

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COURT OF APPEALS

STATE OF NEW YORK

-----

WRIGHT,

Respondent,

-against-

NO. 20

STATE OF NEW YORK,

Appellant.

-----

20 Eagle Street  
Albany, New York  
February 12, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE MADELINE SINGAS  
ASSOCIATE JUDGE ANTHONY CANNATARO  
ASSOCIATE JUDGE SHIRLEY TROUTMAN  
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

JEFFREY W. LANG, ADA  
ASSISTANT ATTORNEY GENERAL OFFICE  
Attorney for Appellant  
6 Lodge Street  
Albany, NY 12207

SETH A. DYMOND  
BELLUCK LAW, LLP  
Attorney for Respondent  
646 Plank Road  
Clifton Park, NY 12065

Raven Wood  
Official Court Transcriber



1 CHIEF JUDGE WILSON: Good afternoon. I wanted to  
2 welcome, we've got a group of students there who are from a  
3 home schooled group, and we're really happy to have you  
4 here. Taking advantage of the fact that the court is open  
5 to the public, and you might be able to learn something.  
6 Thank you for coming.

7 First case on this afternoon's calendar is Wright  
8 v. State of New York.

9 MR. LANG: Jeffrey Lang for the State. I'd like  
10 to reserve two minutes for rebuttal.

11 CHIEF JUDGE WILSON: Two?

12 MR. LANG: Two minutes.

13 CHIEF JUDGE WILSON: Yes.

14 MR. LANG: When the legislature passed the Child  
15 Victims Act in 2019, it revived certain claims alleging the  
16 sexual abuse of minors, a small subset of which have been  
17 brought in against the State and the Court of Claims. But  
18 while the legislature amended the Claims Act to allow  
19 claimants to bring what would otherwise be time barred  
20 claims, it didn't amend the pleading standards in Claims  
21 Act 11(b).

22 JUDGE RIVERA: Well, cCounsel, what else might  
23 have been included that would have put it over the line in  
24 your opinion?

25 MR. LANG: Well, I think for the problem - - -



1 the problem stems from the lack of allegations regarding  
2 the nature of the claim and the time when. So for the  
3 nature of the claim, a brief explanation of how the State  
4 was negligent in nonconclusory terms. So the real problem  
5 here has to do with the very conclusory allegations  
6 regarding the State's notice, and we know - - -

7 JUDGE SINGAS: And had they - - - if they had  
8 named a person, would that have been sufficient?

9 MR. LANG: I think we'd want more than that. We  
10 would want an explanation for how the State either knew, or  
11 should have known, that this abuse was going on in - - - in  
12 The Egg. So they only give two reasons, you know, for the  
13 State's - - - the - - - the State's notice. One, you know,  
14 they say that - - - claimant says that the abuse was open  
15 and obvious, but it occurred in places like bathroom  
16 stalls, the boiler room, stairwells, tunnels, theater,  
17 presumably when it wasn't in use.

18 JUDGE CANNATARO: Do you think a name was  
19 absolutely necessary, or could you do a legally sufficient  
20 pleading, not knowing the name of the individual?

21 MR. LANG: I think if you didn't know the name,  
22 but they identified the - - - the ~~the~~ abusers in some  
23 other way, so - - -

24 JUDGE HALLIGAN: So ~~so~~ for example, if ~~if~~  
25 ~~if~~ the pleading had alleged, you know, I participated in

1 a specific after school activity and the coach sexually  
2 abused me. Would that be sufficient?

3 MR. LANG: You would need to know why the State  
4 was negligent for failing to prevent that abuse. So that  
5 would be the only additional piece beyond what you said.  
6 The State could not be negligent for the coach's abuse.  
7 Assuming the coach was a sState employee because it's well-  
8 settled that sexual abuse is outside the scope of  
9 employment.

10 JUDGE RIVERA: What if - - - what if they said  
11 something like and the State was aware because it was  
12 common knowledge that the person was a pedophile?

13 MR. LANG: Well, you would want to know how it  
14 was common knowledge and they - - - they allege something  
15 like that here. So they say that these were child  
16 predators that were - - - who's whose reputation as such  
17 was well known ~~----- known~~ in the community.

18 JUDGE TROUTMAN: Would you need to allege how the  
19 State would know that these particular individuals or that  
20 ~~----- that~~ these - - - that they're sufficiently  
21 identified, albeit even without a name, such that the State  
22 could investigate?

23 MR. LANG: I think you would want to know  
24 something about their identity, and also something about  
25 why the State was on notice or should have been on notice.

1 JUDGE TROUTMAN: So are you arguing by the manner  
2 in which they described them here, it could be anybody at  
3 any time, and how could you even figure out why the State  
4 could be liable, or would be liable, because you have no  
5 idea who these people are?

6 MR. LANG: That is exactly what we're arguing.  
7 The ~~the~~ court in the Heisler case that was  
8 cited by this court in Lepkowski, which is the main  
9 precedent in this area, said that, no - - - there's not a  
10 requirement of absolute exactness, and we agree with that.  
11 But it also said that allegations that are conclusory, or  
12 say that the State was negligent in ~~in~~ a very general  
13 sense are insufficient. And that's - - -

14 JUDGE HALLIGAN: So what ~~what~~ do we do  
15 about the ~~the~~ challenges of recalling details with  
16 the lapse of time and the goal of the CVA to allow for a  
17 revival of causes of action that's meaningful? It seems  
18 like we have to grapple with that, right?

19 MR. LANG: Yes. And I ~~I~~ think that all the  
20 changes in the pleading standards or proof standards, those  
21 have always come from the legislature. So - - - and a very  
22 important point here --

23 JUDGE HALLIGAN: I appreciate that, but ~~but~~  
24 if - - - and I take your point that, you know, Section 10  
25 is amended, and Section 11 has not been amended, but ~~but~~

1 ~~but it~~ ~~it~~ may be, I take it, that under those  
2 pleading standards, that given the lapse of time, it could  
3 be very difficult for someone to plead with the requisite  
4 specificity that you would expect in a ~~in a~~ different  
5 kind of ~~of~~ case, and - - - and so what are we to make  
6 of that, given that the legislature clearly had some  
7 intention to allow for revival of claims against the State  
8 since it amended 10(b)?

9 MR. LANG: Well, if the pleading standards were  
10 such that it presented an ~~an~~ insuperable barrier,  
11 then I ~~I~~ agree that there would be a problem and you  
12 would have to reconcile the two. But here we're simply not  
13 asking for the level of detail that might prove an  
14 insuperable barrier, and in fact, we give examples.

15 JUDGE HALLIGAN: Do you have - - -

16 MR. LANG: There are plenty of claims - - -

17 JUDGE HALLIGAN: Yeah. Tell ~~tell~~ us about  
18 those. You say there are claims that have proceeded.

19 MR. LANG: Yes.

20 JUDGE HALLIGAN: Right. And ~~and~~ are there  
21 claims that have proceeded from a similar time frame as  
22 this one that are decades previous?

23 MR. LANG: Yes. Yes, many, in fact. I mean  
24 there were - - -

25 JUDGE HALLIGAN: What does many mean, like three,

1 or twenty, or fifty?

2 MR. LANG: No. More than that. I mean, I can  
3 give you some sense of the ~~the~~ numbers - - -

4 JUDGE HALLIGAN: Yeah, just order of magnitude.

5 MR. LANG: And I don't have them precisely.

6 JUDGE HALLIGAN: I understand.

7 MR. LANG: I mean, many of these are a decade  
8 old, but there were something like 300 claims brought  
9 against the State, something like 10,000 overall, but 300  
10 against the State. There's ~~there's~~ still 150 that  
11 remain open. These are approximate numbers. So out of  
12 that 300, the State moved to dismiss 80 based on a pleading  
13 flaw, either the time when, the nature of the claim, or in  
14 some instances the place where. Place where is not an  
15 issue here. And at the trial court level in the Court of  
16 Claims, roughly half of them were those motions were  
17 granted, so.

18 JUDGE HALLIGAN: But in half they were denied I  
19 take it?

20 MR. LANG: And ~~and~~ in half they were  
21 denied, and then a number of those where they were denied.  
22 So there were approximately forty-four out of the eighty  
23 where we moved to dismiss, forty-four were granted, and  
24 then there were roughly like fourteen or fifteen of those  
25 that were reversed on appeal, especially following the

1 Fenton and Meyer cases, and many of those claims are  
2 decades old, and claimants have alleged a sufficient amount  
3 of ~~of~~ information.

4 ~~CHIEF~~ JUDGE CANNATAROWILSON: Can I just ask you,  
5 assume for a second that we agree with the proposition that  
6 this lack of amendment on the pleading statute creates an  
7 impossible, or you know, an undue burden for a certain  
8 class of people to ~~to~~ allege their ~~their~~  
9 ~~their~~ claims with sufficient specificity. What are the  
10 legal options available to a court like this? Short of  
11 saying, well, that's what the legislature did. How can we  
12 remedy that situation?

13 MR. LANG: I think you can't. I think what the  
14 court should say is these are the standards that the  
15 legislature put in place, and in Kolenacki ~~(ph.)~~ is  
16 instructive. There, the claimant had argued there was a  
17 requirement at the time that claimants in personal injury  
18 and medical malpractice cases, had to allege the total  
19 amount of damages up front, and the claimant argued that's  
20 very difficult for claimants to do at the beginning of the  
21 case. And in Kolenacki, this court said, well, that's the  
22 requirement that's in the statute, and the result may be  
23 harsh, but it's really for the legislature to reconsider if  
24 ~~if~~ that requirement poses too much of a barrier to  
25 claimants. And that's - - -

1 JUDGE RIVERA: So if this is not - - - if this  
2 was not an action against the State, would this have  
3 survived traditional liberal pleading standards  
4 requirements as we have articulated them?

5 MR. LANG: I believe this claim is so conclusory  
6 that even if it had not been against the State, it would  
7 not have survived the - - - the normal standards for  
8 pleading negligence claims in New York, which is you're  
9 required to plead nonconclusory claims - - -

10 JUDGE SINGAS: Are you asking us to come up with  
11 a per se rule on either time, or on the nature of the  
12 complaints, or are you saying just the nature of these  
13 claims?

14 MR. LANG: What ~~what~~ ~~what~~ we're  
15 asking is for ~~for~~ the court to follow Lepkowski and ~~-~~  
16 ~~and~~ the pre-CVA Appellate Division cases. There were  
17 many precedents in this area, and they all said - - - and I  
18 gave the example of the Heisler decision earlier. So at -  
19 - - that's the right standard which is absolute exactness  
20 is not required, but a basic explanation for a  
21 nonconclusory terms of how the State was negligent for the  
22 nature of the claim, and then if I can also move to the  
23 time when, because we have an argument that the time when  
24 here - - -

25 CHIEF JUDGE WILSON: What ~~what~~ is the

1 minimum you would want on time when?

2 MR. LANG: So for the time when, if you're only  
3 alleging a discrete number of acts, then the time when  
4 should be specified. It doesn't necessarily need to be a  
5 specific date, but it should be a very narrow range.

6 JUDGE CANNATARO: What's very narrow?

7 MR. LANG: I would say, you know, weeks and - - -  
8 and here we just have nothing, I mean, what they allege - -  
9 -

10 CHIEF JUDGE WILSON: So for example, I was in the  
11 summer program for eight weeks in the summer of 1992. Is  
12 that - - - and that's when this happened?

13 MR. LANG: That would probably be - - - that  
14 would probably be sufficient, and ~~and~~ ~~and~~ you  
15 know, I was the victim of abuse a number of times in that -  
16 - - in - - -

17 CHIEF JUDGE WILSON: In that eight-week period.

18 MR. LANG: - - - in that eight-week period, and  
19 ~~and~~ that would probably be sufficient.

20 JUDGE HALLIGAN: But ~~but~~ he does allege he  
21 was abused. I believe the words that the claim uses is  
22 repeatedly, right?

23 MR. LANG: Yes.

24 JUDGE HALLIGAN: And ~~and~~ so what - - - ~~if~~  
25 ~~if~~ the allegation in more detail would be between 1986

1 and 1990 and set to the side the nature, which I think  
2 would probably be more likely to involve allegations about  
3 what brought him to The Egg in the first place, right? But  
4 ~~but~~ if he was there on a weekly basis and was  
5 alleging that he was repeatedly abused while there in some  
6 capacity, is it your view that he would have to say, you  
7 know, weeks one and three, but not week two? What is it  
8 exactly that's not specific, given that he does use the  
9 word repeatedly?

10 MR. LANG: Well, so if he said, I was there  
11 virtually every ~~every~~ week of the year. So we don't  
12 - - - all he says is repeated and multiple. Was this a  
13 summer program? And we don't know the hours. Was this an  
14 - - - was he there - - - we don't even know why he was at  
15 The Egg. I mean, The Egg isn't a residence. It's a  
16 performing arts center. Was he there for performances?  
17 Was he there as part of some type of student program? We  
18 just don't know anything.

19 JUDGE SINGAS: So is the time when then impacted  
20 by the nature of the claim? So in other words, if he said  
21 I took acting courses for four years at The Egg and this is  
22 what happened, would that be sufficient? Or is the time  
23 when, that period is too long for you?

24 MR. LANG: Well, he would have to say I took  
25 acting classes for four years, and when ~~when~~

1 ~~when~~ were they? You would want to know a bit more details  
2 about when they were, and how frequently - - -

3 JUDGE SINGAS: Yeah. If they give you the four-  
4 year period, and during that time I was abused - - -

5 MR. LANG: Multiple times a week.

6 JUDGE SINGAS: In other words, do we look at the  
7 time when and the nature of the circumstances siloed, or do  
8 they really impact and inform each other?

9 MR. LANG: I ~~think~~ think they are relatively  
10 siloed, and that's because in Lepkowski this ~~this~~  
11 court said that the State shouldn't have to assemble a - -  
12 - ferret out and assemble information that the claimant is  
13 required to allege. So even if we could reconstruct the  
14 time based on some information, it ~~it~~ needs to be  
15 alleged.

16 JUDGE HALLIGAN: But weren't the circumstances -  
17 - - well, let me step back. My understanding is that the  
18 purpose of the requirement is to enable the State to  
19 ascertain its liability with a fair amount of certainty,  
20 right? And so I thought in Lepkowski, I thought those were  
21 false overtime claims, and so you needed to know exactly  
22 what the dates were, exactly, so that you could actually go  
23 and look at the records for that particular day, because  
24 either you worked overtime on day X or you did not, right?  
25 Is ~~is~~ such precision required with a claim like this?

1 MR. LANG: So I don't think it is. Not that  
2 level of precision, but we just don't - - - but certainly  
3 more than what is alleged. Only, so - - - I'll give you,  
4 you know, an example. In the Robin BB case, the third  
5 department decided in 2013, the only - - - the allegation  
6 was numerous acts of - - - it was a sexual abuse. This is  
7 a pre-CVA case of sexual abuse by a state trooper over an  
8 eight-year period, and that's simply not enough.

9 I mean, the State shouldn't have to investigate  
10 over a multi-year period. So you need a narrower date  
11 range, and the reason that it's important is for exactly  
12 the reasons that - - - that Justice Cheryl Chambers in her  
13 Rodriguez concurrence said, which is that the pleading  
14 standards reflect a balance between, you know, allowing  
15 claims to go forward against the State's interest in  
16 limiting its liability, limiting its litigation expenses,  
17 and its even favorable to claimants, in the sense that if  
18 there's enough information in a claim that allows a prompt  
19 investigation, and the State can promptly settle  
20 meritorious claims.

21 CHIEF JUDGE WILSON: If we reverse - - - if we  
22 reverse, can the plaintiff replead?

23 MR. LANG: No, because he's outside the window  
24 and you can't correct a jurisdictional defect in the Court  
25 of Claims. Thank you.

1 MR. DYMOND: May it please the court. Seth  
2 Dymond, on behalf of the claimant, respondent, Mr. Wright.  
3 I'm here with my colleague, Michael Macrides. I wanted to  
4 just begin with the line of questioning that Justice  
5 Halligan was asking my friend about the distinction in the  
6 - - - in the type of claims, because I think this is an  
7 important foundational point about claims in general, which  
8 is there's a wide variety of claims that can be asserted  
9 against the State, and you cannot take a one size fits all  
10 approach into evaluating whether any type of claim or  
11 specific claim satisfies.

12 JUDGE TROUTMAN: Do the pleading requirements  
13 required of the Court of Claims Act apply to these types of  
14 cases?

15 MR. DYMOND: I would submit that they do because  
16 Section - - -

17 JUDGE TROUTMAN: And how did the pleadings here  
18 satisfy those requirements?

19 MR. DYMOND: Well, the pleading - - - the  
20 standard to be employed is that set forth by this court in  
21 Lepkowski, which is the guiding principle, which asks, is  
22 there a sufficient definiteness for the State to be able to  
23 begin its investigation?

24 JUDGE HALLIGAN: So what ~~what~~ about that?  
25 I mean, if ~~if~~ you were the State, what steps

1 specifically would you take in an effort to ascertain the  
2 liability here? Who would you go to? What records would  
3 you look at?

4 MR. DYMOND: So let me preface that answer with ~~with~~  
5 ~~with~~ one point, which is the type of claim alleged  
6 here, casts a very wide net as far as the conduct that's  
7 involved. We're not alleging that just Mr. Wright was  
8 abused. We're alleging multiple boys were abused. We're  
9 not alleging there's one perpetrator; we're alleging  
10 multiple perpetrators occurring on the premises in an open  
11 and obvious manner, right under the State's nose, so.

12 JUDGE HALLIGAN: But ~~but~~ how would you  
13 proceed specifically?

14 MR. DYMOND: I think the ~~the~~ way to start  
15 the investigation is to go to anyone that worked there  
16 during this period in time and ask them, were you aware of  
17 this activity occurring? Did you hear rumors about this  
18 activity?

19 JUDGE TROUTMAN: How do you identify - - -

20 JUDGE RIVERA: Anyone, anyone?

21 MR. DYMOND: Anyone.

22 JUDGE RIVERA: That could be thousands and  
23 thousands of people.

24 MR. DYMOND: Well, that's ~~that's~~ at least  
25 the starting point, and you could focus particularly - - -

1 JUDGE TROUTMAN: But ~~how do you~~ --- how do you  
2 focus on which employees to speak to?

3 MR. DYMOND: Well, based on the allegations,  
4 we've alleged this occurring in the ~~in the~~ audience  
5 of the theater related to the institute for performing  
6 arts.

7 JUDGE TROUTMAN: Do you ~~do you~~ --- indicate  
8 specifically the time frame so that --

9 MR. DYMOND: Yes.

10 JUDGE TROUTMAN: - - - that one could identify  
11 the employees? Winter, fall?

12 MR. DYMOND: Yes. 1986. This is paragraph 4 and  
13 paragraph 7.

14 JUDGE TROUTMAN: So you - - - can you go through  
15 anybody who worked there, period? What I'm trying to  
16 ascertain is what in your pleadings allows the State to  
17 properly investigate?

18 MR. DYMOND: So the first thing is where it  
19 occurred, because we're alleging it occurred in the  
20 theater, in the bathrooms, in the boiler room, in the  
21 tunnels.

22 JUDGE HALLIGAN: So - - - so - - -

23 MR. DYMOND: And we - - - we are - - -

24 JUDGE HALLIGAN: - - - it's your view that you'd  
25 have to - - - you'd have to interview some number of

1 employees. What if ~~what if~~ you know, they went and  
2 looked at the employment records from '86 to '90, and they  
3 identified ten people and interviewed them, would that be  
4 sufficient? What ~~what~~ are the metes and bounds of  
5 the investigation that you think would be required?

6 MR. DYMOND: I think it would be sufficient if  
7 any of them said, oh, yeah, I heard about this happening.  
8 That would be - - -

9 JUDGE HALLIGAN: What if none of them?

10 JUDGE CANNATARO: What if none of them did?

11 JUDGE HALLIGAN: What if you went to ten and they  
12 said, you know, didn't hear anything? Don't know what  
13 you're talking about. Could - - - would that be enough?

14 MR. DYMOND: Well, that would be enough for their  
15 investigation, and I ~~I~~ think based on where this  
16 occurred, they could focus on particular types of  
17 employees, janitorial staff, those are - - -

18 JUDGE SINGAS: Yeah, but that's not really fair,  
19 right? Because where it occurred, the where could be  
20 Madison Square Garden, or the where could be The Egg, or  
21 the where could be an after school program at Saint  
22 Bartholomew. I mean, there's different wheres that would -  
23 - - the context of which would enable the State to defend  
24 itself. Without names, and without a more streamlined  
25 where, it seems that it - - - ~~it~~ you're asking a lot

1 of the State because I don't know practically where they  
2 begin this investigation.

3 MR. DYMOND: Well ~~well~~, Mr. Wright cannot  
4 provide names because of the nature of the conduct. This  
5 was - - -

6 CHIEF JUDGE WILSON: So let me ask you this. Is  
7 ~~is~~ this the most information that you know, there's  
8 not another bit of information you know?

9 MR. DYMOND: Well, at the time this claim was  
10 filed --

11 CHIEF JUDGE WILSON: Right, at the time it was  
12 filed.

13 MR. DYMOND: Which was almost four years ago - -  
14 -

15 CHIEF JUDGE WILSON: I understand.

16 MR. DYMOND: - - - this is the extent of the  
17 information that he knew because of the psychological  
18 trauma associated with this type of horrific act.

19 JUDGE RIVERA: So ~~so~~ he didn't know why he  
20 was at The Egg?

21 MR. DYMOND: Well, he ~~he~~ identifies in the  
22 claim that he was lawfully present, and this is open to the  
23 public.

24 JUDGE RIVERA: Woah, hold. But he doesn't  
25 explain why?

1 JUDGE SINGAS: Why?

2 MR. DYMOND: He - - - it's not explained in the  
3 claim.

4 JUDGE TROUTMAN: But don't you agree that why he  
5 was present would help narrow the scope of people that may  
6 have been involved in the conduct that he alleges?

7 MR. DYMOND: I think that it ~~----it~~ could help.  
8 But that's not - - -

9 CHIEF JUDGE WILSON: Which days of the week ~~----~~  
10 ~~which days of the week~~ he was there, what times of the day  
11 he was there? He presumably knew those things?

12 MR. DYMOND: Well, that could have - - - that  
13 could have been alleged and it could help. But that's not  
14 the standard of whether there's sufficient definiteness to  
15 allow them to begin the investigation.

16 JUDGE HALLIGAN: So here's ~~----here's~~ what I'm  
17 - - -

18 JUDGE RIVERA: But there were also allegations  
19 that the public was involved. How would they investigate  
20 that?

21 MR. DYMOND: That goes back to the ~~----the~~ idea  
22 that this is ubiquitous, rampant activity occurring on the  
23 premises. That this is not involving just one person.

24 JUDGE RIVERA: But again, how would they  
25 investigate that?

1 MR. DYMOND: Well, that is what I was suggesting,  
2 that if they look to people involved with the institute for  
3 performing arts, which is SUNY, and we've alleged that this  
4 is associated with teachers, counselors, and coaches who  
5 are involved - - -

6 JUDGE RIVERA: From where? Where are the  
7 teachers, counselors, and coaches from?

8 MR. DYMOND: That's associated with the Institute  
9 for Performing Arts. Paragraph 3 of the claim - - -

10 JUDGE RIVERA: Isn't the Institute for Performing  
11 Arts its own freestanding - - - these are teachers and  
12 coaches and counselors that only worked for the institute,  
13 or did they work for a school in conjunction?

14 MR. DYMOND: Well, if you - - - if you're drawing  
15 reasonable inferences from the claim, which is required --

16 JUDGE RIVERA: Yeah.

17 MR. DYMOND: - - - then the ~~the~~ inference  
18 to draw is that they are associated with the SUNY Institute  
19 operating out of The Egg, and --

20 JUDGE RIVERA: Associated is quite a broad term.

21 MR. DYMOND: But that's at least a place to start  
22 to say, let's go find the employees who were in the  
23 capacity of teachers, coaches, and counselors associated  
24 with the SUNY Institute during the time frame of 1986 to  
25 1990.



1 JUDGE HALLIGAN: You raise a good point it seems  
2 to me, about the challenges of recollecting specifics,  
3 given the lapse of time, but it also seems that the  
4 legislature could have, if it chose to, have amended the  
5 pleading standards, and I think it did that with respect to  
6 Section 8, for example, which governs unjust convictions,  
7 and - - - and that suggests, to me anyway, that when the  
8 legislature wants to alter the pleading standards, because  
9 it may be particularly difficult for a claimant to allege  
10 with the kind of specificity that Section 11 requires, that  
11 it knows how to do that. But instead, I think it just  
12 amended Section 10. So what ~~what~~ do we make of that?

13 MR. DYMOND: I ~~I~~ have two responses to  
14 that, Judge - - - Justice Halligan. The first is they did  
15 it for unjust conviction, and there's no quantum of  
16 specificity as to the standard to be employed in Section  
17 11(b), which means they left it up to the courts.

18 JUDGE HALLIGAN: Well - - - well, but ~~but~~  
19 our cases, I think, shed some light on ~~on~~ what that  
20 means, and it may be maybe that you can meet that, but it  
21 may be that - - - that complaint as ~~as~~ it sits  
22 doesn't ~~doesn't~~ meet that.

23 MR. DYMOND: Well, there's a second element to  
24 this, which is when we look at the statutes and we ~~and we~~  
25 ~~and we~~ try to harmonize the statutes. The CVA explicitly

1 incorporates any crime within ~~P~~penal ~~L~~law 130 as  
2 constituting a factual predicate for a CVA claim. So if  
3 you look at Penal Law 130.75, that is the continuing crime  
4 statute, and what this court has said in ~~P~~people v. Pabon  
5 in 2016 regarding the interpretation of that ~~--- of that~~  
6 statute, is it is predicated on repeated sexual abuse of a  
7 child over an extended period of time, explicitly because  
8 those children are unable to identify or recall specific  
9 dates and what occurred on any specific date.

10 JUDGE HALLIGAN: I'm not ~~--- I'm not~~ sure how  
11 ~~that that --- that~~ amends Section 11 or ~~--- or~~ alters  
12 what Section 11 would require.

13 MR. DYMOND: It ~~--- it~~ doesn't amend Section  
14 11. What it does is provide the predicate for the CVA  
15 claim, and in harmonizing the two statutes, this court  
16 should, I submit, take into consideration as part of the  
17 circumstances the fact that this is a continuing crime that  
18 fits neatly within the statute.

19 JUDGE CANNATARO: That ~~--- that~~ statement  
20 brings me back to where you started when you got up, which  
21 was this assertion that the level of specificity required  
22 is somehow dependent on the type of claim that is being  
23 made, and I'm just wondering what your support for that  
24 argument is. Is it the language that you're referring to  
25 in the CVA right now, or do you have some other authority

1 that would instruct us on that?

2 MR. DYMOND: Judge Cannataro, it's predicated on  
3 a review of the case law, and let me give you three very  
4 quick examples to show you how disparate the type of claim  
5 is which leads to a distinction in how Section 11(b) is  
6 analyzed for those claims. One of the cases brought up was  
7 Lepkowski, which is overtime worked but not compensated  
8 for. So if the State is trying to determine that, they  
9 need to know, are we talking about 100 hours or are we  
10 talking about 100,000 hours? But that analysis is entirely  
11 distinct in, for example, the toxic torts exposure in the  
12 Fourth Department's decision.

13 JUDGE HALLIGAN: Yeah, but ~~---~~ but to stay on  
14 Lepkowski for a moment, the nature of the claim there was  
15 highly specified, right? I think it said identified the  
16 bargaining unit, which is fairly specific, the specific  
17 civil service title, grade that the person had, that's much  
18 more, it seems to me, than what you have here. In other  
19 words, if - - - ~~if~~ much more from this perspective,  
20 if I was trying to investigate, which is what the cases  
21 say, the purpose of the pleading specificity is intended to  
22 serve, I would have a pretty good idea of exactly where to  
23 go, wouldn't I?

24 MR. DYMOND: For the nature of, that's true.

25 JUDGE HALLIGAN: Yes.



1 MR. DYMOND: But the time when and the place  
2 where in that was ~~was~~ deficient?

3 JUDGE HALLIGAN: Yes. But staying on the nature  
4 of, because I think you probably need to show both, right?

5 MR. DYMOND: Correct.

6 JUDGE HALLIGAN: You need to show sufficient  
7 specificity with both. How ~~how~~ are the allegations  
8 here akin to those in Lepkowski with respect to the  
9 specificity of the nature of?

10 MR. DYMOND: Well, I think part of it is we have  
11 to look at what the causes of action are, that are alleged.  
12 So one of them is the premise liability cause of action,  
13 which is our third cause of action, and so we've identified  
14 all the elements in a nonconclusory way, the ~~the~~  
15 State's duty to ~~to~~ supervise the premises, and duty  
16 of ordinary care associated with the premises. We've  
17 alleged notice in the sense that these activities were open  
18 and obvious, that it was pervasive in the sense that other  
19 boys were being abused at the same time, and that in  
20 paragraph 66 of the claim, that the State knew that this  
21 had been occurring on the premises previously, and did  
22 nothing to stop it moving forward.

23 JUDGE RIVERA: What's the source of the  
24 knowledge?

25 MR. DYMOND: Well, that, Judge Rivera, goes to

1 the evidentiary support, and that is something this court  
2 has said --

3 CHIEF JUDGE WILSON: Well, that goes to whether  
4 the allegations are conclusory. No?

5 MR. DYMOND: Well, the ~~the~~ allegations need  
6 to make out the claims of the cause of action, and if they  
7 are addressing specific things, like here, we're alleging a  
8 breach in the failure to monitor and supervise the specific  
9 areas, bathrooms, and audience of the theater. So that's  
10 not a conclusory assertion. It's directed specifically to  
11 the facts of this case. But the - - - ~~the~~ my friend  
12 raised the issue of how, and I think how is something that  
13 goes more towards the evidentiary underpinnings of the  
14 claim, which is not required to be in a claim, and that's  
15 something that may come to light later on during discovery.

16 JUDGE CANNATARO: So you don't think it's a fair  
17 question to ask when ~~when~~ you're having a debate over  
18 the sufficiency of the pleadings to say when ~~when~~ you  
19 allege failure to monitor bathrooms, how do you mean - - -  
20 Are you talking about having security guards in bathrooms?  
21 Or I mean, what is it - - - ~~is it~~ is there something  
22 inherently unfair about inquiring about the nature of the  
23 claim to see whether it's been alleged specifically enough?

24 MR. DYMOND: No, there's nothing inherently  
25 unfair about it. But the ultimate question is whether



1 there's sufficient definiteness to allow them to begin the  
2 investigation. That's the guiding principle of Lepkowski,  
3 and I think that is a circumstance-based approach, so.

4 JUDGE CANNATARO: But here's the thing. If it's  
5 - - - let's just stick with this one. If it's a claim that  
6 something happened in a bathroom over the course of some  
7 four-year period, I ~~-----I~~ would think to even begin an  
8 investigation, y. ~~Y~~ You have to ask, well, who - - - who was  
9 it that was supposed to be in the bathroom, because if you  
10 say a security guard, then you can go to the security  
11 department and say, you know, what was going on in the  
12 bathrooms between 1996 and 2000? Or '86 and '90, whatever  
13 it was. But none of that's here. None of that's in this  
14 pleading.

15 MR. DYMOND: Well, we do allege that in paragraph  
16 99 on page 28 of the record, which is the failure to have  
17 proper security on the premises to monitor what was  
18 occurring, and - - - and this is operating as a private  
19 enterprise. So they have the same duty that a landowner  
20 does to members of the public to prevent foreseeable  
21 criminal activity occurring on the premises, and so these -  
22 - -

23 JUDGE HALLIGAN: But - - - but paragraph 99 is  
24 very broad. It seems to me, you know, it ~~-----it~~ says  
25 that there are employees of the State of New York, OGS, and



1 SUNY, that sweeps pretty broadly, right?

2 MR. DYMOND: And it does because of the nature of  
3 the conduct alleged, which is widespread activity occurring  
4 on the premises. If ~~if~~ Mr. Wright is there, being  
5 repeatedly abused during this ~~four~~ four-year period  
6 of time, and he doesn't know or cannot identify these  
7 people except by indicia - - -

8 JUDGE RIVERA: Yes. Yes, that - - - ~~that~~  
9 ~~that~~ that seems quite reasonable and logical. But to  
10 the extent that he knows why he's present, he knows whether  
11 or not it's the weekend or the week day, that would go a  
12 long way to assist the State with its investigation.

13 MR. DYMOND: I think - - -

14 JUDGE RIVERA: And to say whether or not, as I  
15 asked you before, the counselor, I'm trying to remember - -  
16 - counselor, coach, teachers were employed specifically by  
17 the institute or were employees somewhere else, even - - -  
18 even if the claimant doesn't have their names, again, that  
19 would go a very long way to assist the State. But without  
20 that, it does seem that it's almost an impossible task.

21 MR. DYMOND: Well, I ~~I~~ agree that it would  
22 - - - the more specificity, obviously, the ~~the~~ better  
23 that everyone would be.

24 JUDGE RIVERA: Well, I'm not talking about more,  
25 and more, and even more helpful, I'm talking about the bare

1 minimum so that they can do the kind of - - - the type of  
2 investigation that the statute contemplates, and that we  
3 contemplate in our prior case law.

4 MR. DYMOND: Well, the information provided in  
5 the claim is the extent that Mr. Wright is able to recount  
6 at four years ago, when he filed the claim, based on the  
7 conduct that occurred forty years ago.

8 CHIEF JUDGE WILSON: Four years ago, he didn't  
9 know why he was there, or what days of the week he was  
10 there. Four years ago, he didn't know that?

11 MR. DYMOND: Well, yeah, I can't speak directly  
12 to whether he knew it or not, Your Honor. But I can tell  
13 you that we - - -

14 CHIEF JUDGE WILSON: You just did, I think. You  
15 just told us that that was all he could say is what's in  
16 the complaint.

17 MR. DYMOND: Well, he alleged that he was  
18 lawfully present there.

19 CHIEF JUDGE WILSON: I know, but - - -

20 MR. DYMOND: And from a - - -

21 CHIEF JUDGE WILSON: Does he know why he was  
22 there? Did he know at the time?

23 MR. DYMOND: He might now. I'm not sure if he  
24 knew at the time.

25 CHIEF JUDGE WILSON: Four years ago did he know?

1 You don't know whether he knew four years ago?

2 MR. DYMOND: I don't, Your Honor.

3 CHIEF JUDGE WILSON: Okay.

4 JUDGE SINGAS: There's also a claim in the  
5 complaint about that the abusers were failed to be removed.  
6 Is that a suggestion that there was complaints made<sup>7</sup> and  
7 the failure to act, so that there was knowledge on behalf  
8 of one of these entities - - -

9 MR. DYMOND: Yes.

10 JUDGE SINGAS: - - - that there was an abuser  
11 there?

12 MR. DYMOND: Yes. And ~~and~~ we do allege  
13 that they were retained in ~~in~~ the employment as  
14 teachers, coaches, and counselors, and we allege that there  
15 were prior complaints of sexual molestation related to the  
16 ~~the~~ premises at The Egg. Thank you.

17 CHIEF JUDGE WILSON: Thank you.

18 JUDGE SINGAS: So can we pick it up from that  
19 point? So if there were allegations, that there was abuse  
20 that was known, why is that so difficult for the State to  
21 then investigate?

22 MR. LANG: Well, because that ~~that~~ was the  
23 extent of the allegation, just that the abuse was open and  
24 obvious, and that the ~~the~~ ~~the~~ abusers were  
25 known as child predators. Those are the only - - -



1 JUDGE HALLIGAN: But there is a negligent  
2 retention claim, right?

3 MR. LANG: Yes, but for negligent retention, the  
4 element - - -

5 JUDGE HALLIGAN: Couldn't you go and look at  
6 whether there were complaints filed during the years - - -

7 MR. LANG: There's ~~-----there's~~ nothing in the  
8 claim that anyone reported this abuse to any State  
9 employee.

10 JUDGE HALLIGAN: I know, I'm not sure that's  
11 responsive to the question, though. Could you go and look  
12 and see if there were complaints filed regarding sexual  
13 abuse, or inappropriate touching, or anything along those  
14 lines during the four-year period with regard to activities  
15 at The Egg?

16 MR. LANG: Well, I mean, complaints filed with  
17 who? I mean, I'm not sure there ~~-----there~~ were three  
18 agencies that are alleged to be involved. The claim  
19 doesn't say what role each agency had. One of those  
20 agencies, the Empire State Institute for the Performing  
21 Arts, hasn't existed in twenty years. So sure, there ~~-----~~  
22 ~~there~~ are investigatory steps that could be taken. I'm not  
23 saying an investigation is impossible, but it is - - - it  
24 would be extraordinarily difficult given the lack of  
25 information in the claim.

1           And just, you know, two quick points. They only  
2           allege that one, look at R21 in the record. They only  
3           allege that one of the abusers was a teacher, coach, or a  
4           counselor, and he doesn't say whether that person was a  
5           state employee or ~~or or~~ not. It's paragraph 63  
6           and paragraph 70 - - - 73. Otherwise, none ~~none~~ of  
7           the abusers are named. None of the State employees who  
8           were allegedly negligent were named, and I just - - - one  
9           brief point on monitoring the bathrooms. I mean, the only  
10          reason to have security in the bathrooms would have been if  
11          you already had knowledge that there was improper activity  
12          going on in the bathrooms, but there's no allegation,  
13          again, in nonconclusory terms, as to why the State had or  
14          should have had such knowledge, making an investigation of  
15          the claim extraordinarily difficult.

16                           CHIEF JUDGE WILSON: Thank you.

17                           MR. LANG: Thank you.

18                           (Court is adjourned)

19

20

21

22

23

24

25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T I O N

I, Raven Wood, certify that the foregoing transcript of proceedings in the Court of Appeals of Wright v. State of New York, No. 20 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

*Raven Wood*

Signature: \_\_\_\_\_

Agency Name: eScribers

Address of Agency: 7227 North 16th Street  
Suite 207  
Phoenix, AZ 85020

Date: February 13, 2025

