have followed in her footsteps.

Court reporters make verbatim records of speeches, conversations, legal proceedings, meetings and other events. Traditionally used in legal proceedings, increasingly court reporters also provide closed-captioning and realtime translating services to the deaf and hard-of-hearing community.

There are two main methods of court reporting: stenotyping and voice-writing. Court reporters use a stenotype machine in all official proceedings. The machine allows them to press multiple keys at a time to record combinations of letters representing sounds, words or phrases. These symbols are then recorded on a computer disk or CD-ROM, then translated and displayed as text in a process called computer-



Sr. Court Reporter Sandra K. Scruggs

PHOTO: TED ERMANSOONS

aided transcription (CAT). Accuracy is critical — an appeal may depend on the transcript.

Communication Access Realtime Translation (CART) is the instant translation of spoken word into English text using a stenotype machine, a laptop and realtime software. The text appears on a computer monitor or other display. In the courtroom, CART is typically used where a deaf or hearing-impaired individual does not use sign-language or there is no interpreter. Judges and lawyers also use CART for fast access to transcripts. Some of the newest machines are equipped with a function that synchronizes audio with the words being typed.

Machine shorthand was patented in 1879 and advanced by Ward Stone Ireland, who came up with a high-speed keyboard that is still used today, according to the September 2004 "Journal for the Reporting and

Captioning Professions." CAT came to the forefront in the 1970s and remains the standard for reporters. When Scruggs started in the court system, there were still a few court reporters who relied on manual shorthand.

"Oftentimes we're writing under very bad conditions," said Scruggs. "People are shuffling their papers, moving around in their seats, mumbling. There are fire trucks outside. We try to listen through those fire trucks. We are the guardian of the record and being such it is our duty and obligation to make sure that we record testimonies accurately."

The voice-writing method involves speaking into a hand-held stenomask, which contains a microphone and voice silencer. The reporter repeats the testimony into the microphone, but the mask and silencer prevent the reporter from being heard.

In addition to time in the courtroom, court reporters spend hours at night or on weekends creating and editing transcripts. Court reporters are responsible for keeping up their skills, taking refresher courses and constantly updating their computer dictionary with new words and phrases.

Court reporters pay for all equipment and software themselves, even in their one-year probationary period (to be hired on a permanent basis, they must produce a partial transcript using computer-aided transcription equipment). A court reporter just starting out could easily spend \$10,000 for a laptop and other equipment. The machine court reporters use, called the writer, costs

a minimum of \$4,000 new, as does the proprietary software, which cannot be shared. Some court reporters, like Scruggs, have two writers in case one breaks down. The only thing court-employed reporters are given is paper for their writers.

"I think court reporters invented multi-tasking because we're looking, listening, thinking, processing, and our hands are moving," said Scruggs. "I might be listening to three people talking at one time. I heard what you said. I'm holding what he just said, writing what the man said before him and I'm thinking about the best way to get this down. And I'm asking them not to talk at once." ■

THEIR ESSENTIAL DUTIES

- Create a verbatim record
- Keep a list of witnesses
- Mark exhibits for the record; keep exhibit list
- Edit, proofread and provide transcripts as ordered
- Prepare for the next day's cases (review docket sheet and pretrial orders; research subject-matter proper names and words; create shorthand/English matches; input names and other relevant terms into job dictionary)
- Purchase and maintain state-of-the-art equipment

For a complete list, see the "Journal for the Reporting and Captioning Professions," September 2004 issue.

The First New York Listening Conference

ON APRIL 26 AND 27 THE NEW York Federal-State-Tribal Courts Forum will hold the first-ever Listening Conference in New York State, bringing state and federal judges together with tribal court judges and tribal justice system representatives.

The event grows out of a national effort to promote dialogue among the various justice systems, following a project begun in the 1990s by the Conference of Chief Justices to encourage conversation and cooperation among state, federal and tribal

courts. In 2003, Chief Judge Judith S. Kaye and Chief Judge John M. Walker Jr. of the U.S. Court of Appeals for the Second Circuit established the New York Tribal Courts Committee — chaired by New York Supreme Court Justices Marcy Kahn and Edward Davidowitz — to "explore ways in which the state, federal and tribal court systems can work to improve our understanding of one another's justice systems and establish better ways of sharing information." This committee of state and

federal judges, after two years of meetings with members of the nine recognized tribes in the state, established the New York Federal-State-Tribal Courts Forum. The purpose of the forum, which includes representatives from the state and federal courts and the various nations and tribes, is to share information about the different justice systems in order to minimize and prevent conflict. It does not address gaming, taxation, land claims or matters in litigation.

Among the nine nations and tribes in New York there are several court and justice systems. As some of the tribes transition to written law systems from oral traditions, or create new courts, the state and federal courts will be confronted with complex new issues of jurisdiction as well as issues requiring the resolution of conflicting legal provisions and decisions in the areas of family, criminal, matrimonial and business law.

The nine tribes in New York are the Cayugas, the Oneidas, the Onondagas, the St. Regis Mohawks, the Senecas, the Shinnecocks, the Tonawanda Senecas, the Tuscaroras and the Unkechaugs.

The New York State Judicial Institute and the Center for Indigenous Law, Governance and Citizenship at Syracuse University College of Law

are cosponsors of the event. The conference offers a unique opportunity to identify developing issues and work toward ways to address conflicts among these justice systems.

The conference will take place at The Marx Hotel in Syracuse. It begins on April 26 with a dinner and program on native restorative justice traditions. The dinner is made possible by a generous grant from the U.S. Department of Justice Bureau of Justice Assistance and the Tribal Judicial Institute. On April 27, a morning plenary session on jurisdiction will combine a historical review of seminal cases and treaties with a review of government policy and discussion of current jurisdictional concerns. A second plenary will provide an introduction to the different tribal court and justice systems. The afternoon will feature two breakout sessions: one on criminal law and jurisdiction over Native Americans in state, federal and tribal courts, and one on issues arising under the Indian Child Welfare Act (ICWA).

Attendees are eligible for continuing judicial/legal education credits. Anyone interested in learning more about the conference should contact Joy Beane at the New York State Judicial Institute: jbeane@courts.state.ny.us. ■

LISTENING CONFERENCE AGENDA

Sponsored by The New York Federal-State-Tribal Courts Forum, The New York State Judicial Institute, and The Center for Indigenous Law, Governance and Citizenship

Wednesday, April 26, 2006

Registration (7:00 p.m.-9:00 p.m.)
Opening Ceremony, Dinner and Program on Restorative Justice

Thursday, April 27, 2006

Morning:
Registration and Breakfast (7:30 a.m.-8:15 a.m.)

Plenary Session: Indian Country Jurisdiction 101

Plenary Session: Native Justice Systems in New York State

Lunch and Keynote Speaker

Thursday, April 27, 2006

Afternoon:

Break-out Session: Indian Children in State Family Courts: Understanding and Applying ICWA

Break-out Session: Criminal Jurisdiction in Indian Country: The Application of 25 U.S.C. §232

Wrap-Up Session: Problem-Solving: Hopes/Wishes for Justice Systems and Interface Between Native and Non-Native Justice Systems

Closing (4:15 p.m.)

COURT CONSTRUCTION UPDATE

MANHATTAN FAMILY COURT

Originally built in 1974, the Family Court building in downtown Manhattan was in dire need of renovation. The entrance had little direct light and the lobby configuration impeded the flow of traffic to courtrooms and offices, while the dark, foreboding structure was hardly a welcoming sight for families — especially children — in distress.

What's New? The courthouse has undergone a dramatic makeover, with a new, bright, cheerful stone and glass facade and a new lobby. The work represented phase one of a two-phase project and included roof repair and numerous upgrades on the ground floor, such as separate entrances for staff and the public, a renovated and expanded lobby, new offices for security, public restrooms, a newsstand and a children's center. A new infrastructure supports these areas, including new HVAC, plumbing, lighting, fire protection and security systems. The result: public spaces that are more user-friendly, light-filled and better suited to accommodating and monitoring large numbers of visitors at one time. What was once a cold monolith has been transformed into a welcoming presence for both staff and the public. Phase two involves renovation of courtrooms and public spaces on the upper floors.

In 2002, the Art Commission of the City of New York presented one of its 20th Annual Awards for Excellence in Design to the team that worked on the design for the facade renovation, which included the architect, the Administrative Judge of the New York City Family Court, and representatives of OCA, the New York State Dormitory Authority and several city agencies.

Architect: Mitchell Giurgola Architects, LLP

OCA Architect: Dave Patterson



Manhattan Family Court

Before: original facade, above

After: new exterior and lobby, right and below



PHOTOS AT LEFT: TED ERMANSONS

ALBANY COUNTY JUDICIAL CENTER

Albany County has opened its second new courthouse in less than a year – the Albany County Judicial Center. (The Albany County Family Courthouse opened in the spring. See "Benchmarks," vol.1, issue 1.)

What's New? The 80,000 square foot Judicial Center includes four courtrooms for the County Court (which hears criminal cases) and court-support services, as well as space for the Sheriff's Department and the District Attorney. The new courthouse allows the County Court to relocate from the Albany County Courthouse, relieving the overcrowding in that historic building. The project included renovation of the historic Stedman House, adjoining the courthouse, for use by the Public Defender's Office. The final phase of the Albany County Court Master Plan, the renovation of the County Courthouse (which houses Supreme Court), is underway.

Architect: Crandell Associates



Albany County Judicial Center

PHOTO: BBL CONSTRUCTION SERVICES, LLC

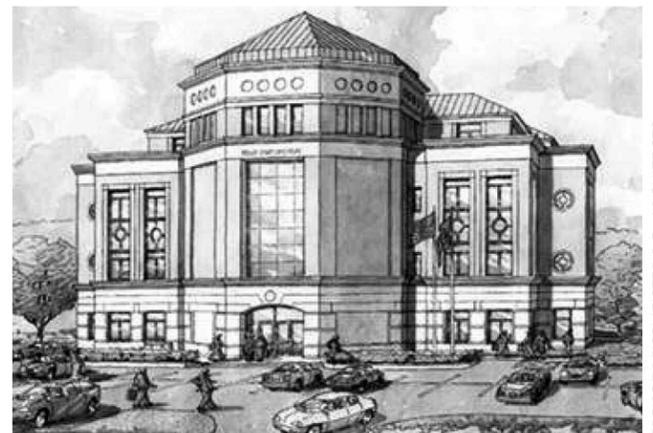
PUTNAM COUNTY COURTHOUSE GROUNDBREAKING

Putnam County will finally have a new courthouse. Most of the court facilities have for many years been crammed into the long, narrow County Office Building in Carmel. Visitors have to sit on benches in the narrow hallways, for lack of waiting rooms, and there are no attorney/client conference rooms.

What's New? Ground has been broken for a new 50,000 square foot, four-story courthouse. It will house four courtrooms (one for Supreme Court, one for Family Court and two for County Court, all with waiting areas and conference rooms); a hearing room; a Commissioner of Jurors and jury assembly facility to accommodate 70 to 85 persons; prisoner holding facilities and a sallyport; a children's center; and ancillary agency offices. There is also space for an additional courtroom in the basement.

Architect: Preiss/Breismeister P.C. Architects

OCA Architect: Ed Rodman



Artist's rendering of the Putnam County Courthouse

PREISS/BREISMEISTER P.C. ARCHITECTS

Court of Appeals Approves Screening Panels

CONTINUED FROM PAGE 1

each judicial district, with members appointed by the Chief Judge, the Presiding Justice of the respective Appellate Division, and bar associations.

The rules specify the following criteria for candidate evaluation: professional ability; character, independence and integrity; reputation for fairness and lack of bias; and temperament, including courtesy and patience.

The independent panels are intended to provide the public with a measure of confidence in the qualifications of judicial candidates,

about whom the public generally knows very little.

The newly-adopted rules implement other recommendations from earlier Feerick Commission reports, including: limiting what judicial candidates may pay for tickets to political functions; prohibiting the use of campaign funds for campaign-related goods and services for which fair value was not received; requiring judicial candidates to complete a campaign ethics program; and reconciling state judicial conduct rules with recent U.S. Supreme Court cases involving campaign speech.

The latest report recommends changes in the convention system by which political parties select Supreme Court justice nominees. Currently, parties hold September primaries to elect delegates who meet and select the nominees who appear on the ballot. The commission found that this process reinforces public perception that delegates rubber-stamp the party leaders' choices. Absent public campaign financing, a costly direct primary system is not preferable because it undermines public confidence to see incumbent judges

engaged in fundraising — potentially among lawyers who appear before them.

Instead, the report recommends amending the Election Law to make conventions a more open and deliberative process. Proposals to promote delegate independence and encourage candidates without party support include smaller conventions with fewer delegates; three-year terms; earlier delegate elections; more candidate information; and reduced petition requirements.

The report is available at: www.nycourts.gov/reports. ■

HISTORIC NEW YORK STATE COURTHOUSES

ERIE COUNTY HALL AND THE TRIAL OF PRESIDENT WILLIAM MCKINLEY'S ASSASSIN

Location: 92 Franklin Street, Buffalo, N.Y.

Houses: Supreme and Surrogate's Courts; County Clerk's Office; Erie County legislative offices; chambers, Eighth Judicial District Administrative Judge and administrative offices

Judicial District: Eighth

Built: Construction began in 1871; the dedication was not until 1876

Architect: Architect Andrew Jackson Warner of Rochester, N.Y., was paid \$24,000 to prepare plans

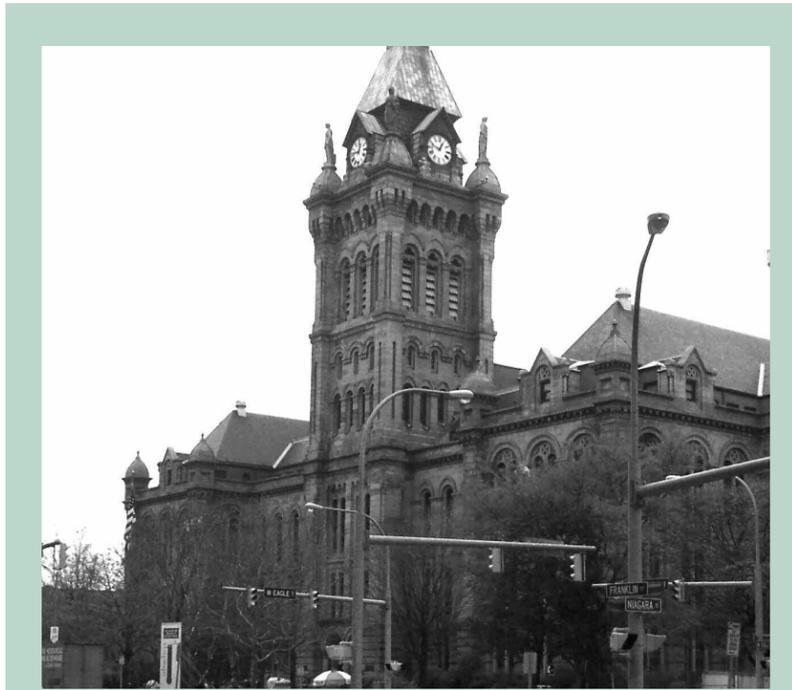
Architecture: The building, in the late Victorian Romanesque style, is a double Roman cross. In the center is the clock and bell tower, 40-foot square at the base and rising to a height of 268 feet, of which 170 feet is masonry. Four turrets are located on the upper central tower. At each corner is a pedestal capped with a 16-foot, 14-ton granite statue sculpted by Giovanni F. Sala. The northeast corner represents "Justice," the northwest corner "Mechanical Arts," the southeast corner "Agriculture," and the southwest corner "Commerce." The main walls are 80-foot high, constructed of granite from Clark Island, Maine (then considered the best building stone in the country). The first story is of uncut stone with chiseled edges; the stone above is bush-hammered, or distressed. Above the main walls, 12 dormers and 14 turrets rise 20 feet high.

Historic Status: Local and National Historic Landmark

THE ASSASSINATION OF PRESIDENT WILLIAM MCKINLEY

President William McKinley missed the official dedication of the Pan-American Exposition in Buffalo in May 1901 due to his wife's illness, but agreed to a later visit to help boost low attendance. He arrived at the exposition on Sept. 5, greeted by a large crowd. A popular president, his image was everywhere, according to the Buffalo Evening News — ribbons, programs, even glass tumblers.

At the same time, Leon Czolgosz arrived in Buffalo with the sole purpose of assassinating McKinley. Czolgosz had heard anarchist Emma Goldman give a speech in May, in which she reportedly advocated the "extermination" of all rulers. Czolgosz stayed in a room over John Nowak's



... in taking the life of our beloved president, you committed a crime which shocked and outraged the moral sense of the civilized world.

bar at 1078 Broadway and purchased a pistol in a shop on Main Street.

On Sept. 6, although political assassinations abroad and the growing anarchist movement at home worried the president's aides, McKinley insisted on attending a 10-minute public reception at the Temple of Music on the exposition grounds. Shortly after 4 p.m., Czolgosz, a handkerchief over his right hand, approached McKinley in the receiving line. When the president extended his left hand in greeting, Czolgosz fired two shots from the concealed gun. Before he was able to fire a third, bystanders knocked him to the ground. President McKinley exclaimed: "go easy on him, boys." The president was taken to the small hospital on the exposition grounds, which was not equipped for surgery, but doctors felt it was too risky to move him and operated on him there. Unable to locate one of the bullets, the doctors closed the wound, believing the bullet had ended up in fatty tissue and would not pose a threat.* The president was moved to the home of a friend to recuperate, but died

eight days later.

McKinley lay in state on Sept. 15 and 16 on the first floor of County Hall, in an area that today is marked by a roped-off brass intaglio.

THE TRIAL OF LEON CZOLGOSZ:

The trial began on Sept. 23, 1901, in the Superior Court chamber of Buffalo City Hall. Officials built a wrought iron fence in front of the entrance to the courtroom, fearing Czolgosz might be lynched. A tunnel, still in use, which connects the jail to the courthouse, was reportedly built for this trial.

Justice Truman C. White presided over the trial, with District Attorney Thomas Penney leading the prosecution and Loran Lewis, Robert Titus and Carlton E. Ladd as defense counsel. The jury of 12 men, whose occupations ranged from plumber to blacksmith, was chosen in under three hours.

Each eyewitness identified Czolgosz as the man who shot the president. Czolgosz reportedly sat with a blank stare throughout most of the testimony.

A detailed confession Czolgosz made to police after his arrest was admitted as evidence. In that confession, Czolgosz said: "I killed President McKinley because I done my duty. I don't believe one man should have so much service and another should have none."

Excluding jury selection and deliberations, the trial lasted less than five hours over the course of two days.

Before imposing sentence, Justice White addressed the defendant: "Czolgosz, in taking the life of our beloved president, you committed a crime which shocked and outraged the moral sense of the civilized world. You have confessed that guilt, and after learning all that at this time can be learned from the facts and circumstances of the case, 12 good jurors have found you guilty of murder in the first degree. The penalty for the crime for which you stand is fixed by this statute, and it now becomes my duty to pronounce this judgment against you. The sentence of the court is that the week beginning Oct. 28, 1901, at the place, in the manner and means prescribed by law, you suffer the punishment of death." Czolgosz died in the electric chair Oct. 29, 1901, at Auburn State Prison.**

Upon McKinley's death, Vice President Theodore Roosevelt became the 26th President of the United States. In his State of the Union address on Dec. 3, 1901, Roosevelt called anarchy "a crime against the whole human race." Congress made anarchistic speeches and meetings seditious and treasonable. Immigration laws were changed to exclude known anarchists, and those living in the U.S. were deported, including Emma Goldman. ■

*A new invention on display just yards from where the doctors operated — the X-ray machine — could have determined the bullet's location but was not used because the doctors were uncertain of its side effects.

**The electric chair used was invented by Buffalo dentist Alfred P. Southwick after he saw a man accidentally touch a live generator terminal. Southwick, believing this was a quick and seemingly painless way to die, developed his invention and worked to have states adopt it as a humane alternative to other methods of capital punishment.

DID YOU KNOW?

Who was the first lawyer admitted to the bar under the New York State Constitution of 1777?

Abraham Van Vechten, "The Father of the Bar in New York State," was born in 1762 in Catskill, Greene County. After attending Columbia College and clerking in the Albany law office of John Lansing Jr., he built a reputation as a real estate lawyer. He was the first lawyer admitted to the bar under the State Constitution of 1777. Over the course of his career, he served as Albany City Recorder, State Senator, member of the Assembly, Attorney General and member of the 1821 Constitutional Convention. He was also a Regent of the University of the State of New York. His wife was Catharina Schuyler, daughter of Philip Schuyler, an American Revolutionary general and one of the first U.S. Senators from New York. Van Vechten died in Albany in 1837.

NEW YORK STATE JUDICIAL INSTITUTE

Program Highlights

■ MARCH 2, 2006

Lunch and Learn Series: Preserving, Presenting and Preparing Medical Evidence in Child Abuse and Neglect Cases

This program will review the medical aspects of child physical abuse, sexual abuse and neglect, including proper work-up and issues of abuse imitators. The program also will address the forensic pediatrics approach to cases of child abuse and neglect.

■ MARCH 27, 2006

How to Plan and Present Legal Educational Programs

This faculty development workshop is designed for those judges who are interested in teaching at Judicial Institute programs. Through an interactive workshop led by nationally-recognized judicial educators, participants will explore effective presentation techniques.

■ APRIL 26-27, 2006

The New York Listening Conference Marx Hotel, Syracuse

Among the nine recognized Indian nations and tribes in New York State there are several court and justice systems. As some of the tribes transition to written law systems from oral traditions, or create new courts, state and federal courts will be confronted with complex new issues of jurisdiction. Bringing state and federal judges together with tribal court judges and representatives, the conference offers a unique opportunity to identify developing issues and ways to minimize and resolve conflicts among these justice systems. The conference, the first of its kind in New York, is cosponsored by the New York Federal-State-Tribal Courts Forum and the Center for Indigenous Law, Governance and Citizenship at Syracuse University College of Law.

■ MAY 2, 2006

New Approaches to Handling Juvenile Sex Offender Cases

This one-day training, open to Family Court judges statewide, will provide participants

with a greater understanding of the appropriate and necessary tools to make better decisions regarding the disposition of juvenile sex offender cases. Current approaches and innovative practices will be discussed so that judges will be better able to tailor dispositions to address the specific and unique risks and needs of juvenile sex offenders.

■ MAY 17, 2006

Enhancing Voter Participation in Judicial Elections

This conference will address one of the recommendations of the Commission to Promote Public Confidence in Judicial Elections (the Feerick Commission) and develop practical approaches to inform voters about candidates for judicial elections in order to enhance voter understanding of and participation in this important democratic process. Participants will include members of the Feerick Commission, the judiciary, community and bar organizations, the press and educators.

■ MAY 23, 2006

Partners in Justice Colloquium: Collateral Consequences of Criminal Charges — The Dialogue Continues

In May 2005, Partners in Justice: A Colloquium on Developing Collaborations Among Courts, Law School Clinical Programs and the Practicing Bar brought together members of the judiciary, law school clinicians and attorneys to discuss collateral consequences of criminal convictions. Participants explored collateral consequences affecting employment, housing, immigration and sentencing enhancements and discussed the legal profession's approaches to representation of people convicted of crimes. The colloquium sparked enthusiastic responses from judges, academics and lawyers who attended and confirmed the importance of collaboration. The May 2006 colloquium will review the work accomplished since the 2005 gathering, explore developments in collateral consequences law and identify specific areas for continued collaboration.

UCS Katrina Fund Nears \$30,000

THE UCS KATRINA COURTS AND Families Recovery Fund has raised almost \$30,000 to assist Gulf Coast court personnel and their families and aid in the efforts to restore the court system in the affected areas.

Deeply moved by the devastation in the Gulf Coast region, UCS court employees instantly made the recovery fund a "court family" project. Literally within minutes of the UCS call for assistance, phone calls and e-mails poured in from employees around the state, requesting information on how to help.

Although the fund accepts only monetary contributions, many employees wanted to help beyond giving money. Some networked informally to find Hurricane Katrina related donation centers for food, clothing and other essential items. Others selflessly volunteered their time and talents and visited the region to provide project-specific assistance. Numerous employees offered suggestions on how best to assist their Gulf Coast court community colleagues.

For more information about the fund, contact Barry Clarke at 212-428-2127 or bclarke@courts.state.ny.us. ■

Black History Month

AMONG THE FEBRUARY EVENTS marking Black History Month in the court community were a discussion of the latest developments in cancer treatment and prevention (Bronx); the 8th annual Future Leaders Achievement Awards (New York); a first time homebuyer's program (Kings); appearances by Theodore Shaw, Director-Counsel and President of the NAACP Legal Defense and Educational Fund (Bronx), actor James Earl Jones (New York) and pioneer educator Dr. Alice H. Young (Monroe); a gospel tribute (Kings); films; children's programming; and book talks.

Look for events in your judicial district celebrating Women's History Month in March. ■

2005-2006 Legal Updates

The Judicial Institute will continue its 2005/2006 Legal Update Program for court attorneys at the following locations:

■ **MARCH 7 - 8**
Marriott Hotel
101 James Doolittle Blvd.
Uniondale, NY

■ **APRIL 5-6**
Marriott Hotel
101 James Doolittle Blvd.
Uniondale, NY

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