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# OFFICE OF THE PUBLIC DEFENDER

## ANNUAL REPORT

2011

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## INTRODUCTION

2011 was a year of continued challenges and continued successes in the Monroe County Public Defender's Office. Caseloads in all bureaus of the Office remained higher than historical norms, and the pressures on Office staff to provide high-quality legal representation continued.

Despite these challenges, due to the extraordinary dedication of the attorneys and support staff, we were able to continue to provide excellent representation for our clients. The attorneys in the Office continued to work significant, unpaid overtime to ensure that we continue to provide excellent representation to our clients. The support staff also expended considerable effort in assisting the attorneys in dealing with the enormous increase in cases.

But with the continued hard work exhibited by our staff came national recognition. As is set forth fully below, in 2011 the Office was recognized as one of the best public defender offices in the eastern United States when it was selected to be a pilot host site for the Public Defender Corps.

Additionally, in 2011 the Office continued its efforts in examining how to improve the representation we provide our clients. We also completed several initiatives began in 2010, and began several new initiatives, all designed to improve the quality of services we provide, and assist the criminal defense bar in providing quality representation to criminal defendants in the greater Rochester area.

In Part I of this Report, the Office's efforts to improve client representation, increase contact with the community that we serve, and continue our efforts to recruit highly qualified attorneys to be assistant public defenders. In Part II of this Report, the Office, its staffing, and caseloads will be outlined. Part III of this Report will discuss office recognition, community involvement and support; and Part IV will discuss future plans for the Office.

## PART I: OFFICE INITIATIVES

### A. Introduction

The strength of this Office is in the enormously talented and committed people who work here. They are truly an asset to our community. It is through their efforts that the following improvements and initiatives were undertaken and accomplished in 2011.

### B. Hiring Committee

Ensuring that each new hire exemplifies the qualities that make an excellent public defender is the responsibility of the hiring committee. Chaired by Special Assistant Public Defender John Bradley, the committee members (Special Assistant Public Defender Drew DuBrin, Special Assistant Public Defender Julie Cianca, Second Assistant Public Defender Jill Paperno, Assistant Public Defender Silvia Lopez, and Assistant Public Defender Amanda Conner) screen all applicants for open attorney positions, conduct all initial interviews with prospective applicants, and recommend to the Public Defender the top three applicants for each open position.

Based upon their excellent work this past year, the Office has hired five attorneys who were well-qualified for the position of assistant public defender and who exhibited a commitment to public defense. All of the new hires possessed excellent academic credentials and a dedication to public interest law. Two of the new hires were interns with the Office prior to being admitted to practice law. The remaining three hires were either employed at, or interning with, another public defender or legal aid office at the time of their hiring.

### C. Continuing Legal Education (CLE) Committee

In order to effectively represent our clients, our attorneys must be provided frequent and regular trainings on changes in the law, and how to improve their trial skills. Additionally, given the enormous amount of legal talent in this Office, staff attorneys routinely conduct CLE programs for

the outside defense and family law communities.

The Monroe County Public Defender's Office is an accredited CLE provider. The Office strives to provide staff attorneys and attorneys in the legal community high-quality CLE programs at no cost. It is the responsibility of the CLE Committee to organize continuing legal education programs for staff attorneys and the legal community. In 2011 it was chaired by First Assistant Public Defender Roger Brazill.

In 2011 the CLE committee organized the following CLE programs for the attorneys in the Office, and the private defense bar:

January 13, 2011	Grand Jury Practice
January 27, 2011	Ethical Considerations for Representing Mentally Ill Clients
February 10, 2011	Frye/Daubert Challenges to Expert Opinions
February 24, 2011	Ethical Considerations of Guilty Pleas and Wrongful Convictions
March 24, 2011	Rape Shield Law
April 15, 2011	Criminal Law Nuts & Bolts: Misdemeanor Overview
April 21, 2011	Demo of Direct Exam & Objections in Particular Cases
May 5, 2011	Character/Reputation Evidence & Prompt Complaint Evidence
May 6, 2011	Criminal Law Nuts & Bolts: Basic Felony Practice
May 20, 2011	Criminal Law Nuts & Bolts: Defective Misdemeanor Accusatories
June 3, 2011	Criminal Law Nuts & Bolts: Discovery/Motion Practice
June 16, 2011	DWI Basics
June 17, 2011	Criminal Law Nuts & Bolts: Felony Sentencing

July 14, 2011	Examining the Fire Arms Examiner
July 15, 2011	Criminal Law Nuts & Bolts: Initial Client Interview; Allocation of Decision-Making
July 22, 2011	Criminal Law Nuts & Bolts: Huntley/Wade Probable Cause Hearings
August 5, 2011	Criminal Law Nuts & Bolts: Basic Trial Preparation
September 16, 2011	Criminal Law Nuts & Bolts: Immigration and Other Collateral Consequences
September 22, 2011	When Family Law and Criminal Law Interact
October 28, 2011	DWI Basics

Hundreds of attorneys from upstate New York attended the above CLE programs. All of the above programs were provided at no cost to the attendees.

Additionally, the Office continued its trial techniques program initially developed in 2009. All new attorneys in the Office will be required to attend a 12 week course of basic trial techniques. (This is in addition to the week-long trial techniques trainer for new Office staff conducted in Troy, New York by the New York State Defenders Association.)

On November 18<sup>th</sup> and 19<sup>th</sup>, 2011, as a result of the hard work of Jill Paperno (2<sup>nd</sup> Assistant public Defender), and the attorneys of Easton, Thompson, Kasperek, Shiffrin, LLP, (with the great assistance of Peggy Prescott, Executive Secretary to the Monroe County Public Defender), the Office co-sponsored a two-day CLE with the New York State Defenders Association (NYSDA) on “Defending Against Snitches & Using and Challenging Scientific Evidence”. Several attorneys in the Office were faculty at the CLE program. Over 70 attorneys from Western New York attended and the CLE program received very favorable reviews.

Attorneys in the Office are often asked to present at various CLE programs throughout New

York State. In 2011 Office attorneys presented at CLEs sponsored by the Monroe County Bar Association, the New York State Defenders Association, and the New York State Association of Criminal Defense Lawyers.

Because of the work of this committee, and the attorneys in this Office who donated their time and effort speaking at CLEs, the legal community received valuable instruction in criminal and family law.

D. Investigators Committee

Defense investigation is a specialty in the area of criminal investigations. Our investigators must be up-to-date on innovative investigation techniques and it is the goal of this committee to ensure that is the case. Chaired by Special Assistant Public Defender John Bradley, the committee is responsible for organizing trainers for staff investigators. The committee is also responsible for assessing and improving how the investigators and attorneys work together to obtain the best possible result for our clients.

E. Internship Committee and Program

In 2011 the Office continued its expansion of our internship program. In addition to placing college students as interns, the Office continued to place law students, and in select cases, high school students. In 2011 the Office hosted 44 student interns (from law schools, local colleges, and high-schools) throughout the year. All of the student interns obtained valuable experience working in a large law office, and gained additional insight into the criminal justice system.

In 2010 the Office continued its "externship program" with the participating law schools. Student externs receive course credit towards their degree requirements, while also learning valuable knowledge about our criminal justice system. Additionally, the student externs assist attorneys in the Office by conducting legal research, drafting motions, and other forms of legal assistance.

Andre Vitale and Assistant Public Defender Don Scalia continue their efforts to place law students as interns in the Public Defender's Office. Law students who are interested in criminal defense volunteer their time learning about the criminal justice system, and gain valuable experience in criminal law, and trial practice. Additionally, they assist staff attorneys in the preparation of motions, briefs, memorandums of law, and research.

In addition to the internship programs offered to local college students throughout the year, in 2011 the Office continued the program to include select high school students. Kelly Sands, our internship coordinator, works very hard to provide our interns a challenging, positive experience as they work in the criminal justice community. Ms. Sands works with Special Assistant Public Defender Andre Vitale and Assistant Public Defender Don Scalia to place interns with our paralegal bureau, our investigators sections, or individual staff attorneys.

College and high school interns are offered the opportunity to observe the criminal justice system from a unique perspective, and they gain valuable experience. Working with their attorney-supervisors, interns review client files, assist staff during court proceedings, and observe a variety of court proceedings. Our interns also assist the Office, as we ask each intern to volunteer a few hours per week performing office work, such as filing and copying. We receive very positive reviews from the students who intern in the Office, and have successfully placed students from SUNY Brockport, SUNY Geneseo, the University of Rochester, Nazareth College, the Rochester City School District, and the BOCES 2 "New Visions Justice Professions" Program.

Finally, the Office continued its collaboration with the Strong Hospital Legal Nurse Consultant Program. Students in the program are registered nurses who are seeking to become legal nurse consultants. As part of their instruction, students from the program interned in the Office and assisted staff with reviewing and interpreting medical records, and researching medical issues.

F. Additional Initiatives

In 2011 the Office unveiled its new website ([www.monroecountypublicdefender.com](http://www.monroecountypublicdefender.com)). The website provides information about the Office, its staff, and helpful information to potential clients. Additionally, the website has an on-line "discussion forum" for criminal defense attorneys. This "discussion forum" assists local defense attorneys in seeking answers to difficult legal questions from other attorneys in the area.

PART II: OFFICE ORGANIZATION

A. Creation of Office and its jurisdiction

In a 1963 landmark decision, the Supreme Court of the United States ruled that all indigent defendants had the right to be represented by counsel in criminal proceedings. In order to comply with the Supreme Court ruling, Article 18-B of the County Law of the State of New York was adopted by the State Legislature in 1965. This law required the various counties throughout the State to adopt a plan for the representation of indigent defendants. In compliance with the state mandate, on May 23, 1968, by virtue of Resolution No. 250 of 1968, the Monroe County Legislature adopted Local Law No. 5 of 1968, thus creating the Office of the MONROE COUNTY PUBLIC DEFENDER.

By law, the Public Defender is required to "represent, without charge, at the request of the defendant, or by order of the court with the consent of the defendant, each indigent defendant who is charged with a crime...in the county...in which such public defender serves."

The Monroe County Public Defender's Office represents individuals in the courts within Monroe County, including the City of Rochester and the towns and villages within the geographical boundaries of the County. This area has a population of approximately 700,000 people.

The office handles cases in:



- A. Town and Village Justice Courts
- B. Rochester City Court (including Rochester Drug Treatment Court)
- C. County Court (including Mental Health Court, Veterans Court, and Judicial Diversion Program Court)
- D. Supreme Court
- E. Family Court
- F. Appellate Division, Fourth Department and Court of Appeals
- G. United States Supreme Court (when required)

The Public Defender represents the indigent accused at every stage of the criminal proceeding from the arraignment through final disposition, including, when appropriate, appeals from adverse judgments and decisions.

Our goal is to provide to the poor who are accused of a crime, or who are entitled to representation in family court, truly competent legal representation which is at least equal to that which they would expect to obtain from privately retained counsel. An individual's constitutional rights must be protected regardless of his or her financial circumstances.

B. Staff

During 2011, our staff included 60 attorneys, 1 confidential assistant, 5 investigators, 6 investigative assistants, 9 full-time secretaries and 2 receptionists, both of whom are bilingual. The attorneys are precluded from engaging in private practice.

Assistant public defenders are assigned to work in the Town Court Bureau, the City Court Bureau, the Superior Court Bureau (Non-Violent Felony Section and the Violent Felony Section), the Family Court Bureau, or the Appeals Bureau.

The Office staff takes great pride in the quality of the work they provide to our clients. Their

work results in high-quality representation that advances justice in our community. As an example, in 2011 the Office conducted 149 trials, and 63 of those trials (42%) resulted in a complete acquittal. Another 43 of those trials (29%) resulted in a conviction to a lesser offense.

### C. City Court Bureau

The Rochester City Court has a heavier caseload than any other Criminal Court in Monroe County. All felonies, misdemeanors and violations of the law committed within the geographical boundaries of the City of Rochester are handled by City Court. A City Court judge has preliminary jurisdiction over all felonies and complete jurisdiction over misdemeanors and violations.

The responsibilities of the Assistant Public Defender assigned to City Court include gathering information to assist the court in determining a defendant's eligibility for representation, appearing at arraignment, making bail applications, participating in pre-trial conferences, investigating and preparing a defense to the charges, preparation and argument of various types of motions, pre-trial hearings, preliminary hearings, trials, social service agency referrals, and sentencing. The City Court Section also has the added responsibility of representing individuals who were charged with violations of their parole, and individuals whose cases have been transferred to Rochester Drug Treatment Court, Monroe County Mental Health Court, the Integrated Domestic Violence Court, or Monroe County Veterans Court.

In 2011, all of these responsibilities were carried out by a total of thirteen Assistant Public Defenders and one Special Assistant Public Defender, who is in charge of the City Court Section. The attorneys share the enumerated responsibilities on a rotating basis.

In 2011, this Office was called upon to represent clients in approximately 12,500 cases in the City Court of Rochester. In addition, the attorneys in this section were assigned to represent more than 790 parolees who were charged with violating the conditions of their parole release. That

means, on average, each Assistant Public Defender would have been assigned to approximately 1000 cases during the course of the year. That number of case assignments is more than double the recommended maximum caseload as established by the National Legal Aid and Defender's Association.

#### D. Town Court Bureau

The office is required to represent persons accused of crimes in the various town and villages throughout the County. In 2011 the Office increased the staffing in this Bureau to account for the increased number of cases in the towns and villages of Monroe County. There are eight assistant public defenders (overseen by a Special Assistant Public Defender) assigned to cover the Town and Village Justice Courts within the 21 towns and villages of Monroe County.<sup>1</sup>

The newly hired Assistant Public Defenders are traditionally assigned to the Town Courts. The Town Courts have heavy case loads, erratic court hours and varying local court procedures. The assignment of a Special Assistant Public Defender to the section enables us to provide our new attorneys with the appropriate training and orientation to the local justice court process and essential supervision so as to ensure quality representation for our clients.

In 2011, approximately 4000 clients were assigned to our Justice Court Staff of eight full-time attorneys. Therefore, each of the newly hired attorneys in the section was assigned to an average of approximately 500 cases. This is almost within the recommended caseload guidelines for misdemeanor attorneys.

#### E. Superior Court Bureau

In 2011, the Superior Court Bureau (divided into the non-violent felony section and the violent felony section) was staffed with 20 attorneys, including the First Assistant Public Defender,

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<sup>1</sup> Although there are 21 Town and Villages in Monroe County with a justice court, almost all of those courts have at least two judges. The attorneys in the Town Court section must handle 46 separate courts in the 21 Towns and Villages in

the Second Assistant Public Defender, and four Special Assistant Public Defenders.

The attorneys in the Bureau handled felony cases, the most serious charges against the indigent accused. The attorneys appeared in all courts, including: Supreme Court, County Court, City Court and Town/Justice Courts. The Bureau handled violent and nonviolent felony offenses.

The attorneys in this Bureau handled most aspects of the criminal process, including local court preliminary hearings, local court pleas and sentencing; superior court pleas and sentencing, hearings, motions, and trials. In addition, these attorneys handle probation violation proceedings, parole cases (preliminary hearings, final hearings, and administrative appeals), habeas corpus proceedings, and mental health proceedings under the Criminal Procedure Law.

While our present staffing level does not permit us to provide vertical representation in all felony cases, we do provide this type of representation in violent felony offender and repeat offender cases. Vertical representation was also provided in all homicide cases and to select clients charged with other serious felonies, such as class A and B drug offenses.

This Office remains committed to providing vertical representation whenever possible since it provides the indigent accused the most effective representation possible. Our goal is to provide vertical representation to all those accused of a felony offense.

In 2011, we were assigned to approximately 4,301 felony cases. The felony caseload per attorney ratio is approximately 215 new cases per attorney. That represents a current felony assignment rate which is far above national standards for caseload maximums.

#### F. Family Court Bureau

The role of the Public Defender's Office in Family Court has continually grown. The State Legislature has consistently expanded the right to counsel for indigent persons involved in the

Family Court process to include more cases where counsel is required.<sup>2</sup> The State has also passed legislation requiring more court appearances in certain types of family court actions which requires our family court attorneys to devote a significant amount of time to appearing in court.

Our Family Court staff is comprised of one Special Assistant Public Defender and seven Assistant Public Defenders. Each attorney is assigned to the "intake part" on a rotating basis and is responsible for handling the cases assigned to our office through completion.

In 2011, this office was assigned to represent 3500 new clients. To put this caseload into a historical perspective, in 1987, there were five attorneys in our Family Court section who were assigned to represent 865 clients. That 1987 caseload was within 10% of management guidelines which suggest that a maximum caseload of approximately 150 cases be assigned to each attorney per year. Currently our eight Family Court attorneys are each required to provide representation to significantly greater number of clients each year. Last year, each family court attorney was asked to represent over 425 clients per year.

This number is far above the recommended caseload for family court attorneys.

The goal of our office is to try and maintain the family unit whenever possible and to assist clients to negotiate the network of court-ordered services and providers thereby holding the state to its statutorily mandated obligation "to help the family with services [in order] to prevent its breakup."

#### G. Appeals Bureau

A person who is aggrieved by the final determination of a court has the constitutional right to at least one appeal. The Public Defender's Office is assigned by the Appellate Division or the appropriate appellate court to handle such proceedings. The Public Defender is assigned to appeal

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<sup>2</sup> The Public Defender's jurisdiction in Family Court is specifically set forth in § 262 of the Family Court Act which includes representing indigent respondents in child abuse, child neglect, permanent termination of parental rights, family offense, custody, paternity/support and support violation cases.

not only cases of our clients, but also for those defendants who want to appeal, but have exhausted their funds and who, after it is determined by the Court, cannot afford to retain private attorneys for purpose of an appeal.

The preparation and argument of appeals are specialties within the field of criminal law. Proper appellate practice requires not only a strong background in law, but also strong writing skills and the ability to orally argue the law before an appellate court. The appellate attorney must first familiarize himself with what went on in the court below and then must research the law pertaining to the issues which have been discovered. The appeals attorneys argue cases before the Monroe County Court, Appellate Division (Fourth Department), Court of Appeals and the United States Supreme Court (when required).

In 2011, our authorized appeal staff consisted of the Special Assistant Public Defender in-charge of the section and five Assistant Public Defenders.

The attorneys in the Appeals Bureau of the Monroe County Public Defender are primarily responsible for representing persons appealing felony convictions, and perfecting family court appeals.

Finally, the Bureau has continued to assist in the research, analysis and presentation of trial court cases. This work is instrumental in insuring that our attorneys are able to provide the best possible representation for our clients. This work occurs on a variety of levels. Pretrial motions and written requests for jury charge in felony cases are regularly reviewed and edited by attorneys from this Bureau. Additionally, Bureau attorneys research numerous evidentiary issues, -- sometimes preparing memoranda or motions. Bureau attorneys have also assisted trial attorneys on collateral issues which sometimes arise.

In 2011, the six attorneys in our Appeals Bureau closed approximately 197 cases. Included in

this number were eleven cases perfected at the Court of Appeals (New York's highest appellate court). As the Court of Appeals typically considers approximately 100 criminal cases per year for the entire State of New York, this is a very impressive number and a testament to the quality of the work performed by the attorneys in the Bureau. The Appeals Bureau is truly one of the best appellate offices in New York State.

H. Investigation Bureau

During 2011, the Monroe County Public Defender's Office employed five full-time investigators, one of whom is the Chief Investigator in charge of the section.

The statistics for 2011 are as follows:

	<u>Criminal Trial Parts</u>	<u>Family Court Appeals Court</u>	<u>Total</u>
Investigations/ Interviews	4,306	455	4,761
Subpoenas	557	226	783
Other Misc. Matters	423	131	554

In 2011 more than 6,000 criminal and family court investigation requests were handled by our investigative staff. The work performed by our investigative staff is reflected in our ability to successfully resolve cases for our clients either by disposition or trial.

PART III: OFFICE RECOGNITION, COMMUNITY  
INVOLVEMENT AND SUPPORT

A. The Jeffrey A. Jacobs Award

In 2010 the Office established an annual award in the memory of former Special Assistant Public Defender Jeffrey A. Jacobs. Jeff Jacobs was a truly outstanding attorney and person. His commitment to justice for the indigent was unparalleled in our community. Jeff was a fierce advocate, and was justifiably proud of his trying over 100 felony cases. Many of those cases were

difficult, complex cases requiring Jeff to become familiar with novel scientific theories, and develop effective trial strategies.

Jeff was also a role-model for younger assistant public defenders. He generously gave his time to assist younger attorneys on their cases and provide encouragement as they handled difficult cases. His dedication to his clients, perseverance despite the circumstances, and commitment to a fair justice system were a source of inspiration for defense attorneys throughout our community.

Jeff tragically passed away in November of 2006 after an eight month courageous battle with brain cancer.

The Jacobs Award recognizes a criminal defense attorney from the greater Monroe County area who exemplifies the above qualities, and who has performed truly outstanding trial work in the preceding year. The award winner is chosen according to the following criteria:

(a) the complexity of the cases tried, which may include the effective use of experts, and/or litigating complex forensic or scientific issues; and/or (b) fearless advocacy exhibited on behalf of the client; and/ or (c) creativity demonstrated in the presentation of the defense.

In 2011 the Office continued its recognition of a local attorney who exemplified Jeff's commitment to excellent defense of the indigent with the awarding of the 2011 Jeffrey A. Jacobs Award to William T. Easton, partner in the law firm of Easton, Thompson, Kasperek, Shiffrin, LLP.

**B. Defense Community Dinner**

On November 18th, 2011 the Office hosted the 2<sup>nd</sup> Annual Defense Community Dinner at Brockport, New York (in conjunction with the CLE program discussed above). Over 100 attorneys and judges attended and celebrated the excellent work done in our local community by our criminal defense and family law practitioners.

The Honorable Eugene F. Pigott, Jr., Associate Judge of the New York State Court of



Appeals, was the keynote speaker and gave a memorable speech honoring the defense bar. Also attending and providing remarks was Bill Leahy, the new Director of the New York State Office of Indigent Legal Services.

The highlight of the evening was the awarding of the Jeffrey A. Jacobs Award to William T. Easton. Attached is an article from The Daily Record describing the event.

C. Public Defender Corps

Due to its excellent reputation as a public defender office, and the fact it is staffed with dedicated public defenders, in the Fall of 2011 the Monroe County Public Defender's Office became a pilot site for a new nationwide initiative known as the Public Defender Corps (PDC).

PDC is a new, three year fellowship program for recent law graduates interested in pursuing a career in indigent defense. The fellowship program provides a means for top graduates to engage in indigent defense within a strong training and support structure. Fellows undergo a rigorous application and selection program. Once selected, they receive outstanding advocacy training and mentoring, and are integrated into a community of defenders to help them develop the skills needed to provide the highest quality of representation to clients and imbue them with a commitment to indigent defense reform.

PDC is a joint initiative of Equal Justice Works and The Southern Public Defender Training Center (SPDTC). Equal Justice Works leads the largest Fellowship program in the nation for law students and law school graduates. It places its Fellows in public interest organizations and builds leadership capacity to maximize its Fellows effectiveness. SPDTC is building a community of public defenders -- bound by a common set of values fundamental to public defender excellence -- using recruitment, training, and mentoring to develop its lawyers into great advocates and future leaders in the field. Together, these two organizations built Public Defender Corps, an initiative that promises

to spread this growing community of dedicated public defenders nationally through its fellowship model with an eye towards raising the standard of practice immediately and populating the field with future leaders. More information about PDC may be found at: [www.equaljusticeworks.org/post-grad/public-defender-corps](http://www.equaljusticeworks.org/post-grad/public-defender-corps).

In commenting upon the Office being selected as a host site for the Fellows, Becky Brand, senior communications specialist with Equal Justice Works stated: “[t]he Monroe County Public Defender’s Office is going through a period of improvement for indigent defense and was chosen because they strive to provide outstanding counsel to defendants \* \* Monroe County believes in our work and mission to address the justice gap in America by providing public interest opportunities to those passionate about holistic and systemic change \* \* \*.”

The Monroe County Public Defender’s Office placed two PDC Fellows, Katherine Higgins and Felipe Alexandre, who began working in the Office in August, 2011.

An article from The Daily Record describing PDC and the Monroe County Public Defender’s Office being selected as a pilot site is attached.

#### PART IV: THE FUTURE OF THE OFFICE

2012 will be a challenging year for the Office. It is anticipated that caseloads will remain at their very high levels, and that there will be increasing pressure on the Office to provide excellent representation to our clients, while maintaining costs. As such, the Office will continue its efforts at improving efficiencies in each Bureau, ever mindful that our number one priority is our clients. We are confident that given the enormously talented and committed staff at this Office we will meet those challenges.

As we look ahead to 2012 the Office plans to continue its efforts to improve our representation to our clients, continue our discourse with the community we serve, and improve the

diversity of our staff. The initiatives outlined above will continue as well. We will continue looking at how technology may improve Office operations.

In addition, with the help of grant funding from the New York State Office of Indigent Legal Services, the Office hopes to begin two new initiatives in 2012: the creation and staffing of the Western New York Criminal Immigration Advisory Clinic, and providing counsel to indigent defendants who are arraigned in the town and village courts.

PART V: CONCLUSION

Each and every member of the Public Defender's Office is proud of the amount of work done in the past year, but each individual takes a great deal more pride in the quality of the services we provide. We continue to stress respect for the judicial process and absolute integrity in the handling of all cases assigned to this Office.

It is important to note that the success this Office has achieved is due in part to the support given to us by the Monroe County Legislature and the Administration. Both the Legislature and the Administration take seriously the obligation of government to ensure justice for all. We would like to take this opportunity to express our thanks for that support, and we look forward to their support in the future.

In concluding, I would like to note that this Office's excellent reputation is the result of the dedication, commitment, and talent of the attorneys and the support staff of this Office. I am enormously proud of their efforts and the results they achieve for our clients.

Respectfully submitted for  
The Public Defender's Office



TIMOTHY P. DONAHER  
Monroe County Public Defender

COURT ACTIVITY SUMMARY 2011

NEW CLIENTS.....30,156

FELONY..... 2,544

FELONY (Drug A and B).. 466

FELONY (VFO)..... 1,270

HOMICIDE .....29

MISDEMEANOR.....12,864

VIOLATION..... 4,987  
(City and Justice)

PROBATION VIOLATION.... 463  
(Superior)

PROBATION VIOLATION.... 793  
(City and Towns)

APPEALS..... 197

FAMILY COURT..... 5,636

PAROLE..... 794

FUGITIVES..... 70

SORA..... 51

PLEAS AS CHARGED.....2,323

FELONY..... 443

MISDEMEANOR..... 1,471

VIOLATION..... 409

PLEAS TO LESSER

FELONIES.....1,254

    To Lesser Felony..... 181

    To Misdemeanor..... 1,073

PLEAS TO LESSER (Con't)

MISDEMEANORS.....2,424

    To Lesser Misd..... 278

    To Violation..... 2,146

CLOSED CASES: [OTHER]:

A.C.D..... 4,237

PRIVATE ATTY..... 979

ASSIGNED COUNSEL..... 5,658

W/D D.A, DIS'D ON MOTION..... 5,524

TRIALS.....151

FELONY..... 49

MISDEMEANOR.....63

VIOLATION..... 39

FINDING AFTER TRIAL

GUILTY AS CHARGED  
(or to part of indict.  
when highest court)..... 37

    GUILTY TO LESSER  
(or to part of indict.  
when lesser court)..... 34

NOT GUILTY..... 53

TRIAL ORDER OF DISMISSAL..... 10

MISTRIAL..... 2

PUBLIC DEFENDER STAFF  
(as of 1/5/12)

Administration

Donaher, T. Public Defender  
Brazill, R. 1<sup>st</sup> Asst. Pub. Def.  
Tronolone, T. Conf. Asst. to the Public Defender  
Prescott, M. Exec. Secretary to the Public Defender  
Colon, M. Receptionist-Bilingual  
Rivera, N. Receptionist-Bilingual

Superior Court

Paperno, J. 2<sup>nd</sup> Asst. Pub. Def.  
Vitale, A. Spec. Asst. (Non-VFO)  
Doran, M. Spec. Asst. (Drug)  
Teifke, E. Spec. Asst. (VFO)  
Lopez, M. Spec. Asst. (Parole)  
Cook, K. Secretary  
Abdallah, W. Asst. Pub. Def.  
Brach, K. Asst. Pub. Def.  
Clark, M. Asst. Pub. Def.  
Conner, A. Asst. Pub. Def.  
Griffin, J. Asst. Pub. Def.  
Harned, L. Asst. Pub. Def.  
Lopez, S. Asst. Pub. Def.  
Oren, A. Asst. Pub. Def.  
Riley, E. Asst. Pub. Def.  
Rosmus, E. Asst. Pub. Def.  
Scalia, D. Asst. Pub. Def.  
Stubbe, J. Asst. Pub. Def.  
Van Hooft, B. Asst. Pub. Def.  
Winward, T. Asst. Pub. Def.  
Yoon, J. Asst. Pub. Def.  
Zoghlin, S. Asst. Pub. Def.

Appeals

DuBrin, D. Spec. Asst. (Appeals)  
Amiger, S. Secretary  
DeMonte, J.C. Secretary  
Davis, T. Asst. Pub. Def.  
Duguay, K. Asst. Pub. Def.  
Eckert, J. Sen. Asst. Pub. Def.  
Juergens, D., Asst. Pub. Def.  
Somes, J. Asst. Pub. Def.  
(Vacant) Asst. Pub. Def.  
(Vacant) Asst. Pub. Def.

City Court

Bradley, J. Special Assistant  
Lamb, P. Secretary  
Morley, L. Secretary  
Grain, M. Secretary  
Sands, K. Invest. Asst.  
Behrndt, D. Invest. Asst.  
Afoh-Manin, J. Asst. Pub. Def.  
Alexandre, F. Asst. Pub. Def.  
Bahr, R. Asst. Pub. Def.  
Caputo, J. Asst. Pub. Def.  
Conner, M. Asst. Pub. Def.  
Daniele, A. Asst. Pub. Def.  
Fusco, E. Asst. Pub. Def.  
Hagen, M. Asst. Pub. Def.  
Harnsberger, D. Asst. Pub. Def.  
Mazzarella, J. Asst. Pub. Def.  
Murajda, R. Asst. Pub. Def.  
Myers, G. Asst. Pub. Def.  
Newman, E. Asst. Pub. Def.  
Stare, S. Asst. Pub. Def.

Justice Court

Cianca, J. Special Assistant  
McKie, M. Secretary  
Vargas, J. Invest. Asst.  
Claiborne, K. Invest. Asst.  
Cruz, A. Asst. Pub. Def.  
Fiedler, M. Asst. Pub. Def.  
Foti, M. Asst. Pub. Def.  
Higgins, K. Asst. Pub. Def.  
Morgan, J. Asst. Pub. Def.  
Naclerio, J. Asst. Pub. Def.  
Rissew, A. Asst. Pub. Def.  
Santacroce, F. Asst. Pub. Def.

Family Court

Fine, A. Special Assistant  
Adams, S. Secretary  
Ciaccia, C. Paralegal  
(Job Share)  
Enright, C. Paralegal  
(Job Share)  
Altman, J. Asst. Pub. Def.  
Buitrago, M. Asst. Pub. Def.  
Haselbauer, K. Asst. Pub. Def.  
Lugbill, R. Asst. Pub. Def.  
Ponticello, C. Asst. Pub. Def.  
Sartori, S. Asst. Pub. Def.  
Wirley, B. Asst. Pub. Def.

Investigations

DuMont T. Chief Investigator  
Camacho, M. Spec. Urban Inv.  
Johnson, J. Spec. Urban Inv.  
Pagan, G. Spec. Urban Inv.  
Morse, L. Spec. Urban Inv.  
(Vacant) Spec. Urban Inv.

## Public Defender Training Comes to County

NY Daily Record  
June 22, 2011

## Public defender training comes to county

by Denise M. Champagne

Published: June 22nd, 2011



Timothy Donaher

The Monroe County Public Defender's Office is one of 12 in the country that will host young attorneys in a new fellowship program designed to improve representation of indigent defendants.

An initial class of 18 Public Defender Corps members will work at sites in seven different states to learn best practices of public defense and eventually raise the standard of representation across the country.

"The Monroe County Public Defender's Office is going through a period of improvement for indigent defense and was chosen because they strive to provide outstanding counsel to defendants," said Becky Brand, senior communications specialist with Equal Justice Works, a nationally recognized leader in creating public interest opportunities for law students and lawyers.

Equal Justice Works and the Southern Public Defender Training Center are launching the new corps to combat a growing problem of wrongful convictions and a lack of fairness related to under-funded, under-staffed public defender offices facing increasing caseloads.

"Lead Counsel Timothy Donaher has been a driving force and vocal advocate for providing the best quality representation for those unable to afford counsel," Brand said. "Monroe County believes in our work and mission to address the justice gap in America by providing public interest opportunities to those passionate about holistic and systemic change and, through this partnership, we hope to address the continued funding issues that plague the public defender system, including the office in Monroe County."

Two of the 18 corps members will be assigned to Monroe County following a two-week training boot camp in August at the SPDTC Summer Institute at the Cumberland School of Law in Birmingham, Ala. They will be the only ones in New York state.



Katy Higgins

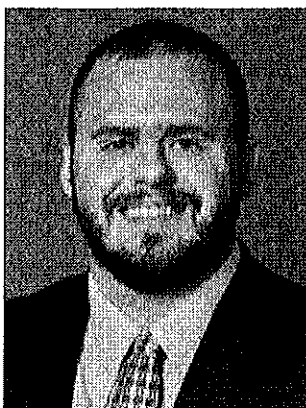
Joining Monroe County on Aug. 22 will be Katy Higgins, an Equal Justice Works Americorps Legal Fellow at Ithaca's Legal Assistance of Western New York Inc. A Cornell University Law School graduate, Higgins has been assisting low-income clients in uncontested divorce matters and prisoner re-entry issues. As a Public Defender Corps fellow, she will focus on adult, immigration and misdemeanor defense.

Felipe Alexandre, a 2011 graduate of Indiana University School of Law originally from Brazil, will join the office soon after that. He has served as a legal intern in the Monroe County Public Defender's Office. He will focus on adult, juvenile, immigration, felonies and misdemeanors.

Donaher said Higgins, who is admitted to the New York State Bar, will be assigned to the office's Town Court Bureau, which will bring the caseloads close to recommended levels per attorney. He said Alexandre will initially work on motions in city court until he passes the bar exam, which is a part of his fellowship requirement. Donaher said Alexandre will then be moved to town courts. The additional personnel will free up resources to relieve pressure in city court, which at times has nearly double the recommended



caseload.



Felipe Alexandre

More than 450 people applied for the fellowships. Donaher said those selected listed a number of preferred work sites and those who listed Monroe County in the top three were reviewed.

"We actually had a hiring committee," Donaher said. "It was very difficult to make a decision because all of the applicants were very impressive."

Fellows will receive training at their sites, as well as through SPDTC. Donaher said the idea is to properly train young attorneys at high-quality offices with the expectation that they will be the leaders of tomorrow improving the offices they work at and the profession overall as they advance their careers.

"I'm just honored that Equal Justice Works recognized that we have a quality office and it's really due to the men and women who work here," Donaher said. "They're just very committed people. Every chance I get, I tell the people in Monroe County they should be proud of the work they do."

Brand said Equal Justice Works is trying to help facilitate public interest legal opportunities.

"The fellows that were selected already have a passion for public interest work," she said. "A lot of them have worked in public defender offices or done clinical work during law school to help the indigent."

Brand said Equal Justice Works is noted for reacting to crises across the country. For instance, it had a Katrina initiative following the 2005 hurricane that devastated New Orleans and other parts of the Gulf area and sent aid to Joplin, Mo., following the recent tornados.

She said the organization recognizes the need for counsel for people who cannot afford it, particularly at a time when the economy is weak and providers are trying to do more with less at the same time their caseloads are increasing.

"As the nation's leading creator of public interest law opportunities for law students and lawyers, Equal Justice Works is proud to utilize our network of law schools, public interest professionals and passionate attorneys to assist in the successful launch of the Public Defender Corps," Brand said.

The inaugural class is being supported with a \$700,000 grant from the Bureau of Justice Assistance, Office of Justice Programs.

"Public Defender Corps is part of an ongoing initiative to support the public defender community in much of the United States," said Jonathan Rapping, founder and CEO of SPDTC. "These 188 attorneys will joint a committed, conscientious and competent community of public defenders who are driving systemic reform by raising expectations of the quality of representation for the poor. Public Defender Corps will provide fellows with the training and support they need to become leaders in indigent defense, protecting the rights of the accused and ensuring justice."

Donaher said he first heard about the proposed corps program about a year and a half ago at a meeting in Albany which was attended by Cait Clarke from Equal Justice Works and David Stern, the program's executive director.

When he got back to Rochester, Donaher said he emailed Clarke a copy of his annual report, talked up the office with its committed attorneys who have won statewide awards and got a response inviting him to Washington, D.C., where he discussed proper training for new defenders with programs advisors.

Donaher said Equal Justice Works wanted a variety of host sites and he talked with Norman Effman, Livingston County conflict defender and Genesee County Public Defender Gary A. Horton about a joint urban/rural concept, but the other two counties lacked funding.

Donaher, who will receive about \$30,000 from Monroe County to help pay for the fellowship program, hasn't given up on the joint idea.

"Norm, Gary and I are talking," Donaher said. "We're hoping to get additional grant money from the New York State Office of Indigent Services."

It is hoped additional fellows may be added next year and could be rotated to learn the different challenges faced in urban, rural and mid-sized communities.

Monroe County is also receiving \$100,000 — in two \$50,000 grants from Equal Justice Works and the New York State Office of Indigent Legal Services to pay the salaries and benefits of the two fellows for the three-year program.

"The selection of our public defender office as only one of 12 sites across the country speaks volumes to the quality of service that the office provides to indigent defense," County Executive Maggie Brooks said in a release. "The excellence displayed by this office and the commitment to indigent defense in Monroe County has truly set it apart from many other offices around the country. The two attorneys that will be mentored here will be offered the highest level of training and receive instruction from our most experienced law professionals."

Complete URL: <http://nydailyrecord.com/blog/2011/06/22/public-defender-training-comes-to-county/>

## Easton being Honored for his Dogged Defense

NY Daily Record  
November 14, 2011

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Nicole Black tells about her attendance at TEDxRochester and the ideas generated there.



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David C. Pettig tells why you should sign yourself, and your clients up for Rochester RHIO.

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Upcoming business and legal events

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## Case Digests

Decision summaries from federal and state courts

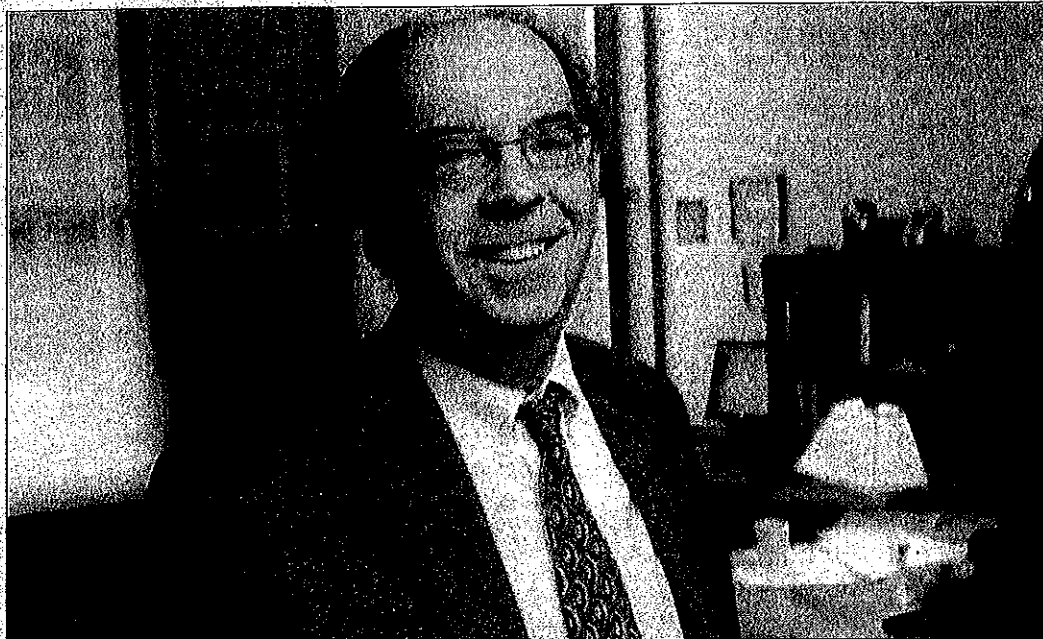
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## Quote

*"Knowledge - full, unfettered knowledge of its own heritage, of freedom's enemies, of the whole world of men and ideas - this knowledge is a free people's..."*



VASILY BAZUK

Attorney William T. Easton will be given the Jeffrey A. Jacobs Award on Friday, Nov. 18. The award was established in 2010 in memory of another defender known for his dedication to clients and fiercely defending them.

# Easton being honored for his dogged defense

BY DENISE M. CHAMPAGNE

William T. Easton is not intimidated by science.

When prosecutors present scientific evidence to try to convict one of his clients, he brings in his own experts to refute their claims.

The long-time defender, part of the criminal defense team at Easton Thompson Kasperek Shiffrin LLP, will be honored by his colleagues Friday, Nov. 18, at the 2011 Defense Community Dinner at The College at Brockport.

Easton's strong client advocacy will be recognized with the presentation of the Jeffrey A. Jacobs Award, established in 2010 in memory of another defender known for his dedication to clients and fiercely defending them.

"I knew Jeff and respected him as an attorney," said Easton. "It's truly an honor to receive an award based on recognition of his superb work."

The award is for somebody who has done

extraordinary work in the last 12 months, said Roger Brazill, first assistant public defender and chair of the Jeffrey A. Jacobs Memorial Awards Committee.

Nominees are solicited from the entire defense community. Judges were unanimous in selecting Easton.

"One of the reasons that it was a pretty easy selection is that he is one of the people in this area that is on the forefront of challenging junk science, forensic evidence that has been admissible basically because no one's every challenged it before, but it doesn't have very strong scientific support," Brazill said.

The committee was particularly impressed with two of Easton's recent cases; one involving DNA evidence and one that had to do with dog tracking.

Brazill said evidence obtained by dog tracking is certainly open to attack and that Easton

See EASTON page 8

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## Easton to receive Jacobs award

**EASTON** from page 1

fought for and got a *Daubert* hearing in federal court on the admissibility of expert testimony.

"The judge ruled against him," Brazill added. "But, I think partially because of Bill's resistance, the U.S. attorney ultimately declined to introduce the evidence at trial."

Easton said he also had two homicide cases that involved complicated DNA issues. Firm partner Brian Shiffrin worked with him on one.

Brazill said the case considered by the committee was very complicated because the defendant suffered from significant mental problems.

"At several points throughout the prosecution, Bill sought psychiatric exams for the client, had some battles with the judge over obtaining a court order to authorize payment for psychiatric witnesses and generally, by all accounts, although she was convicted, did an ultimately good job," Brazill said.

"I've always been drawn to defense

Easton, according to the firm's website ([www.etksdefense.com](http://www.etksdefense.com)), has extensive experience, both at trial and on appeal, litigating issues involving the use of experts, including mental health professionals, in criminal trials and sentencing proceedings.

He began his legal career as an assistant public defender in the Monroe County Public Defender's Office, which created the award last year in honor of the exemplary work of Jeffrey A. Jacobs. Jacobs served in the office for more than 20 years until his death in 2006 at age 50. Supreme Court Justice Elma A. Bellini, who serves on the awards committee, said a variety of people and the types of cases they handled were considered.

"Bill Easton exemplified everything that Jeff Jacobs stood for as far as a defense attorney is concerned," she said, noting she spent 10 years (1989-99) in the public defender's office and knew Jacobs well. "He was just a very committed, zealous defense attorney with the highest of standards and I think Bill exemplifies all of those qualities."

Other committee members are William G. Clauss, law clerk to County

Court Judge John L. DeMarco; Assistant Federal Public Defender Mark D. Hosken; Karen Bailey Turner, Brown & Hutchinson; attorney Dianne C. Russell, private practice; and Erik R. Teifke, a special assistant county public defender.

Joining Easton at the dinner will be his wife Ann, a special education teacher at School No. 45. They have four children: Joseph, a graduate of State University at Geneseo; Colleen, a nurse in Cooperstown; Laura, a student at Cornell University; and Maggie, a student at the School of the Arts.

The dinner is part of a two-day program that includes a CLE on "Defending Against Snitches & Using Challenging Scientific Evidence," presented by the New York State Defenders Association and the Monroe County Public Defender's Office.

Easton, Shiffrin and their firm partners, Lawrence L. Kasperek and Donald M. Thompson, are among the speakers. Teifke and Hosken are also speaking, along with county public defenders Andre A. Vitale and Jill L. Paperno, and others.

— [denise.champagne@rydailyrecord.com](mailto:denise.champagne@rydailyrecord.com)

## 2011 Defense Community Dinner

NY Daily Record  
November 30, 2011

# 2011 Defense Community Dinner

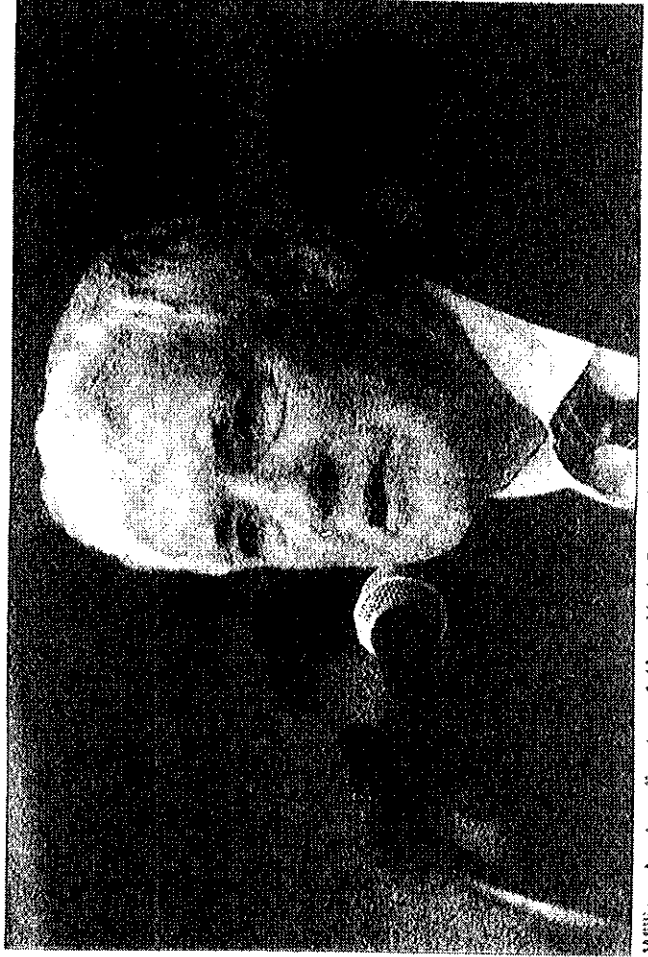


EMILY ANSELL

Defenders from around the state gathered recently for a two-day CLE at The College at Brockport. The event was presented by the Monroe County Public Defender's Office and the New York State Defenders Association. New York State Court of Appeals Associate Judge Eugene F. Pigott Jr. served as the keynote speaker at the 2011 Defense Community Dinner. See additional photos in today's On the Town feature, page 8.



Attorneys Mark D. Funk and Karen Bailey Turner.



William Leahy, director of New York State Office of Indigent Defense Services, addresses defenders at the 2011 Defense Community Dinner on Nov. 18 at The College at Brockport.



New York State Court of Appeals Associate Judge Eugene F. Pigott Jr. was the keynote speaker.

# OnTheTOWN

## Defense attorneys gather from across state

Defenders from around the state gathered earlier this month for a two-day CLE at The College at Brockport.

The event, "Defending Against Snitches & Using and Challenging Scientific Evidence," was presented by the Monroe County Public Defender's Office and the New York State Defenders Association.

It included the 2011 Defense Community Dinner on Nov. 18, which was attended by more than 100 people, and featured keynote speaker Judge Eugene F. Pigott Jr., associate judge of the New York State Court of Appeals.

William Leahy, director of the state Office of Indigent Defense Services, also addressed the dinner program, where the second Jeffrey A. Jacobs Award was presented to Rochester attorney William T. Easton of the firm Easton Thompson Kasperek Shiffirin LLP for his strong client advocacy.

The award was created by the Monroe County Public Defender's Office last year in memory of Jeffrey A. Jacobs, a defender known for his dedication to clients and fiercely defending them.

— Photos by Emily Angell



(Right) Judge Pigott speaks with Monroe County Court Judge James J. Piampiano and his wife, Karen.



William Easton, of Easton Thompson Kasperek Shiffirin LLP, was honored with the second Jeffrey A. Jacobs Award for his dedication to and fierce defense of clients.



Morgan Fiedler, Jennifer Morgan, Derek Harnsberger and Amy Cruz.