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Message from the President

Hon. Derek P. Champagne, Franklin County District Attorney



The District Attorneys Association of New York is dedicated to engaging in the best practices of prosecutorial conduct. With this commitment, I am pleased to announce the progress we have made in effectively identifying and prosecuting those who seek to defraud publicly-funded government programs. Our success in this area is thanks to the tenacity of the investigators and prosecutors who handle these cases as well as the implementation of new facial recognition software. Within the first six months of instituting this software, it has assisted authorities in identifying upwards of 1,000 instances of alleged fraud of government services. This demonstrates how through hard-work, and with the aid of available technology, we can effectively crack down on even the most evasive criminals.

However, we cannot relent in our efforts to fight crime. We will keep pursuing perpetrators of fraud, with a particular focus on perpetrators of Social Security and Medicare fraud. Through these cost-effective means, we will continue to protect the economic as well as the physical safety of New Yorkers.

Spotlight On: Orange County Restorative Justice



District Attorney Frank Phillips is committed to the principle of restorative justice. As the district attorney of Orange County, he promotes restorative justice as a means through which low-level defendants can be held responsible for their actions while they simultaneously receive an education designed to limit the likelihood that they will re-offend. Accordingly, DA Philips has instituted myriad programs designed to help defendants divert their cases from criminal courts to special programs that are based on restorative justice. Thanks to the hard-work of the Orange County District Attorney's Office, along with their community and government partners, these programs have met with great success.

One such program is the **Orange County John School**, which opened in 2003. The school is a county-wide court referral program designed for non-violent offenders who have been arrested for soliciting prostitutes. This one-day program is a collaborative effort by multiple government and private not-for-profit agencies. Since its inception, more than 100 defendants have successfully completed the program. The John School teaches men about the health and physical dangers of their conduct and how it negatively affects their families and their communities. The John School is funded entirely by enrollment fees paid by the participants.

Also launched in 2003, the **Women's Enrichment Program** is designed for at-risk women, particularly those who have been arrested for prostitution. Approximately 100 women have benefited from this successful program, which is funded through fees collected

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from participants in the John School. The program is a collaborative effort facilitated by health and mental health services and community members, who educate the female offenders on a variety of issues. The class seeks to empower women to choose productive and healthy lifestyles. Participants attend a week of daily sessions designed to educate and enhance their self-esteem.

The **Shoplifting Prevention Program** was designed to address the high volume of arrests for shoplifting in Orange County. Shoplifting harms local merchants and forces law-abiding citizens to pay higher prices to defray the financial losses caused by shoplifting. The Shoplifting Prevention Program recognizes that shoplifting is a symptom of a problem. It seeks to educate shoplifters in order to encourage them to change their behavior. After admitting their guilt in court, the offender's case is adjourned to allow the defendant to take and complete a six-hour correspondence course, which is administered by the National Association for Shoplifting Prevention. This course helps offenders understand the underlying reasons for shoplifting and the negative impact their behavior has on their communities. The program is entirely funded by the participants. Since its inception in 2005, more than 1,100 participants have successfully completed the program.

Substance abuse by teenagers is also a major problem, and District Attorney Phillips implemented the **Teen Victim Impact Panel** in 2003 to address the issue. With the assistance of the Orange County STOP DWI Program, the Teen Victim Impact Panel targets underage offenders who have been charged with alcohol and drug related offenses. In order to deter them from committing similar acts, teen offenders are educated regarding the hazards and harm of alcohol and drug abuse. Panels provide a forum in which speakers, who were victims or past offenders, relate their stories to the attending teens. Panels are given in English and Spanish and are held throughout the year. Attendance each year exceeds 100 teenagers.

The District Attorney's Office, along with the Orange County Probation Department, also uses accountability **group counseling** for a variety of crimes committed against citizens and communities. In these settings, a specific victim or representative of a community, the defendant, and a trained facilitator meet as a group. During the meeting, a victim details the damage inflicted by the defendant and how it adversely affected the victim's life. The defendant, in turn, acknowledges the criminal conduct and apologizes. An agreement is reached wherein the defendant makes reparations to the victim. Through this group counseling, the victim is able to directly participate in the criminal justice process. To date, close to 100 conferences have been held addressing crimes ranging from criminal mischief to larceny and harassment.

Community Accountability Boards are community-led initiatives rooted in restorative justice principles. Young offenders referred by the Probation Department or the District Attorney's Office go before a board comprised of volunteer community members to discuss the harm and reach an agreement to repair the damage caused by the offender to the community. Crimes referred to the boards include criminal mischief, larceny, and graffiti. Approximately 50 cases have been referred to community boards since their inception.

Identification Procedure Law Enforcement Training

Training sessions on the statewide guidelines for identification procedures began this summer and are continuing throughout the fall. The Best Practices Committee of DAASNY produced these guidelines with extensive consultation and input from law enforcement agencies throughout the state, which represents the first time in the nation that law enforcement agencies have proactively worked statewide to establish best practices for photo array and lineup procedures.

These trainings are a result of a combined effort among DAASNY, the New York State Division of Criminal Justice Services, and the Office of

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Public Safety. Each session incorporates the expertise of a police trainer, who has extensive experience in conducting identifications, as well as a prosecuting attorney, who has a detailed background in successfully entering identifications into evidence.



The training sessions focus on:

- How to create a fair photo array and live lineup.
- How to invite a witness to an identification procedure.
- How to instruct a witness before the identification procedure in a neutral and unbiased way.
- How to display a photo array or live lineup in a fair and neutral manner.
- How to conduct a “blinded” identification procedure, or, if possible, a “double blind” identification procedure.
- How to document the results of the identification procedure.
- What to do after the identification procedure is concluded.
- The creation of new forms that guide an officer through the new protocols.

The training dates are:

- August 27 – Rockland County
- September 9 – Monroe County
- September 16 – Nassau County
- October 14 – Albany County
- November 4 – Jefferson County
- November 9 – Erie County
- November 18 – Broome County
- December 9 – Onondaga County

Trainings are offered free of cost. However, due to high demand, a course application must be submitted two weeks prior to the start of the training session. Applications can be found on the DCJS website under the training calendar. If you have any questions regarding this training, please contact Joshua Vinehout, senior training technician, at joshua.vinehout@dcjs.state.ny.us.

To date, 356 officers in 103 agencies have completed training, and 218 officers from 49 agencies are registered to attend the next three classes. These trainings are currently on track to train over 574 officers in 152 agencies statewide. This expansive participation speaks to the widespread influence this course will have on ensuring law enforcement’s ability to solve crime and protect the rights of the accused.

Amicus Brief Update

Morrie Kleinbart, Appeals Bureau Chief, Richmond County District Attorney’s Office

In a recent newsletter, we reported that the association filed an amicus brief in connection with the en banc rehearing of the constitutional challenge to the persistent felony offender sentencing framework. We are pleased to advise that the en banc court vacated the panel decision and has concluded that the persistent felony offender scheme does not violate a criminal defendant’s jury trial right. Thanks to the New York County District Attorney’s Office for their preparation of the brief. The

opinion in *Portalatin v. Graham* is available for your reading pleasure at http://www.ca2.uscourts.gov/decisions/isysquery/f5055664-54ba-4e91-8aee-03cae12d0b33/4/doc/07-1599-pr_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/f5055664-54ba-4e91-8aee-03cae12d0b33/4/hilite/

The association also filed an amicus brief in the Appellate Division, Second Department, in *People v. Martin Heidgen*. Heidgen was convicted of depraved indifference murder arising from deaths he caused while driving drunk. The issues presented are whether, in the post-Feingold world in which we live, a drunk driver can be convicted of such a crime and whether voluntary intoxication is a defense to depraved indifference homicide. Thanks to the Bronx District Attorney's Office – Joe McCormack, Joe Ferdenzi, and Tony Girese – for their work on this extremely important issue.

If you have an amicus brief that the association filed, but which has not yet been posted on the website, please send it electronically or by mail to Morrie Kleinbart in Richmond County: morrie.kleinbart@rcda.nyc.gov or Morrie Kleinbart, Richmond County District Attorney's Office, 130 Stuyvesant Place, Staten Island, New York 10301.

District Attorneys who would like to request an amicus brief should contact DAASNY President Derek Champagne at dchampag@co.franklin.ny.us. Assistant District Attorneys should send amicus inquiries and requests to Lois Raff, Counsel to the Queens County District Attorney at LMRaff@queensda.org. Requests should be made as early as possible so that there is sufficient opportunity to evaluate the request and draft the amicus.