

§ Benchmarks

JOURNAL OF THE NEW YORK STATE UNIFIED COURT SYSTEM

Chief Judge Announces Five-Point Plan to Address Judicial Pay Crisis

In a public statement delivered at Court of Appeals Hall in early April following the approval of the state budget — without a cost-of-living pay raise for New York judges — an impassioned Chief Judge Judith S. Kaye outlined a five-step plan, declaring that she will “leave no stone unturned” in obtaining raises for state judges.

Of the 50 states, New York has gone the longest without a judicial pay increase. New York judges are in the ninth year of a pay freeze, having last received a salary adjustment in January 1999. Chief Judge Kaye had proposed a cost-of-living adjustment for New York judges based on the salaries of federal district court judges, with retroactive adjustments to April 1, 2005. In addition, to make the process of setting salaries for high-level state officials more transparent and accountable, and to end the cycle of long periods without raises, the Chief Judge proposed the establishment of a broad-based commission to periodically study and set salary increases for judges and other high-level state officials.

The governor and legislative leaders had expressed strong support for judicial pay increases, and the Chief Judge’s salary proposals also won numerous editorial endorsements. Nonetheless, the Legislature and governor failed to agree on judicial salary adjustments because the issue



Judge Kaye delivers her April 9 statement on the judicial pay crisis, which was followed by a news conference.

adequate compensation for judges, stating, “No society can expect its courts to function with the excellence the public deserves when the issue of judicial compensation reaches such a level of unfairness and disdain, when our judiciary can no longer expect to attract and retain the very best lawyers at the pinnacle of their careers.”

Judge Kaye also warned that if no action is taken on judicial salaries before the Legislature adjourns in June, “the only remaining course

“Basic fairness and respect for our status as a co-equal branch dictate that the vital question of judicial compensation not be considered — and certainly not rejected — without affording us even an opportunity to be heard.”

STEP TWO: Judge Kaye has invited the governor and legislative leaders to the Court of Appeals — or alternatively has offered to go to the Capitol herself — to discuss the judicial pay crisis.

“It is essential that the other branches understand that we in the judiciary have reached a critical point in our history and that efforts must be directed at achieving a resolution while there is still time.”

In addition, she is urging that discussions on this subject among the governor and the legislative leaders be conducted in a transparent manner and that she and Chief Administrative Judge Lippman be included in those discussions.

STEP THREE: New York’s Law Day 2007 ceremonies at courthouses across the state will focus on judicial independence, and in particular on the connection between judicial independence and judicial compensation.

“Surely our founders, in providing for lengthy judicial terms and prohibiting diminution in judicial compensation — both as a means to assure judicial independence — could not have envisioned the thicket into which we have been thrust.”

STEP FOUR: The National Center for State Courts will undertake an independent assessment of the consequences of New York’s more-

“No society can expect its courts to function with the excellence the public deserves when the issue of judicial compensation reaches such a level of unfairness and disdain, when our judiciary can no longer expect to attract and retain the very best lawyers at the pinnacle of their careers.”

became embroiled with unrelated issues in the budget negotiations between the two branches. Judge Kaye expressed the frustration of all New York judges over the failure of compensation reform for reasons wholly unrelated to the merits, stating, “These most recent days have been distressing and infuriating for me and for all my colleagues on the bench as we struggle to comprehend why, yet again, the measure has failed for no reason related to its merit, or to us.”

Chief Judge Kaye warned of the dangers of a failure to maintain

of action available to us may well be to institute litigation with the full weight of the state judiciary behind it.” “That truly would be a sad day for us, for state government and for the people of New York,” she said.

Here is Judge Kaye’s five-step plan as outlined in her April 9 statement:

STEP ONE: Judge Kaye has written to the legislative leaders asking to speak on the subject of judicial compensation directly to members of the Legislature either in a joint session or in the respective conferences in each house.

NEW YORK’S JUDICIAL COMPENSATION CRISIS: THE FACTS

The value of judicial compensation in New York State has been seriously eroded. The cost of living has increased by over 26 percent since 1999, when New York judges last received a salary adjustment.

Because of New York’s uniquely long and severe pay freeze:

► New York is last among the ten most populous states in a cost-of-living-adjusted ranking (behind California, Florida, Georgia, Illinois, Michigan, North Carolina, Ohio, Pennsylvania and Texas).

► New York ranks 38th nationwide when salaries are adjusted for statewide cost of living. In reality, many New York judges rank even lower than that because most judgeships are based in metropolitan areas where the cost of living is higher.

► Since New York’s judges last received a pay increase, trial judges in the other 49 states have received pay increases averaging 3.2 percent a year, for a cumulative increase of more than 24 percent.

► A growing number of states have adopted mechanisms, including automatic cost-of-living adjustments, review commissions and linkage to adjustments accorded other groups, to ensure that judicial compensation is reviewed regularly.

DAVE OXFORD, NEW YORK LAW JOURNAL

than-eight-year-long judicial pay freeze, both from a state and national perspective. The center’s report will be completed and made public by May 15, 2007.

STEP FIVE: The Judiciary will seek an advisory opinion from the state attorney general and the state comptroller on the feasibility of unilateral action by the third branch to increase judicial salaries.

“This is entirely in keeping with the judiciary’s longstanding practice, within the context of our separation-of-powers framework, of asking New York’s chief legal officer and chief fiscal officer for their interpretation of key provisions of the law bearing upon extraordinary administrative action and the expenditure of monies in the public treasury.”

The Chief Judge emphasized that “while pursuing this course, I want to be clear that my foremost objective, and my intention, is to work with the governor and Legislature for comprehensive reform, including statutory adoption of our proposals for new judicial pay scales and a cost-of-living-adjustment-based quadrennial commission system for ongoing pay adjustments for government officials.” ■

To view Judge Kaye’s statement in its entirety, log onto: www.nycourts.gov/press/JSK/JudicialSalaryStatementApr9.pdf.

New DWI Statute

BY MICHAEL YAVINSKY

One criminal justice measure enacted in last year's legislative session that will have a significant impact on New York's criminal courts is Chapter 732 of the Laws of 2006. Commonly referred to as "Aggravated DWI Legislation," this law, which took effect Nov. 1, will affect the way the courts handle DWI cases.

The legislation creates two new sections of the Vehicle and Traffic Law. Driving While Ability Impaired By the Combined Influence of Drugs or of Alcohol and Any Drug or Drugs [new VTL § 1192(4-a)] occurs when

records. Court personnel who handle these cases should become familiar with these procedures.

The legislation creates new restrictions on plea bargaining in cases alleging a violation of the new Aggravated Driving While Intoxicated Offense [VTL § 1192 (2a)]. Also, the Department of Motor Vehicles-sponsored Drinking Driver Program is now mandatory for certain convictions. Additionally, anyone convicted of the new VTL § 1192(2-a) offense and sentenced to probation must install and maintain a functioning ignition interlock device as a condition of probation.

The biggest procedural change that arises from this new law is the requirement that every defendant charged with a DWI offense be screened for alcohol/substance abuse and dependency.

a "person's ability to operate... [a] motor vehicle is impaired by the combined influence of drugs or of alcohol and any drug or drugs." It is a misdemeanor punishable by a fine "of not less than \$500 nor more than \$1,000" or a jail term of up to one year, or both. Aggravated Driving While Intoxicated; Per Se [new VTL § 1192(2-a)] occurs when a person is operating a motor vehicle "while such person has .18 of one per centum or more by weight of alcohol in such person's blood, breath, urine or saliva." Also a misdemeanor, it is punishable by a fine "of not less than \$1,000 nor more than \$2,500" or a jail term of up to one year, or both.

The biggest procedural change that arises from this new law is the requirement that every defendant charged with a DWI offense be screened and/or assessed for alcohol/substance abuse and dependency. The legislation outlines the details of the screening and assessment procedure, which must be conducted by a credentialed alcohol and substance abuse counselor. Screenings and assessments are to be conducted at arraignment or at the court's discretion prior to the sentencing of any person charged with a DWI-related offense. The results of these screenings and assessments will be given to the defendant and forwarded to the court within 30 days of the court's order, with the new legislation providing detailed procedures regarding the confidentiality of these

The legislation also mandates every court to require defendants to complete treatment for alcohol/substance abuse or dependency where a court-ordered assessment indicates that the defendant, if sentenced to either probation or a conditional discharge, is in need of such treatment.

Chapter 732 also brings a number of changes that will affect the suspension and/or revocation of the driver's license of those convicted of DWI-related offenses. A first conviction for VTL § 1192(4-a) will result in a six-month revocation of the defendant's driver's license, while a first conviction for VTL § 1192(2-a) will result in a one-year revocation. Defendants who refuse to submit to a chemical test will now face a one-year — instead of the previously mandated six-month — revocation of their driver's license.

A further important change is that repeat offenders will now have to contend with permanent revocation of their driver's license. However, "permanent" does not necessarily translate into "forever," with the legislation outlining which combination of convictions and/or refusals to submit to a chemical test will result in such permanent revocation as well as what is required in getting the Department of Motor Vehicles to waive such permanent revocation. ■

Michael Yavinsky is the chief court attorney of the New York City Criminal Court

Center for Court Innovation Marks First Decade



GENE SORKIN

New York City Mayor Michael Bloomberg was among the speakers at a reception earlier this year marking the 10-year anniversary of the Center for Court Innovation, an independent entity that functions as the New York state courts' research and development arm. Guests celebrated the center's first decade of achievements, which include the creation of dozens of "problem-solving" specialty courts that are proving effective in reducing recidivism and revitalizing communities.

New Faces on the Court of Appeals



JUDGE EUGENE F. PIGOTT JR.

JUDGE EUGENE F. PIGOTT JR.

Judge Eugene F. Pigott, Jr. was confirmed by the state Senate Sept. 18, the sixth and final Court of Appeals nomination by Gov. George E. Pataki.

In addition to serving as Erie County Attorney, Judge Pigott was in private practice before being appointed and then elected to the state Supreme Court in 1997. He was elevated to the Appellate Division, Fourth Department, in 1998 and became presiding justice in 2000.

Judge Pigott, 60, replaces Judge George Bundy Smith on the Court of Appeals and is the first jurist from the Buffalo area to be nominated to the state's highest court since the mid-1980s.



JUDGE THEODORE T. JONES JR.

JUDGE THEODORE T. JONES JR.

Gov. Eliot Spitzer nominated Supreme Court Justice Theodore Jones to the Court of Appeals on Jan. 14. Judge Jones, who most recently served as Brooklyn civil term administrative judge, was confirmed by the state Senate on Feb. 12.

Judge Jones, 62, handled the case involving the December 2005 New York City transit strike, in which he held union leader Roger Toussaint in contempt of court under a strict application of the Taylor Law.

Judge Jones, who succeeds Judge Albert M. Rosenblatt, spent several years as a defense attorney with the Legal Aid Society and was in private practice before being elected to the state Supreme Court in 1989.

CHIEF JUDGE KAYE CONFIRMED FOR SECOND TERM

Chief Judge Judith S. Kaye, the first woman to sit on New York's Court of Appeals and the longest-serving chief judge in state history, has been reappointed to a second term. Nominated for reappointment by Gov. Eliot Spitzer in February, Judge Kaye, 68, was confirmed by the Legislature on March 6. Judge Kaye cannot serve past Dec. 31, 2008, the year in which she reaches the court's mandatory retirement age of 70.

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

JUDITH S. KAYE
CHIEF JUDGE OF THE STATE OF NEW YORK

JONATHAN LIPPMAN
CHIEF ADMINISTRATIVE JUDGE

ANN PFAU
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

LAWRENCE MARKS
ADMINISTRATIVE DIRECTOR

RONALD YOUNKINS
CHIEF OF OPERATIONS

EDITORS

ARLENE HACKEL, ANITA WOMACK-WEIDNER

DESIGN

HEATHER HAGGERTY

BENCHMARKS is available online at: www.nycourts.gov/publications
Comments and article ideas are welcome at Benchmarks@courts.state.ny.us.

Task Force Outlines Model to Revitalize NY's Probation System

By Anita Womack-Weidner

A NEWLY RELEASED REPORT RECOMMENDS THAT

budgetary and oversight functions of state probation services be shifted from the executive to the judicial branch because the current system is overburdened, also calling for additional state funding for local probation departments to bring reimbursement rates back up to levels set two decades ago.

"In 1986, New York state was reimbursing county probation departments almost 47 percent of their total budgets. Today, reimbursement to local probation departments hovers around 18 percent," cites the Feb. 26 report, issued by the Task Force on the Future of Probation in New York, at one point stating, "Probation is in dire need of more resources in order to do its job and fulfill its mission to protect public safety."

The 23-member task force was appointed last year by Chief Judge Judith S. Kaye to create a model for making probation a

more vital state entity. Chaired by former New York state Sen. John R. Dunne and comprising judges, court administrators, prosecutors, defense attorneys, probation officials, academics and others, the task force studied successful innovations in other states, met with and reviewed the literature of numerous experts and conducted public hearings around the state in gathering data for its report.

"While the state reaps the benefits associated with probationary sentences for those felons who would otherwise be incarcerated in state prison, it has failed to live up to its statutory commitment of contributing 50 percent toward the costs incurred by local probation departments," said Judge Kaye, in appointing the panel. There are currently some 120,000 offenders being supervised by probation officers statewide at an annual cost of \$4,000 per probationer. In contrast, it costs \$32,000 to keep an offender in prison for one year in New York state.

First introduced in the United States in 1841, probation has since emerged as a cost-efficient means of ending the cycle of crime by giving offenders a chance at becoming law-abiding, productive members of the community, at the same time providing objective information to the court system and its criminal justice partners about an offender's past criminal history, personal characteristics and outside influences in assessing whether that individual presents a good risk for a probationary sentence.

Though probation services are utilized by many different components of the criminal justice system, the state's criminal and family courts are the primary beneficiaries of well-funded, adequately staffed local probation departments and therefore have the most to lose if this downward spiral continues, stated the report, referring to the courts' reliance on probation reports and other information in making informed bail, sentencing and other critical decisions in cases involving adult

as well as juvenile offenders.

To address this decline in funding to New York's county probation departments, the task force recommends that the state provide an additional \$75 million annually, to be phased in over three years. In transferring probation oversight to the judicial branch, the group calls for the creation within the court system of a new Office of Probation and Correctional Alternatives. This new entity would replace the state's Division of Probation and Correctional Alternatives, with responsibility for distribution of state funds to local probation departments and training of probation officers statewide. Though the new office would also assist in enforcing the rules and regulations governing the practice of probation in New York, the delivery of actual services would still fall within control of local counties. ■

The full text of the report is available at: www.nycourts.gov/reports/future-probation_2007.pdf



Pictured here are several New York state foster children available for adoption.

National Summit Focuses on Children's Welfare

BY ANITA WOMACK-WEIDNER

Over 200 judges and child welfare experts from 46 jurisdictions convened in New York this past March for a summit aimed at devising ways to improve the care and protection of vulnerable children across the nation.

"A Summit on Children: It's Their Future—Ours Too!" was co-sponsored by the Conference of Chief Justices and the Conference of State Court Administrators in partnership with the National Center for State Courts and the New York State Unified Court System. The meeting is a follow-up to the first National Judicial Leadership Summit on the Protection of Children held two years ago in Minneapolis.

Each state represented at the summit was asked to participate as a team of three or more,

a group to ideally include the chief judge, state court administrator and either the governor's director of human services or a senior administrator of the human services agency responsible for the state's child welfare system.

"As you know, today and every single day, we have an enormous amount of work to do to improve the lives and the life chances of our nation's needy children, *our* children," said Chief Judge Judith S. Kaye, who welcomed participants to the summit.

"It is unethical and immoral for your life's circumstances to be predicated on your zip code," said keynote speaker Geoffrey Canada, executive director of Harlem Children's Zone, a non-profit, community-based organization that works to enhance the quality of life for children and families in some of New York City's most devastated neighborhoods. Some children are forced

CONTINUED ON PAGE 6

Celebrating Black History Month

The Dance Theatre of Harlem conducted an informal dance presentation as part of the courts' Black History Month celebrations in New York City. Other courthouse events commemorating Black History Month included several Erie County exhibits highlighting the achievements of African Americans in New York and beyond.



TED ERMANSOONS

Court Officers' Academy: Training New Recruits to Protect Our Courts

BY ANITA WOMACK-WEIDNER

Chief Joseph Baccellieri Jr., the head of the New York state Court Officers' Academy, uses tough talk while addressing a class of over 100 new recruits, who for the first time are mostly women. His speech pattern and directness are similar to a military drill instructor's during basic training. Later on, he explains that he takes this tough stance to make sure his new recruits understand their responsibilities in maintaining order and security in the courtroom.

A court officer for the past 24 years, Chief Baccellieri has worked at the academy in Manhattan for nearly 20 of those years and served as chief since November 2001. There are 21 full-time instructors at the Manhattan academy and two full-time instructors at a facility in Cohoes. All instructors are certified by the New York state Division of Criminal Justice Services and must pass a "police general topics" course before obtaining instructor status in areas such as firearms and counterterrorism.

"This is a great job," said Chief Baccellieri. "We treat everyone with dignity, including prisoners. We help people, and that responsibility doesn't end at the courthouse steps."

At no time was that truer than September 11, 2001. Court officers from the academy and area courthouses responded to the World Trade Center to help rescue people that morning. Three of them — Captain William Harry Thompson, an instructor from the academy, and Senior Court Officers Thomas Jurgens and Mitchel Wallace from New York County Supreme Court — perished that day. In all, four court officers and one academy instructor have died in the line of duty since the academy's inception.

Established in 1972, the academy is responsible for training officers who maintain order and provide security in courtrooms, court buildings and grounds across the state. There are approximately 3,800 court officers in New York state, with the number growing as new court facilities are built and existing ones expanded.

While their responsibilities are centered around court facilities, their powers as peace officers are statewide. Court officers are uniformed, armed personnel with the ability to execute warrants, make arrests and coordinate the activities of other court security personnel. Though candidates must be at least 18 years old, there is no maximum age limit for applying as a court officer, unlike the police and military. A 60-year-old woman once got into the academy, but eventually dropped out due to the physical demands.

Court security in New York has come a long way. It's been 23 years since Brooklyn Criminal Court became the first courthouse in the state to require screening of visitors. "It was chaos," said Chief Baccellieri. "Lines were out the door." In the beginning, court officers were trained in screening and other procedures by area police departments. Now, the academy certifies its own instructors as well as those from other agencies and police departments.

In keeping with the growing safety needs of our courthouses, officials have created mobilized and special response teams in which an elite group of court officers are specially trained in judicial protection, threat assessment and extracting unruly inmates from their cells.

The process for getting into the academy is long and arduous. Potential candidates must first pass a civil service exam. The exam is given once every four or five years and typically 60,000 to 90,000 people show up for it. The results are made available six to nine months later. Preliminary and comprehensive medical exams follow, along with a background investigation, physical agility test, psychological exam and an evaluation by a review board.

Three recent graduates were singled out by their instructors as being among the best and brightest.



Above: New recruits at the Court Officers' Academy in Manhattan Left: (From left to right) Mark Hirschman, Estelle Simpson and Marcus Durham

"When you're in the academy you feel like you're a family. When you graduate, you feel like you're in a bigger family." —Marcus Durham, recent graduate

Marcus Durham, Mark Hirschman and Estelle Simpson each waited at least five years between taking the test and getting the call that they were admitted to the academy.

Simpson, 43, was cited for completing the program under great obstacles. A former employee of the New York City Health and Hospitals Corporation, her 10-year-old daughter was diagnosed with a bladder tumor after Simpson began the program. She spent her nights in her daughter's hospital room and her days training at the academy. "It was rough," Simpson said. "I knew I wasn't going to give up, though. I had the prayers and encouragement

of everyone in the academy. Our class was a real family." Her daughter, Deanna, now has a clean bill of health.

"You hear young officers who've been here two years saying 'I love this job,' and officers who've been here 20 years saying 'you're going to love this job,'" said Durham, who was selected by his classmates to give the graduation speech. At age 35, he took a pay cut when he left his job as a retail store manager to join the academy. "When you're in the academy you feel like you're a family," he said. "When you graduate, you feel like you're in a bigger family."

Hirschman, 35, rose through the ranks at Wenner Media, the publishers of *Rolling Stone* Magazine, starting out as a messenger and ending up in telecommunications and security before deciding to become a court officer. He received the William Harry Thompson Leadership Award. "I did a Google search on him, and the type of person he was, the quality of the man... he was righteous," said Hirschman. "I have big shoes to fill." ■

New York State Family Court Open 24/7 for Emergency Cases

BY JANET FINK

New York State Family Court will never sleep again.

Family court judges are now available 24 hours a day, seven days a week to handle emergency requests in child abuse and neglect cases [Laws of 2006, ch. 740]. The new law took effect Jan. 18. Where parents have been uncooperative with a child protective investigation, the new law permits a child protective agency, before filing a petition, to seek a family court order. That order would require a parent to immediately produce a child at a designated

place for an interview and observation or to allow a child protective caseworker immediate access to the home.

Judges from each judicial district, and one each from Nassau and Suffolk counties and New York City, will be available via cell phone at all hours. Caseworkers and attorneys from child protective agencies will have a toll-free number they can call to contact the Office of Court Administration (OCA) Technology Division's help desk operators, on duty 24/7.

The operators, who have been trained in the new statute, will connect the judge and the parties, arrange for transcription of the

calls, generate the court orders, affix electronic signatures and transmit the court orders. Special forms have been developed with the assistance of OCA's Family Court Advisory and Rules Committee, and administrative orders have been issued to ensure that the designated judges will be able to issue orders beyond their own counties.

This collaborative, statewide effort has resulted in a seamless process for handling emergencies that put the safety of our children at risk. ■

Janet Fink is Deputy Counsel for Family Law, New York state Office of Court Administration.

HISTORIC NEW YORK STATE COURTHOUSES

CAYUGA COUNTY COURTHOUSE AND THE CASE THAT HELPED ESTABLISH THE INSANITY DEFENSE IN NEW YORK

CAYUGA COUNTY COURTHOUSE

LOCATION: 152 Genessee St., Auburn, NY

HOUSES: Supreme, County and Surrogate's Courts, as well as the law library and the probation department.

JUDICIAL DISTRICT: Seventh

BUILT: Sometime between 1833-1836 for \$30,000

ARCHITECT: Original structure designed by John I. Hagan. A 1922 fire gutted the courthouse and caused the dome to drop through the building. A third floor was later added.

ARCHITECTURE: Greek Revival, with a large dome intended to support a statue of "Justice." Plans for the statue were not realized due to the Panic of 1837, which caused financial restrictions. Also abandoned were plans to adorn the portico with statues of "Liberty" and "Temperance."

HISTORIC STATUS: Listed on both the national and state historic registries as well as the National Park Service's National Underground Railroad Network to Freedom.



In 1846, William H. Seward in Cayuga County Court House defended a man accused of murder and based his plea on the unprecedented grounds of insanity.

returned a verdict that Freeman was "sufficiently sane to stand trial." Over Seward's objection that this verdict was inconclusive, the trial continued.

On the day the murder trial began, Auburn residents burned Seward in effigy. Because of heightened publicity, State Attorney General John Van Buren, son of former President Martin Van Buren, prosecuted the case instead of the local district attorney. During the trial, the prosecution's experts argued that Freeman was perfectly sane and that his slow speech and unemotional behavior was due to his descent from African slaves and savage Native Americans. Seward countered that there was a history of insanity in Freeman's family.

The jury began deliberations on July 6, 1846, while a crowd outside shouted that Freeman should be crucified and Seward stoned. A guilty verdict was returned.

On appeal, the Supreme Court reversed the conviction and ordered a new trial, but Freeman died in his cell Aug. 21, 1847. An autopsy showed that Freeman suffered from advanced brain deterioration.

The reversal was in part due to the jury's improper preliminary finding, which, according to the court, "was defective and did not directly find anything, and certainly not the point in issue."

Seward, a former New York governor, went on to serve as U.S. Secretary of State in the Lincoln and Johnson administrations. Seward is credited with helping to write the Emancipation Proclamation and with making the purchase of Alaska from Russia.

A plaque in front of the courthouse reminds visitors of the Freeman trial. It reads: "In 1846, William H. Seward in Cayuga County Court House defended a man accused of murder and based his plea on the unprecedented grounds of insanity. Although scorned and humiliated for many for his stand at that time, history has since vindicated him as a man of principle, courage and foresight." ■

The primary sources used for this article were "Historic Courthouses of New York State" by Herbert A. Johnson & Ralph K. Andrist (1977) and "The Trial of William Freeman, for the Murder of John G. Van Nest" reported by Benjamin F. Hall, Esq. (1848).

BACKGROUND

William Freeman was born in Auburn, N.Y., in 1824 to a former slave and a Native American woman. In 1840, Freeman was arrested for stealing a stable horse from his employer. Upon investigation, he was discharged by a magistrate and officials came to believe that another black man, Jack Furman, had committed the theft. While Furman was in jail awaiting indictment, he claimed Freeman had been involved in the crime. Freeman was arrested and imprisoned again.

Freeman escaped from jail. When apprehended shortly thereafter, he maintained his innocence saying he escaped because Furman planned to implicate him. Furman was freed, while Freeman was tried and convicted for theft and escape.

At the age of 16, Freeman was sentenced to five years of hard labor at Auburn State Prison. It soon appeared that Freeman had an alibi for the night in question, while Furman was later convicted of stealing a different horse. While in prison, Freeman continued

to assert his innocence, and he was punished by a guard who beat him on the head with a piece of lumber.

Upon his release, Freeman returned to Auburn looking for work. Residents noticed he was now deaf and slow of wit, with a constant, vacant smile. He unsuccessfully sought warrants from two magistrates for the people who had sent him to prison. Freeman reportedly told his brother-in-law that "someone had to pay" for his conviction and imprisonment.

Not long after Freeman's release, a wealthy farmer, John G. Van Nest, and his family were murdered just outside of Auburn. Freeman was arrested the following day and identified by a victim who survived the attack. While transporting Freeman to the county jail, authorities had to elude the angry mobs that wanted to kill him.

Many Auburn residents soon became convinced that Freeman had committed the brutal and apparently senseless murders after hearing William H. Seward raise an insanity defense at the murder trial of Henry

Wyatt. In the Wyatt case, Seward had unsuccessfully argued that the inhumane treatment Wyatt received in Auburn State Prison made him insane and bent on revenge, causing him to kill a fellow inmate.

Seward was away when the Van Nest murders occurred, but his wife wrote to him about the case. After visiting Freeman in jail, Seward agreed to represent him.

THE MURDER TRIAL

Seward believed the defendant's sanity should be addressed at the threshold of the criminal proceedings. When he pleaded Freeman "not guilty by virtue of insanity," the battle of the "experts" began. A litany of doctors who worked in New York mental institutions testified, followed by Auburn residents who knew Freeman before and after his incarceration. Others, who interviewed Freeman in jail — including a reverend and a Sunday school teacher — also weighed in on his mental state. The judge left the issue of sanity up to the jury, which

DID YOU KNOW?

Which former delegate to the Constitutional Convention of 1787 disappeared without a trace?

JOHN LANSING JR., a former mayor of Albany and former chief justice of the New York State Supreme Court, disappeared after leaving a Manhattan hotel to mail a letter on Dec. 12, 1829. It is believed that he either drowned or was murdered. A cenotaph, or empty tomb, was built at Albany Rural Cemetery. Lansing, along with Robert Yates and Alexander Hamilton, represented New York as delegates to the Constitutional Convention in 1787, which resulted in the adoption of the U.S. Constitution and the formation of the United States of America. Lansing and Yates thought a strong central government would threaten New York's autonomy, and they walked out of the convention, never signing the Constitution.

New York State Judicial Institute Calendar

MAY

MAY 2-5

National Consortium on Racial and Ethnic Fairness in the Courts

The conference: "Saving Our Children: Justice and Fair Treatment of Youth in the Courts" explores solutions to the disproportionate number of minority youth in the family and criminal court system.

SPEAKERS INCLUDE: Rep. Charles B. Rangel (D-NY); U.S. District Court Judge Dora Irizarry; Chief Judge Judith S. Kaye; Buffalo Mayor Byron Brown and Dr. Jeremy Travis, president of John Jay College of Criminal Justice.

LOCATION: Marriott New York at the Brooklyn Bridge, Brooklyn, N.Y.

MAY 10 AND MAY 11

Abuse in Later Life: Elder Issues in Civil, Criminal and Family Proceedings

This seminar examines various forms of elder abuse and their impact on court proceedings.

LOCATION: Judicial Institute

MAY 22

Sexual Orientation Law

This program, co-sponsored by the Williams Institute on Sexual Orientation Law and Public Policy, focuses on sexual orientation law.

LOCATION: New York City Bar Association, 42 West 44th St., New York, N.Y.

JUNE

JUNE 1

JCEC Judicial Candidate Ethics Training

JCEC's mandatory campaign ethics training required of all candidates for elective judicial office other than Town and Village justices.

TIME: 2:00 p.m.- 4:00 p.m.

LOCATION: Judicial Institute (or by simulcast)

CONTACT: Nancy Lucadamo at 212-428-2526 to register

JUNE 27-28

Summer Judicial Seminar

This two-day seminar addresses judicial skills, ethics and substantive and procedural updates on family, civil and criminal law.

LOCATION: Uniondale Marriott

Children's Summit

CONTINUED FROM PAGE 3

to live in horrible conditions and to attend schools where students have failed for years, he added.

Canada also said that though people question how much it costs to fund programs that enrich children's lives, they rarely if ever think about what we as a society are willing to spend down the line, when many of these broken youngsters wind up in prison. Canada's organization spends \$3,500 annually per family to provide educational and other support services, a fraction of the more than \$30,000 it costs per year to incarcerate an individual in New York state. The Harlem Children's Zone serves more than 12,500 children and adults through a variety of programs designed to rebuild the community.

Gov. Eliot Spitzer told the audience that refocusing state dollars to intervene earlier in the life of a child to address education, health care and other issues is clearly where social policy should head, while Mayor Michael Bloomberg discussed steps that New York City is taking to provide better training and other support to its child protective agency personnel.

A group of young adults gave conference attendees a view of what it's like growing up in foster care. They told participants that every child deserves and needs caring adults and permanency in order to connect well with others and feel hopeful about the future.

Retired New York Family Court Judge Joan Cooney encouraged child welfare workers and others at the conference to do all they can to keep children transferred to a new foster home in their current schools. Foster children are more apt to become dropouts, she said, when they're constantly being moved from school to school. ■

VOLUME 3, NUMBER 1 SPRING 2007

Benchmarks

JOURNAL OF THE NEW YORK STATE UNIFIED COURT SYSTEM



1

DAVE OXFORD, NEW YORK LAW JOURNAL

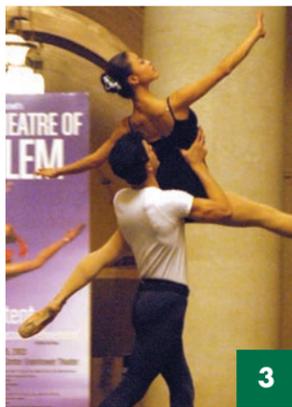
PAGE 1
Judicial Compensation



2

GENE SORKIN

PAGE 2
DWI Statute
Center for Court Innovation
New Faces on the Court of Appeals



3

TED ERMANSONS

PAGE 3
Commission Report:
Probation Interim Report
Children's Summit
Black History
Month Activities

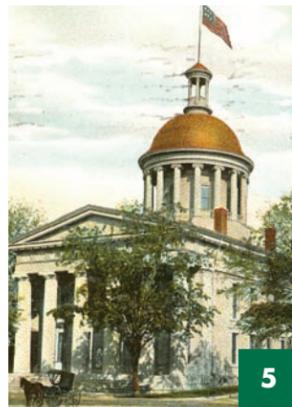


3



4

PAGE 4
Court Officers' Academy
Family Court Statute



5

PAGE 5
Historic Courthouse
Did You Know?



BENCHMARKS is
printed on recycled and
recyclable paper