



**Making History Together
The New York State Court of Appeals
in
Albany's Tricentennial Year**

Transcript of Ceremony held in Court of Appeals Hall
Eagle Street, Albany, NY
November 15, 1986

The Historical Society of the Courts of the State of New York
New York State Judicial Institute
84 North Broadway, White Plains, NY 10603
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THE COURT ON THE BENCH

Chief Judge Sol Wachtler
Judge Bernard S. Meyer
Judge Richard D. Simons
Judge Judith S. Kaye
Judge Fritz W. Alexander, II
Judge Vito J. Titone
Judge Stewart F. Hancock, Jr.

ORDER OF SPEAKERS

Chief Judge Sol Wachtler

Thomas M. Whalen, III
Mayor City of Albany

John Mesick, Architect
Mendel, Mesick, Cohen, Waite, Hall

Hon. Francis Bergan
Court of Appeals, retired

Robert MacCrate, Esq.
President-elect, American Bar Association

William J. Kennedy, Jr.
Pulitzer Prize-winning Novelist

Carroll J. Mealey, Esq., Chairman
DeGraff, Foy, Conway, Holt-Harris & Mealey

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CHIEF JUDGE SOL WACHTLER:

I am delighted, as Chief Judge of this Court, and on behalf of the judges of this Court, Judge Meyer, Judge Simons, Judge Kaye, Judge Alexander, Judge Titone, Judge Hancock, and our Clerk, Don Sheraw, to welcome you here this morning.

I particularly wish to thank the members of the Committee for their arrangements in connection with this event:

Our Chairman, Carroll J. Mealey, from whom we will hear later, Judge Bergan, who will also favor us with remarks, Larry Hackman, our State Archivist, Sister Ellen Lawlor, Walter Mordaunt, Professor Mary Helen Moses, Norman Rice, Sally Webb, Dolores Wharton. I skipped Jack Gary only because I wanted to make special mention of him. Jack died very recently. Jack was as much a part of this Court as anyone could be, having given and devoted thirty years of his life as our Motion Clerk. He was very much a part of all of us and of the fabric of this institution. So I speak his name with sadness, with love, affection, and eternal gratitude.

Three hundred years ago when the colonies of New England, the intellectual seed bed of the New World, were regressing to the savagery of witch hunts, and when Cotton Mather was warning those colonists of "the possessed" and of soul selling to the devil, we here in New York State, a much more civilized lot, were applying to Thomas Dongan for land patents.

During this past year, we who have been privileged to be in and a part of Albany, have been enjoying with the residents and citizens of the City, —and we all feel very much a part of that citizenry, —the Tricentennial — the 300th anniversary of this city.

The study of the history of this city and of this state is very important because, as Judge Kaye of our Court once said, "Many of the troubles of this generation come from not having read the minutes of the last meeting". And so we are gathered here in a sense to look at the past, to "read the minutes of the last meeting", and at the same time we hope to share not only of the beauty of this great chamber, but some of the history of this Court as well.

Although we are privileged to have many distinguished guests here this morning, one of our most distinguished citizens is absent. I speak of the Mayor of the City, Tom Whalen, who is not here for very good reason. That reason will be explained to you and a letter will be read to you from the Mayor by our Chief Administrative Judge, Joseph W. Bellacosa. I would just like to mention in introducing Judge Bellacosa to you that he works with me in administering the court system of the State of New York, which is probably the largest court system in the country. We resolve 3 million cases a year in this State, which is ten times more than all of the courts in all of the federal system combined. My right hand, and left hand, in doing that work is Joe Bellacosa, who will now read a communication from our Mayor, Tom Whalen.

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JUDGE JOSEPH W. BELLACOSA:

Thank you Chief Judge Wachtler. Members of the Court and Distinguished Citizens of the City of Albany.

Yesterday afternoon as I was walking down from my office up above the Capitol to come to the Court to meet with Judge Wachtler, I ran into the Mayor of the City of Albany going out to another meeting. He said to me, "You know, my son is playing first string with Princeton and they have their afternoon game at the Yale Bowl tomorrow and would you mind reading the letter to my citizens?" I said "No." He said "Do you think the Chief Judge is going to be angry, or mind?" I said "Yes, but he'll never tell you".

So, here I am on behalf of the Mayor, and I am delighted to be in this position. He wishes he were here with you and he asked me to extend that very warm sense of his gratitude for this ceremony. He addresses his letter to the Chief Judge of the State of New York.

"Dear Chief Judge Wachtler:

"On behalf of the citizens of the City of Albany, I extend my deep gratitude and express my great pleasure that you are, this day, honoring the City of Albany on its 300th birthday. How fortunate I am as Mayor to have such a revered institution of government as the Court of Appeals within the city where I have the honor to serve.

"The New York State Court of Appeals is widely regarded as the second most influential court in the United States; and we, in local government and in the legal profession, know that in legal scholarship it is second to none. This court and this city have shared a great history together. Albany natives who have sat on the Court as distinguished jurists include John K. Porter; Rufus W. Peckham; and his son, Rufus W. Peckham, Jr. An Albanian, Robert R. Livingston, was the first Chancellor of the State. Mentioned last, because of him we are the most proud, is Albany's favorite judicial son, Francis J. Bergan.

"One hundred and forty-one years ago this month, the Court of Appeals wrote a description of judicial temperament as though it knew Judge Bergan and his fellow jurists who now grace our most distinguished Court, as if it knew them on a personal basis. 'He is what a judge ought to be, wise enough to know that he is fallible and, therefore, ever ready to learn, great and honest enough to discard all mere pride of opinion and follow truth where ever it may lead'.

"That the State of New York has had so many judges who fit this description is a tribute to a judicial system which elevates not only the law, but the men and the women who serve it. To the Court of Appeals and to the judges who serve, I speak for all citizens of Albany when I say we are honored by your presence, we seek your advice, we covet your wisdom and entreat your mercies and, above all, we hope and pray for your long and healthy service to the law and to the citizenry of the Great Empire State."

Yours truly,

Thomas M. Whalen III
 Mayor of the City of Albany

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CHIEF JUDGE WACHTLER:

Thank you very much, Joe. We are grateful to the Mayor. It was the Mayor, along with Lew Swyer, who is the Chairman of the Tricentennial Committee, who first visited me with the idea and concept of having this meeting in this hall. Mr. Swyer is with us here this morning, and I am delighted to welcome him.

When this building was first rededicated as a courthouse, it was said that "it attests our confidence and suggests permanence — not the permanence of brick or steel or mortar, but the permanence of an ideal". And that ideal is represented in many ways, not only by the chamber and by the one statue, a statue of a person who Mayor Whalen mentioned in his letter, Robert Livingston. His statue is at the back of the court room.

He was born in 1746, which was exactly one hundred years before the Constitution, which created this court, was written. He was born in Clermont, New York, and if the name "Clermont" sounds familiar to you, that was the name of the first steamship which came up the Hudson River piloted by Robert Fulton. Robert Livingston was on that steamship. It took 32 hours to come from New York City to Albany. Robert Livingston helped draft the Declaration of Independence, but he didn't hang around Philadelphia long enough to sign it. He left right after it was drawn and went to Kingston, New York, to work with John Jay, whose portrait hangs above me, to write the New York State Constitution of 1777. I have a mental picture of the two of them sitting down to decide what they would become once the Constitution was drawn, and Robert Livingston saying that "I think I will become the first Chancellor of the State of New York".

Now, the Chancellor in those days was a carry over from the ancient common law English Chancellor, the conscience of the King. It was a judicial office as opposed to what it is today in our State. In that judicial office, he was a member of the highest court of the State of New York and administered the oath of office to George Washington in 1789. George Washington then appointed him as a Minister to France, in which capacity he negotiated the Louisiana Purchase. As you walk out and look at the statue, you will notice that it carries a roll of parchment in its hand — that is the Louisiana Purchase.

I mentioned John Jay before; one of the reasons that the two of them related so well to one another is that they were law partners at one time. When John Jay came to Kingston, having left the Continental Congress to do so, he helped his former law partner Robert Livingston draw up the State Constitution. Again, I imagine the conversation, Robert Livingston saying to John Jay, "You should become our first governor". And John Jay saying, "No, I would rather be Chief Justice of the New York State Supreme Court". It was interesting because I recall when Governor Cuomo called me and asked if I would become Chief Judge of the State of New York, offering me that great honor, he said to me "I would rather have been Chief Judge of the State of New York than be Governor". So, in manner, history has a way of repeating itself.

John Jay did become the first Chief Justice of the State of New York in 1777 and then, two years later, the Legislature sent him to Congress. The legislature found a constitutional provision which allowed Jay to serve as both Chief Justice of New York State and also a member of Congress. I imagine neither job was quite as demanding in those days. He became President of the Continental Congress, and did such an excellent job that when George Washington became President, he asked what position he would most want. And, again, John Jay,

being true to his judicial calling, chose to become the first Chief Justice of the United States of America. That, too, came to be. But it should be remembered that this hero of the Revolution and author of the Federalist papers, was New York's Chief Justice, before becoming the Chief Justice of the United States.

As you look about you, you look at history. Each one of these portraits tell a story, reflecting our past. You will recognize some of the names and faces. But many are from another age and time; names like Alton, Willard, Cuthbert, Rufus, Celora, and Greene. We have a presidential candidate, a couple of governors, Supreme Court justices

-- each a part of the marvelous history of this state and of this court. We continue to "read the minutes of the last meeting" by hearing from some distinguished speakers. The first of whom will speak of this magnificent building. You will notice the columns and the marble. Much of it was cut in Sing Sing by prisoners. It was then put on barges and taken up the Hudson River and then brought up State Street by ox cart. There is a story told, and I'm sure it is apocryphal, that as the building was being built and as the marble was being sent from Sing Sing, one of those prisoners had his case come to this Court on appeal. It should have been an easy reversal. But one of the colleagues of that day said, "If we reverse his conviction and let him free, who will finish the marble in the rotunda?". And that's how the entry "Affirmed, no opinion" came about.

That, of course, as I said, is an apocryphal story but, to tell us now the real story of this historic court room, it is my privilege to introduce John Mesick, a noted Albany architect and acknowledged expert on the work of H. H. Richardson, who designed this room for the Court, a chamber which was originally in the Capitol building. John has quite recently completed a study for the Court of the court room, and a survey of the number of and condition of the pieces of Richardson furniture which are in our possession.

It is my great privilege to introduce to you John Mesick.

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JOHN MESICK:

Thank you very much, Chief Judge Wachtler. Members of the Court, Fellow Citizens:

It was with considerable delight that I learned today's occasion would take note of architecture in the tradition of the Court and the history of the City. Given our 300-plus years of existence, it probably is not surprising that architecture comes to mind. Certainly in our city, the chief image you carry away probably of the visible scene is this layering, almost geological, of buildings that have occurred in this city over a period of about two centuries, I would say, for our accumulation of buildings. As you look at that accumulation of buildings, what you are really seeing is each generation's trying to bring some sense of order out of the chaos and affairs of the day. And, if you think about it, that's exactly. I think, what jurisprudence tries to do — to bring order out of the chaos of human affairs. Indeed, any architect challenged with a job, tries to bring his image of order out of the cultural chaos of his times. And, very often, to his contemporaries, that seems like an unfamiliar and strange sort of creation. Generally it takes a few generations for it to become accepted, as something wonderful. I think all of us who lived through the 1960's and what happened on the hill here in Albany, understand what I am trying to say.

No doubt in 1842, when this building was completed by Henry Rector, I well imagine that the prudent Yankees and the frugal Dutchmen thought it was squandering a great deal of the State's money to build a massive building with walls five feet thick and, indeed, a guide book which Carroll Mealey gave to me the other day, boasts that this building, when it was built in 1842, was probably the most permanently fireproof-constructed building in the nation and, indeed, the world. I can well imagine the notion of building a Greek temple for a series of, not even the Legislature, but a series of State offices on top of the hill here did cause some raised eyebrows in the taxpayers' mind. We all in succeeding generations have been very grateful for that, and that Rector sought to build so well. Indeed, when it came 1909, they were thinking of tearing this building down but then-State architect Louis Filster was able to save it.

I get ahead of my story because, prior to 1884, the court had been meeting in the second floor of the Capitol, in a room, a fragment of which still exists, where the Governor has given his press conferences in the last year or two. The Court did not like that room, for reasons that have not become clear and requested the Legislature to appropriate funds for another room. They did, and hired Henry Hobson Richardson, who had just completed the Senate Chamber on the third floor of the Capitol and the year before had completed the Executive Chamber on the second floor. Just above the Executive Chamber on the third floor of the southeast corner, this room was constructed. Opened in 1884, it was at that time both narrower, shorter and more lofty than the room we are in today. But most everything else that you lay your eyes upon was conceived by Richardson and built by a crew of craftsmen in the Capitol. The construction of the Capitol brought to Albany artisans in the building trades from all over the world. As the local news papers noted, the architects didn't like to think that their wonderful, open-stone walls would be furnished by furniture out of a store or someone's catalog. So they established their own furniture shop in the basement of the Capitol; and, all the chairs that most of you are sitting in were manufactured in the basement of the Capitol by these artisans. And to truly appreciate this room, you have to approach the Bench on your hands and knees. The Chief Judge spoke about faces staring out, there are many more faces to be seen on your hands and knees if you look at the underside of this table or, indeed, even the front of the Bench. And this is clearly the Capitol craftsmen, I believe, sculpting one another in parody. There are very

humorous little things that peer out at you here.

And unlike later architecture which became almost a machine- repetition of traditional motifs, you look nearly in vain for the same pattern twice in this room. There is always a feast for the eye, where ever you look. It is of the finest quality materials they could have of the day and, yet, a very quiet design that has survived well over time.

When in 1909 the justices had appropriation to build and renovate this building as the Court, they insisted their chambers go with them. And, so, this room was dismantled and brought over here. The ceiling was left behind and the window frames, which were arched in marble on both the south and the east facades, remained behind in what is today the Legislative Minority Conference Room of the Senate on the Third floor. And you can see what was left behind over there. But, when it was brought here, certain adjustments had been made given the size of this building and this rear wing was added to the building to include the court room. And scattered throughout the upper floors are other pieces of wonderfully crafted oak furniture that graced the various rooms of the Court in the old Capitol building. They were brought over and have been preserved to this day.

We all owe a great debt of gratitude to the foresight of succeeding generations of the Court that have kept this room intact and valued it for what it is. And, most importantly, in my work, has been the dedication and devotion of the staff of the Court to the preservation of this room. Indeed, I'd like to boast as I bring visitors to Albany and give them a tour, that this is one of America's most beautiful rooms. I think you might agree.

Thank you.

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CHIEF JUDGE WACHTLER:

Thank you very much, John. I mentioned earlier that the role of Chancellor, when that office was occupied by Robert Livingston was somewhat different than the role played today by the Chancellor. We are pleased to have with us today's Chancellor, Clifford Wharton, who will be retiring soon and will be sorely missed by the educational community and scene here in the State of New York. His wife, Dolores Wharton, who is President of the Fund for Corporate Initiatives, was good enough to serve on our Committee.

I would like to introduce you to another person who will speak of this Court and this Bench. His portrait is on the wall, right there, the second away from the clock. Reputed to have been the youngest man ever to ascend a court bench in Albany, when he became the Albany Police Court Judge while he was still in his twenties. He later became a State Supreme Court Justice, a member and then Presiding Justice of the Appellate Division, Third Department; and, in 1964, he became a member of this Bench. He served as a member of our Court of Appeals until 1972 and, last year, Columbia University Press published Bergan's History of the Court of Appeals from 1847 to 1932. You already heard him described by Mayor Whalen in his letter as a man who is 'everything a judge ought to be'. It is my privilege to introduce to you Judge Francis Bergan.

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JUDGE FRANCIS BERGAN:

Chief Judge Wachtler, Members of the Court, and Ladies and Gentlemen:

The Court of Appeals has always had a close and intimate relationship with the City of Albany. We in this city have been proud of the Court as an institution, as the great institution of our community, and there have been long, continued intimate ties between the Court and the citizens of the city. For example, the Bar of Albany County has annually, over more than half of a century, given a very special reception dinner to the Court of Appeals at its annual meetings. And we have a feeling of pride and a close relationship with the members of the Court.

The Court, too, has a special relationship to the City of Albany. The Court was conceived and born in Albany. The Convention of 1846, the Constitutional Convention which met about a block away from here at the head of State Street hill in the old Capitol, devised and created the mechanism which, and the institution which, ultimately by approval of the people, became the Court of Appeals. And, therefore, the Court itself looks back to this City and to the institutions created in the Constitutional Convention of 1846. It has always held its sessions in the City of Albany. The first sessions in the old Capitol, and beginning in 1846 and thereafter, in the new Capitol, which quarters have been described here, and finally in 1917 in this building, which is somewhat older than the Court itself. And, therefore, the Court has had this close, continued relationship with the city.

For a long time we had published in the City of Albany the *Albany Law Journal*, which has gone out of existence; but, for some fifty or sixty years in the last century, this professional publication was here in Albany. It devoted itself particularly to the Court of Appeals, not only to its calendar and to its decisional process, but also to the problems that the Court would admit from time to time in handling its constantly growing calendar and the difficulties in handling the volume of business which flooded into the Court. The *Albany Law Journal* became a special vehicle by which the Court communicated to the Bar of the State.

And there was during a portion of that time what was known as "the Court of Appeals Bar" in the City of Albany, when traveling was more difficult than it is in modern times. It became convenient to have lawyers be represented by local lawyers, and the development of that process resulted in the Albany "Court of Appeals Bar".

So there has been a long, continued, close, intimate relationship between the City of Albany and this great Court. And we feel, and Albany feels, very grateful and honored by the willingness of the Court to mark, in this ceremony, what to us is a great historical event, the Tricentennial of the City of Albany.

Thank you.



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CHIEF JUDGE WACHTLER:

Thank you very much, Judge Bergan. Evan Davis, the counsel to Governor Cuomo is here with us this morning. I use that as a way of introducing our next guest, who was counsel to Governor Rockefeller, when he was Governor of the State of New York. He is a very special person as far as I am concerned because he is from my home community, Manhasset, New York, in the Town of North Hempstead, which isn't quite as old as Albany. The Town of North Hempstead was formed when it split away from the Town of Hempstead during the Revolutionary War; our part of the township sided with the colonists, so that put us with the 'good guys'. One of our favorite sons, and a person from whom we derive great honor, is a man who served as President of the New York State Bar Association, and now brings us even more honor as President-elect of the American Bar Association. He honors our State and certainly my home community. The President-elect of the American Bar Association, Mr. Robert MacCrate.

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ROBERT MacCRATE:

Few human institutions on this continent can match the longevity of the City of Albany. Its settlement in the early 1600s survived the strife of the frontier and its 1686 Charter is today the oldest municipal governing document in the United States.

I am privileged to speak for the Bar on this occasion celebrating Albany's three hundred years, at this, the judicial capitol of our State. This City has been a seminal place for the law, for lawyers and for the administration of justice. Let me briefly illustrate by recalling some of its legal history.

The original Charter dated July 22, 1686 under which the City continues to operate was granted by a Governor of the Province of New York, Thomas Dongan, who himself was a leader in law reform for the colony he administered on behalf of the Duke of York who had become James II in 1685. In 1683 Dongan had convened a legislative assembly for New York which adopted the Charter of Liberties and Privileges, granting popular rights and religious tolerance. It was the first "Bill of Rights" for New Yorkers and preceded by six years the 1689 Bill of Rights in the mother country across the Atlantic.

Moreover, Governor Dongan set up a system of town and county courts which were known as the Dongan Judiciary from the splintered legal heritage left behind by the Dutch. Actually, the small bar of this fur trading post, bolstered by trade from Champlain to the north and along the Mohawk from the west, was an amalgam of Dutch and British, with at least two university-educated Dutch lawyers, Dirck Van Schelluyne and Lodewyck Cobes, having moved to the Albany area after the English seized New Amsterdam in 1664.

The Schuyler family have loomed large in Albany's history from its beginning. It was Peter Schuyler who, together with Robert Livingston, waited upon Governor Dongan to obtain the charter and Schuyler who was designated by Dongan as the first Mayor of Albany. It was a frontier town. Three years later nearby Schenectady would be destroyed by the French and Indians in an attack which killed the Dutch lawyer Cobes. Albany, however, was spared.

Within the month following the chartering of the City of Albany, a water supply was provided for the City, through logs bored with two-inch holes, from a pond created at the top of Yonkers, which we now know as State Street. Later in November of 1686 it was found necessary to pass an ordinance prohibiting people from watering horses from the pails hanging at the fountain and wells fed by the log aquaduct. The next year, 1687, marks, alas, the first recorded murder in the City of Albany, but the Dongan Judiciary was there and hopefully available to see that justice was done.

Just what law and lawyering would have entailed in Albany in the closing years of the 17th Century is perhaps best sensed if we remind ourselves of just how early it was in Anglo-American legal development. Slowly rising mercantilism had brought to England the Statute of Frauds only in 1677. Protection from the British Crown had been won in the Habeas Corpus Act of 1679. The struggle between Parliament and the Crown reached its climax in the Glorious Revolution of 1688 with the flight to France of James II (the royal authority for Albany's Charter). The accession of William and Mary followed in 1689.

Available law books on either side of the Atlantic would fit comfortably on a mantelpiece - including any Dutch treatises from Leyden or Amsterdam that Dutch lawyers may have brought with them. In the New World there were no published reports of decisions for lawyers to cite. Moreover, for the most part individual citizens had little regard for the few persons who held themselves out as lawyers. Citizens were quite prepared to act on their own behalf.

Nonetheless, it is to 1691 and the General Assembly of Freeholders in that year that the Supreme Court of the State of New York traces its creation. Chief Judge Irving Lehman in 1941 memorialized in the Assembly Chamber the 250th Anniversary of that, our oldest continuously open court.

The importance of Albany as a focal point for law and political action grew significantly during the first half of the 18th Century. The influence of its Dutch heritage remained strong and we find one Harne Gansevoost paying 330 Pounds in 1750 to Colonial Governor Clinton for the privilege of serving as clerk of the Albany Court with the right to collect for his own account the fees paid to that office. In the old Dutch Stadt Huys at the foot of State Street, Benjamin Franklin at the First Colonial Congress in 1754 proposed the Albany Plan of Union, the first formal proposal for the federation of the colonies into a united states.

Two decades later, upon the Declaration of Independence, New York became a State in the Union and in 1777 adopted the State Constitution. The question of where the State capital would be located - Albany or New York City remained in contention until it was voted to be Albany in 1797.

Meanwhile, with the successful completion of the War for Independence, young aspiring lawyers who had fought with the Continental Army had come to Albany, where opportunity beckoned. As a result of the Revolution and the ensuing departure and disbarment of Tory members of the Bar, the profession was depleted on a broad scale and the Bar of the Supreme Court of New York had almost ceased to exist. We are told that during 1778 and 1779 only ten attorneys transacted any business at terms of the Supreme Court.

It was in this setting in 1781 that we find Alexander Hamilton, Aaron Burr and James, later Chancellor, Kent all reading law in the same law office here in Albany, studying for admission to the Bar. Hamilton had begun his studies at Kings College before leaving to pick up the Revolutionary cause and to serve as aide-de-camp to George Washington. In 1780 he returned to marry Eliza Schuyler, daughter of the then leader of the Schuyler family, and the next year in Albany set about becoming a member of the Bar.

Hamilton, Burr and Kent found it indeed to be a good time for young lawyers who had been good patriots. Thus, while the rules of court provided that no person was to be admitted without serving three years as a clerk to an attorney, the Supreme Court in January 1782 entered an order which referred to the fact that "Several Young Gentlemen who. . .[had] directed their studies to the profession of law, but. . .[had] entered into the Army in defense of their Country. . . [and thereby had been] prevented from prosecuting their studies in the manner directed by the said rule" would be exempted until the last day of the April 1782 term from the rule requiring three years of clerkship. It is reported that Aaron Burr promptly took advantage of this temporary exemption and was admitted early in 1782, but Alexander Hamilton did not take the requisite examination until the summer of 1782 and his admission in October was accomplished only with an extension of the grace period. James Kent seems to have stayed the full term and was admitted only in 1785.

[Mr. MacCrate's remarks continue ...]

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[Robert MacCrate cont.]

While Hamilton's significant contribution to the Federal Constitution came in the ratification phase with Madison and Jay as an author of *The Federalist Papers*, it is appropriate as we approach the 200th Anniversary of the Constitution to note that it was Hamilton who on September 17, 1787 signed the Constitution on behalf of New York State, less than five years after his admission to the Bar in Albany.

We note that extraordinary and unwieldy court of last resort with which the State began - the Court for the Trial of Impeachments and Correction of Errors - which met here in Albany and consisted of the entire membership of the State Senate as well as the Chancellor and all the Justices of the Supreme Court. We catch the flavor of what the young Hamilton saw from the law office window when we note that 1783 was the year that the first migrating pioneers bound for the American West began to appear on the streets of Albany. We are told that by 1795, each day 500 ox carts made their way up State Street and that the ferry franchise was bringing the city significant revenues.

Moving quickly to the middle of the 19th century, we find the Constitutional Convention of 1846 in Albany seeking to put the State's diverse and disparate legal heritage together and to accommodate such different developments as the State's exploding population, new rail and barge commerce with the west and the populist implications of Jacksonian democracy. The unwieldy court of last resort was abolished, as was the office of Chancellor and the Court of Chancery, judges were now to be popularly elected and the Constitution now would provide that "any male citizen of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, is entitled to admission to practice in all the courts of this state." The first woman attorney in New York was still 40 years in the future.

The most significant new words in the 1846 Constitution were those with which Article VI, Section 2 began: "There shall be a Court of Appeals. . . ." With its constitutional charter thus provided this Court began here in Albany its epic-writing role in American law.

But all was not well in the law. The state of the Bar was demoralized, with no recognized standards of competence or conduct. The education of lawyers still generally consisted solely of reading law in a lawyer's office. Local culture prevailed as to the standards for admission of individual lawyers, who customarily sought admission to the Bar through one of the lower courts in the place where the individual wished to practice.

This was the background against which three public spirited citizens of this City in 1851 founded Albany Law School, which is today the fourth oldest law school in the United States. They recognized the importance of some formal instruction for every law student and declared their purpose to be to fit the student "to enter at once the successful practice of the profession" while at the same time "elevating the profession itself." The School which opened in December 1851 at the corner of Broadway and State has been from that time a salient contributor to the legal profession of this State.

While contemplating these actions in the mid-nineteenth century to improve the law and those who practice it, one might appropriately note that the revolution in industrial technology and the development of private financial empires were beginning to bring a host of new problems to the Courts, to the houses of government

and to the offices of lawyers. Thus, with a blend of cynicism and ridicule, in March 1858 a petition was presented here in Albany to the New York State Senate for an act to convene a constitutional convention, this one for the purpose of abolishing the legislative and executive branches of New York State government and transferring their powers to the Officers of the New York Central Railroad. Furthermore, the bill was enacted as Chapter 320 of the Laws of 1858 and the proposition submitted to the people of the State in November 1858 where it was defeated by a scant 6,360 votes.

Nevertheless, the forces of reform and improvement remained strong, particularly within the legal profession, which came more fully to appreciate, as the law matured and grew in complexity, its special responsibility to the public as a profession entrusted with a monopoly of the services it provided. Beginning in the 1870s lawyers began to organize their profession at the local, state and national level. Here again, Albany was at the center of these efforts.

Thus in November 1876 delegates from each of the eight judicial districts of the State met in the Assembly Chamber of the Old State Capitol and voted to organize the New York State Bar Association. Its first president was John K. Porter of Saratoga and a former Judge of the Court of Appeals. He was succeeded as president by Samuel Hand, the father of Learned Hand who also served briefly on the Court of Appeals. In 1877 a correspondent wrote the Albany Law Journal, a principal legal publication of that time, suggesting that it would be a good idea if every State had such an organization as the newly formed State Bar, which would send delegates to a national yearly meeting.

It was with just such an objective that Simeon E. Baldwin of Connecticut in August 1878 assembled lawyers from 21 states up the road in Saratoga to form the American Bar Association, dedicated to lifting the standards of the legal profession nationwide.

During the years following the close of the Civil War, those seeking formal education in the law came from across the country to Albany Law School as one of the few places in the United States where such education could be found. One of these was William McKinley, whose became the 25th President of the United States. Another was Alton B. Parker, who subsequently served as Chief Judge of the Court of Appeals while McKinley was President and resigned from the Court in 1904 to run against Theodore Roosevelt for President. As a footnote, I would observe that Judge Parker's consolation prize was to be elected president of the American Bar Association in 1906.

We should not pass the bi-centennial of Albany in 1886 without noting that it was here in Albany in May of that year that the first woman was at last admitted to the Bar of New York State. Kate Stoneman of Chautauqua could not get by three justices of the Albany Supreme Court who read the word "male" narrowly, but the Legislature came to her rescue to permit her to be admitted here in Albany on May 22, 1886.

I would note that since the creation here in Albany in 1895 of the State Board of Law Examiners, the State-wide admissions standards under the supervision of this Court have helped assure the competence of all who practice law in this State.

The State's judicial system received its master plan at the Constitutional Convention here in Albany in 1894. Elihu Root, as chairman of the Judiciary Committee of the Convention, focused attention upon what he described as the "overcrowding of the Calendar of the Court of Appeals" and to address that problem recommended the creation of the Appellate Divisions with a general plan of organization for the courts that has survived to this day.

In January 1917 this Court moved from the State Capitol to this building, earlier known as State Hall, rich in Albany tradition. It had provided the offices over the years for the Attorney General, the Comptroller and the Clerk of the Court of Appeals. After the careful modernization of the late 1950s, it provides today a premier courthouse worthy of this Court's role in the national legal community.

Across the street stands the State Bar Center, now the pulsing heart for a volunteer association with more

than 45,000 New York lawyers as members.

Over the past 300 years Albany has occupied a unique place in the law, in relation to the courts and to the legal profession. Each has been enriched over the years by this felicitous association with the City.

The Bar congratulates the City of Albany on its first 300 years. We appreciate the hospitality of the City and express the hope that future generations of lawyers will continue to look to this City as the source of much that is best in our law and in our justice system.



Making History Together
The New York State Court of Appeals
in
Albany's Tricentennial Year

WILLIAM J. KENNEDY, JR.:

William J. Kennedy, Jr.'s address can be found in *Riding the Yellow Trolley Car* by William J. Kennedy, Jr. (Viking Penguin) under the title "Talking to the High Court"

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CHIEF JUDGE WACHTLER:

Thank you so much, Mr. Kennedy. I noticed when you were enumerating some of those ancient punishments, every one was smiling except our District Attorney, Sol Greenberg, who was very seriously taking notes for future reference.

I would like to thank the State Archivist, Larry Hackman, who provided the exhibit outside this chamber, which I hope you will all see before your leave. And, now, for a parting word, I would like to introduce the Chairman of this event — a man on whom we have called so often and always has very eagerly and willingly served and who has always done such a superb job, whether it was in the Commission that Governor Cuomo and I appointed to study our court system, or whether it was the event this morning. I speak of the Chairman, Carroll Mealey.

CARROLL J. MEALEY:

Respected Judges of the Court:

I must remark before I close that John Mesick had a very interesting statement here this morning, but in it was something that is not really that novel to attorneys, John. When you remarked that there are interesting things to be found — when you approached the Court on your hands and knees. We attorneys know that. We do it every day when we argue here. And, hence, we use that time-honored salutation to the Court before we argue — "May it please the Court".

As a proud native of this venerable city and a long-time advocate before this dedicated and erudite Court, I wish to extend the thanks of the City of Albany and its citizens for the Court's unique tender of this celebration in honor of the City's Tricentennial year. Particularly do we wish to thank you for your graciousness in remaining in the city today to celebrate this with us. Like any celebration shared by neighbors surely this event brings us closer together in appreciation and understanding.

I would be remiss, I think, if I did not remark to you that the enthusiasm and the inspiration, which Chief Judge Wachtler and Chief Administrative Judge Bellacosa have brought to this event, is highly and richly deserving of our gratitude. I thank all of the distinguished speakers here today for this most interesting program. I thank the members of my committee who worked so hard to put this together; and, I announce on behalf of the Chief Judge, that the Judges of the Court will now join all of us in a reception to be held through the good graces of Mayor Tom Whalen in the City Hall rotunda.

Thank you very much.