

The Fund for Modern Courts is a nonprofit, statewide court reform organization dedicated to improving the administration of justice in New York. Our goals are to enhance the quality, diversity and independence of the judiciary, improve the jury system, and make the courts more efficient, fair and responsive to all seeking justice.



*Fern Schair*



*Victor A. Kovner*



*Ken Jockers*

2003 was an extraordinary year in New York's courts, producing both alarming scandal and promising new initiatives for reform. Public confidence in the justice system continued to erode amid allegations of political influence and corruption on the bench. Public concern about the fair operation of the courts and concern about New York's judicial selection process have increased dramatically. While most judges continued to uphold the highest standards on the bench, it became clear that problems inherent in New York's judicial selection process have captured the public attention. Noting this serious concern, Chief Judge Judith S. Kaye this year established the Commission on Public Confidence in Judicial Elections, Chaired by Modern Courts Chair Emeritus John Feerick, to suggest improvements to New York's current system of judicial elections. The Commission issued an interim report in December 2003, and will produce final recommendations in 2004. Together, these events have produced exciting opportunities for court reform in New York, and Modern Courts continued to play an essential role in promoting change.

In 2003, Modern Courts had a successful year building a constituency for court reform. Our ongoing public education, research, and in-court programming have been central to engaging individuals in the work of the courts. In addition, new programs and initiatives, including the introduction of the Cyrus R. Vance Tribute and the opening of an office in the Capital District, have helped expand our impact

with State leaders and communities in every corner of New York. As Modern Courts approaches its 50th Anniversary in 2005, we look forward to continuing our role as the leading citizens group dedicated to improving the court for all who seek justice.

## **Citizen Court Monitoring**

In 2003, the Citizen Court Monitoring program continued to bring the voice of the public into the courts. Court Monitoring operates on the premise that every individual can contribute to the fair and efficient administration of justice, and this year our monitors continued to observe court proceedings and facilities in numerous counties in the state, including Saratoga, Suffolk, Queens and Schenectady. In addition, by engaging Judges and court personnel in educating court monitors, the program strengthened ties with court administration and established new relationships that will ensure that our many recommendations are implemented.

## **Citizens Jury Project**

Modern Courts' Citizens Jury Project (CJP) has continued to provide direct assistance to individuals who have questions or problems regarding their jury service, while also producing important research about the jury service system. CJP has expanded its impact by interviewing jurors, collecting data about their impressions, and producing reports that make jurors' voices an important part of the planning process for the court system. CJP has also continued to conduct facilities assessments this year, producing a well-received analysis of improvements and ongoing needs in the Supreme Court building in Kings County.

## **Education and Outreach**

Modern Courts continued to present substantive public education about ongoing developments in the courts. In 2003, we produced new public forums on emerging issues in the courts. Almost Home: New Developments and Next Steps in Adoption brought together experts in foster care and permanency planning to examine the court system's "Adoption Now" program to expedite placements for more than 5,000 children. Our Hugh R. Jones Memorial Lecture offered Judges and the general public the opportunity to hear an esteemed jurist, the Honorable Howard A. Levine, speak about the critical elements of judicial decision-making. Also, Modern Courts served as co-sponsor of the Pathways to the Bench, which addressed crucial concerns about how to achieve a diverse

and representative judiciary. Each of these events offered citizens useful information to the public about the workings of their courts, and encouraged civic participation in ensuring fair and efficient justice.

To promote public debate about court improvements, Modern Courts this year maintained a bold and active voice in the media and at public events to ensure that attention remains focused on the need to enhance and modernize the judicial system in New York. Throughout the State, media continued to turn to Modern Courts as a reliable source of objective research and information about issues affecting judicial independence, access to the courts, and the effectiveness and efficiency of the judiciary.

In 2003, Modern Courts' legislative affiliate, the Committee for Modern Courts, also continued its critical efforts to promote constitutional and administrative reform of the judicial system. While maintaining our long-held position that merit selection is the best means to limit the influence of money and politics in judicial selection, Modern Courts expanded its policy this year to include proposals for improving the State's current system of judicial elections. Modern Courts' new Statement on Judicial Selection was developed with the understanding that our organization would bring an important and well-respected voice to the call for improving the current system while continuing to work toward our ultimate goal of expanding merit selection throughout the State.

As the public call for judicial reform grows, and the need for research, education and public participation continues, the coming year will present important opportunities to improve the system. With leadership from our Executive Committee Chair, Victor A. Kovner, and our Board of Directors, we look forward to continued success in 2004. As always, we are thankful to the many public-spirited corporations, foundations, law firms, and individuals listed in the following pages who have contributed so generously to our efforts to improve the quality of justice in New York State.



Fern Schair  
Chair



Ken Jockers  
Executive Director

In October 2003, the Fund for Modern Courts inaugurated the Cyrus R. Vance Tribute. Celebrating Cyrus Vance's vision, accomplishments, and legacy of integrity in government, the Vance Tribute honors a notable public figure who has made the New York State Court system more efficient, fair and accessible to all. Modern Courts was pleased to recognize New York State Attorney General Eliot Spitzer.

As an advocate, and as a proponent of the justice system as a means to protect individual rights, Eliot Spitzer is an exemplary public servant. As Attorney General, Eliot Spitzer has made New York a national leader in investor protection, environmental stewardship, labor rights, personal privacy, public safety and criminal law enforcement. Mr. Spitzer's work on issues such as gun violence, white-collar fraud, Internet marketing practices, air pollution and employee benefits has earned him a reputation as "the People's Lawyer."

Cyrus R. Vance set an exemplary standard for public service throughout his career. He served as United States Secretary of State, Chair of the Federal Reserve Bank of New York, President of the City Bar Association, and was a Partner at Simpson, Thacher and Bartlett, LLP. Mr. Vance was also a leader of the Fund for Modern Courts, and served as the organization's Chair from 1986 to 1990. In addition to his notable career on the national and international stages, Cyrus Vance was tireless in his efforts to reform the New York State Court system. Among his successes was promoting the implementation of merit selection for New York State's highest court, producing the nationally renowned Court of Appeals we enjoy today. The Cyrus R. Vance Tribute is supported by a generous private donor grant through the Communities Foundation of Texas.



*Modern Courts Board  
Chair, Fern Scbair,  
presents The Cyrus R.  
Vance Tribute to NY  
Attorney General  
Eliot Spitzer.*



# & Awards

## Samuel J. Duboff Memorial Award

5

Each year, the Fund for Modern Courts presents the Samuel J. Duboff Memorial Award to recognize a non-lawyer individual or group who have made an outstanding contribution to improving the quality of justice in New York State. The award is named for the late Samuel J. Duboff, who served as Chair of Modern Courts' Executive Committee for 19 years, and was a respected leader of many civic, social service, and arts organizations.

The 2003 Duboff Award was presented to two organizations whose volunteers improve the court system for all New Yorkers: The Law, Order and Justice Society of Schenectady County and the Family Abuse Court Services Program of the Mental Health Association of Westchester County.

The Law, Order and Justice Society (LOJ) provides dispute resolution, case management, supportive services and advocacy to individuals involved in the courts in Schenectady County. LOJ recently celebrated its 30th Anniversary of promoting fairness and equality in the justice system.



*Board Members and Volunteers of the Family Abuse Court Services Program accept the 2003 Duboff Award.*



*Members of the Duboff family (left to right): Modern Courts Board Member David B. Duboff, Elizabeth Duboff, Robert S. Duboff and Judith Duboff*

The Family Abuse Court Services Volunteer Program, part of the Mental health Association of Westchester, offers critical in-court help to victims. In Westchester County, 5,000 women are battered and 4,500 children are physically or sexually abused each year. Family Abuse Court Service volunteers help victims negotiate the court system by explaining the court process, providing emotional support and discussing a victim's options, accompanying clients to courts as non-witness friends, and assisting with referrals to social and personal services a victim may need when leaving an abusive relationship.

### **Past Winners of the Duboff Award include:**

2002 EISNER, LLP AND MELLON TRUST OF NEW YORK, LLC—  
SEPTEMBER 11TH RELIEF EFFORT

2001 THE CAPITAL DISTRICT COURT MONITORS

1999 THE VOLUNTEERS AT MY SISTERS' PLACE IN WHITE PLAINS, NEW YORK

1998 THE VOLUNTEERS AT THE CHILDREN'S CENTERS IN THE COURTS OF NEW YORK STATE.

1997 THE VOLUNTEERS AT THE JEWISH BOARD OF FAMILY & CHILDREN'S SERVICES COURT LIAISON PROGRAM, AND THE VOLUNTEERS AT THE YWCA VISITATION CENTER OF WHITE PLAINS AND CENTRAL WESTCHESTER.

1996 DOLORES DEL BELLO, LAW MEMBER OF THE STATE COMMISSION ON JUDICIAL CONDUCT.

1995 THE CITY-WIDE TASK FORCE ON HOUSING COURT.

1994 THE MONROE COUNTY COURT MONITORS, AND THE ROCHESTER CHURCHWOMEN UNITED'S TASK FORCE ON COURTS.

1993 PAULINE FEINGOLD, VOLUNTEER AFFILIATED WITH NUMEROUS CRIMINAL JUSTICE AND COURT REFORM PANELS, TASK FORCES, AND ORGANIZATIONS.

1992 EDITORIAL WRITERS, JOHN P. MACKENZIE OF THE NEW YORK TIMES, AND LEONARD O. HALPERT OF THE BUFFALO NEWS.

1990 THE NEW YORK STATE COURT APPOINTED SPECIAL ADVOCATES (CASA).

1989 THE LEAGUE OF WOMEN VOTERS OF NEW YORK STATE AND ITS JUDICIAL DIRECTORS.

1988 THE COMMUNITY DISPUTE RESOLUTION CENTERS PROGRAM.

1987 LILLEMOR T. ROBB, FORMER CHAIR, STATE COMMISSION ON JUDICIAL CONDUCT.

1986 THE DUTCHESS AND WESTCHESTER COUNTY COURT MONITORS

# Citizen Court Monitoring

6

**Comments on Modern Courts' award-winning program:**

**"One of the country's most effective projects in bringing problems to light and proposing changes to correct shortcomings."**

—*The American Bar Association*

**"...most well-run court monitoring programs in the nation."**

—*The National Center for State Courts*

**"...the catalyst for virtually every worthwhile judicial improvement in New York State."**

*and*

**"...the model for jurisdictions elsewhere striving to make the justice system more responsive to citizen needs."**

—*The American Judicature Society*

In 1975, The Fund for Modern Courts developed a program to give New York citizens a powerful voice in how their courts are run. The concept, known as citizen court monitoring, was simple: recruit a diverse group of volunteers around the state to observe court proceedings in their communities. The monitors would assess the courts from the point of view of those outside the legal system, and would recommend improvements to make the courts more fair, efficient, and user-friendly. The monitors' findings and recommendations would then be published by Modern Courts and released to court administrators, judges, court personnel, lawmakers, bar associations, civic groups, the media, and others concerned with how the courts function.

For more than 25 years, citizen court monitoring has been central to Modern Courts' efforts to involve the public in improving the administration of justice. Today, our volunteer court monitors number more than 600 and work in 16 counties across New York. Their efforts educate both the judiciary and the public; make the courts more accountable to the communities they serve, and produce tangible reforms that benefit all New Yorkers.

## **Tangible Results**

Our dedicated group of citizen court monitors has sensitized the court system to the needs of the public, and has been the catalyst for a number of significant improvements. For example, new courthouses have been constructed, old courthouses have been renovated, court security has been increased, in-court child care facilities have been established, civility training for court personnel has been instituted, the treatment of jurors has greatly improved, court calendars have been reorganized to combat congestion, and new court informational services have been developed. Court monitoring reports, and the testimony of Modern Courts staff, has been instrumental at hearings before planning commissions and other governmental agencies charged with investigating how our courts are functioning.

## **Recent Monitoring Activities**

In keeping with its tradition of maintaining a rotating roster of court projects around the state, Court Monitors observed several courts this year. During 2003, monitors observed proceedings in the Suffolk County Family Court, Saratoga County Court and the housing court in Queens County. Monitors found that these courts, which impact on the lives of the average citizen, would benefit from public scrutiny to address concerns about facilities, judicial response to litigants, and attorney preparedness.

In addition to new projects begun in 2003, the Citizen Court Monitoring Program released comprehensive reports this year on the Criminal Term of the Supreme Court in New York County, the Saratoga County Family Court and the Schenectady City Court.

## Outreach

To complement its monitoring activities, Modern Courts organized lectures, given by local judges and others, on court-related issues to educate monitors and other interested parties in the community. The lectures included presentations by Supreme Court Justice David Angiolillo on the operations of Westchester County's Integrated Domestic Violence Court, which allow cases involving domestic violence to be heard by a single judge in one court, and Christine Olsen, Project Director of the Suffolk County's Family Treatment Court, on that court's inventive approach to integrating assessment, treatment, and support services with the processing of neglect cases in the Family Court.

In 2004, Citizen Court Monitoring will continue to observe courts throughout the state, including projects in the Supreme Courts in Nassau and Westchester counties and the Saratoga City Court. A new project is also anticipated in Dutchess County. The program will also issue reports on the Saratoga County Court, New York County Criminal Court and several other courts.

**The Times Union**  
January 9, 2003

## Watchdog report cites problems with courthouse

Danielle T. Furfaro; Staff Writer

**SCHENECTADY** An independent watchdog group has concluded that the Schenectady County Courthouse is too small, has only one adequate courtroom, lacks conference space and is in desperate need of maintenance and housekeeping.

The report, slated to be released today by the Capital District Court Monitors, suggests that the court add another courtroom and another judge to take care of an increasing caseload. The report also urges Schenectady County to increase funding to the public defender's office so that it can hire more attorneys.

The nonprofit group's assessment of the operations at the Schenectady County Courthouse was the result of nearly six months of monitoring daily activity, during which it found that restrooms were often out of order.

"Monitors felt that such safety hazards and deficiencies in essential maintenance and housekeeping created an environment lacking in basic human dignity for litigants and staff," Court Monitor Director Helga Schroeter wrote.

Because of a mandate from the state Office of Court Administration, the county had already been planning to find more space and eventually create a joint city-county court facility, but that is not expected to happen for another three to five years.

The Capital District Court Monitors is a branch of the Fund for Modern Courts, a nonprofit, independent organization dedicated to improving courts in the state.

In the past few years, the Capital District Court Monitors has also looked at Albany Family Court, Schenectady Family Court and Saratoga Family Court.



*Kings County Supreme Court*

**“I’ve been coming here [courts in New York County] for many years, and I feel the change and see the improvements. It’s great that you have all of these materials, the movie is great, and the clerk is doing a really good job. I can see that a lot of effort has been put into the system.”**

—CJP Juror Interview

The Citizens Jury Project (CJP) was created in 1995, following a recommendation by Chief Judge Judith Kaye’s Jury Project, a blue-ribbon panel designed to review and reform jury service in New York State. CJP advocates for individual jurors on service-related issues, records and analyzes juror concerns, and publishes trimester reports of its findings. By assisting individuals and promoting systemic reform, CJP ensures that the jury system functions efficiently and effectively so that jurors may focus on their pivotal role as fact finders in our courts. In 2003, CJP’s role further expanded to include assessing court facilities in New York and Kings County and observing civil and criminal voir dieres in counties throughout southern New York.

In response to CJP’s reports on juror concerns, the Office of Court Administration (OCA) and New York and King’s County court officials have continued to improve juror summonses, signage, seating, acoustics, and access to information on the process of service. The court system has demonstrated its commitment to public feedback by meeting regularly with CJP staff in regard to new initiatives and by seeking programmatic assistance from CJP staff and interns.

### Court Facilities Surveys

This year CJP published the *Kings County Court Facilities Assessment*, its second report based on surveys collected from jurors in assembly rooms and courtrooms. In response to recommendations made in the report, Office of Court Administration officials and Kings County court officials and staff have made significant facilities and procedural improvements. For example, in the spring and summer of 2004, new microphones will be installed for the assembly

room and the benches in the assembly room will be replaced with new, accessible court

## Jury Duty? Prepare for Rejection

Though Many Are Called, Few Ever Deliberate



Associate Court Clerk Larry Levin, at the microphone, calling out the names of prospective jurors in the State Supreme Court building. At left are Rhonda Johnson and Martin Schlessel, associate court clerks.

By SUSAN SAULNY  
He was a sharp contrast to the man who said he could not serve because he might have to see gruesome photos. No, Mr. Leon, eager citizen, was looking forward to his duty last week.  
It was near 11 a.m. on Thursday, and Mr. Leon, an investment analyst from the Upper West Side of Manhattan, had already spent two days going through a familiar drill inside State Supreme Court at 60 Centre Street downtown. He waited, answered lawyers’ questions, was rejected, waited some more, then did it all over again in a different courtroom for different prospective jurors, too. The same thing happened in 1992 and 1999 when he responded to his summons for duty and went home without ever sitting on a trial.  
“I wouldn’t mind a trial at all, but I have a feeling that they seem not to like me,” Mr. Leon said.  
Whether or not litigators like Mr. Leon, he is certainly not alone in being prevented from performing his civic duty. In New York State, 82 percent of the people called for jury service never make it past voir dire, the process of questioning in which a jury is selected from those eligible to speak the truth, and the point of the questioning, usually by lawyers representing both sides of a case, is to decide whether potential jurors would be fair.  
The 82 percent statistic includes people who ask to be excused and are let go for reasons the

Continued on Page B3

THE NEW YORK TIMES METRO MONDAY, SEPTEMBER 8, 2003

## Many Are Called for Jury Duty

Continued From Page B1

courts have decided are legitimate, such as the financial hardship imposed by service, or serious medical conditions. But even with those exceptions, the number is high enough to worry legal experts and those in court administration.  
“Wow, that figure just struck me between the eyes,” Judith S. Kaye, the state’s chief judge, said in an interview last week as she described her reaction to what some in the courts have begun to call the 82 percent problem.  
See another way, the state uses the cases makes it harder to find jurors who might not already have information and opinions about the cases.  
Speaking about the city as a whole, Jane Eggers, director of the Citizens Jury Project at the Fund for Modern Courts, said: “With the amount of variation in a courthouse and a courtroom in a city as large as this one, administrators tend to overestimate rather than underestimate be-

furniture. In addition to facilities improvements, Kings County has responded to CJP procedural recommendations and will soon provide multi-lingual, telephonic information for jurors prior to service. The *Kings County Court Facilities Assessment* is available at [www.juryproject.org](http://www.juryproject.org).

### Voir Dire Monitoring

In June of 2003, CJP interns began observing criminal and civil voir dire in supreme courts throughout southern New York. The impetus behind this project was the Commission on the Jury, which was established by Chief Judge Kaye and is charged with examining the issue of juror utilization. For the voir dire observation project, OCA designed civil and criminal voir dire surveys that the CJP interns fill out, while interns also provide written narratives of criminal voir dire. Since June, CJP interns have observed over fifty voir dire in New York, Kings, Bronx, Queens, Nassau, and Westchester County. In 2004, CJP will analyze this data, and OCA will write and publish a report that provides observations on how civil and criminal voir dire are currently being administered, and recommendations for how these processes can be improved.

### Community Programming

While continuing to expand its in-court programs, CJP also reaches out to New York communities through the Youth Mock Trial program (YMT). YMT was designed to promote youths' understanding of and interest in the legal system. In the course of six weeks, CJP interns and staff teach 11-15 year olds about the legal system through the preparation of a mock trial. In addition, YMT brings in members of the legal community to talk with participants, address their questions and concerns about the legal system, and teach the youth about their rights and responsibilities. During the months of July and August 2003, fourteen young people from the Harlem Children's Zone's Booker T. Washington Center participated in YMT. The Harlem Children's



CJP Director Jane Eggers (fifth from left) with summer 2003 interns

Zone is a non-profit, community-based organization serving at-risk children. On August 6, 2003, the program culminated with the youths' presentation of their mock trial to Justice Milton Tingling of 60 Centre Street. In 2004, CJP will continue to reach out to individuals and communities both in and outside of the courts.

# Hugh R. Jones Memorial Lecture

**“Even if it were possible, I would not eliminate concepts of morality, justice and fairness from the judicial process. Such values, of course, should not merely be based on the personal moral code of the judge, but rather the historically enduring standards of righteous conduct and principles of justice that reflect the best in our national character.”**

—Hon. Howard A. Levine

On March 31, 2003, the Fund for Modern Courts presented the second Judge Hugh R. Jones Memorial Lecture at Albany Law School. The lecture is dedicated to Judge Jones, the former Associate Judge of the New York State Court of Appeals who was a leader in efforts to improve the courts. The lecture series honors Judge Jones by promoting research and writing on issues affecting the judiciary.

Judith S. Kaye, the Chief Judge of the State of New York, introduced this year’s speaker, Howard A. Levine, a former Associate Judge of the New York Court of Appeals. Judge Levine’s lecture, *The Common-law Tradition and its Critics: A Jonesian Response*, argued for an evolutionary versus a revolutionary approach to jurisprudence.

Well over 100 people, including judges, students, and concerned citizens, gathered in the Dean Alexander Moot Courtroom to Judge Levine’s speech. The lecture series extends Judge Jones’ example of scholarship and integrity on the bench by highlighting an established and well-respected jurist each year, and by presenting the public with a thoughtful examination of the important standards of jurisprudence.

The inaugural Hugh R. Jones Lecture, presented in 2002, was delivered by former Court of Appeals Associate Judge Richard C. Wesley, now of the United States Court of Appeals for the Second Circuit.

## Former Court of Appeals Judge Levine Defends Common Law Adjudication

BY JOHN CAHER

ALBANY — The continuing debate over common law-based adjudication versus textualism and originalism was spotlighted yesterday, when retired Court of Appeals Judge Howard A. Levine argued passionately for an evolutionary rather than revolutionary approach to jurisprudence.

Judge Levine, long considered an intellectual beacon of the Court of Appeals, yesterday delivered a pointed alternative to the judicial methodologies embraced by the likes of U.S. Supreme Court Justice Antonin Scalia and Judge Richard A. Posner of the U.S. Court of Appeals for the Seventh Circuit. Judge Levine, the most recent New York Court of Appeals retiree, flatly rejected the approaches of Justice Scalia and Judge Posner, and said values like morality and justice are necessary considerations in appellate adjudication, and that the incremental, common law methodology best serves legal and societal interests.

“The common law tradition is a pluralistic methodology especially appropriate for America’s society. It is the most pluralistic in the world,” Judge Levine told an audience at the Albany Law School.

Judge Levine, who left the Court of Appeals at the end of last year, was selected as keynote speaker for the second annual Judge Hugh R. Jones Memorial Lecture, an event co-sponsored by Albany Law School and the Fund for Modern Courts.

The late Court of Appeals Judge Jones delivered a lecture titled “Cogitations on Appellate Decision-Making” in 1979 that continues to influence the art of adjudication. In his Cardozo Lec-



Retired Court of Appeals Judge Howard A. Levine and Chief Judge Judith S. Kaye at Albany Law School. PHOTO BY ALAN SOLOMON

ture at the Bar Association of the City of New York, Judge Jones, a practicing lawyer who brought a practitioner’s viewpoint to the Court after he was elected in 1971, advocated common law case-by-case refinement of the law because “judges lack the competence or clairvoyance to anticipate the implications and ramifications of broad announcements... as well as the wisdom to formulate them.” That approach, which some Court of Appeals

## Approach to Judging Defended

...cepts and joins in common-law like decisions when original understanding of text is insufficient to support his strongly felt overall Constitutional vision,” Judge Levine said. “Under Judge Posner’s vision of a good society,” he said, “the values of

*“[T]he commitment to incremental development of law, to waiting for just the right moment when a broader rule may be articulated and justified as underlying prior narrow rulings... best enables correcting or at least limiting the damage of mistakes,” Judge Howard A. Levine said.*

...tends that... inevitably... decision-making... la and Judge... in... demonstration... of Scalia’s textu... that he willingly

free market competition and maximization of wealth and economic efficiency prevail over other inconsistent moral values. A judge who happens not to agree with Posner on his moral vision will get scant assistance from Posner’s jurispru-

dence on how to reach and write decisions.”

Judge Levine said values such as justice, fairness and morality are perfectly appropriate judicial considerations, so long as they are based not on a judge’s personal moral code, but on “historically enduring standards of righteous conduct and principles of justice that reflect the best in our national character.” He said those values, and the “creative role” of the judge, provide the foundation for common law adjudication.

“[T]he commitment to incremental development of law, to waiting for just the right moment when a broader rule may be articulated and justified as underlying prior narrow rulings... best enables correcting or at least limiting the damage of mistakes,” Judge Levine said.

The retired judge from Schenectady County also expressed concern over increasingly rancorous judicial elections, particularly in states where the high court judges are chosen by popular vote.

“The judiciary alone will not turn back the wave of skepticism spilling over into the political arena of selecting high court judges and punishing them for disfavored decisions,” he said. “It is my hope that practicing lawyers and academic lawyers will join the fray.”

Since its founding in 1955, Modern Courts has maintained a commitment to informing the public about the judicial system and building a constituency for improvements in the courts. Our outreach, education, research and public programs form an essential part of our reform agenda.

### **A Victory on Assigned Counsel Rates**

In 2003, Modern Courts played a role in helping increase assigned counsel fee rates and improving access to justice for all New Yorkers. Community outreach, public education, advocacy, and the testimony and surveys of our legislative affiliate made Modern Courts part of a winning coalition that will ensure that more individuals have access to quality free legal representation.

For nearly twenty years, the fee rates for attorneys representing the indigent in criminal and family law matters stood still at \$40 per hour for in-court work and \$25 per hour for work out-of-court. The result was a dearth of counsel willing to take on cases for those in need of representation. As a result of the leadership of Chief Judge Judith S. Kaye and the support of Modern Courts and others, the rates were raised to \$75 an hour for felonies and Family Court matters (eliminating the distinction between in-court and out-of-court work), and \$60 an hour for other cases, such as misdemeanors. Although the new rates do not go into effect until 2004, the announcement of the new fee structure had an immediate impact on the availability of counsel for the indigent.

The increase in assigned counsel rates is an important step forward for ensuring quality counsel for litigants who cannot afford legal representation. However, more remains to be done, and Modern Courts will continue the call for broader access to justice in the coming year. In 2004 a new Commission on Indigent Defense will review the system in its entirety. As part of this process, Modern Courts will continue its active role in informing the public about the need for broader services, and providing the information, research and public advocacy necessary to improve the indigent legal service system for those who seek justice.

### **New Initiatives to Improve Judicial Elections**

This year, the Committee for Modern Courts took an important step in promoting improvements in New York's current system of judicial elections. Modern Courts has always held that merit selection is the best means to safeguard the independence and integrity of the judiciary. Merit selection remains the primary goal of our agenda for reform. While Modern Courts continues to pursue the long-term Constitutional goal of expanding the use of merit selection for judgeships across the state, this year we also took steps to promote immediate reform to the current system of judicial elections and respond to the public outcry for improvements in judicial elections. In June, our Judicial Selection Task Force, Chaired by Board Member Carey Dunne, proposed a set of judicial election reform proposals (see inset page 14) focused on improving the nominating process,

"The success of the Integrated Domestic Violence Courts demonstrates the need for restructuring the trial court system across the state."

—Letter to the Editor, *Newsday*

## Reform of Judicial Elections Proposed by Watchdog Group

Critics Say Nominations 'Exclusively Controlled' by Political Parties

DANIEL WISE

THE FUND for Modern Courts, a longtime proponent for the appointment of judges, yesterday called on political leaders throughout the state to immediately implement a series of changes in the way judicial elections are conducted.

While the group continues to press for a constitutional amendment that would end the elective system, its executive director, Kenneth Jockers, said yesterday it is time to push for reforms in the elective system.

Brooklyn District Attorney Charles J. Foye is probing the way judges are nominated in Brooklyn, he said, and Chief Judge Judith S. Kaye has appointed a commission headed by former Fordham University School of Law Dean John D. Feerick to explore improvements to the current system.

As a result of the Brooklyn probe, Mr. Jockers said, it is "abundantly clear" that judicial nominations are "exclusively controlled by political parties and the public has no real input."

In a separate election-related development yesterday, the Brennan Center at New York University Law School filed a suit in the Eastern District of New York charging that 60,000 New York City voters inadvertently lost their votes in the 2000 presidential election.

The lawsuit seeks to force the city Board of Elections to use a device that already exists on voting machines to prevent voters from losing their votes



NYLJ PHOTO: RICK KOPSTEIN

Victor Kovner, chair of the executive committee of the Committee for Modern Courts, speaks at yesterday's news conference as Fern Schair, the group's board chair, looks on.

when they pull the levers that open the machines' curtains before they have voted.

That device, called "a sensor latch," blocks a voter from opening the curtains after throwing the lever that closes them until the voter either casts a vote for at least one candidate or affirmatively indicates an intention not to vote at all. According to the suit, the sensor latches have been disabled on New York City voting machines since 1964.

Christopher Riley, a spokesman for the board, did not return a call for comment.

Douglas Kellner, the Democratic commissioner from Manhattan, however, said he has been pushing to have the sensor latches reinstated for the last four years, but that the board's 10 commissioners have for the most part been evenly divided on the issue, strictly along party lines.

Continued on page 7

## Reform of Judicial Elections Is Proposed

Continued from page 1

In April, Mr. Kellner said, the Staten Island Republican commissioner, Michael J. Climi, voted with the five Democrats to reactivate the latches. However, a few weeks later, he said, the commission reversed itself, with the Democratic commissioner from the Bronx, Nero Graham Jr., voting with the five Republicans.

The Board of Elections has 10 commissioners: one Republican and one Democrat from each of the city's five boroughs.

### Five Recommendations

Regarding judicial elections, the Fund for Modern Courts made five recommendations:

- Establish public financing for judicial elections modeled on the system used in New York City for races for citywide offices.
- Develop timely disclosure requirements, including access to donation and expenditure information over the Internet.
- Distribute independently produced voter guides providing objective information about candidates and ratings from bar associations and other screening panels.

- Expand the use of monitoring committees set up by the New York State Bar Association and local bar groups at the urging of court officials in the wake of the U.S. Supreme Court's decision last year in *Republican Party*

In several respects the Fund's recommendations closely mirror the areas that Chief Judge Judith S. Kaye instructed the Commission to Promote Public Confidence in Judicial Elections to investigate.

of *Minnesota v. White*, 536 U.S. 658 (2002), which imposed free speech restrictions on states' regulation of what judicial candidates can say during elections.

Concern about new limits on the powers of the state Commission on Judicial Conduct prompted the call for the formation of local committees that could publicize infractions — an

action that would not implicate the First Amendment because it does not involve use of formal state powers.

Mr. Jockers said the Fund is not advocating that the committees be used to limit candidates' speech, but instead to clamp down on inappropriate practices such as tearing down an opponent's campaign posters.

In several respects the Fund's recommendations closely mirror the areas that Chief Judge Kaye instructed the Commission to Promote Public Confidence in Judicial Elections, headed by Mr. Feerick, to examine: the distribution of non-partisan voter guides and stricter ethics provisions.

Mr. Jockers said the Fund, through its legislative affiliate, the Committee for Modern Courts, is working with other groups, especially a number of organizations concerned about the treatment of women and children in the courts, to push for the changes.

Also attending yesterday's event were Victor Kovner of Davis Wright Tremaine who is chairman of the executive committee of the Committee for Modern Courts, and Fern Schair, who chairs the board of the Committee.

campaign finance and disclosure, voter education and standards of campaign conduct.

The adoption of Modern Courts' reform proposals was an important part of a larger movement to improve judicial elections in 2003. In response to sagging public confidence in the judiciary arising from a series of scandals involving money and political influence, Chief Judge Judith S. Kaye established the Commission to Promote Public Confidence in Judicial Elections, and chose former Modern Courts Chair John Feerick to head the Commission.

Modern Courts has been fully engaged in the Commission's public process, conducting research and building a constituency to support substantive change in the State's system of judicial elections. Modern Courts Chair, Fern Schair, testified during the "Feerick" Commission's public hearing process, and Modern Courts conducted research on campaign filings and public access to records that was used by the Commission in creating its reform proposals.

In December 2003 the Commission presented its Interim Report to the Chief Judge. Modern Courts was pleased that the Interim Report called for immediate administrative reforms and policy proposals that reflected our own Judicial Selection statement. Included among these proposals were the introduction of broad-based, independent panels to evaluate candidates for judicial campaigns and the expansion of the use of independent Judicial Campaign Conduct Committees to review campaign behavior and hear allegations of inappropriate campaign behavior.

### **Support for the Code of Judicial Conduct**

In 2003, Modern Courts joined with other community groups to protect New York's Code of Judicial Conduct. In the wake of the United States Supreme Court's decision in *Republican Party of Minnesota v. White*, which struck down Minnesota's conduct codes barring judicial candidates from stating their views on disputed legal or political issues, New York faced a challenge to its own code outlining proscribed political behavior by members of the bench.

To ensure that standards for judicial behavior are maintained, Modern Courts joined the Brennan Center for Justice in two amicus briefs that urged the preservation of New York's Code of Judicial Conduct. The Code of Judicial Conduct establishes standards for judicial behavior while on the bench and during elections, and outlines parameters of acceptable political activity by judges. The briefs submitted by Modern Courts and a variety of other civic groups offered strong support for the Code of Judicial Conduct as enforcing appropriate rules to meet the public expectation that judges remain above the political fray.

Modern Courts' participation in the amicus briefs impacted cases that had the potential to allow wide-ranging political activity by sitting judges and create significant pressure on judicial candidates to state their positions on matters that

## Modern Courts Statement on Judicial Selection Reform

The Committee for Modern Courts is a nonpartisan, nonprofit, statewide court reform organization founded in 1955. Led by concerned citizens, prominent lawyers, and business leaders, Modern Courts strives to improve the administration and quality of justice in our courts. It is the only organization in New York State devoted exclusively to improving the judicial system.

The method of selecting judges in New York State has a direct and significant impact on the fair and efficient administration of justice. The Committee for Modern Courts has adopted the following statement, which at this time sets out, in broad principles only, our position regarding judicial selection for judges in the state.

**1. The Committee for Modern Courts, as it has since its inception in 1955, calls for the adoption and public ratification of a Constitutional Amendment to expand the use of merit selection to choose judges statewide in New York. Merit selection represents the best method of limiting external pressures on judicial selection, and diminishing the role of money and politics on the process.**

**2. Until a Merit Selection Constitutional Amendment is passed by the Legislature and ratified in a public referendum, the Committee for Modern Courts calls for the adoption of rules and procedures to improve the process of judicial elections. Reform of the judicial election process will more effectively limit the influence of partisan politics, decrease the role of campaigning and fundraising, and help to safeguard the independence and integrity of the judiciary. Such reform should be instituted without delay by political parties and appointing authorities, and should also be advanced through legislation. Reform should, at a minimum, consist of the following:**

### **a. Nomination Process Reform**

*Judicial Nominations:* Before any candidate can be nominated for a judicial office in the State of New York, there should be a meaningful evaluation of the candidate's qualifications by an independent panel. Only candidates who have been found "well qualified" by such a panel should be nominated for judicial office. The independent panel members should be selected by independent and diverse organizations or appointing authorities, should represent the broad diversity of the area, and should include laypersons as members. There should be a limit (typically three) on the number of candidates who are approved by the panel for nomination for each judicial vacancy. If the panel finds an elected incumbent "well qualified," no other candidate should be approved by the panel for nomination to that judicial position.

### **b. Campaign Finance and Disclosure**

*Voluntary Public Finance System:* A public finance system should be adopted through legislation for all judicial candidates in the State of New York. Candidates opting into the public financing system should be subject to contribution limits, campaign spending limits, and threshold requirements to qualify for the finance system. Candidates who meet the requirements should be provided with public matching funds to ensure adequate resources to operate a campaign, particularly in cases where an opponent has opted out of the campaign finance system. To ensure a candidate's right to free expression, any public finance system should be voluntary. The proposed campaign finance system should be similar to that used by the New York City Campaign Finance Board.

*Disclosure:* For judicial candidates inside and outside the voluntary public finance system, there should be a timely campaign donation disclosure requirement, indicating the candidate's name, donor's name, donor's affiliation, date of donation, dollar amount, and source (individual/corporate/law firm/political action committee) of each campaign contribution. Further, candidates should be required to submit detailed campaign expenditure reports, and the donation and expenditure information should be easily available to the public through the Internet.

*Voter Guides:* Voters should be provided with meaningful and objective information about judicial candidates in advance of an election. The best method to achieve this is to include judicial candidates in voter guides produced by a Board of Elections or other independent organization. Voter guides listing each candidate's qualifications, professional background, and screening panel and other ratings should be distributed to all eligible voters prior to an election.

### **c. Fair Campaign Practices Committees**

Bar Associations and other organizations in each County or Judicial District should establish Fair Campaign Practices Committees, as proposed by the New York State Bar Association and the State court system, to address inappropriate judicial campaign activities. The Committees should educate judicial candidates about campaign rules, secure pledges from candidates to campaign in a dignified and ethical manner, and resolve disputes regarding judicial campaigns. Fair Campaign Practices Committees should be distinct from the local Bar Associations' Judicial Screening Committees.

## Panel Hears Range of Opinions on Electing Judges

BY JOHN CAHER

ALBANY — An assertion by the head of a court reform organization that the elective system of selecting judges is "corrupt" and inherently inferior to so-called merit selection drew a sharp reaction yesterday at the final hearing of Chief Judge Judith S. Kaye's Commission to Promote Public Confidence in Judicial Elections.

Fern Schair, chairwoman of the Committee for Modern Courts, a nonpartisan court reform organization, ignited a brief but heated exchange when she criticized the elective system and suggested that it is beyond salvaging. Modern Courts' political agenda has long included scrapping elections in favor of commission-based appointments, and it often points to the Court of Appeals selection process as a model.

Yesterday, retired Bronx Supreme Court Judge George Friedman, a member of the commission panel, took sharp exception to Ms. Schair's characterizations of the electoral process and her assumption that



Leonard A. Weiss of McNamee, Lochner, Titus & Williams testifies yesterday at the public hearing in Albany before the Commission to Promote Public Confidence in Judicial Elections. PHOTO BY AL SOLOMON

some top legal talent is shut out because they lack political clout.

"I personally disagree with most of what you said, Miss Schair," said Mr. Friedman, now of Wilson, Elser, Moskowitz, Edelman & Dicker. "I suggest to you the problem we have here is as much the fault of

people like yourself and organization's like yours that demean what we have."

Commission Chairman John D. Feerick, a former chairman of the Committee for Modern Courts,

Continued on page 9

could come before them on the bench. In one case, Albany County Judge Thomas Spargo filed a federal lawsuit claiming that the State Code violated his rights under the First Amendment. Judge Spargo's lawsuit arose from disciplinary proceedings held against him.

At the same time, two companion cases, Raab v. State Commission on Judicial Conduct and Watson v. State Commission on Judicial Conduct, were proceeding in the New York State Courts, also contesting the State Code of Judicial Conduct as a violation of judges' free-speech rights during campaigns. In June 2003, the New York Court of Appeals issued a decision in Raab and Watson, upholding the State Code of Judicial Conduct. The Court held that sitting judges may neither engage in partisan political activities nor make campaign promises that interfere with the impartial administration of justice as alleged in these cases.

In December 2003, the U.S. Court of Appeals for the Second Circuit agreed with Modern Courts and others that the Federal Courts should have abstained from hearing the Spargo matter, and that the case should properly be decided in the New York State Courts. As a result, the New York State Commission on Judicial Conduct will resume its disciplinary proceedings against Judge Spargo for violations of New York's Code of Judicial Conduct.

In each matter, Modern Courts took an active role in promoting strong, clear



PHOTOGRAPH BY ALAN SOLOMON

## Forum on Adoption

The Fund for Modern Courts and the New York State Bar Association co-sponsored a forum to examine Chief Judge Judith S. Kaye's "adoption now" initiative promoting faster and more efficient placements. The event, "Almost Home: New Developments and Next Steps in Adoption," was held Tuesday at the State Bar Center in Albany. Panelists included, from left, Aaron Britvan, co-chair of the State Bar's Committee on Adoption; Raymond Schimmer, executive director of the Parsons Child and Family Center; Judith Ashton, executive director of the Citizens' Coalition for Children; Janet R. Fink, counsel in the Office of Court Administration; Administrative Judge Sharon Townsend of the Eighth Judicial District; and Moderator Darlene Ward, executive director of CASA: Advocates for Children of New York State.

standards for judicial behavior on the bench and during judicial campaigns.

## Public Education: Judicial Diversity; Adoption Initiatives

This year, Modern Courts also continued its series of topical, timely public presentations to ensure that the community has access to information about new initiatives and ongoing concerns in the courts.

In October 2003, Modern Courts co-sponsored a forum held at

Albany Law School entitled "Pathways to the

Judiciary: A 'How To' Guide For Attorneys". The

session educated attorneys about the practical process of transitioning from the bar to the bench, and addressed specific concerns of women and minorities when considering judicial opportunities and increasing diversity in the Judiciary.

In December, the Fund For Modern Courts sponsored a program entitled "Almost Home: New Developments and Next Steps In Adoption." The focus of the

forum, held at the New York State Bar Association, was the Unified Court

System's Adoption Now

initiative, which has

promoted an expedited

process for finding

permanent homes for 5,000

children in foster care and

created new procedures for

future placements. Panelists

highlighted how the courts,

the State Office of Children

and Family Services, the New

York City Administration for

Children's Services, and local

social services agencies have

collaborated to streamline the

adoption process and eliminate

obstacles to expedited

permanency for children.

## Reform sought to ease adoptions

Albany Advocates want to streamline process to get children placed faster

By NICHELE MORGAN BOLTON Staff writer

All children deserve a safe and loving home, but too many — now known as "legal orphans" — are languishing for years in foster care and missing out on opportunities to be adopted.

The long delay in finding permanent homes for these children is the focus of a statewide initiative "Adoption Now," spearheaded by Court of Appeals Chief Judge Judith S. Kaye and the state Office of Children and Family Services.

Advocates and attorneys gathered in Albany this week to discuss adoption reform at a forum sponsored jointly by the Fund for Modern Courts and the state Bar Association.

A U.S. Department of Health and Human Services study found a child's chances for adoption become slim after age 9. On average, children just a year older will have spent almost three years in foster care and many are never adopted, the Child Welfare League of America reported in 2000.

The number of a

CHILDREN IN NEED			
2001 child welfare statistics broken down by Capital Region county			
County	Adopted	Waiting to be adopted	In foster care
Albany	47	106	564
Rensselaer	15	26	200
Saratoga	7	29	132
Schenectady	18	62	306

Source: 2001 Monitoring and Analysis Profiles, State Office of Children and Family Services

— more needs to be done, advocates said.

So far this year, 600 children have been adopted around the state, said Jan Fink, the Unified Court System's general counsel. That seems like a lot until you realize it's only 10 percent of the 6,000 children who are eligible, she said.

Those children who are not adopted are, in Kaye's view, "no excuses cases," and steps have been taken to review the circumstances, Fink said.

Work is ongoing to simplify paper trails and to speed up parental rights terminations, she said. Such details can hang up the process for months and even years.

"Adoption Now is a process, not a one-time event," Fink said.

Placing children in families don't always work out. Judith Ashton, executive director of the New

York State Citizens' Coalition for Children Inc.

"The easy part is recruiting families," Ashton said. "When people learn of a need, they will present themselves."

But research showed 40 percent of children awaiting adoption in New York did not have current photo listings in adoption books, she said, highlighting how the state needs to do a better job of getting the word out about these kids.

One problem is that some prospective families are turned down for adoptions for unclear reasons, she said.

Proposed legislation calls for an independent review of those families, particularly when the children they wanted are still available, Ashton added. "Some children wait 12 years. And when you peel back the covers ... you see some case workers weren't willing to consider those families."

They include single parents, gays and lesbians and interracial families, she said. "Nontraditional families are interested in nontraditional kids."

Mediation is also important to settle problems that hold up adoptions, including situations where a mother might refuse to give up her parental rights, even though her child is thriving in a foster placement that wants to make it permanent, experts said.

New York already has mediation centers in every county, and there's a push to take such cases out of the courts, Ashton said. "It isn't a judicial issue, but a human issue."

But just getting children adopted isn't enough, participants said. Parental support groups, information and education referral services, and mental health evaluations are also important to ensure the success of those new families.

"What we're all about is helping children achieve a productive adulthood," said Parsons Child and Family Center Executive Director Raymond Schimmer. "But we don't have a reliable funding stream for post-adoptive services in this state, and it's a crime."

Interested adoptive parents can get information from the state agency's Web site at [www.adoption.ny.gov](http://www.adoption.ny.gov)

### Voice for Reform and New Capital District Outreach

In 2003, Modern Courts also continued its vital role as the state's leading nonpartisan court watchdog, speaking out on such issues as judicial selection, court restructuring, Rockefeller drug law reform, and other issues that impact the public's access to justice. We continued to serve as a reliable, objective and informed source for the media on the numerous issues affecting the administration of justice in New York.

In October 2003, to increase our presence throughout New York State, Modern Courts opened an office in downtown Albany within walking distance of the State Capitol, the Legislative Office Building, the Court of Appeals, and the New York State Bar Association headquarters. From this office, the Fund for Modern Courts will organize public education and information events for the Capital region and Northern and Western sections of the State, and will also organize and implement Citizen Court Monitoring programs. In addition, the Committee for Modern Courts will use the office as a base for its advocacy work on policy and legislative issues that impact the fair and efficient administration of justice.

## Free the judges from boss rule

By FERN SCHAIR

The Daily News' "Judging the Judges" editorial series rightfully excoriates New York's flawed judicial system and applauds Chief Judge Judith Kaye for her reform efforts. The News is on target in arguing that it is time to discontinue the sordid practice of electing judges.

Judicial elections suffer from the same money-related problems as any election. Candidates need to raise funds. Who contributes to judicial campaigns? The same lawyers and corporate special-interest groups that appear before those judges. Imagine appearing in court to seek justice when your adversary or his or her lawyer has contributed heavily to the judge's campaign.

Worse, the process through which judges are elected is a farce. Rather than an election in which citizens cast informed votes, the system has devolved into one where party bosses dole out judgeships. Studies show that few voters have any idea who is running for judicial office in their district, much less what their qualifications may be.

Parties often cross-endorse candidates in exchange for other concessions, and in counties that are heavily Democratic or Republican, the winner is a foregone conclusion. The corruption from political patronage often follows. Bosses expect the judges they choose to toe the party line or face the consequences. This past year, it was reported that Brooklyn Civil Court Judge Margarita Lopez Torres fell out of favor and was not supported for reelection. By all accounts, she was fair and effective. Her shortcoming appears to have been her refusal to hire a law clerk referred to her by clubhouse leaders.

How best to minimize the influence of politics on the branch of government that was designed to be politically independent? Merit selection. It works this way: A bipartisan, broadly based nominating commission appointed by a variety of sources evaluates judicial candidates. The commission submits a list of qualified candidates to the chief executive, who appoints someone from that list and can be held accountable for that choice.

Thirty-three states choose at least some of their judges by merit selection. In New York 25 years ago, voters approved a constitutional amendment to stop electing judges to the Court of Appeals in favor of merit selection. If that's the best way to select judges for our highest court, surely it is the way for the rest of the judges.

Why the holdup? The state's lower courts offer fertile ground for political patronage. Perhaps that is why leaders of the Legislature refuse even to give voters an opportunity to support a merit selection process.

The stranglehold that party politics has on choosing a qualified and independent judiciary is proof that electing judges is bad policy. The challenge is getting legislators to buck the party bosses and act. Public outcry is the only thing that will make it happen.

Schair is chairwoman of the Fund for Modern Courts.

# The Fund For Modern Courts

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January 1, 2003–December 31, 2003

18

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January 1, 2003–December 31, 2003

20

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22

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# 2003 Financial Report

## with 2002 comparative statement

24

	<b>Audited 2003</b>	<b>Audited 2002</b>
<b>EXPENSES</b>		
Salaries	332,754	315,441
Employee Benefits and Payroll Taxes	70,935	55,978
Occupancy	75,731	70,370
Professional Fees	28,075	24,416
Conferences	10,735	5,348
Printing and Publications	16,429	15,786
Office Supplies	12,396	11,020
Telephone/Communications	8,117	7,445
Postage/Delivery Services	7,441	8,540
Equipment and Repair	17,070	27,740
Subscriptions and Dues	1,588	1,349
Travel	3,732	2,678
Depreciation	3,551	6,099
Internet Expenses	9,412	9,225
Miscellaneous	6,737	3,745
Insurance	<u>2,608</u>	<u>3,391</u>
<b>TOTAL</b>	<b>607,311</b>	<b>568,571</b>
<b>INCOME</b>		
Unrestricted Income	599,405	602,563
Restricted Income	<u>—</u>	<u>50,000</u>
<b>TOTAL</b>	<b>599,405</b>	<b>652,563</b>
Surplus (Deficit)	(7,906)	83,992

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