

“There Shall Be A Court of Appeals...”

New York Constitution (1846) Article VI, § 2

VOLUME II: 1997–2022

To commemorate the 175th Anniversary of the
Court of Appeals of the State of New York





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Foreword

BY CHIEF JUDGE JANET DIFIORE



It has been an honor and a privilege to lead this great Court, especially during this milestone year in its storied history.

I am grateful to my colleagues and the Court's professional staff for preparing this updated edition of "There Shall be a Court of Appeals" to commemorate the Court's 175th anniversary of the first time it convened to hear

oral arguments on September 7, 1847. First prepared on the occasion of our 150th anniversary, this special publication pays tribute to the Court's long tradition of judicial excellence while chronicling the important events and developments of the past 25 years, including the Court's steadfastness through the tragic attacks of September 11, 2001, the major renovation and expansion of Court of Appeals Hall completed in 2004, implementation of public access and electronic filing measures that have modernized the Court's operations, our successful efforts to continue our service to the State throughout the COVID-19 pandemic, and our commitment to ensuring the Court is accessible and transparent to the public by holding session in different courthouses across the State.

As this publication makes clear through its synopses of landmark decisions that have shaped the growth and development of the law over the past 25 years, the mission of the Court of Appeals has remained fundamentally unchanged. The Court in 2022 continues to confront and resolve society's most pressing, complex and novel legal issues while carefully articulating a strong, predictable and just body of law to guide our communities, our economy and the personal and professional lives of our citizenry.

I would venture to guess that many of the Judges who served on the Court of Appeals throughout its history could not have predicted some of the modern legal issues and disputes that are reflected in our present docket. But those jurists have nonetheless provided us with the timeless principles and traditions that continue to inform and inspire our work today, especially the enduring spirit of public service and unwavering commitment to the rule of law that have been the bedrock of this institution since its creation in the New York State Constitution of 1846.

And so, on this wonderful milestone year in the Court's history, I want to thank and congratulate all of the Judges and court professionals—past and present—who have served and honored the Court of Appeals with a purity of purpose that has not only defined our work over our first 175 years but has provided us with a strong foundation to carry on the mission of ensuring fair and equal justice for all in the years and decades to come.

Janet DiFiore



Above: from left: Judges Ciparick, G.B. Smith, and Titone, Chief Judge Kaye, and Judges Bellacosa, Levine, and Wesley, 1997



Above: from left: Judges Pigott, Read, and Ciparick, Chief Judge Lippman, Judges Graffeo, R.S. Smith, and Jones, 2009
Below: from left: Judges Garcia, Stein, and Rivera, Chief Judge DiFiore, Judges Abdus-Salaam, Fahey, and Wilson, 2017





Hon. Judith S. Kaye

Chief Judge

January 1997¹ — December 31, 2008²

Associate Judges

January 3, 1997 – September 1, 1998 December 17, 1998 – September 1, 2000

- | | |
|----------------------------------|--|
| Hon. Vito J. Titone ³ | Hon. Joseph W. Bellacosa ⁴ |
| Hon. Joseph W. Bellacosa | Hon. George Bundy Smith |
| Hon. George Bundy Smith | Hon. Howard A. Levine |
| Hon. Howard A. Levine | Hon. Carmen Beauchamp Ciparick |
| Hon. Carmen Beauchamp Ciparick | Hon. Richard C. Wesley |
| Hon. Richard C. Wesley | Hon. Albert M. Rosenblatt ⁵ |

November 29, 2000 – December 31, 2002 January 22, 2003 – June 2003

- | | |
|---------------------------------------|---------------------------------------|
| Hon. George Bundy Smith | Hon. George Bundy Smith |
| Hon. Howard A. Levine ⁶ | Hon. Carmen Beauchamp Ciparick |
| Hon. Carmen Beauchamp Ciparick | Hon. Richard C. Wesley ⁸ |
| Hon. Richard C. Wesley | Hon. Albert M. Rosenblatt |
| Hon. Albert M. Rosenblatt | Hon. Victoria A. Graffeo |
| Hon. Victoria A. Graffeo ⁷ | Hon. Susan Phillips Read ⁹ |

January 12, 2004 – September 23, 2006 September 24, 2006 – December 31, 2006

- | | |
|---------------------------------------|--|
| Hon. George Bundy Smith ¹⁰ | Hon. Carmen Beauchamp Ciparick |
| Hon. Carmen Beauchamp Ciparick | Hon. Albert M. Rosenblatt ¹² |
| Hon. Albert M. Rosenblatt | Hon. Victoria A. Graffeo |
| Hon. Victoria A. Graffeo | Hon. Susan Phillips Read |
| Hon. Susan Phillips Read | Hon. Robert S. Smith |
| Hon. Robert S. Smith ¹¹ | Hon. Eugene F. Pigott, Jr. ¹³ |

February 12, 2007 – December 31, 2008

- Hon. Carmen Beauchamp Ciparick¹⁴
- Hon. Victoria A. Graffeo
- Hon. Susan Phillips Read
- Hon. Robert S. Smith
- Hon. Eugene F. Pigott, Jr.
- Hon. Theodore T. Jones, Jr.¹⁵



From left: Judge Titone and Chief Judge Kaye (seated) Judges Levine, G.B. Smith, Wesley, Ciparick, and Bellacosa, 1997



From left: Judges Pigott, Read, Ciparick, Chief Judge Kaye, Judges Graffeo, R.S. Smith, and Jones, 2007



Judge G.B. Smith's last day on the Court of Appeals bench, September 14, 2006



Judge Ciparick and Governor Eliot Spitzer applaud Chief Judge Kaye at her Re-investiture, March 19, 2007



Chief Judge Kaye and Judges Ciparick, Graffeo, and Read. Upon Judge Read's appointment in 2003, women comprised the majority of the Court of Appeals bench for the first time in the Court's history.



Chief Judge Kaye and Judges G.B. Smith, Levine, Ciparick, Wesley, Rosenblatt, and Graffeo at the conference table in 2001. Also pictured: Stuart M. Cohen, Clerk of the Court; Andrew W. Klein, Consultation Clerk; and John P. Asiello, Assistant Consultation Clerk



Court of Appeals Judges and staff gather on the steps of Court of Appeals Hall, 2001



Reunion of Court of Appeals Law Clerks, May 2, 2005



In the early 2000s, the Court recreated the iconic black and white 1921 conference room photograph.
 Above: from left: Judges Pound, McLaughlin, Cardozo, Crane, Andrews, Chief Judge Hiscock, and Judge Hogan
 Below: from left: Judge Levine, Chief Judge Kaye, and Judges Rosenblatt, Ciparick, Graffeo, Wesley, and G.B. Smith



From left: Judges Pigott, Read, Ciparick, Chief Judge Kaye, Judges Graffeo, R.S. Smith, and Jones
 Chief Judge Kaye's last day on the Court of Appeals bench, November 20, 2008



Hon. Jonathan Lippman

Chief Judge

February 11, 2009¹⁶ – December 31, 2015¹⁷

Associate Judges

February 11, 2009 – November 6, 2012

Hon. Carmen Beauchamp Ciparick¹⁸
Hon. Victoria A. Graffeo
Hon. Susan Phillips Read
Hon. Robert S. Smith
Hon. Eugene F. Pigott, Jr.
Hon. Theodore T. Jones, Jr.¹⁹

February 11, 2013 – May 5, 2013

Hon. Victoria A. Graffeo
Hon. Susan Phillips Read
Hon. Robert S. Smith
Hon. Eugene F. Pigott, Jr.
Hon. Jenny Rivera²⁰

May 6, 2013 – November 29, 2014

Hon. Victoria A. Graffeo²¹
Hon. Susan Phillips Read
Hon. Robert S. Smith²²
Hon. Eugene F. Pigott, Jr.
Hon. Jenny Rivera
Hon. Sheila Abdus-Salaam²³

February 9, 2015 – August 24, 2015

Hon. Susan Phillips Read²⁴
Hon. Eugene F. Pigott, Jr.
Hon. Jenny Rivera
Hon. Sheila Abdus-Salaam
Hon. Leslie E. Stein²⁵
Hon. Eugene M. Fahey²⁶

August 25, 2015 – December 31, 2015

Hon. Eugene F. Pigott, Jr.
Hon. Jenny Rivera
Hon. Sheila Abdus-Salaam
Hon. Leslie E. Stein
Hon. Eugene M. Fahey



Chief Judge Lippman at his Investiture with Judge Ciparick and Governor David Paterson, February 25, 2009



From left: Judge Levine, Chief Judge Lippman, Judge Ciparick, Judge Rivera, Chief Judge Kaye, and Judge Bellacosa at Judge Rivera's Investiture, March 18th, 2013



From left: Chief Judge Wachtler, Judges Ciparick, Read, R.S. Smith, Hancock, Chief Judge Lippman, Judges G.B. Smith, Pigott, Graffeo, Jones, and Rosenblatt. The Judges are pictured at the Court's 2011 Diversity Program honoring Judge G.B. Smith, a dedicated civil rights advocate.



Chief Judge Lippman with Judges Graffeo, Read, R.S. Smith, Pigott, Rivera, and Abdus-Salaam in the conference room in 2013. Also pictured: Andrew W. Klein, Clerk of the Court; John P. Asiello, Consultation Clerk; and Hope B. Engel, Assistant Consultation Clerk.



From left: Judge Read and Chief Judge Lippman (seated)
Judges Rivera, Stein, Abdus-Salaam, Fahey, and Pigott, 2015



Judges Stein and Fahey on the day of their joint investiture, March 27, 2015



Chief Judge DiFiore and Chief Judge Lippman at the unveiling of his portrait, April 3, 2017



Hon. Janet Di Fiore

Chief Judge

January 21, 2016²⁷ – August 31, 2022²⁸

Associate Judges

January 21, 2016 – February 7, 2016

Hon. Eugene F. Pigott, Jr.
Hon. Jenny Rivera
Hon. Sheila Abdus-Salaam
Hon. Leslie E. Stein
Hon. Eugene M. Fahey

February 8, 2016 – December 31, 2016

Hon. Eugene F. Pigott, Jr.²⁹
Hon. Jenny Rivera
Hon. Sheila Abdus-Salaam
Hon. Leslie E. Stein
Hon. Eugene M. Fahey
Hon. Michael J. Garcia³⁰

February 6, 2017 – April 12, 2017

Hon. Jenny Rivera
Hon. Sheila Abdus-Salaam³¹
Hon. Leslie E. Stein
Hon. Eugene M. Fahey
Hon. Michael J. Garcia
Hon. Rowan D. Wilson³²

June 21, 2017 – March 23, 2021

Hon. Jenny Rivera
Hon. Leslie E. Stein
Hon. Eugene M. Fahey
Hon. Michael J. Garcia
Hon. Rowan D. Wilson
Hon. Paul G. Feinman^{33 34}

March 24, 2021 – June 4, 2021

Hon. Jenny Rivera
Hon. Leslie E. Stein³⁵
Hon. Eugene M. Fahey
Hon. Michael J. Garcia
Hon. Rowan D. Wilson

June 8, 2021 – December 31, 2021

Hon. Jenny Rivera
Hon. Eugene M. Fahey³⁶
Hon. Michael J. Garcia
Hon. Rowan D. Wilson
Hon. Madeline Singas³⁷
Hon. Anthony Cannataro³⁸

January 12, 2022 – August 2022

Hon. Jenny Rivera
Hon. Michael J. Garcia
Hon. Rowan D. Wilson
Hon. Madeline Singas
Hon. Anthony Cannataro
Hon. Shirley Troutman³⁹



Chief Judge DiFiore at the conference table in 2017 with Judges Rivera, Stein, Fahey, Garcia, Wilson, and Feinman. Also pictured: John P. Asiello, Clerk of the Court; Hope B. Engel, Consultation Clerk; and Julia Smead Bielawski, Assistant Consultation Clerk.



Chief Judge DiFiore is sworn in by Judge Pigott, January 21, 2016



From left: Judges Fahey, Pigott, Garcia, Chief Judge DiFiore, Judges Abdus-Salaam, Rivera, and Stein on the day of Judge Garcia's Investiture, April 25, 2016



Judges Feinman, Wilson, Rivera, and Stein on the day of Judge Feinman's Investiture, October 18, 2017



Chief Judge DiFiore at the conference table in 2016 with Judges Pigott, Rivera, Abdus-Salaam, Stein, Fahey, and Garcia. Also pictured: John P. Asiello, Clerk of the Court; Hope B. Engel, Consultation Clerk; and Lisa LeCours, Assistant Consultation Clerk.



Court of Appeals Judges and staff gather on the steps of Court of Appeals Hall, 2018.



From left: Judges Fahey and Garcia, Chief Judge DiFiore, Judges Cannataro, Singas, and Wilson, 2021



Judges Troutman, Cannataro, and Singas on the day of their combined Investiture, April 5, 2022

In Memoriam

BETWEEN 2012 AND 2021,
THE COURT SUFFERED THE UNTIMELY LOSS
OF THREE SERVING JUDGES.



Hon. Theodore T. Jones

After 17 years of service as a Supreme Court Justice, in January 2007, Judge Theodore T. Jones was nominated to the Court by newly-elected Governor Eliot Spitzer and his appointment was confirmed by the State Senate in February 2007. Judge Jones served as an Associate Judge on the Court until his death on November 6, 2012. He was a jurist of great intellect and compassion, with a warm and engaging personality.

Judge Jones was born in Brooklyn and attended public schools in New York City. He graduated from Hampton University in Hampton, Virginia in 1965, receiving a Bachelor of Arts degree in History and Political Science. Judge Jones served on active duty with the United States Army from 1967-1969. While in the service, he was stationed in the Republic of Vietnam, and attained the rank of Captain. He graduated from

St. Johns University School of Law in 1972 and was admitted to practice in New York State, Federal District Court (E.D.N.Y, S.D.N.Y.), United States Tax Court, Federal Court of Appeals for the Second Circuit, and the Supreme Court of the United States.



Hon. Sheila Abdus-Salaam

Judge Sheila Abdus-Salaam's appointment to the Court by Governor Andrew M. Cuomo was confirmed by the State Senate on May 6, 2013. She served as an Associate Judge until her death on April 12, 2017. Judge Abdus-Salaam's time on the Court was marked by her personal warmth, intelligence, uncompromising sense of fairness, and outstanding collegiality.

Judge Abdus-Salaam was born in Washington, D.C. in 1952 and educated in its public schools. She graduated from Barnard College in 1974 and received her J.D. from Columbia Law School in 1977. Upon graduation, she began her legal career as a staff attorney at East Brooklyn Legal Services, Corporation A (1977-1980); served as an Assistant Attorney General in the New York State Department of Law, Civil Rights and Real Estate Financing Bureaus (1980-1988); and served as General Counsel for the New York City Office of Labor Services (1988-1991). She began her judicial career in 1992, having been elected in 1991 to the Civil Court of the City of New York. In 1993, she was elected to the Supreme Court, New York County, and was re-elected in 2007. She was appointed an Associate Justice of the Appellate Division, First Department in 2009 by Governor David A. Paterson.




Hon. Paul G. Feinman

Governor Cuomo's nomination of Judge Paul G. Feinman to the Court was unanimously confirmed by the State Senate on June 21, 2017. On March 23, 2021, Judge Feinman retired from the Court, citing health issues, and he passed away on March 31, 2021. Known for his kindness, humor, keen intellect, and championship of LGBTQ rights, Judge Feinman was a dedicated jurist who made an extraordinary impact on the Court, the law, and the lives of many members of the legal community.

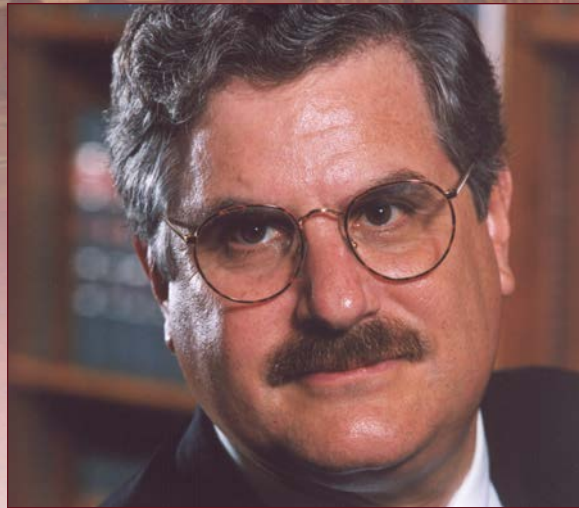
Judge Feinman was born in 1960 in Hempstead, New York, the third of five children. He was raised in Merrick, where he attended public schools. Judge Feinman graduated from Columbia College, Columbia University (A.B. 1981) and the University of Minnesota Law School (J.D. 1985), attending both on scholarship. He also studied at the Université de Paris VII (Jussieu), the Université de Paris II (Assas) and the Université de Lyon III. He began his legal career as a staff attorney for the Legal Aid Society. He then clerked for Justice Angela M. Mazzarelli in Supreme Court, Criminal and Civil Branches, and in the Appellate Division, First Department. In 1996, Judge Feinman was elected to the Civil Court of the City of New York; he was re-elected in 2006. From 1997-2001, he was assigned to the Criminal Court. He was designated an Acting Supreme Court Justice in 2004 and elected a Justice of the Supreme Court in 2007. Governor Andrew M. Cuomo appointed him to the Appellate Division, First Department in October 2012.

Notes to the List of Judges of the Court

1. Nominated Chief Judge February 22, 1993 and confirmed March 17, 1993. Renominated February 7, 2007 and confirmed March 6, 2007.
2. Term expired December 31, 2008, by virtue of provision of State Constitution (Article VI, Section 25, subd b).
3. Resigned effective September 1, 1998.
4. Resigned effective September 1, 2000.
5. Nominated December 9, 1998 and confirmed December 17, 1998.
6. Term expired December 31, 2002, by virtue of provision of State Constitution (Article VI, Section 25, subd b).
7. Nominated November 2, 2000 and confirmed November 29, 2000, replacing Hon. Joseph W. Bellacosa.
8. Resigned effective June 2003.
9. Appointed interim Judge of the Court of Appeals January 6, 2003. Nominated January 8, 2003 and confirmed January 22, 2003, replacing Hon. Howard A. Levine.
10. Term expired September 24, 2006.
11. Nominated November 4, 2003 and confirmed January 12, 2004, replacing Hon. Richard C. Wesley.
12. Term expired December 31, 2006, by virtue of provision of State Constitution (Article VI, Section 25, subd b).
13. Nominated August 18, 2006 and confirmed September 15, 2006, replacing Hon. George Bundy Smith.
14. Renominated November 2007 and confirmed December 13, 2007.
15. Nominated January 14, 2007 and confirmed February 12, 2007, replacing Hon. Albert M. Rosenblatt.
16. Nominated January 13, 2009 and confirmed February 11, 2009, replacing Hon. Judith S. Kaye.
17. Term expired December 31, 2015, by virtue of provision of State Constitution (Article VI, Section 25, subd b).
18. Term expired December 31, 2012, by virtue of provision of State Constitution (Article VI, Section 25, subd b).
19. Died November 6, 2012.
20. Nominated January 15, 2013 and confirmed February 11, 2013, replacing Hon. Carmen Beauchamp Ciparick.
21. Term expired November 29, 2014.
22. Term expired December 31, 2014, by virtue of provision of State Constitution (Article VI, Section 25, subd b).
23. Nominated April 5, 2013 and confirmed May 6, 2013, replacing Hon. Theodore T. Jones, Jr.
24. Resigned effective August 24, 2015.
25. Nominated October 17, 2014 and confirmed February 9, 2015, replacing Hon. Victoria A. Graffeo.
26. Nominated January 15, 2015 and confirmed February 9, 2015, replacing Hon. Robert S. Smith.
27. Nominated December 1, 2015 and confirmed January 21, 2016, replacing Hon. Jonathan Lippman.
28. Announced resignation effective August 31, 2022.
29. Term expired December 31, 2016, by virtue of provision of State Constitution (Article VI, Section 25, subd b).
30. Nominated January 20, 2016 and confirmed February 8, 2016, replacing Hon. Susan Phillips Read.
31. Died April 12, 2017.
32. Nominated January 15, 2017 and confirmed February 6, 2017, replacing Hon. Eugene F. Pigott, Jr.
33. Nominated June 16, 2017 and confirmed June 21, 2017, replacing Hon. Sheila Abdus-Salaam.
34. Resigned effective March 23, 2021.
35. Resigned effective June 4, 2021.
36. Term expired December 31, 2021, by virtue of provision of State Constitution (Article VI, Section 25, subd b).
37. Nominated May 25, 2021 and confirmed June 8, 2021, replacing Hon. Leslie E. Stein.
38. Nominated May 25, 2021 and confirmed June 8, 2021, replacing Hon. Paul G. Feinman.
39. Nominated November 24, 2021 and confirmed January 12, 2022, replacing Hon. Eugene M. Fahey.



Clerks of the Court 1997–2022



Stuart M. Cohen

Stuart M. Cohen was appointed Clerk of the New York Court of Appeals on November 15, 1996 and served in that capacity until he retired in November 2010. Born in Newark, New Jersey, Cohen received his B.A. in history from Connecticut College in 1976 and his J.D. from New York University School of Law in 1979. Cohen was admitted to the New York State Bar in 1980 and started his legal career as an Appellate Law Research Assistant at the Appellate Division, Second Department. He went on to clerk for Associate Judge Jacob D. Fuchsberg and Chief Judge Sol Wachtler before becoming the Deputy Clerk of the Court of Appeals.



Andrew W. Klein

Andrew W. Klein was appointed Chief Clerk and Legal Counsel to the Court on November 4, 2010. He received his B.A. in history from the State University of New York at Stony Brook in 1974 and his J.D. from St. John's University School of Law in 1977. Klein was admitted to the Bar in 1978 and started his legal career as a law clerk on the Court's Central Legal Research Staff. Klein left the Court in 1980 to practice as a litigation associate with Whitman and Ransom in Manhattan and Whiteman, Osterman and Hanna in Albany. Klein returned to the Court in 1983 as the Assistant Consultation Clerk. In 1990, he was appointed Consultation Clerk to the Court and served in that role until November 2010, when he was appointed Clerk of the Court. Klein retired in September 2015.



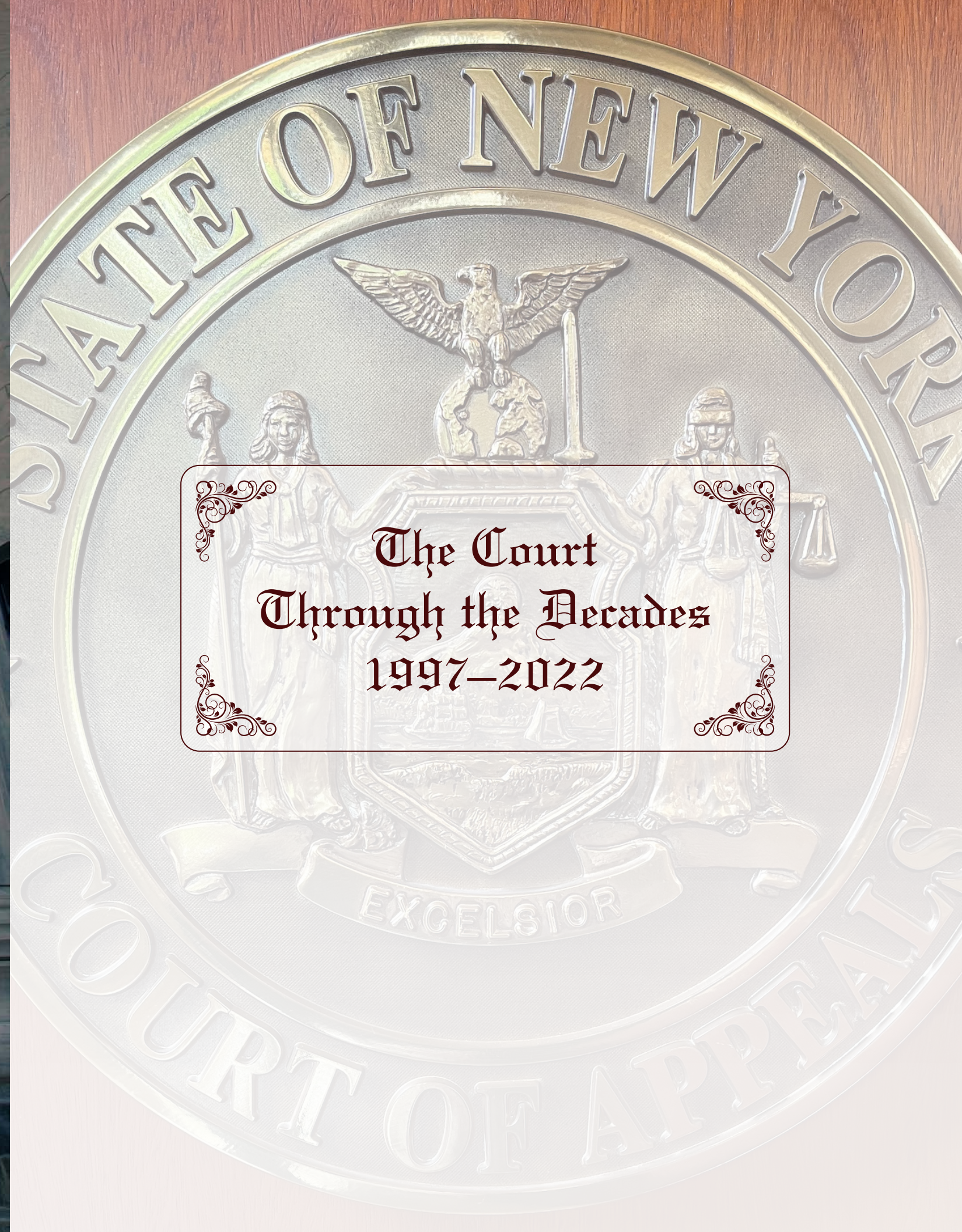
John P. Asiello

John P. Asiello was appointed Chief Clerk and Legal Counsel to the Court on September 17, 2015. Born in Corning, New York, Asiello received his B.A., with outstanding academic performance, Phi Beta Kappa, from Harpur College, State University of New York at Binghamton, in 1974; and his J.D. from Cornell Law School in 1977. He was admitted to the New York State Bar in 1978 and served as a staff attorney in the Clerk's Office until 1981, after which he spent several years in private practice as an associate at Bouck, Holloway, Kiernan and Casey in Albany. Asiello returned to the Court of Appeals in 1985 and served in several positions—including Chief Motion Clerk, Assistant Consultation Clerk, Consultation Clerk, and Deputy Clerk—before being appointed Clerk of the Court, a position from which he retired in April 2022.



Lisa LeCours

Lisa LeCours was appointed Chief Clerk and Legal Counsel to the Court on May 2, 2022. A career public servant, she previously served as Executive Assistant to Chief Judge Janet DiFiore from August 2017 to May 2022. Prior to taking that position, she was the Assistant Consultation Clerk from 2014 to 2017, following fourteen years as Senior Principal Law Clerk to the Hon. Victoria A. Graffeo, an Associate Judge of the Court. Lisa began her legal career in 1993 as an Appellate Court Attorney at the Appellate Division, Fourth Department. In 1995, she joined the Appeals and Opinions Bureau of the New York Attorney General's Office. She subsequently was employed as Associate Counsel with The Moreland Act Commission on New York City Schools and left that post to serve as Principal Law Clerk to Judge Graffeo, who was then an Associate Justice of the Appellate Division, Third Department. Admitted to practice law in 1994, LeCours received her B.A. from the University at Albany, State University of New York, in 1990 and her J.D. from Albany Law School in 1993.



*The Court
Through the Decades
1997–2022*



Court Officers Academy Instructor Patricia Mack on September 11, 2001

NEW YORK STATE UNIFIED COURT SYSTEM

CAPTAIN WILLIAM H. THOMPSON
SERGEANT THOMAS JURGENS · SERGEANT MITCHEL WALLACE

COURT OFFICERS ACADEMY

In December 2018, the Unified Court System dedicated a new training facility for court officers to the three heroic court officers who perished in the September 11, 2001 attacks—Captain William H. Thompson, Sergeant Thomas Jurgens, and Sergeant Mitchel Wallace. Chief Judge DiFiore attended the dedication ceremony to honor the fallen officers, with Chief of Public Safety Michael Magliano and Chief of Training Joseph Baccellieri, Jr.




September 11, 2001

On the morning of Tuesday, September 11, 2001, the Judges and nonjudicial staff of the Court of Appeals were at their desks in Court of Appeals Hall in Albany, preparing the cases that were scheduled to be heard that afternoon. It was the second week of the Court's September session and the building was humming with activity, as it always did during session days when the Judges and their staff traveled from their home chambers across the state to Albany, swelling the population at Court of Appeals Hall (which at that time—prior to the 2004 renovation—was bursting at the seams). Slowly, by word of mouth, news spread that a plane had hit one of the Twin Towers at the World Trade Center. Judges and staff members began to congregate around the handful of televisions that existed in the building, typically used only for internal viewing of oral argument on the Court's closed-circuit system. Many watched the real-time news coverage showing the second plane striking the south tower—a horrific moment that at once clarified that New York City was experiencing a terrorist attack. As the morning unspooled, the enormity of the attack—and the scale of the human tragedy—began to come into focus as the towers fell and we learned that the events at the World Trade Center were part of a larger attack that extended to the Pentagon in Washington D.C. and, owing to the heroic acts of ordinary citizens, a field in Pennsylvania. In the early hours of that day, there was no way to know whether this was the opening volley in what would be a series of attacks on landmarks and government buildings, enhancing the sense of vulnerability we all shared in Court of Appeals Hall, located steps from the New York Capitol and Empire State Plaza—the seat of New York state government.

Many Judges and staff members had friends and family that worked at or near the World Trade Center. Telephone communications in that area were significantly disrupted, and we watched helplessly as the news conveyed images of the destruction. As so many other Americans did, we held a sort of vigil in the building, celebrating every time we heard that a loved one had made contact and was safe. Judge Howard Levine's 14-year-old granddaughter had just that week started classes at Stuyvesant High School, next door to the World Trade Center; it was late morning before he learned that the students had been safely evacuated and led through city streets to safety, albeit unable to avoid exposure to many of the horrors of that day. For one Judge's law clerk whose parents worked mere steps from the towers, word that they were both unharmed did not reach him until late afternoon. Of course, stories like this are legion for New Yorkers—and far too many of them did not end with such relieving news.

Although September 11th was full of anxiety and sadness, there were also moments of extraordinary inspiration. We were awed by the selflessness of so many, as we learned that first responders from all over the greater New York City area were flocking to lower Manhattan to assist with rescue efforts. We later learned that among them were more than 25 court officers, including several whose regular assignment was at the Court of Claims located at the World Trade Center complex. Three of them—Officer Thomas Jurgens, Captain William H. Thompson, and Officer Mitchel Wallace—did not return. These officers made the ultimate sacrifice to help others.

It was obviously difficult to focus on the everyday work of the Court that day. But three oral arguments were scheduled for two o'clock that afternoon and, as Chief Judge Kaye explained, "very quickly we had to turn our attention to critical questions concerning the courts. On the one hand there was a human

A photograph of the 9/11 Memorial reflecting pool. In the foreground, several hands wearing white gloves are touching the names of victims engraved on the dark, reflective surface. The names are in large, bold, black letters. The water in the pool is dark and reflects the sky and the surrounding area. In the background, a crowd of people can be seen walking around the pool.

inclination to cancel, to adjourn all scheduled activities, because everything we were doing, all our 'important' affairs, suddenly seemed so trivial, so insignificant. The unanimous sentiment, however—from my Court of Appeals colleagues as well as my court administration colleagues—was to go forward, not to postpone, not to capitulate, not to succumb to the terrorist attack on our people and our values" (Remarks of Chief Judge Judith Kaye, District of Columbia Judicial & Bar Conference, April 19, 2002). In this spirit, the Court initially vowed that it would hear oral argument in Court of Appeals Hall that afternoon as planned. Unfortunately, it soon became evident that this would not be feasible because the travel plans of several of the attorneys scheduled to appear had been disrupted by the attack. The following afternoon, however, the Court was able to hear argument in a criminal case that had been postponed from the previous day and, on Thursday, September 13th, the Court heard its regularly scheduled docket of three cases.

Of course, in its pristine building miles up the Hudson River from ground zero, the Court had the luxury of resuming its work. But never for a moment did the Court lose sight of the challenges facing others in the court system and so many New Yorkers in other walks of life; even at that time, with so many unknowns, it was clear that the resumption of normal operations would be a formidable task that would take months, if not years, to accomplish. Despite the grief, the Judges and staff—what we like to call the Court of Appeals family—ended that most heart-breaking September session with a sense of gratitude, buoyed by "the spirit that immediately overtook and united Americans—the desire to help, to volunteer, to contribute, to celebrate this great land of liberty and opportunity" (Open Letter to the Bar, Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman, on the eve of September 11, 2002). Now, each year on September 11th, the Judges and Court of Appeals staff remember the lives tragically lost on that day and honor all those who served in the aftermath.

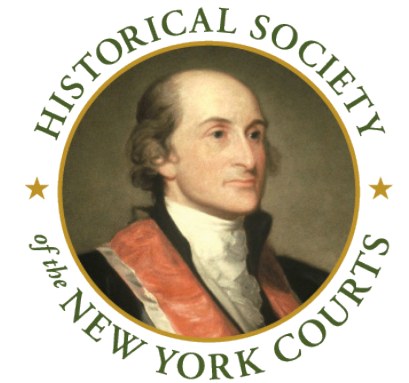
“Much of the history of the New York State courts lies buried in the memories of hundreds of judges and lawyers, as well as in storerooms and attics across the country. With the formation of the Historical Society we put in place a vehicle to collect and preserve the wonderful history of the New York courts for future generations.”

— Chief Judge Judith S. Kaye

“We have a wonderful history we want to share. But it first must be captured and preserved. This is a time-consuming task, but for those of us who cherish the courts it is a labor of love. The Historical Society will create an enduring testament to the contributions that the New York State courts have made to our State and Nation.”

— Judge Albert M. Rosenblatt

The Historical Society of the New York Courts



Founded in 2002 by Chief Judge Judith S. Kaye in partnership with Judge Albert M. Rosenblatt, the Historical Society of the New York Courts was established to preserve the legal history of the State, foster scholarly interest in the history of the courts, and promote public understanding and appreciation of the role of the judicial branch.

The Historical Society is a recognized 501(c)(3) organization formed by a charter from the New York State Board of Regents and funded by contributions from members, gifts, and grants from foundations, corporations, and law firms. Although the organization is independent of the Court of the Appeals, several Judges of the Court have served on its Board, including Chief Judge Jonathan Lippman (President), Judge Albert M. Rosenblatt (President Emeritus), Judge Carmen Beauchamp Ciparick (Chair Emeritus of the Board), Judge Michael J. Garcia (Trustee), Judge Eugene M. Fahey (Trustee Emeritus), Judge Susan Phillips Read (Trustee Emeritus), and Judge Bernard S. Meyer (former Trustee). The Society continues to collaborate with the Court of Appeals in a variety of ways.

Highlighting the Role of the Courts to the Public

The Society engages with the public through its events to inform, entertain, and delight lawyers, judges, historians, and the like with programs—both in-person and virtual—that celebrate New York’s bench and bar. Programs have often featured themes highlighting the Court of Appeals, including the majesty of its courthouse, its judges, art and architecture, and its significant jurisprudence. In addition to its live events, the Society also moved to digital programming with its podcast and interview series. One such series, *Dispensing Justice from a Distance: Journal of the NYS Courts During the 2020-2021 Pandemic*, tracked history being made in real time as the Unified Court System responded to the COVID-19 pandemic to ensure that every New Yorker received justice. It featured nearly 40 interviews with judges and court personnel who dealt directly with the public on the front lines. While the focus was primarily at the trial level, Chief Judge DiFiore and Chief Administrative Judge Lawrence K. Marks shared their approach from the top down to the lower courts in an interview with former Chief Judge Lippman.



Retired Court of Appeals Judges are honored at a 2007 Society event; from left: Judges Hancock, Simons, G.B. Smith, Chief Judges Kaye and Wachtler, and Judges Rosenblatt, Bellacosa, Wesley, and Levine



Chief Judge Lippman is interviewed in 2018 by Antonio Galvao—his former counsel and a former Central Staff Attorney and law clerk—for Chief Judge Lippman's oral history



Chief Judge DiFiore and Chief Administrative Judge Lawrence K. Marks are interviewed by Chief Judge Lippman for *Dispensing Justice*.



United States Supreme Court Justice Ruth Bader Ginsburg and Chief Judge Kaye give a talk together



Judge Wilson participates on a panel with Appellate Division Justice Dianne T. Renwick, retired Connecticut Superior Court Judge Angela C. Robinson, and U.S. District Judge Leslie Abrams Gardner.

Preserving the Legacy of the Judges of the Court

The Society launched its Oral History Project in 2005 to document the paths to the law, careers, experiences, and observations of retired judges and lawyers. These interviews are spoken personal accounts that provide rich insight into the judiciary for present and future members of the public and the bar. A number of the Court's former Chief and Associate Judges have participated and detailed their stories from childhood to the Court and beyond.

Creating an Archive to Celebrate the Legal History of the State

Over the last two decades, the Society has compiled an impressive array of legal history and reference materials available for public viewing on the Society's website, launched in 2003. The Court of Appeals' former Chief Legal Reference Attorney, Frances Murray, researched and developed *Legal History by Era*—a collection, available on the Society's website, that looks back on New York's foundational roots in legal history beginning with the Dutch and British and also explores the history of the State Constitution and other important documents and case law. The Society's website also features biographies of former and current Court of Appeals Judges (among others) and digital copies of publications regarding the history of the courts, as well as the art and architecture of state courthouses—most notably of Court of Appeals Hall. The website contains a wealth of past program videos, issues of the Society's scholarly journal *Judicial Notice*, an annual calendar featuring soundbites of New York legal history, and original curriculum for students. All these materials create a veritable treasury of knowledge for judges, lawyers, students, and the general public in creative and user-friendly ways.

The Society understands that history informs the present and works to inform all who visit its website. It is celebrating its 20th anniversary in 2022 and will continue to work to deliver its message in the years to come. Its virtual library can be accessed at <https://history.nycourts.gov> and through its social media channels.



The *Lemmon Slave Case* exhibit installed in Yates County Courthouse with Chief Judge DiFiore's introduction playing on the monitor



Chief Judge Kaye in 2008 with inaugural Garfinkel Essay Scholarship winner, Elijah Fagan-Solis



Judge Rivera with the 2014 Garfinkel Essay Scholarship winners, Zachary Field, Lida Ramos Arce, and Rhonda Parker

Bringing Exhibits to the Courthouse

To better connect those who enter New York courthouses with the State's legal history, the Society developed an exhibit that is currently travelling to 45 courthouses across the State. Known as the *Lemmon Slave Case* exhibit, it tells the story of the Court of Appeals' landmark 1860 decision (20 NY 562 [1860]) ruling in favor of eight enslaved young women and children in an era when *Dred Scott* (60 US 393 [1857]) was the law of the land. The exhibit—which showcases the New York courts' unyielding statement against slavery—includes text panels and a video narration by James Earl Jones, with an introduction by Chief Judge Janet DiFiore.

Empowering Students

The Society works with educators across the state to teach students about our democracy, founding documents, and the role the judicial system plays in the government and society. It strives to support and encourage civics education through the Judith S. Kaye Teaching Fellowship, teacher workshops, ready-made curriculum, and an essay competition to build informed citizens for the future. The Fellowship brings educators into the classroom, focusing on topics that include civil rights, immigration, privacy, and discrimination. The curriculum that Fellows develop is distilled into lesson plans for teachers to easily incorporate into their own teaching materials, and the teacher workshops provide strategies for educators to incorporate more civics into their classes. The Society's essay contest which had been offered to CUNY and SUNY two-year community college students across the state was an opportunity for students to engage in important civics issues, including voting, jury service, and LGBTQ rights. Traditionally, winners were awarded their prizes during the annual Law Day Ceremony at the Court of Appeals.



The 2004 Renovations of Court of Appeals Hall

In 1999, the Court decided to pursue an extensive restoration and renovation of Court of Appeals Hall because the building no longer provided adequate space for the Court’s judicial and nonjudicial staff, and proved to be insufficient for 21st century operations. For example, the outdated utility systems made climate difficult to control, and meeting space was limited. Chief Judge Kaye designated Associate Judge (now United States Circuit Judge) Richard C. Wesley as the Court’s liaison to the renovation project. In 2000 and 2001, the Legislature—with the support of Governor George E. Pataki—appropriated funds for the project, and construction began in 2002. For the next 17 months, the Judges and Court staff worked from temporary offices located 10 miles from the courthouse, although oral argument continued to be held at Court of Appeals Hall.

When the project was completed in 2004, two three-story additions to the eastern corners of the building had increased floor space by 33,000 square feet. The additions are similar in scale and detail to the original building and are faced with marble from the same quarry that supplied the 1958-1959 renovations. Several external walls from the original structure were preserved as interior walls within the additions, leaving the historical facade undisturbed to be appreciated from inside the building. Additionally, the courthouse dome was re clad in stainless steel, and an oculus and skylight—consistent with the building’s 1835 design—were installed to replace the cupola erected atop the dome during the prior renovation. The skylight continues to provide natural light to the rotunda below and to the 1000-square-foot mural adorning the inside of the dome—“Romance of the Skies,” painted by Eugene F. Savage in 1959.



Chief Judge Kaye overseeing construction



From left: Judges Ciparick, Graffeo, Wesley, and Rosenblatt



Rear view of Court of Appeals Hall prior to the 2004 renovations



Rear view of Court of Appeals Hall after the 2004 renovations



The Red Room after completion of the 2004 renovations

Inside Court of Appeals Hall, 60,000 square feet of existing interior space were restored and existing electrical, communication, plumbing, and HVAC systems were updated or replaced. Two Judges' Chambers were moved from the third floor to the second floor, allowing the second floor to accommodate all seven Judges and their staff—a principal objective of Chief Judge Kaye's renovation plans. The second floor Judges' Library and Conference Room also underwent extensive renovations as its north and south bays were redesigned to provide space for the additional Judges' Chambers, and new walls were constructed using paneling and molding matching the existing 1950s woodwork. To replace the space lost on the second floor, a modern library was constructed on the third floor. A third conference room—the John Jay Room—was also added to the first floor for public programs and educational functions.

Where possible, existing materials, fixtures, and furnishings were restored and reused throughout the building. Elegant, high groin-vaulted ceilings that had been concealed during prior renovations were exposed, plastered, and painted to appear as they had nearly two centuries earlier. New color schemes were thoughtfully selected, with different areas of the building embracing distinct eras of the Court's history. On the first floor, the principally blue and red carpet and wall colors evoke traditional early 20th

century design. The second floor also boasts blue and red, along with hues of green and gold—typical of mid-20th century design. Finally, a contemporary color scheme was selected for the third floor, as the majority of this level was newly constructed.

The historic and magnificent Court of Appeals courtroom—designed in the 1880s by H.H. Richardson for the State Capitol Building and moved piece by piece to Court of Appeals Hall upon the Court's relocation in 1917—also saw significant improvements. Brass chandeliers, based on the courtroom's original fixtures, were installed to provide more light to the Judges and litigants. Many of the courtroom's former chandeliers were refurbished and reused elsewhere in the building, including in the John Jay Room and the Red Room—the Court's traditional gathering place after oral argument, which was completely reconstructed during the renovation. Finally, the historical Richardson furniture and the portraits of former Judges were restored to their prior grandeur and returned to the courtroom.

Nearly 20 years later, and now well into its third century, Court of Appeals Hall continues to provide a fitting home for the State's highest tribunal. There is little doubt that it will continue to be a celebrated symbol of justice, liberty, and the rule of law for many decades to come.



Above: One of the Judge's Chambers on the second floor. Below: The Court's Conference Room following renovations

Above: The H.H. Richardson Courtroom following the renovation. Below: Court of Appeals Hall, 2005





Above: The John Jay Room. Below: The John Jay Hallway



Above: The Attorney's Lounge. Below: The Attorney's Library



The Court of Appeals Lecture Series

Starting in 2006, the Court of Appeals—in conjunction with the Historical Society of the New York Courts—hosted an educational lecture series, open to the public, in the courtroom at Court of Appeals Hall. As Chief Judge Kaye explained, the lecture series sought to bring the Court, public, and bar “together to explore, to enjoy, to exalt in [a] . . . public treasure, . . . the American justice system,” with a particular focus on “broader questions of justice that affect the life of the community.”



Kermit Hall, March 23, 2006 *NY Times v Sullivan and its Times: The Press and the Community*



From left: Chief Judge Kaye, Francesca Zambello, Judge Read, and Susan N. Herman, June 26, 2006 Dreiser’s “*American Tragedy*”: *The Law and the Arts*

In its first year, the lecture series included three outstanding programs on law and society, covering a diverse range of topics. For the inaugural lecture—*NY Times v Sullivan and its Times: The Press and the Community*—Kermit Hall, President of the State University of New York at Albany, discussed one of the United States Supreme Court’s most significant decisions involving the law of libel. The Court’s next lecture delved into the law and the arts, with presentations by Francesca Zambello, internationally renowned director of opera and theater, and Susan N. Herman, Centennial Professor of Law at Brooklyn Law School. Zambello and Herman explored Theodore Dreiser’s 1925 novel *An American Tragedy*—later adapted into an opera—based on the sensational murder of Grace Brown in Herkimer County in 1906. That lecture was followed by *The Shape of Justice: Law and Architecture*, featuring eminent architects Henry N. Cobb and Paul Spencer Byard, who examined the history of courtroom architecture, including—to the delight of spectators and the Court—that of the H.H. Richardson-designed courtroom in Court of Appeals Hall.

In 2007, the Court was honored to host Supreme Court Justice Stephen G. Breyer, who spoke to members of the public and the bar about democracy and the role of the Constitution while providing the audience insight into the workings of the nation’s highest court. The Court also presented a program spotlighting issues relating to *The Courts and Children*, with speaker Geoffrey Canada—acclaimed educator, activist, and author. That same year, Jeffrey Toobin—an attorney, author, and legal affairs analyst for CNN and other media organizations—visited to discuss *The Courts and the Media*.

The Court’s lecture series continued for almost a decade and, over the years, the programs covered a myriad of interesting legal and cultural topics. Approaching the law from different perspectives, several lectures explored the intersection of law with sports, music, and dance. Presentations featured, among others, NBA Commissioner David Stern; Michael Lang—co-creator of the famous Woodstock Music and Art Festival in 1969; author Daniel J. Kornstein; and Randall R. Craft, Jr.—General Counsel for the New York City Ballet.

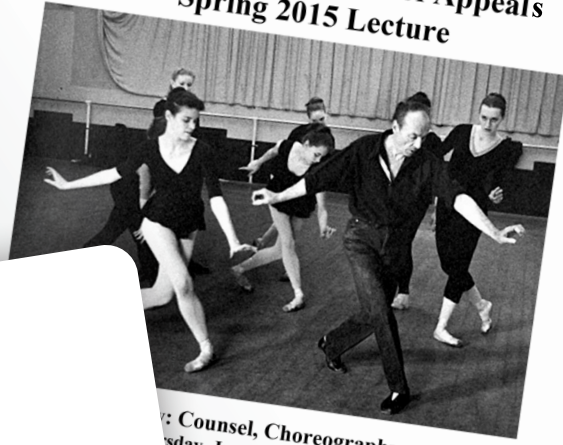
The New York Court of Appeals 2012 Lecture



Shakespeare and the Law

Thursday, May 31, 2012
6:00 p.m.
Court of Appeals Hall

The New York Court of Appeals Spring 2015 Lecture

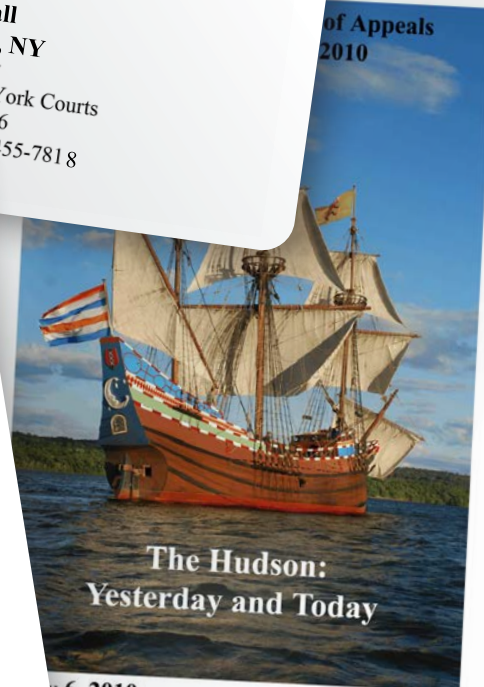


Topic: Counsel, Choreography and Copyright
Thursday, June 4, 2015, 6 p.m.
Court of Appeals Hall

The New York Court of Appeals
is pleased to welcome
R. Craft, Jr.
General Counsel for the New York City Ballet
and Knight

Thursday, June 4, 2015
Immediately following program

Court of Appeals Hall
Albany, NY
Sponsored by
New York Courts
May 26
8-455-7818



The Hudson: Yesterday and Today

Thursday, May 6, 2010 6:00 p.m.
Court of Appeals Hall

The New York Court of Appeals
is pleased to welcome
Frances F. Dunwell, Hudson River Estuary Coordinator,
New York State Department of Environmental Conservation
and
William T. (Chip) Reynolds, Captain, *Half Moon*
with
An exhibit of Hudson River photographs
by the *Half Moon*



From left: Justice Breyer with Chief Judge Kaye (seated) and Judges Ciparick, Pigott, R.S. Smith, Graffeo, Jones, and Read

In addition to surveying connections between the law and the arts, the Court's lecture series focused on significant moments in legal history. The Court's tenth lecture in the series, *The Hudson: Yesterday and Today*, explored the history of the Hudson River, which runs through Albany just a few blocks from Court of Appeals Hall. William T. (Chip) Reynolds, an environmental scientist and captain of a full scale replica of the *Halfmoon*—the ship that Henry Hudson sailed up the river in 1609—illuminated Hudson's experiences and the history of river travel. Co-presenter Frances F. Dunwell, the Hudson River Estuary Coordinator for the New York State Department of Environmental Conservation, explored more recent history relating to the environmental movement and environmental law reforms. With a presentation by Paul Finkelman—President William McKinley Distinguished Professor of Law and Public Policy and Senior Fellow, Government Law Center at the Albany Law School—on *The Fugitive Slave Act & Secession*, the Court and other listeners examined the history of slavery, secession, and the law in an opening event for the conference, *The Civil War On Trial: Legal Issues That Divided A Nation*, sponsored by The New York State Archives Partnership Trust and the Government Law Center at Albany Law School, in cooperation with the Historical Society of the New York Courts, the New York State Bar Association, and the Abraham Lincoln Bicentennial Foundation. Switching gears, Michael Perino, Dean George W. Mattheson Professor of Law at St. John's University School of Law, visited the Court in 2011 to discuss his recently-published book "*The Hellhound of Wall Street: How Ferdinand Pecora's Investigation of the Great Crash Forever Changed American Finance.*" The Court was honored to host such distinguished guests over the years, and is proud that its programs brought the public, the bench, and the bar together.



Speaker Michael Perino with Judge Ciparick and Judge Jones April 11th, 2011



Geoffrey Canada presenting to a full courthouse



Architect Henry N. Cobb speaks with Chief Judge Kaye about the architecture of the courtroom, November 16, 2006



David Stern, *The Courts and Sports*, March 19, 2008



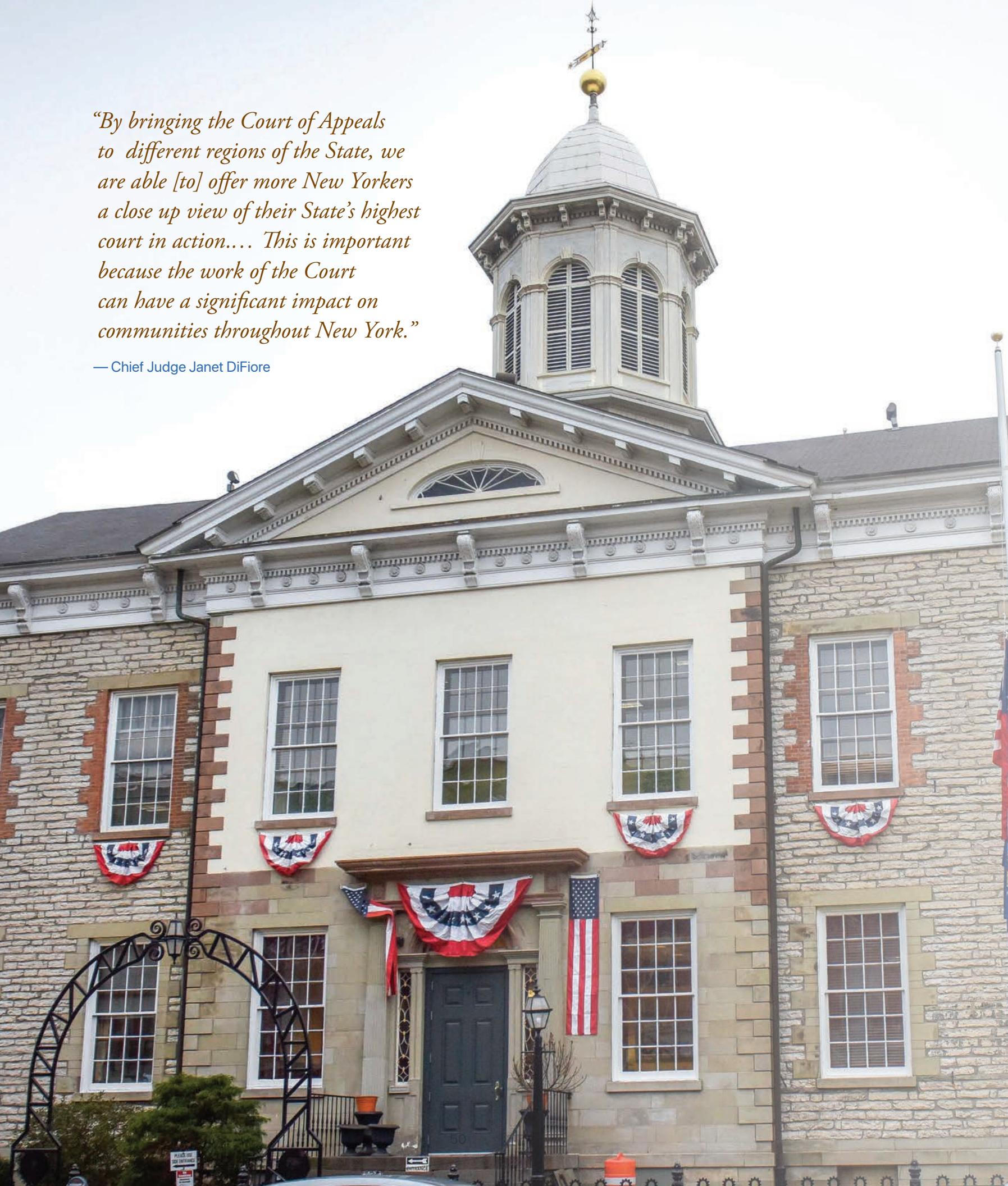
Michael Lang speaks during the Court's *Woodstock: Music of the First Amendment* lecture with co-presenters Sam Yasgur and Phil Gitlen. October 23, 2008



Stolen Art, Presenters Owen Pell and Monica Dugot, June 5, 2008

“By bringing the Court of Appeals to different regions of the State, we are able [to] offer more New Yorkers a close up view of their State’s highest court in action.... This is important because the work of the Court can have a significant impact on communities throughout New York.”

— Chief Judge Janet DiFiore



The Court of Appeals on the Road

Since 2002, the Court has convened throughout New York in a return to tradition from the earliest years of the Court. These travels ensure that members of the public and legal community have the opportunity to experience in-person oral arguments, and provide opportunities for the Court to celebrate local history and connect with the public through visits with school children, law students, bar associations and community groups across the state.

- 2002:** Brooklyn Borough Hall, Appellate Division, Second Department, Brooklyn
- 2005:** Old County Hall, Buffalo
- 2006:** John P. Cohalan, Jr. Court Complex, Central Islip
- 2008:** The Bronx Hall of Justice, Bronx
- 2010:** Hon. Stewart F. Hancock, Jr. Ceremonial Courtroom, Onondaga County Courthouse, Syracuse
- 2012:** Appellate Division, First Department, Manhattan
- 2015:** Melanie Gray Courtroom, Syracuse University College of Law, Syracuse
- 2015:** New York State Judicial Institute, White Plains
- 2016:** M. Dolores Denman Courthouse, Appellate Division, Fourth Department, Rochester
- 2017:** Richard J. Daronco Westchester County Courthouse, White Plains
- 2018:** Ulster County Courthouse, Kingston
- 2022:** Fulton County Courthouse, Johnstown



Retired Associate Judge Albert M. Rosenblatt spoke to local students about the history of the Court before oral argument at the Ulster County Courthouse.



Above: In September 2002, the Court convened in Brooklyn's historic Borough Hall—the original home of the Appellate Division, Second Department—for three days of oral argument. Nearly 1,300 lawyers, students, and members of the public attended the Court's first session away from Court of Appeals Hall in almost 50 years.

Below: In April 2008, the Court traveled to the Bronx to hear oral arguments in the Bronx Hall of Justice. More than 450 people attended the arguments. The Court also spent time with local members of the bar and visited the Bronx High School of Law, Government and Justice to speak with students.



Above: To celebrate the 200-year anniversary of the rebuilding of the historic Kingston courthouse, in November 2018, the Court of Appeals heard oral arguments at the Ulster County Courthouse—the very site where the State's highest court first convened in 1777, with John Jay serving as New York's first Chief Judge before going on to become the first Chief Justice of the Supreme Court of the United States.



Above: The Court held a three-day session at the Richard J. Daronco Westchester County Courthouse in White Plains in April 2017 and met with local high school and college students after arguments each day.

Below: The Court road-tripped to Rochester in October 2016 to hear appeals in the Hon. Samuel L. Green Courtroom of the Appellate Division, Fourth Department, in the M. Dolores Denman Courthouse. While in Western New York, the Court attended bar association events and interacted with judicial colleagues, court staff, the bar, and members of the public.





Advancements in the Digital Age

The last 25 years have seen extraordinary technological advances, prompting various changes to the Court’s internal operations and Rules of Practice to increase efficiency, reduce paper usage, take advantage of digital resources, and improve public access to court records and information.

In 2009, the Court transitioned to a new case management system designed and implemented by the Office of Court Administration’s Division of Technology to better facilitate the Court’s processing of motions, criminal leave applications, and appeals. In 2010, the Court began its transition toward electronic filing, amending its Rules of Practice to reduce the number of paper copies filed for appeals and to require the submission of accompanying digital copies of records, appendices, and briefs by CD or DVD. This rule change facilitated the use of electronic copies of appeal papers by Judges and Chambers staff.

The Court’s library has continuously expanded the digital resources available for the Court’s research needs, ensuring ready access to an increasing number of online legal databases, legislative history materials, and other relevant information.

The Court also revamped its website in 2011, adding a new feature listing undecided argued appeals and civil motions, which allows the bar and public to better keep track of matters pending at the Court. Today, the Court’s comprehensive website posts information about the Court, its Judges, and its history; summaries of pending cases and news items; helpful

information about the Court’s practice—including its Rules, civil and criminal jurisdictional outlines, court forms, and session calendars—and links to other judiciary-related websites.

To better serve the public and the bar, the Court developed and, in February 2013, launched an online service—the Court of Appeals Public Access and Search System (Court-PASS). Court-PASS facilitates easier submission of records and briefs to the Court in digital format, and also offers universal online access to publicly available documents through a searchable database for matters pending on or filed after January 1, 2013. Anyone may search or browse the Court-PASS database free of charge, and users may view or download non-confidential documents filed in a case, including those relating to civil motions in which leave to appeal has been granted, and briefs and records in pending appeals. In addition, Court-PASS incorporates transcripts of oral arguments, as well as the Court’s decisions, which are also available on the Court’s main website. Because Court-PASS increases accessibility to information contained in public records and briefs, mechanisms were built into the digital filing system to ensure that attorneys properly redact confidential and sensitive matters.

The Court of Appeals joined Twitter in 2014 (@NYCourtsCOA) and uses its account to announce the release of its decisions and calendars and inform the public of significant court news. To further advance public access, engagement, and transparency, oral arguments have been live-streamed via the Court’s website since the 2004 renovation and, in 2016, the Court began streaming and archiving its oral arguments on YouTube. Members of the public and bar all over the world can easily watch oral argument in real time or view past arguments from 2010 to present day.

As discussed in this publication’s segment detailing the Court’s response to the COVID-19 pandemic, in 2020, the need for additional virtual operations spurred the launch of the Companion Filing Upload Portal for motions, criminal leave applications and Rule 500.10 Responses (the Portal). The Portal—fully implemented in 2021—is used to upload companion digital submissions of motions, criminal leave applications, and Rule 500.10 Jurisdictional Responses. The Rules of Practice were amended in conjunction with the launch of the Portal to require the filing of only a single printed copy for civil motion and opposition papers. In addition, the Rules were changed to provide that intermediate appellate court documents relating to civil and criminal leave applications be filed in digital format only.

The Law Reporting Bureau—which operates under the supervision of the Court of Appeals and the direction and control of the Court-appointed State Reporter and which edits and publishes New York’s Official Reports, the permanent record of the decisions of the New York state courts—also experienced significant technological innovations in recent years, bringing the Official Reports from a primarily print medium to an increasingly electronic one. In 1997, the Official Reports first appeared on the Internet in the New York Slip Opinion Service and, two years later, the Official Reports first appeared in Westlaw.

With the expansion of the Internet came an increasing public interest in obtaining current court opinions online, and, in 2000, the Law Reporting Bureau launched its website, providing



free public access to the Slip Opinion Service. 2004 marked the Law Reporting Bureau’s 200th anniversary of official reporting and began the third series of the Official Reports. The following year, the Bureau’s website was expanded to include the Official Reports Service, which currently provides access to Official Reports decisions back to 1917. The website was further enhanced with citation services in 2006 and 2008, a legal research portal in 2006, and the Electronic Resources User Guide in 2016. The Bureau’s website includes features to facilitate accessibility by persons with disabilities and ensure the website’s compatibility with a range of devices. Today, the Law Reporting Bureau publishes tens of thousands of decisions on its website each year. Usage of the website is strong, with over 1 million unique visitors accessing the site in 2021.

The Law Reporting Bureau has also embraced innovations in communications, creating an RSS service in 2010 and a Twitter account in 2016. In 2020, an Official Reports logo was added to Westlaw which distinguishes the Official Reports from other, unofficial versions of New York State decisions available in Westlaw’s National Reporter System. The COVID-19 pandemic compelled the Law Reporting Bureau to take a fresh look at its operations, resulting in additional improvements and an almost entirely paperless publication process.



The COVID-19 Pandemic

In January 2020, the first case of a highly contagious novel coronavirus was confirmed in the United States. On March 1, the first confirmed case of SARS-CoV-2 virus—later officially named COVID-19—was reported in New York State. Within a week, Governor Andrew Cuomo declared a state of emergency and, by the end of the month, the COVID-19 outbreak was declared both a nationwide and international public health emergency, with the World Health Organization announcing a global pandemic. Soon thereafter, extraordinary measures were undertaken to attempt to curtail spread of the virus including, by Executive Order, the closing of all non-essential businesses in New York—a measure which would continue to varying degree for several months. After vaccinations were developed and released to the public in stages in early 2021, Governor Cuomo ended the declared state of disaster emergency that June, although mitigation and prevention efforts were ongoing. As of August 2022, the United States death toll from COVID-19 has surpassed 1,000,000.*

In early March 2020, as New York quickly became the epicenter of the country's COVID-19 outbreak, the Unified Court System incorporated guidance from the Centers for Disease Control and Prevention and the New York State Department of Health into policies that limited traffic in court facilities, advised on "social distancing" measures to mitigate the risk of transmission, and prevented persons who self-identified as at risk of COVID-19 due to recent travels or exposure from entering court facilities.

Accordingly, for its March 2020 Session, the Court directed that oral argument would not be open to public spectators and that persons who self-identified as at risk of COVID-19 would not be permitted to enter Court of Appeals Hall.

The Court had scheduled oral argument of 10 cases, to be heard on March 17, 18, 24 and 25. On March 17, two cases were argued in person. The Court reconfigured its historical seating arrangement for the judges and arguing counsel to facilitate social distancing. The Judges of



Governor Kathy Hochul speaks at the Joint Investiture for Associate Judges Singas, Cannataro, and Troutman, April 5, 2022

the Court were seated more than six feet apart, with four Judges on the bench and three seated at a table placed in front of the bench. Arguing counsel were positioned at least six feet away from the Judges and each other at separate tables. With respect to the third case calendared that day, for the first time in Court history, the appeal was argued by videoconference, with the seven Judges in the courtroom and the two attorneys arguing virtually from New York City.

Developments in the coronavirus public health emergency progressed rapidly. The Unified Court System regularly updated the applicable protocols to address new developments, as did the Court of Appeals. Thus, on March 18, the Court announced that all appeals scheduled for the remainder of the March Session were adjourned and Court of Appeals Hall would be closed to public visitors until further notice. The Court announced that it would nonetheless consider previously filed pending matters and accept submissions by mail. At that time, the majority of Albany court staff were directed not to report to Court of Appeals Hall.

Consistent with evolving public health guidelines, operations were maintained to the greatest extent possible, in-person and remotely. At no time did the Court's operations cease. Even when in-person work was severely restricted, a small group of attorneys, technology staff and administrative personnel were present at Court of Appeals Hall to attend to Clerk's Office responsibilities, including answering telephone inquiries, processing mail and digital filings, and communicating with the Judges and Chambers staff. In early April, when the Unified Court System authorized a transition to virtual courts and virtual offices, the Court's Information Technology Department immediately provided the necessary equipment, training and support to facilitate remote work.

The Court heard in-person argument at all but one (April-May) of the eight sessions it had scheduled for arguments in 2020, while also making use of argument by videoconference as necessary. On May 28, 2020, Albany staff

safely resumed in-person operations at Court of Appeals Hall, with diligent masking, social distancing, and cleaning protocols.

As is typical, the Court released decisions in all months of 2020 except July. The Court decided more motions and more criminal leave applications than were filed, leaving fewer pending applications to be carried over to 2021 than were carried over from the previous year.

Significant amendments to the Rules of Practice were adopted in May and December of 2020 to provide for a new companion digital filing system for motions, sua sponte jurisdictional reviews and criminal leave applications. The Court's Information Technology Department and Clerk's Office attorneys created and implemented the system to further facilitate internal virtual office operations, and to provide litigants with a means of digital filing. More than a short-term fix to address the challenges occasioned by the COVID-19 pandemic, these advancements will benefit the bar, public and Court long into the future.

During 2020, the Court also addressed many issues relating to administration of the State's bar examination and legal education programs, both of which were significantly disrupted by the pandemic. In response to these disruptions, the Court issued a series of waivers to facilitate distance learning and to modify certain requirements of the bar admission process, including those relating to the Pro Bono Scholar Program, the Pro Bono Requirements for Bar Admission, and the Skills Competency Requirement for Admission. On June 4, the Chief Judge signed an order extending the waiver of distance learning limitations through the Fall 2020 term and a waiver on the limitation on the number of credit hours that may be earned towards an L.L.M. degree during the Summer 2021 term.

The Court also amended its Rules to add a new Part 524 temporarily authorizing certain law graduates to engage in the supervised practice of law in New York. Historically, in October of 2020, the New York State Board of Law Examiners



Judge Stein speaks to counsel from the modified bench during her last oral argument at the Court of Appeals, May 5, 2021

Chief Judge DiFiore, Associate Judge Cannataro, and New York State Attorney General Letitia James stand with other masked guests for the National Anthem, sung by New York State Court Officer Sergeant Peter Robinson, at the Court's Law Day Ceremony on May 2, 2022

successfully administered its first ever remote bar examination—a tremendous feat made possible only by the hard work of the Board and its staff.

In December 2020, COVID-19 cases in the general population increased to the point where, as a precaution, in-person staffing levels at Court of Appeals Hall were again reduced. 2021 began with Albany staff working from home or in-person on a rotational basis. Density in the courthouse was further reduced by holding oral argument in January and February by videoconference, with Judges and their staff remaining in local chambers. Throughout the year, the Court worked toward the goal of maximizing in-person operations without compromising the health of the public, Judges, or staff. In-person operations were increased incrementally throughout the year as improving circumstances permitted and as evolving public health guidelines and protocols of the Unified Court System allowed. Vaccinations against COVID-19 approved by the Food and Drug Administration in December 2020 slowly became more readily available, further facilitating the Court's return to normal operations.

The Court prioritized returning to holding oral argument and conferences of the Court in-person. Starting with the March session, the Judges met in Albany and heard argument in the courtroom, with masking, social distancing, and other health protocols. Limited Judges' staff traveled to Albany and some Albany staff continued working remotely. For the August-September session, restrictions were further relaxed by returning to full in-person staffing and restoring normal operations at Court of Appeals Hall to that extent.

Masking, social distancing, and other health protocols were also maintained outside of the courtroom, including mandatory temperature screenings and daily online COVID-19 self-assessments. In July and September 2021, the Unified Court System implemented policies allowing vaccinated Judges and nonjudicial personnel to apply for an "orange card" that granted authorization to enter and remain in nonpublic areas of courthouses without a mask, and exempted employees from temperature screenings and on-line self-assessments. The testing policies required all Judges and

nonjudicial personnel who did not receive an orange card to submit proof each week that they had received a negative COVID-19 test. Eventually, the vaccination policies required all Judges and nonjudicial personnel be vaccinated against COVID-19, unless otherwise approved for an exemption.

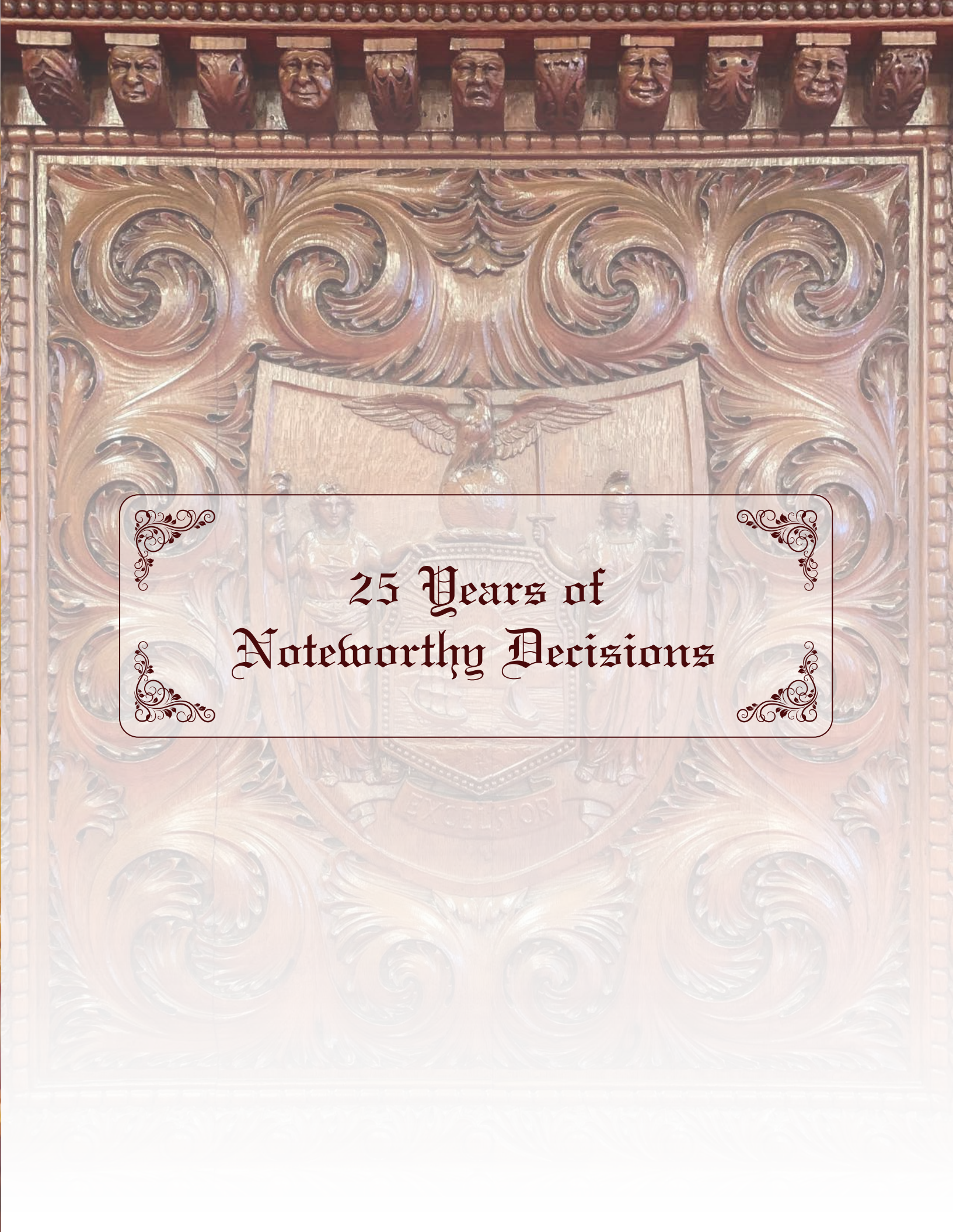
In 2022, oral arguments continued to be held in-person at Court of Appeals Hall, with appropriate safety protocols. In addition, the Court was again able to host several of its traditional events—with proper safety measures—including its annual Law Day ceremony and a joint investiture for Judges Singas, Cannataro, and Troutman, the Court's first investiture to simultaneously celebrate the appointment of three Judges to the Court.

As of August 2022, Unified Court System protocols have been modified based on the continuing decline in COVID-19 cases and the high rate of vaccination for New York State residents. In accordance with these protocols, it is anticipated that oral argument in September 2022 will be held in person at Court of Appeals

Hall in a manner that closely resembles the traditional oral argument procedures in place before March 2020.

In these years of extraordinary challenges that could not have been anticipated, the Court and nonjudicial personnel displayed unwavering commitment and dedication to the institutional purpose of serving the people of the State of New York. The lessons learned through the pandemic—flexibility, innovation and cooperation, among many others—have strengthened the Court's dedication to its mission and will continue to do so for years to come.

*The information in this paragraph is sourced from: Centers for Disease Control and Prevention, David J. Sencer CDC Museum: In Association with the Smithsonian Institution, CDC Museum COVID-19 Timeline, <https://www.cdc.gov/museum/timeline/covid19.html> [last accessed Aug. 24, 2022] and Historical Society of the New York Courts, Dispensing Justice From Distance: Journal of the NYS Courts During the 2020-2021 Pandemic, <https://history.nycourts.gov/dispensing-justice/timeline/> [last accessed Aug. 24, 2022].



25 Years of
Noteworthy Decisions



Over the last 25 years, the Court of Appeals has continued to confront complex legal issues of statewide importance and has remained a nationwide leader in the development of an influential body of jurisprudence. The Court has resolved many questions of statutory interpretation, providing necessary guidance regarding civil and criminal procedure, rent regulation, laws governing sex offender registration and treatment, drug law reform, workers' compensation laws, and insurance disputes. The Court has also left its mark on the common law world, continuing to refine its case law and adapt it to modern developments. Setting forth an exhaustive description of the significant cases decided by the Court would be a lofty goal; thus, what follows is merely a snippet of the Court's noteworthy decisions, with a focus on cases resolving questions of first impression and noteworthy constitutional issues.

Criminal Law

People v Gordon (36 NY3d 420 [2021])

On this appeal, the Court declined to follow federal case law that, relying on *United States v Ross* (456 US 798 [1982]), has concluded that a warrant to search an "entire premises" may impliedly authorize a search of automobiles found on the property. The Court explained that its prior decisions regarding the State Constitution and the Criminal Procedure Law require that search warrants describe with particularity the premises, vehicles, and persons for which a search is authorized and for the police to establish probable cause for each. The Court held that a search warrant authorizing a search of premises does not impliedly authorize a search of vehicles located on the premises when the warrant lacks reference thereto. The Court further determined that the record supported a finding that the search warrant application in this particular case failed to establish probable cause to search the vehicles, as it provided no evidence connecting the vehicles to suspected criminality.

People v Hinshaw (35 NY3d 427 [2020])

The Court clarified that New York law provides greater protection than federal law with respect to traffic stops by requiring police to have probable cause to stop a vehicle for a traffic infraction, as compared with the reasonable suspicion necessary to justify a stop where the driver or occupant is suspected of a crime.

People v Li (34 NY3d 357 [2019])

This is the first case in which the Court considered the viability of a homicide conviction based on a physician's prescription of controlled substances, a novel prosecution relating to the widespread opioid epidemic. The Court rejected the argument of defendant, a physician board-certified in anesthesiology and pain management who was accused of running a "pill mill," that he could not be convicted of any homicide offense for providing controlled substances to patients that resulted in overdose deaths. Detailing the considerable evidence establishing that defendant

disregarded warning signs that his patients were abusing prescribed opioid medications and that defendant issued prescriptions without medical cause and in a manner designed to create and feed addiction, the Court affirmed defendant's reckless manslaughter convictions.

People v Suazo (32 NY3d 491 [2018])

As a matter of first impression, the Court held that a noncitizen defendant who demonstrates that a charged crime carries the potential penalty of deportation is entitled to a jury trial under the Sixth Amendment. The Court recognized that deportation is a penalty of the utmost severity and is often more injurious to noncitizens than periods of six months or less of imprisonment. Thus, the Court concluded that a defendant may overcome the presumption that charged crimes are petty and establish a right to a jury trial by demonstrating the deportation consequences of the charged crimes.

People v Boone (30 NY3d 521 [2017])

Recognizing "near consensus" among relevant experts that "people have significantly greater difficulty in accurately identifying members of a different race than in accurately identifying members of their own race," the Court held that when identification is an issue and the identifying witness and defendant appear to be of different races, the defendant is entitled upon request to a charge on the cross-race effect. Although expert testimony may be admitted regarding the cross-race effect, such expert testimony is not necessary to establish a right to the jury charge.

People v Austin (30 NY3d 98 [2017]); *People v John* (27 NY3d 294 [2016])

In these cases, the Court addressed the admission of DNA reports and profiles as they relate to a defendant's Sixth Amendment right to confrontation. The Court held, in each case, that the defendant's confrontation rights were violated by the admission of DNA reports developed from buccal swabs—taken for the primary purpose of proving a particular fact in a criminal

proceeding—that connected the defendants to the charged offenses. The Court explained that defendants are entitled to cross-examine an analyst who has either conducted, witnessed, or supervised the generation of the DNA profile or who has undertaken their own independent analysis on the raw data to arrive at their own conclusions.

People v Bridgeforth (28 NY3d 567 [2016])

Acknowledging the existence of discrimination based on skin color, the Court held that—under the State Constitution and New York's Civil Rights Law—the skin color of a prospective juror is a cognizable classification upon which a challenge to a prosecutor's use of peremptory strikes under *Batson v Kentucky* (476 US 79 [1986]) may be based.

People v Williams (25 NY3d 185 [2015])

On this appeal, the Court reiterated the principle that, as a matter of state evidentiary law, absent unusual circumstances the People may not use evidence of a defendant's silence during their direct case or to impeach a defendant's trial testimony. The Court concluded this principle applies with equal force to selective silence, reasoning that evidence of selective silence is of limited probative value and presents a significant risk of prejudice because jurors may draw an improper inference of guilt if the defendant has willingly answered some questions but not others.

People v Peque; People v Diaz; People v Thomas (22 NY3d 168 [2013])

Defendants, who were noncitizens, pleaded guilty to felonies which, under federal law, subjected them to deportation. The trial court did not warn defendants, as required by statute, that they may be deported as a result of their pleas if they were not United States citizens. The Court held that, in light of the close connection between the modern immigration system and the criminal justice system, "deportation constitutes such a substantial and unique consequence of a plea that it must be mentioned by the trial court to a

defendant as a matter of fundamental fairness,” thereby overruling part of *People v Ford* (86 NY2d 397 [1995]). Thus, where a defendant has preserved the claim and demonstrates the existence of a reasonable probability that a plea would have been rejected had the court warned the defendant of the possibility of deportation, a defendant’s conviction will be overturned.

***People v Rudolph* (21 NY3d 497 [2013])**

Overruling *People v McGowen* (42 NY2d 905 [1977]), the Court held that in any case where a defendant is eligible for youthful offender status, a sentencing court must determine whether the defendant should be adjudicated a youthful offender. This determination is required by statute and, as such, cannot be waived by plea bargain agreement or by a defendant’s failure to request the court to consider youthful offender status. The Court observed that “[t]he judgment of a court as to which young people have a real likelihood of turning their lives around is just too valuable, both to the offender and to the community, to be sacrificed in plea bargaining.”

***People v Weaver* (12 NY3d 433 [2009])**

Addressing a conviction based largely on evidence obtained from a global positioning system (GPS) tracking device placed on the defendant’s vehicle that tracked his movements for 65 days, the Court concluded that individuals have a reasonable expectation of privacy in their vehicles and, in this case, the defendant’s reasonable expectation was violated. The Court determined that the continuous monitoring amounts to a search under the State Constitution and held that, in the absence of exigent circumstances, a warrant supported by probable cause is required before law enforcement can attach and employ a GPS device to track an individual’s whereabouts.

***People v Gajadhar* (9 NY3d 438 [2007])**

The Court interpreted article I, § 2 of the New York State Constitution, which permits a defendant to waive the right to a jury trial if the waiver is

in writing and made in open court, to allow a defendant to consent to a deliberating jury of less than 12 individuals. Here, the Court held that defendant executed a valid waiver of the right to a 12-member jury after one of the jurors became unavailable during deliberations and defendant requested that the deliberations continue with the remaining jurors.

***People v Gomez* (5 NY3d 416 [2005])**

A motorist’s general consent to allow a police officer to conduct a search of their vehicle did not permit the officer to pry open the floorboard covering the fuel tank. Although a reasonable person would understand that consent to a search of the vehicle may include the opening and examining of containers, that general consent alone does not justify a search that impacts the vehicle’s structural integrity. Thus, where probable cause does not exist, an officer must obtain specific consent to conduct a destructive search of the vehicle.

***People v LaValle* (3 NY3d 88 [2004])**

In this landmark case, the Court declared a portion of the death penalty statute unconstitutional—effectively ending the use of capital punishment in New York absent a corrective amendment. The Court held that the deadlock instruction provided to the jury, as mandated by the death penalty statute, was unconstitutional inasmuch as it violated the Due Process Clause of the New York State Constitution by creating an unacceptable risk that jurors favoring life without parole would be coerced into voting for the death penalty to avoid the possibility that defendant would eventually be released from prison as a result of jury deadlock. The Court determined that the deadlock instruction was an integral part of the statute and could not be severed. Thus, the Court held the death penalty could not lawfully be imposed under the present scheme and ordered cases in which death notices had been filed to proceed as noncapital prosecutions.

***People v Stultz* (2 NY3d 277 [2004])**

The Court set the standard for ineffective assistance of appellate counsel claims on this appeal, concluding that the “meaningful representation” standard applicable to claims of ineffective assistance of trial counsel (*People v Baldi*, 54 NY2d 137 [1981]) should be used to evaluate claims of ineffective appellate assistance.

***People v Stuart* (100 NY2d 412 [2003])**

Defendant, convicted of violating Penal Law § 120.45, the anti-stalking statute, challenged the statute as unconstitutionally vague both on its face and as applied. Setting forth the legal principles governing vagueness challenges, the Court rejected defendant’s arguments and reasoned that a “common understanding” of the statute’s provisions gave defendant sufficient notice that his month-long pursuit of the complainant was unlawful, especially after she told him to desist. Continuing, the Court held that

the constitutionality of section 120.45 as applied to defendant confirmed the facial validity of the statute.

***People v Hues* (92 NY2d 413 [1998])**

Recognizing the need to respond to contemporary challenges facing our jury system and the overwhelming authority of federal and other state courts, and employing a “healthy dose of common sense,” the Court held that it is within the sound discretion of trial courts to allow note-taking by jurors during a trial. If a trial court determines that a particular case warrants note-taking, the court can, sua sponte, instruct jurors that they are permitted to take notes during the trial, although the court’s discretion should be tempered by instructions at the commencement and conclusion of trial cautioning the jury that note-taking should not become a distraction, is only to aid a juror’s memory, and that notes are not a substitute for the official record or governing principles of law as enunciated by the trial court.

Civil Law

***Matter of Nonhuman Rights Project, Inc. v Breheny* (2022 NY Slip Op 03859 [2022])**

In this case, petitioner sought a writ of habeas corpus on behalf of Happy, an elephant residing at the Bronx Zoo. The Court of Appeals became the first high court in the nation to consider whether a third party may invoke the writ of habeas corpus on behalf of a nonhuman animal. Because the writ of habeas corpus is intended to protect the liberty right of human beings to be free of unlawful confinement, the Court held that it has no applicability to a nonhuman animal who is not a “person” subjected to illegal detention. The Court observed that the law recognizes that nonhuman animals are not the equivalent of “things” and they have been afforded numerous protections by the legislature, which is the appropriate forum for resolution of such animal welfare issues.

***Matter of Harkenrider v Hochul* (2022 NY Slip Op 02833 [2022])**

In this landmark case, the Court of Appeals interpreted for the first time certain 2014 amendments to the New York State Constitution that require the creation of electoral maps by an Independent Redistricting Commission (IRC) and declare that “[d]istricts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties” (NY Const, art III, § 4 [c] [5]). The Court determined that the record supported the conclusions of the courts below that the 2022 congressional district lines were drawn with an unconstitutional partisan intent. Further, the Court held that judicial oversight was required to facilitate the expeditious drafting of new, constitutionally conforming maps for use in the

2022 congressional and state senate elections because the IRC failed to follow the procedure prescribed by the Constitution.

White v Cuomo (2022 NY Slip Op 01954 [2022])

This litigation challenged the constitutionality of Racing, Pari–Mutuel Wagering and Breeding Law Article 14, authorizing and regulating interactive fantasy sport contests. In its decision upholding the challenged statutes, the Court clarified that the prohibition on “gambling” in article I, § 9 of the New York Constitution does not encompass skill-based competitions in which participants who exercise substantial influence over the outcome of the contest are awarded predetermined fixed prizes by a neutral operator. As applied to the facts presented, the Court determined there was ample support for the legislature’s conclusion that the interactive fantasy sport contests authorized by article 14 are lawful skill-based competitions for prizes and, therefore, are not prohibited gambling activities.

Ferreira v City of Binghamton (2022 NY Slip Op 01953 [2022])

In response to a certified question from the Second Circuit, the Court provided a comprehensive overview of the public duty and special duty rules governing municipal tort liability. The Court reaffirmed that plaintiffs asserting a negligence claim based on actions taken by a municipality acting in a governmental capacity must establish that the municipality owed them a special duty. Significantly, the Court clarified that, when a municipality’s police force plans and executes a no-knock search warrant at a person’s home, the municipality owes a special duty to individuals within the targeted premises.

Aybar v Aybar (37 NY3d 274 [2021])

The Business Corporation Law requires foreign corporations seeking authorization to do business in New York to register with the New York Secretary of State and designate an in-

state agent for service of process. In this appeal, the Court held that a foreign corporation’s compliance with these Business Corporation Law provisions constitutes consent to accept service of process in New York but not consent to general jurisdiction in New York courts. Moreover, the Court recognized that, under modern United States Supreme Court jurisprudence, an exercise of general jurisdiction in every state in which a corporation engages in systematic business would be “unacceptably grasping” (*Daimler AG v Bauman*, 571 US 117, 138 [2014]).

Protect the Adirondacks! Inc. v New York State Dept. of Env’tl. Conservation (37 NY3d 73 [2021])

The “forever wild” provision of article XIV, § 1 of the State Constitution ensures the preservation of state-owned land within the Adirondack Park in its wild state. On this appeal, the Court held that the construction of certain community connector trails designed for snowmobile use in the Adirondack Forest Preserve—requiring the cutting and removal of thousands of trees, grading and leveling, and the removal of rocks and other natural components—would violate the forever wild clause and, therefore, could not be accomplished other than by constitutional amendment.

Myers v Schneiderman (30 NY3d 1 [2017])

Plaintiffs sought a declaration that the New York State Constitution provides an individual with a fundamental right to aid-in-dying—that is, physician-assisted suicide. The Court rejected plaintiffs’ Equal Protection and Due Process claims, concluding that the asserted right to assistance in committing suicide is not a fundamental liberty interest protected by the state or federal constitution and that the statutory prohibition on assisted suicide is rationally related to legitimate state interests.

Matter of Brooke S.B. v Elizabeth A.C.C. (28 NY3d 1 [2016])

On this appeal, the Court overruled *Matter of Alison D. v Virginia M.* (77 NY2d 651 [1991]), which had held that a partner in an unmarried couple who lacks a biological or adoptive relationship to a child is not the child’s “parent” for purposes of standing to seek custody or visitation under Domestic Relations Law § 70. In *Brooke S.B.*, the Court observed that “in light of more recently delineated legal principles, the definition of ‘parent’ established by this Court 25 years ago ... has become unworkable when applied to increasingly varied familial relationships.” Thus, the Court held that, where a partner without a biological or adoptive relation to a child shows by clear and convincing evidence that the parties agreed to conceive the child and to raise the child together, the non-biological, non-adoptive partner has standing to seek visitation and custody as a “parent” under Domestic Relations Law § 70.

Flo & Eddie, Inc. v Sirius XM Radio, Inc. (28 NY3d 583 [2016])

Answering a question certified from the Second Circuit, the Court held that New York’s common law copyright does not accord creators of pre-1972 musical works a right to control public performances in addition to their right against unauthorized reproduction. Following a lengthy exploration of state and federal copyright law, the Court concluded that no right against public performance exists for pre-1972 sound recordings and that practical considerations, societal expectations, and competing interests militated toward leaving recognition of a right of public performance in sound recordings to a legislative body, not the courts.

Davis v South Nassau Communities Hosp. (26 NY3d 563 [2015])

A nonparty was treated at the defendant hospital and was intravenously administered an opioid narcotic painkiller and a benzodiazepine drug without any warning that such medication may

impair her ability to safely operate an automobile. Shortly thereafter, the nonparty was involved in a motor vehicle accident with plaintiff, who subsequently commenced an action against the hospital and related defendants. The Court was confronted with the question of whether defendants owed a duty to plaintiff to warn the nonparty patient that the medication could impair her ability to drive following departure from the hospital. The Court answered this question in the affirmative, concluding that where a medical provider has administered a medication that impairs or could impair the patient’s ability to safely operate an automobile, the medical provider owes a duty to third parties to warn the patient of that danger, thereby expanding the scope of persons to whom a medical provider may be responsible in such circumstances.

Matter of Holmes v Winter (22 NY3d 300 [2013])

Petitioner Holmes was charged with multiple counts of murder, among other offenses, arising from a mass shooting at a movie screening in Aurora, Colorado that resulted in 12 deaths and the wounding of 70 other people. After the police obtained a notebook that Holmes had sent to a psychiatrist before the shootings, the Colorado trial court precluded either side from disclosing the existence of the notebook or its contents. Winter, a New York-based investigative reporter, subsequently published an article describing the contents of the notebook, indicating she learned about it from two unidentified law enforcement sources. Holmes sought to determine the identity of those individuals and compel Winter to come to Colorado to testify in a sanction proceeding. The issue presented to the Court was the extent to which New York’s Shield Law protects a journalist from being compelled to disclose confidential sources in a criminal proceeding in another state. Disagreeing with both lower courts, the Court held that Holmes’s subpoena application should have been denied because it would violate well-defined and longstanding New York public policy for a New York court to issue a subpoena compelling a New York reporter to

attend a proceeding in another state where there was a substantial likelihood that she would be compelled to identify her sources.

***Hurrell-Harring v State of New York* (15 NY3d 8 [2010])**

Plaintiffs, defendants in collateral criminal proceedings unable by reason of indigency to retain counsel, brought this action to obtain declaratory and injunctive relief to address the state's alleged failure, by reason of systemic inadequacies, to provide them with constitutionally mandated representation. Although plaintiffs could not state collateral civil claims for ineffective representation, the Court held that plaintiffs had sufficiently pleaded claims for the denial of constitutionally required representation by alleging they had been either actually or constructively unrepresented at critical stages of the underlying criminal proceedings. The Court recognized that the latter category of claims, seeking to enforce the mandate of *Gideon v Wainwright* (372 US 335 [1963]), were, in distinction to claims requiring an assessment of the constitutional adequacy of particular representation, cognizable in a collateral civil action. Thus, the Court of Appeals reinstated plaintiffs' complaint in part.

***Skelos v Paterson* (13 NY3d 141 [2009])**

The litigation culminating in this appeal challenged the constitutionality of Governor David Paterson's appointment of Richard Ravitch to fill a vacancy in the office of State Lieutenant Governor. The Court of Appeals held that the appointment was authorized because article XIII, § 3 of the State Constitution commands the legislature to provide for the filling of vacancies in public office and Public Officers Law § 43 empowers the governor, without relevant qualification, to fill vacancies in elected office. The Court rejected the argument that article IV, § 6 of the Constitution—under which the President of the Senate performs the duties of the lieutenant governor during a vacancy—limited the Governor's power to fill the vacancy, explaining that provision was merely intended to assure continuity of service.

***Thyroff v Nationwide Mut. Ins. Co.* (8 NY3d 283 [2007]):**

Observing that the common law "must keep pace with the contemporary realities of widespread computer use," the Court determined the scope of the tort of conversion should be expanded to encompass electronic records that are stored on a computer.

***Parker v Mobil Oil Corp.* (7 NY3d 434 [2006])**

This Court clarified that, in a toxic tort case, an expert opinion on causation should establish a plaintiff's exposure to a toxin, that the toxin is capable of causing the particular illness (general causation) and that plaintiff was exposed to sufficient levels of the toxin to cause the illness (specific causation). Balancing the dangers in allowing speculative information to go before the jury with the weight of expert testimony against the need to avoid setting an insurmountable standard, the Court explained that, while precise quantification of exposure levels is not required, the methods an expert uses to establish causation must be generally accepted in the scientific community.

***Campaign for Fiscal Equity, Inc. v State* (8 NY3d 14 [2006]; 100 NY2d 893 [2003]; 86 NY2d 307 [1995])**

In this trio of cases, the Court of Appeals held that the Education Article of the New York State Constitution requires the State to offer all children the opportunity of a sound basic education and agreed with the trial court that the New York City schools failed to meet the constitutional standard. The Court ordered the State to determine the cost of providing a sound basic education in New York City and enact appropriate reforms and, on a subsequent appeal, determined that the State's estimated cost was a reasonable one entitled to deference.

***Matter of The New York Times Co. v City of New York Fire Dept.* (4 NY3d 477 [2005])**

The Court was called upon to determine whether the Freedom of Information Law (FOIL) required the New York City Fire Department to disclose tapes and transcripts of certain conversations that occurred on and shortly after September 11, 2001, relating to the attacks on the World Trade Center. The Court held that the privacy exception to FOIL prevented disclosure of 911 calls made on September 11th, even if the callers had died, unless their families had requested disclosure, concluding the privacy interest outweighed the significant public interest in disclosure. Further, the Court determined that the FOIL exception covering intra-agency materials protected from release dispatch calls made within the Fire Department's internal communications system. However, the Court held that the oral history interviews given by firefighters in the days following September 11th were subject to FOIL disclosure.

***Capitol Records, Inc. v Naxos of Am., Inc.* (4 NY3d 540 [2005])**

In this dispute between two record companies, the Court answered a question from the Second Circuit regarding whether New York common law provides copyright protection for sound recordings made prior to 1972. Detailing the history of the development of copyright law from the 15th century forward, the Court concluded that New York common law protects pre-1972 recordings against unauthorized copying and distribution, which protection continues until preemption by the Federal Copyright Act occurs in February 2007. The Court also clarified that a copyright infringement cause of action in New York does not require proof of malicious intent or bad faith and that slight popularity or lack of a current market for a work does not defeat an infringement claim.

***Matter of Zelinsky v Tax Appeals Trib. of State* (1 NY3d 85 [2003]); *Matter of Huckaby v New York State Div. of Tax Appeals* (4 NY3d 427 [2005]):**

In these appeals, the Court addressed New York's "convenience of the employer" test," which provides that when a nonresident is employed by a New York employer, income derived from work in another state is taxable by New York unless performed out of State for the necessity of the employer. In *Zelinsky*, the Court rejected the taxpayer's Commerce Clause challenge, concluding that the convenience test "neither unfairly burdens interstate commerce nor discriminates against the free flow of goods in the marketplace" and was fairly apportioned. The Court also held that the tax complied with the Due Process Clause because the taxpayer had the requisite minimum connection with New York and the tax was rationally related to values connected to the State. In *Huckaby*, the Court again rejected challenges to the convenience test and determined it did not violate the Equal Protection Clause because, in distinguishing employees who work out of State for personal convenience and those who work out of state as a necessity, New York properly taxes nonresidents only on income sourced to New York and therefore avoids taxing income derived from interstate commerce.

***Pataki v New York State Assembly; Silver v Pataki* (4 NY3d 75 [2004])**

In these actions, the Governor and New York State Legislature asked the Court to declare their respective budgeting powers as established by the State Constitution. In *Silver v Pataki*, the Legislature sued the Governor for his actions in the 1998-1999 budget process and, in *Pataki v Assembly*, the Governor sued the Legislature for its actions in the 2001-2002 budget process. The suits involved the propriety of certain appropriations proposed by the Governor and the Legislature's responses to those appropriations. The Court ultimately held that the Governor acted within his powers and that the Legislature violated the State Constitution by impermissibly altering the Governor's appropriations.

Matter of Benjamin L. (92 NY2d 660 [1999])

The Court held that a juvenile has a right to speedy adjudication under the Due Process Clause of our State Constitution, reasoning that “the same policies that warrant the articulation and enforcement of a criminal defendant’s right to a speedy trial are applicable as a matter of fundamental fairness to juveniles in delinquency proceedings.” The Court modified the factors applicable to determining whether a criminal defendant’s speedy trial rights had been violated and directed courts to weigh the factors on a case-by-case basis.

Kass v Kass (91 NY2d 554 [1998])

In this novel case, the Court was called upon to determine, after a couple’s divorce, the fate of their five cryopreserved pre-zygotes developed through an in vitro fertilization program. The wife sought sole custody of the pre-zygotes for implantation while the husband asserted that, in accordance with the consent forms signed by the parties prior to the in vitro fertilization procedure, the pre-zygotes should be donated to research. The Court concluded that constitutional rights relating to reproductive choice were not implicated in the dispute and that the pre-zygotes were not recognized as “persons” for constitutional purposes. Further, “agreements between progenitors, or gamete donors, regarding disposition of their pre-zygotes should generally be presumed valid and binding and enforced in any dispute between them.” Here, the parties’ consent forms unequivocally manifested their mutual intention that the pre-zygotes be donated for research under the circumstances presented.

Morgan v State (90 NY2d 471 [1997])

The Court reexamined the assumption of risk doctrine in light of the State’s adoption of comparative negligence and reiterated that assumption of risk survives the enactment of the comparative fault statute. The Court explained that the doctrine applies to limit the duty owed where a consenting participant in a sport or recreational activity is aware of the risk, has an appreciation of the nature of the risk, and voluntarily assumes the risk and, further, that a participant consents to commonly appreciated risks that are inherent in the nature of the activity. Absent the creation of uniquely dangerous and unreasonably increased risks or reckless or intentional conduct, assumption of the risk may bar a claim.



**The 2022
Court of Appeals**



From left: Judge Wilson, Chief Judge DiFiore, Judge Garcia (seated), Judges Singas, Cannataro, Troutman; Not pictured: Judge Rivera



Chief Judge Janet DiFiore

Janet DiFiore, Chief Judge of the Court of Appeals and of the State of New York, was born in 1955 in Mount Vernon, New York.

She graduated from C.W. Post College, Long Island University (B.A. 1977) and from St. John's University School of Law (J.D. 1981). She was admitted to the Bar of the State of New York in 1982.

Chief Judge DiFiore served as an Assistant District Attorney in the Westchester County District Attorney's Office from 1981-1987, and from 1994-1998 as Chief of the Office's Narcotics Bureau. From 1987-1993, Chief Judge DiFiore practiced law with the firm of Goodrich & Bendish. In 1998, she was elected a Judge of the Westchester County Court, presiding over criminal and civil matters and sitting by designation in the Family Court, Surrogate's Court and Supreme Court. She served as a County Court Judge until 2002, when she was elected a Justice of the New York State Supreme Court. As a Supreme Court Justice, she served as Supervising Judge of the Criminal Courts of the 9th Judicial District. In 2005, Chief Judge DiFiore resigned from the bench and was elected Westchester County District Attorney. She served in this position from 2006-2016.

On December 1, 2015, Governor Andrew Cuomo nominated her to the position of Chief Judge of the Court of Appeals and the State of New York. On January 21, 2016, her nomination was confirmed by the New York State Senate.



Judge Jenny Rivera

Jenny Rivera, Associate Judge of the Court of Appeals, was born in New York City in December 1960. On January 15, 2013, Governor Andrew M. Cuomo nominated her to the Court of Appeals, and the New York State Senate confirmed her appointment on February 11, 2013. Judge Rivera has spent her entire professional career in public service. She clerked for the Honorable Sonia Sotomayor, on the Southern District of New York, and also clerked in the Second Circuit Court of Appeals Pro Se Law Clerk's Office. She worked for the Legal Aid Society's Homeless Family Rights Project, the Puerto Rican Legal Defense and Education Fund (renamed Latino Justice PRLDEF), and was appointed by the New York State Attorney General as Special Deputy Attorney General for Civil Rights. Judge Rivera has been an Administrative Law Judge for the New York State Division for Human Rights, and served on the New York City Commission on Human Rights. Prior to her appointment, she was a tenured faculty member of the City University of New York School of Law, where she founded and served as Director of the Law School's Center on Latino and Latina Rights and Equality. She graduated from Princeton University, and received her J.D. from New York University School of Law and her LL.M. from Columbia University School of Law.



Judge Michael J. Garcia

Michael J. Garcia, Associate Judge of the Court of Appeals, was born in Brooklyn, in October 1961. On January 20, 2016, Governor Andrew M. Cuomo nominated him to the Court of Appeals, and the New York State Senate confirmed his appointment on February 8, 2016. Judge Garcia received his undergraduate degree with honors from the State University of New York at Binghamton in 1983 and an M.A. degree from the College of William & Mary in 1984. In 1989, he received his law degree (summa cum laude) from Albany Law School, where he graduated as valedictorian. He began his legal career at Cahill Gordon & Reindel LLP in 1989. From 1990 to 1992, he served as Law Clerk to Hon. Judith S. Kaye, then Associate Judge of the New York Court of Appeals. From 1992 to 2001, he served as an Assistant United States Attorney for the Southern District of New York. In 2001, he became Assistant Secretary of Commerce for Export Enforcement in the Bureau of Industry and Security, and in December 2002 he became Acting Commissioner of the Immigration and Naturalization Service at the United States Department of Justice. From March 2003 to August 2005, he served as Assistant Secretary for Immigration and Customs Enforcement at the United States Department of Homeland Security. Judge Garcia was the United States Attorney for the Southern District of New York from 2005 to 2008, when he joined Kirkland & Ellis LLP. Judge Garcia previously was Vice President of the Americas for INTERPOL, the international police organization, from 2003 to 2006. From 2012 to 2014, he was Chair of the Investigatory Chamber of the Ethics Committee of the Federation Internationale de Football Association.



Judge Rowan D. Wilson

Rowan D. Wilson, Associate Judge of the Court of Appeals, was born in Pomona, California in 1960, and grew up in Berkeley, California. He received his A.B. degree from Harvard College in 1981, and his J.D. degree from Harvard Law School in 1984. He was admitted to the bar of the State of California in 1985, and the bar of the State of New York in 1987. From 1984 to 1986, he served as a judicial law clerk to the Honorable James R. Browning, Chief Judge of the United States Court of Appeals for the Ninth Circuit, based in San Francisco, California. In 1986, he joined the firm of Cravath, Swaine & Moore in New York City as an associate, and was elected to partnership there in 1991, in which position he continued until February 2017. On January 15, 2017, Governor Andrew M. Cuomo nominated Judge Wilson to serve as an Associate Judge of the Court of Appeals, and the New York State Senate confirmed his nomination on February 6, 2017. While in private practice, Judge Wilson served on the boards of several charitable and not-for-profit organizations and handled numerous pro bono matters.



Judge Madeline Singas

Madeline Singas, Associate Judge of the Court of Appeals, was born in 1966. The daughter of Greek immigrants, she was raised in Astoria, Queens. She is a graduate of the Bronx High School of Science, Barnard College of Columbia University (B.A.), and Fordham University School of Law (J.D.). Judge Singas began her legal career as an Assistant District Attorney in Queens County, serving from 1991 to 2006. From 2006 to 2011, she served as Chief of the Nassau County District Attorney's Special Victims Bureau, from 2011 to 2015 as Chief Assistant District Attorney, and in 2015, Acting District Attorney until her election as Nassau County District Attorney, a role she held from January 2016 until her appointment to the Court of Appeals. Judge Singas was nominated to the Court of Appeals by Governor Andrew M. Cuomo on May 25, 2021 and she was confirmed by the New York State Senate on June 8, 2021.



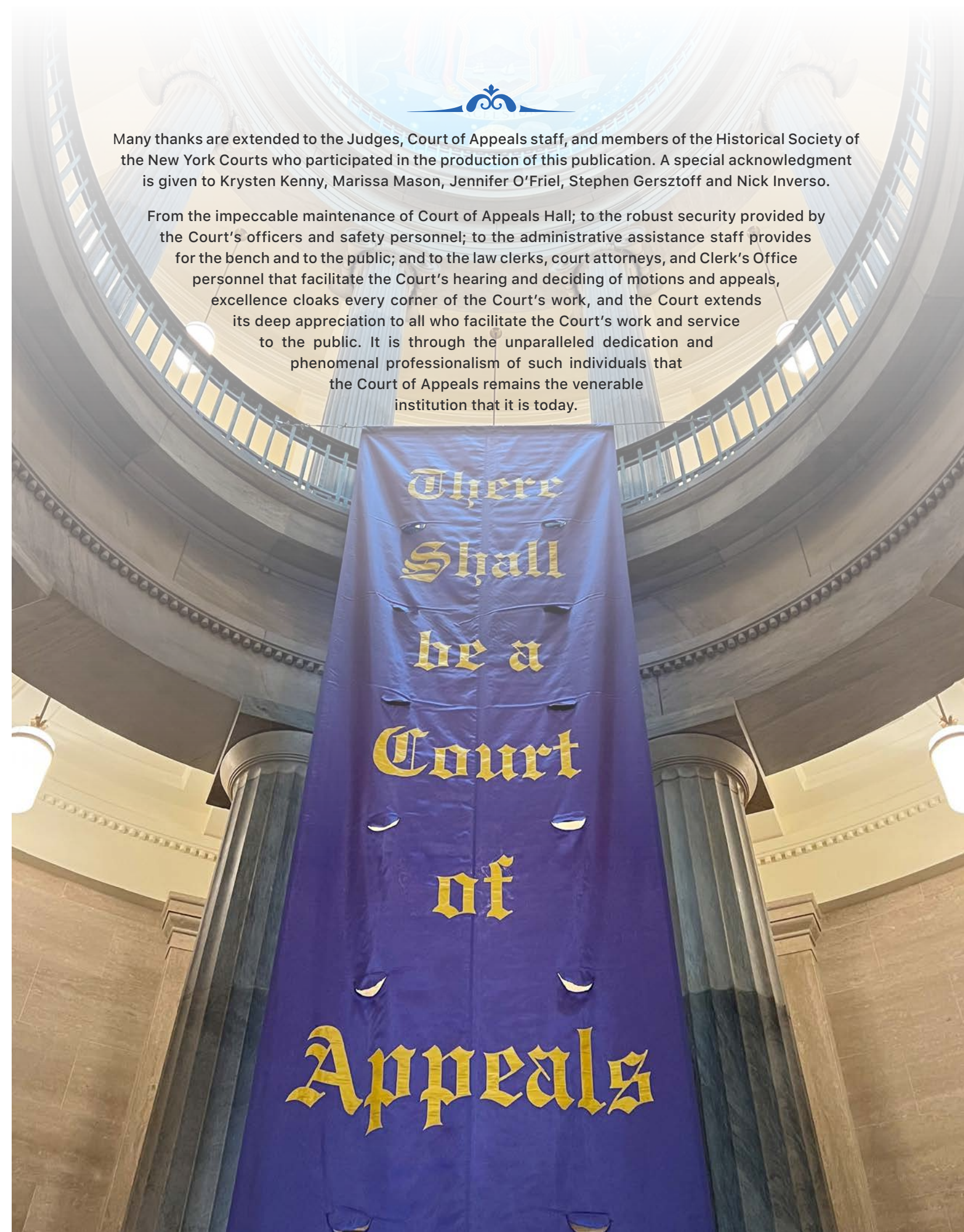
Judge Anthony Cannataro

Anthony Cannataro, Associate Judge of the Court of Appeals, was born in New Jersey in July 1965. On May 25, 2021, Governor Andrew M. Cuomo nominated him to the Court of Appeals, and the New York State Senate confirmed his appointment on June 8, 2021. A career public servant, Judge Cannataro began his legal career in 1996 as an Assistant Corporation Counsel with the New York City Law Department. From 2000-2003, he served as Law Clerk to Carmen Beauchamp Ciparick, Associate Judge of the New York Court of Appeals. He then served as Law Clerk to Hon. Lottie E. Wilkins in Supreme Court, New York County from 2003-2011. In 2011, he was elected Judge of the Civil Court of the City of New York, receiving assignments to the Kings County Family Court and the Bronx County Civil Court, until his appointment in 2016 as Supervising Judge of the New York County Civil Court. In 2017, he was elected Justice of the Supreme Court for the First Judicial District. Upon taking office as a Supreme Court Justice in January 2018, he was concurrently appointed Citywide Administrative Judge for the New York City Civil Court. Judge Cannataro received his B.A. (cum laude) from Columbia University in 1993 and his J.D. (cum laude) from New York Law School in 1996. He was admitted to practice law in April 1997.



Judge Shirley Troutman

Shirley Troutman, Associate Judge of the Court of Appeals, was born in Fort Valley, Georgia. She was raised in Buffalo, New York, where she attended public schools. In 1982 she received a Bachelor of Arts in Business Administration from the State University of New York at Buffalo. She received her law degree from Albany Law School in 1985 and was admitted to the New York State Bar in 1986. She began her legal career as an Assistant District Attorney in Erie County, then served as an Assistant Attorney General and as an Assistant United States Attorney representing the State of New York and the United States in civil litigation. She has also served as an adjunct professor at the University at Buffalo School of Law. In 1994, Judge Troutman was appointed by Mayor Anthony Masiello to serve as a judge for the Buffalo City Court, and she was elected to a full ten-year term the same year. In 2002 she was elected to the Erie County Court, where she served until her election to New York State Supreme Court in 2009. In 2016 she was designated by Governor Andrew Cuomo to serve on the Appellate Division, Fourth Department. In November of 2021, Judge Troutman was nominated by Governor Kathy Hochul to serve on the New York State Court of Appeals and her appointment was confirmed by the Senate in January 2022. She has served as co-chair of the Franklin H. Williams Judicial Commission, National Association of Women Judges New York Chapter President, a member of the Advisory Committee on Judicial Ethics, and member of the Ethics Commission of the New York State Unified Court System. She has also been an active member of many bar associations.



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From the impeccable maintenance of Court of Appeals Hall; to the robust security provided by the Court’s officers and safety personnel; to the administrative assistance staff provides for the bench and to the public; and to the law clerks, court attorneys, and Clerk’s Office personnel that facilitate the Court’s hearing and deciding of motions and appeals, excellence cloaks every corner of the Court’s work, and the Court extends its deep appreciation to all who facilitate the Court’s work and service to the public. It is through the unparalleled dedication and phenomenal professionalism of such individuals that the Court of Appeals remains the venerable institution that it is today.

