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## **New State Court Commission, Named for LGBTQ Pioneer, Begins to Map the Future**

BY JEFF STOREY

MEMBERS of a new commission tasked with addressing LGBTQ issues in state courts have underlined their mission by naming the panel after a Manhattan judge who was a forceful advocate of the gay and lesbian community at a dark time in its history.

The late Judge Richard C. Failla was the first openly gay person admitted to the New York City Criminal Court when he was named by Mayor Edward Koch in 1985. He became the first openly gay person elected to the state Supreme Court in 1988.

On receiving an award in 1986, Failla urged gays and lesbians to support with their donations only organizations that were supportive of the community. And he spoke of privately rebuking two fellow judges who had thoughtlessly used homophobic terms.

"It is only if enough of us do this every time the occasion arises that words like 'fruit,' 'pansy' 'queer' and 'fag' will take on the same social taboo as words like 'nigger' and 'kike,' he said.

At the height of the AIDS epidemic, Failla joined the board of the Gay Men's Health Crisis and later became its vice president. He was a member of a New York City Bar Association panel, which found in 1989 that the courts and state prisons frequently mishandled AIDS cases.

He died in 1993 at the age of 53 of complications from AIDS according to his obituary in The New York Times.

Failla was a hero who "really stood up for the rights of LGBTQ people," said Appellate Division, First Department, Justice Marcy Kahn, co-chair of the Richard C. Failla LGBTQ Commission, who regards Failla as one of her mentors. "He gives the commission a model to aspire to."

Chief Judge Janet DiFiore announced in December that the yet-unnamed commission was modeled after the court system's Franklin H. Williams Judicial Commission, established in 1988 to foster fair treatment of minorities in the court system.

Ironically, Kahn said in a podcast earlier this year, some lesbian and gay judges, including Failla and her, were rebuffed when they asked court administrators to address complaints of discrimination against gay and lesbian users of the courts as part of the Williams commission's work. Kahn said that court administrators told them that federal funding for the commission did not cover sexual orientation.

Edna Handy, the first executive director of the Williams commission who is now counsel to the police commissioner, said in a recent interview that the panel discussed the request but decided to focus on the "traditional" or "historic" definition of minority groups as racial and ethnic minorities, a definition that did not include sexual orientation.

Kahn said she and her colleagues thought the exclusion was "a big mistake." She said gays and lesbians were being "persecuted" in the courts, a problem of longstanding.

Now, she expects the Failla commission to work with the Williams commission. "We're allies," she said.

Last month, members of the Richard C. Failla LGBTQ Commission participated in Pride Month activities in Manhattan, Central Islip, Ithaca, Utica, Rochester, Buffalo and Batavia to introduce itself.

The reaction to the initiative was "very exciting," said Appellate Division, Third Department, Justice Elizabeth Garry, its other co-chair. She added it was more favorable than she expected in the upstate areas where she concentrated her efforts and was particularly moved by LGBTQ seniors who approached her and said they felt "validated" by the commission.

The commission is still new, but it has begun to map out its program. It has adopted a two-fold mission: to promote equal participation and access to the court system regardless of sexual orientation, gender identity or gender expression and to promote the presence of LGBTQ judges and employees within the court system.

The commission expects to sponsor more training like the session it organized recently on transgender issues and family law for new judges; to build collaborative relationships with advocacy organizations, the legal profession and community groups toward a more supportive environment in the courts; to foster sensitivity for and progress for LGBTQ groups; and to demonstrate a welcoming attitude for all who come through the courthouse doors.

Kahn said the commission also may sponsor research on the experiences of LGBTQ people in the courts, like the detailed studies done by the Williams commission and a panel on women in the courts. "We can't just proceed on anecdotal evidence anymore," she said.

The position of LGBTQ people has improved in recent years, a fact Kahn credits, in large measure, to the determination of groups in the community who demanded to be treated fairly. "We didn't stop asking for this kind of attention," she said.

She and Garry praised DiFiore and Chief Administrative Judge Lawrence Marks for responding to their concerns.

DiFiore said in a December news release that LGBTQ people are "well represented" among the courts' judges and nonjudicial employees.

When Failla and Kahn first sought entry into the Williams commission, there were only "a handful" of self-acknowledged lesbian and gay judges, Kahn said. However, more and more judges have come out, she said.

Failla said in his 1986 speech that it was important for gays and lesbians to be "open about our sexual orientation in our everyday lives, just as heterosexuals are. As long as the vast majority of us stay hidden, we are whatever our enemies says we are, for there is no one to refute what they say."

The Association of Gay and Lesbian Judges counts about 50 openly LGBTQ judges (out of about 1,300 state-paid judges) said its president, Acting Manhattan Justice Michael Sonberg, a member of the Failla commission.

Paul Feinman, also a member of the commission, recently joined the Court of Appeals as its first openly LGBTQ member (NYLJ, June 22).

Marc Levine, who is now the executive director of the Failla commission, formed the Gay/Straight Alliance of the New York Courts in 2003, when he and three closeted co-workers became concerned that an administrator was threatening their jobs. Initially, people were afraid to attend meetings, but by the time his tenure as president ended, he said, its events were packed.

Despite the progress of the last few decades, court administrators, Kahn and Garry all agree that more needs to be done.

"People are still very much feeling discrimination, exclusion, bullying, violence," Garry said. Transgender people are particularly vulnerable, she noted.

Sonberg said that knowledge about LGBTQ issues "is highly variable from courthouse to courthouse," with more openness exhibited in the metropolitan area than upstate.

But the attention given to the Failla commission lets judges know that the Office of Court Administration regards its program as important, he said. Moreover, "the increased presence gives us the ability to do more teaching."

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