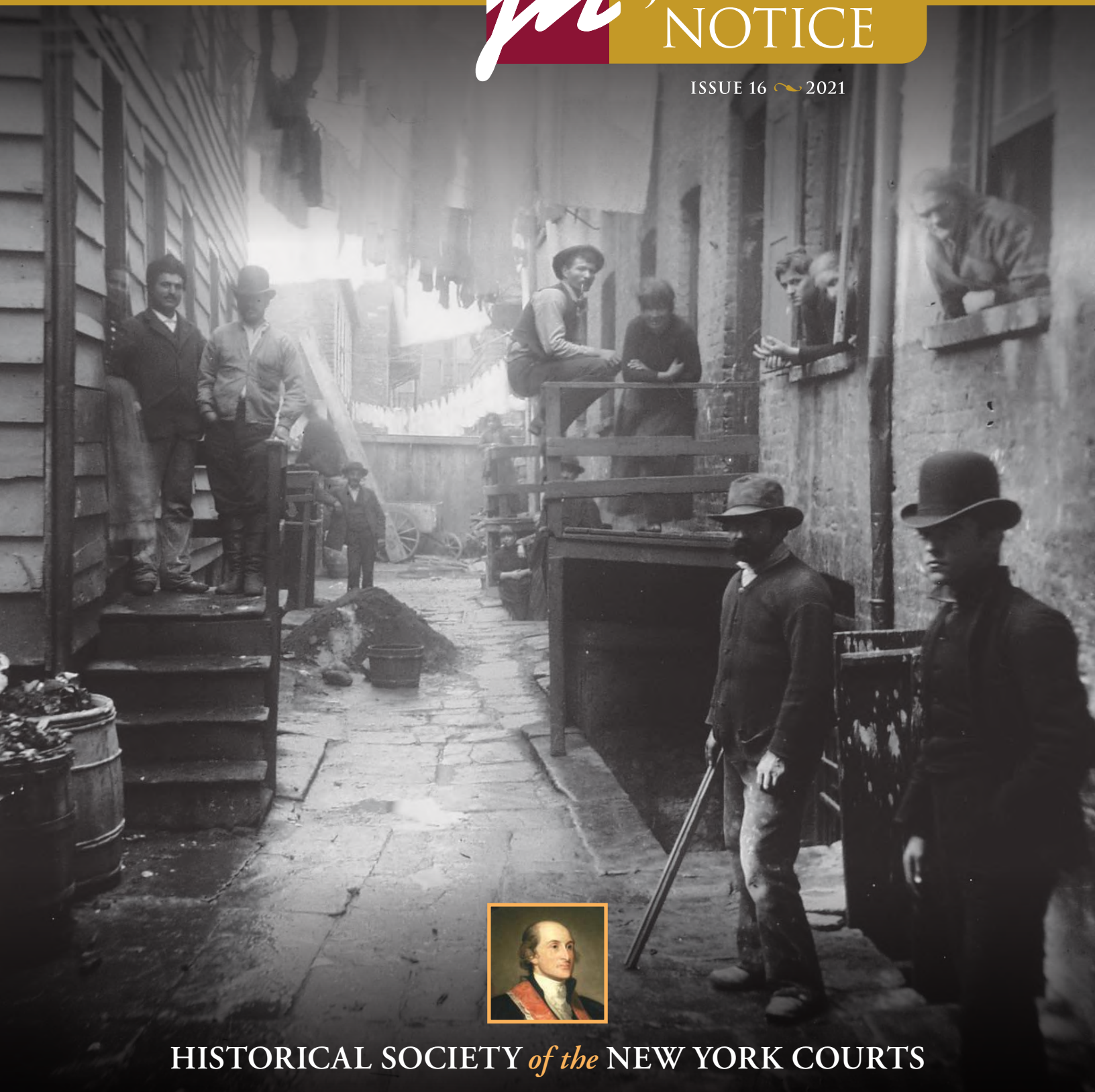


A PERIODICAL OF NEW YORK COURT HISTORY



# JUDICIAL NOTICE

ISSUE 16 ~ 2021



HISTORICAL SOCIETY *of the* NEW YORK COURTS

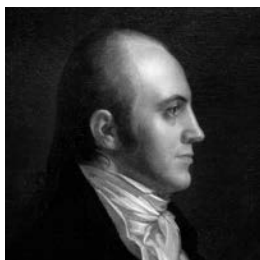
Litchfield Law School *by Paul DeForest Hicks* ~ The Tombs Angel *by John F. Werner & Robert C. Meade, Jr.*

Hon. M. Dolores Denman *by Hon. Eugene M. Fahey & Dr. Gordon W. Lyon* ~ Hon. Ruth Bader Ginsburg *by Prof. John Q. Barrett*



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# From the Editor-in-Chief

Dear Members,

**J**udicial Notice 16 features three trailblazing women, each of whom has left her mark on New York's legal history. The current issue also highlights a small independent Connecticut Law School that educated many of New York's prominent lawyers in the late 18th and early 19th centuries.

Although most New York lawyers had not heard of the Litchfield Law School, the country's first independent law school, founded in 1784 and lasting until 1833, Paul DeForest Hicks' article in JN16, together with his book on the same subject, is changing that. While located across the border in Connecticut, the Litchfield Law School educated some of New York's most eminent early lawyers, including its founder Tapping Reeve's brother-in-law, Aaron Burr. Most lawyers of that day still learned their trade by serving as apprentices in law offices, but the Litchfield Law School paved the way for the scholarly approach that was to transform legal education. Although, as the author notes, Litchfield itself only educated men, a nearby female academy provided companionship and wives for many of the law students.

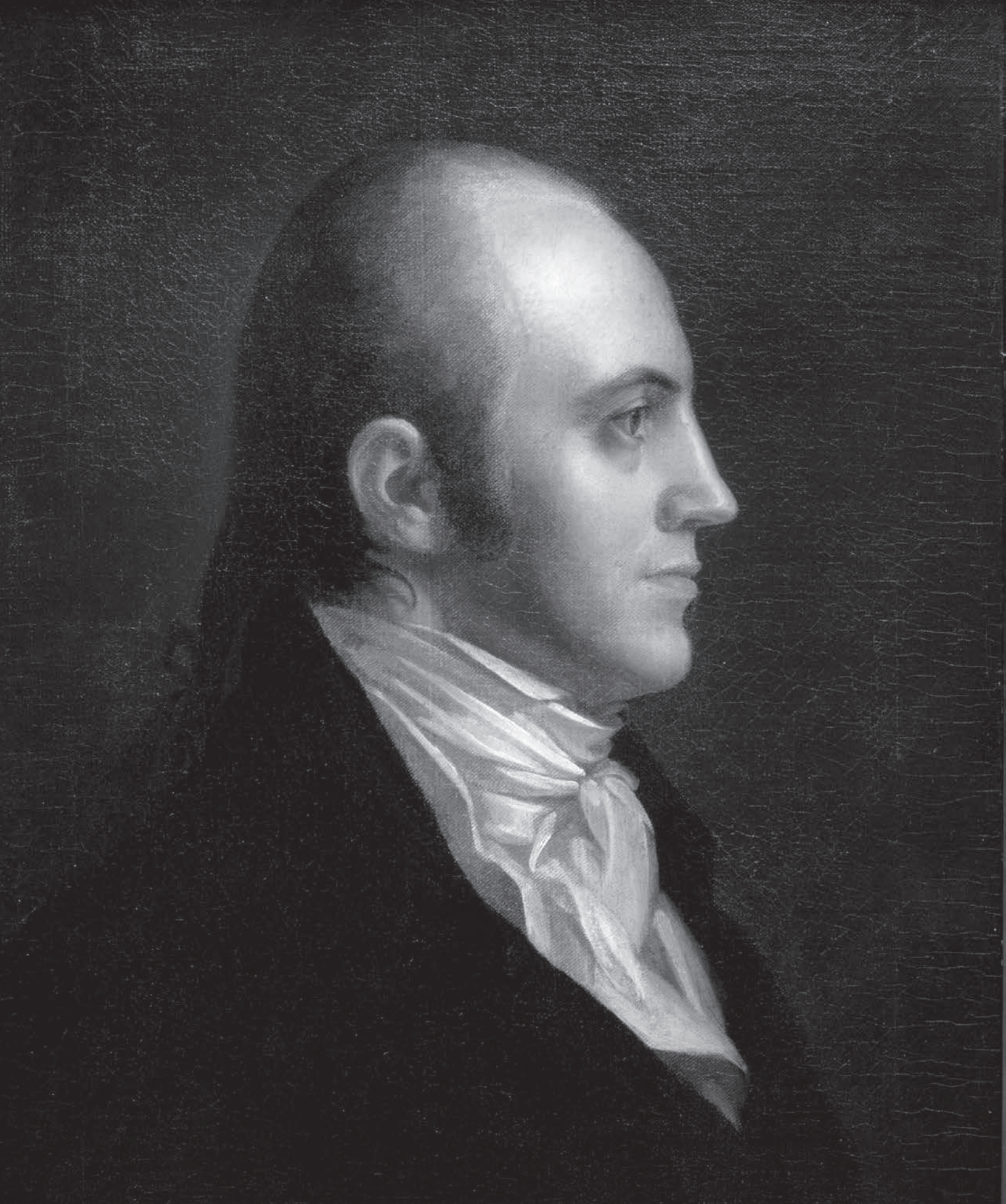
Born 15 years after the closing of Litchfield Law School in Mobile Alabama, Rebecca Salome Foster combined the attributes of a modern-day legal aid lawyer, social worker, pastor, and parole officer, despite having no formal training in any of those disciplines during a time when women were still not members of the bar. Lawyers and unrepresented defendants in the criminal courts of New York City sought her assistance in defending, counseling and assisting individuals accused of crimes, and judges often deferred to her judgment. John F. Werner and Robert C. Meade, Jr., note that there are very few statues or monuments in public places depicting real women, but thanks to their efforts and those of others, a statue commemorating Mrs. Foster and her pioneering work, that had been relegated to storage in the Criminal Court building, is now prominently positioned in the rotunda of 60 Centre Street.

More than 150 years after the Litchfield Law School closed, the Honorable M. Dolores Denman became one of the first two women appointed to an Appellate Division in New York and the first to become the Presiding Justice of an Appellate Division. She served as Presiding Justice for nine years and authored groundbreaking decisions. Her signature accomplishment, the Fourth Department Courthouse, whose construction she supervised, serves as a monument to her determination and energy, and fittingly, bears her name. Court of Appeals Judge Eugene M. Fahey and Dr. Gordon W. Lyon recount the highlights of Justice Denman's remarkable judicial career.

Shortly after Justice Denman became the first woman Presiding Justice, Hon. Ruth Bader Ginsburg became the second woman Associate Justice of the U.S. Supreme Court. Although she became a rock star in recent years and much has been written about the "Notorious RBG," Professor John Q. Barrett casts Justice Ginsburg as a quintessential New Yorker, whose roots and life story affected her approach to the law and the rendering of justice. Professor Barrett describes Justice Ginsburg's personal history and her role in some of the seminal cases that she brought before her ascension to the D.C. Circuit and Supreme Court benches. In March of this year, a statue of Justice Ginsburg was installed in her hometown, Brooklyn.

We continue to be grateful to each of our authors for their insightful articles and to Marilyn Marcus as Managing Editor, Allison Morey as Associate and Picture Editor, David L. Goodwin as Associate a Style Editor, and Nick Inverso as Graphic Designer with the NYS Unified Court System's Graphics Department for all their hard work in producing *Judicial Notice* 16 during these challenging times.

- Helen E. Freedman

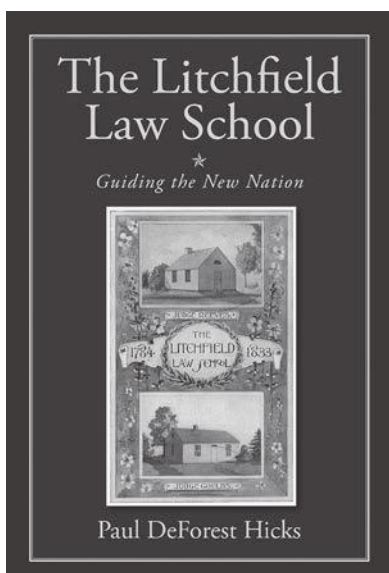


**Aaron Burr, Tapping Reeve's brother-in-law and future Vice President, was one of Reeve's first apprentice students in 1774.**  
This portrait was painted by John Vanderlyn in 1802. Collection of the New-York Historical Society



# Litchfield Law School Alumni *on the New York Courts*

by Paul DeForest Hicks



Paul DeForest Hicks is a graduate of Princeton and Harvard Law School. After practicing law in Denver, Colorado, he returned to New York where he joined J.P. Morgan. Retiring as a Managing Director after more than thirty years with JPM, he began a third career as a writer. He has written about the development of the law and legal education in America, as seen through the life of an ancestor who was the first chief justice of the Georgia Supreme Court and the achievements of an eminent New York lawyer and philanthropist in the Gilded Age. His latest book, published in 2019, is a history of The Litchfield Law School (1784-1833), which was widely influential, but is little known.

In the view of many historians, the Litchfield Law School provided the most innovative and successful legal education program in the country for almost fifty years, from its opening in 1784 to its closing in 1833. Founded by Tapping Reeve, Litchfield introduced a major improvement in legal education over then-prevalent informal training or legal apprenticeship.

For example, among the twenty-five signers of the Declaration of Independence who had legal training, several were self-taught and a few had studied law at the Inns of Court in England, but the great majority had qualified for admission to the bar by first serving as an apprentice in a lawyer's office. In time, Litchfield would change the legal-education landscape of the new nation, with many of its innovations carried forward by other schools founded in its wake.<sup>1</sup>

Despite being a Connecticut institution, Litchfield was closely intertwined with the early history of the New York Courts. In this piece, I examine the many connections between this pioneer in legal education and the New York bench, including some who went on to national prominence in the 19th century.

\* \* \*

Litchfield's founding in 1784 means it cannot quite lay claim to being the nation's first law school. The College of William & Mary claims that title, because it established the country's original law professorship in 1779. However, it was closed for a number of years during and after the Civil War and did not open a separate law school until the 1920s. Thus, Harvard Law School (founded in 1817) can rightly state that it is "the oldest continuously operating law school in the United States."

After studying with a leading lawyer in Hartford, Tapping Reeve settled in Litchfield, Connecticut with his wife in 1773 and began teaching aspiring attorneys in his law office to augment income from his law practice. His wife's brother, Aaron Burr, became the first of his apprentice students in 1774, but Burr abandoned his studies the following year to become an officer in the Continental Army at the outset of the Revolutionary War.<sup>2</sup>

By the end of the war, Reeve's reputation as a gifted teacher had attracted so many students that in 1784, he decided to erect a separate building on his property with enough room to hold lectures. It is generally acknowledged that

## Litchfield Law School Alumni on the New York Courts

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the changes Reeve made that year marked the official beginning of the Litchfield Law School.

In 1798, Reeve invited a former student, James Gould, to join him as a lecturer and partner in running the law school. Together, Reeve and Gould pursued four goals for the law school: to promote a national perspective on American law, attract a geographically diverse student body, train skilled lawyers, and elevate the status of the legal profession. Gould continued operating the school for thirteen years after Reeve retired in 1820.

Upwards of twelve hundred students came from all over the country to study law at Litchfield, although the school's records of attendance are incomplete, especially for its early years. One of the important reasons that the law school was so successful in attracting students from far and wide was its focus on a national perspective in lecturing on the emerging general principles of American common law. By focusing on fundamental rather than state specific legal principles in their lectures, Reeve and Gould created a model for Harvard, Yale, and later national law schools.<sup>3</sup>

The full course of instruction was modeled by Reeve on a series of lectures given by Sir William Blackstone at Oxford University, which became the text of Blackstone's *Commentaries*, published between 1765 and 1769. It was designed to be completed normally in fourteen months, but students came and went at different times of the year, depending on their prior training and other plans.

Students took detailed lecture notes, which they then carefully re-copied and had bound into leather volumes. The notebooks, which grew to as many as five volumes compiled by some students, became an invaluable foundation of alumni law libraries. Fortunately, a growing number of those notebooks have been found and preserved by the Litchfield Historical Society, as well as by the law libraries at Yale, Harvard, and many other academic law libraries; historical societies; and state repositories.

Despite the law school's remote location in the northwest corner of Connecticut, students gained practical experience from observing trials and appellate proceedings held at the courts in Litchfield. These included sessions of both the Superior and Supreme Courts of Connecticut, on which Reeve and Gould each served. Access to Reeve's superior law library and participation in moot court proceedings further enriched the students' experience.<sup>4</sup>

Another attraction of Litchfield for law students was the nearby Litchfield Female Academy. Founded in 1792, the Academy educated an estimated three thousand young women over its forty-one year existence. Its curriculum, com-

bining academic, practical and ornamental courses, attracted students from many states—and, as a side effect, provided welcome female companionship for the all-male student body at Litchfield (leading to many marriages).

Historian Mark Boonshoft identified a more lasting effect of the socializing among the male and female students:

The combination of well-connected and ambitious young men and women drawn from throughout the nation, and the vibrant social world in which they interacted in Litchfield, created a nationally expansive network of advice, information and patronage.<sup>5</sup>

\* \* \*

In every year from 1791 to 1860, there were law school alumni serving at high levels in the executive, legislative and judicial branches of the federal government, most notably:

- Two Vice Presidents (Aaron Burr and John C. Calhoun)
- One hundred U. S. Congressmen (twenty-eight from New York)
- Twenty-eight U.S. Senators (three from New York)
- Three justices of the U. S. Supreme Court (Henry Baldwin, Ward E. Hunt, and Levi Woodbury)

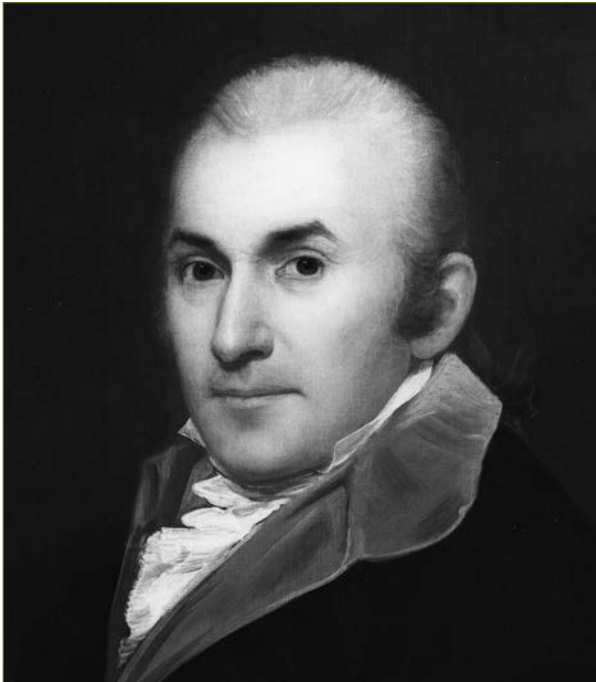
Many alumni also held senior positions in state governments, including eighteen who held the highest judicial office. In New York, that position was held by the Chancellor from 1777 to 1847. For an account of alumnus Nathan Sanford's tenure as Chancellor of New York (1823–1826), see Ann Sandford, "Nathan Sanford and his Contributions to New York State Law," 13 *Jud. Notice* 10, 13 (2018).<sup>6</sup>

Litchfield's contributions to the bench, bar, and government of New York were especially pronounced. Following adoption of a new New York constitution in 1846, the Chief Judges of the state's new Court of Appeals became New York's highest judicial officers, one of whom was alumnus Ward E. Hunt. A lifelong resident of Utica, New York, he graduated from Union College with honors in 1828. After studying at Litchfield Law School in 1830 he returned to Utica, where he was admitted to the bar in 1831.



## Litchfield Law School Alumni on the New York Courts

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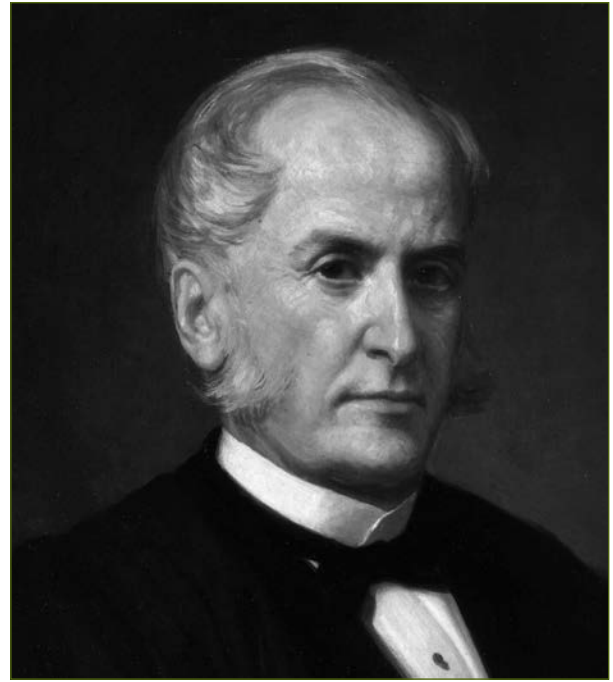


**James Gould, a former Litchfield student and later partner with Tapping Reeve in managing the law school.**

Courtesy of the Litchfield Historical Society

In 1838, Hunt was elected to the New York State Legislature as a Democrat and served one term. He later changed his political affiliation and was instrumental in the organization of the Republican Party in New York in the 1850s. Elected as an Associate Judge on the Court of Appeals in 1865, Hunt became the Chief Judge three years later. President Grant nominated him as an Associate Justice of U.S. Supreme Court, and he took his seat in January, 1873. The only other judges who served on both the New York Court of Appeals and the United States Supreme Court were Benjamin Cardozo and Rufus Peckham, Jr.<sup>7</sup>

Hunt is probably best remembered for one of his decisions as a trial judge, which was part of the circuit court duties required of a Supreme Court Justice at the time. The defendant was Susan B. Anthony, the women's suffrage crusader. She had been charged with voting illegally in the 1872 federal election in violation of New York law and the state constitution, which did not permit women to vote. During her trial, Anthony argued that the barring of her vote was an unconstitutional violation of



**Hon. Ward Hunt, former Chief Judge of the New York Court of Appeals and Litchfield Law School alumnus. He may be best remembered for his decision as a federal circuit court judge, where he ordered a guilty verdict for illegal voting by Susan B. Anthony.** Collection of the Supreme Court of the United States

the Fourteenth Amendment, but Hunt ordered the jury to enter a guilty verdict.

In his decision, Hunt determined that the rights set forth in amendments to the United States Constitution were guaranteed to citizens of the United States, but not to citizens of the states. He therefore ruled that each state had the right to set its own voting qualifications. The next day, Anthony's attorney made a motion for a new trial, which Justice Hunt denied. Despite Anthony's eloquent protestations, Hunt sentenced her to pay a fine of one hundred dollars plus the costs of prosecution, a penalty she refused to pay.<sup>8</sup>

Because of a series of illnesses, Hunt's active participation on the Supreme Court lasted less than ten years. The general view is that his tenure on the court did not achieve the potential forecast by the New York Times when he was nominated: "No appointment which President Grant has made has been based upon stronger recommendations than that of Judge Ward Hunt to the Supreme Court of the United States."<sup>9</sup>

THE DAILY GRAPHIC

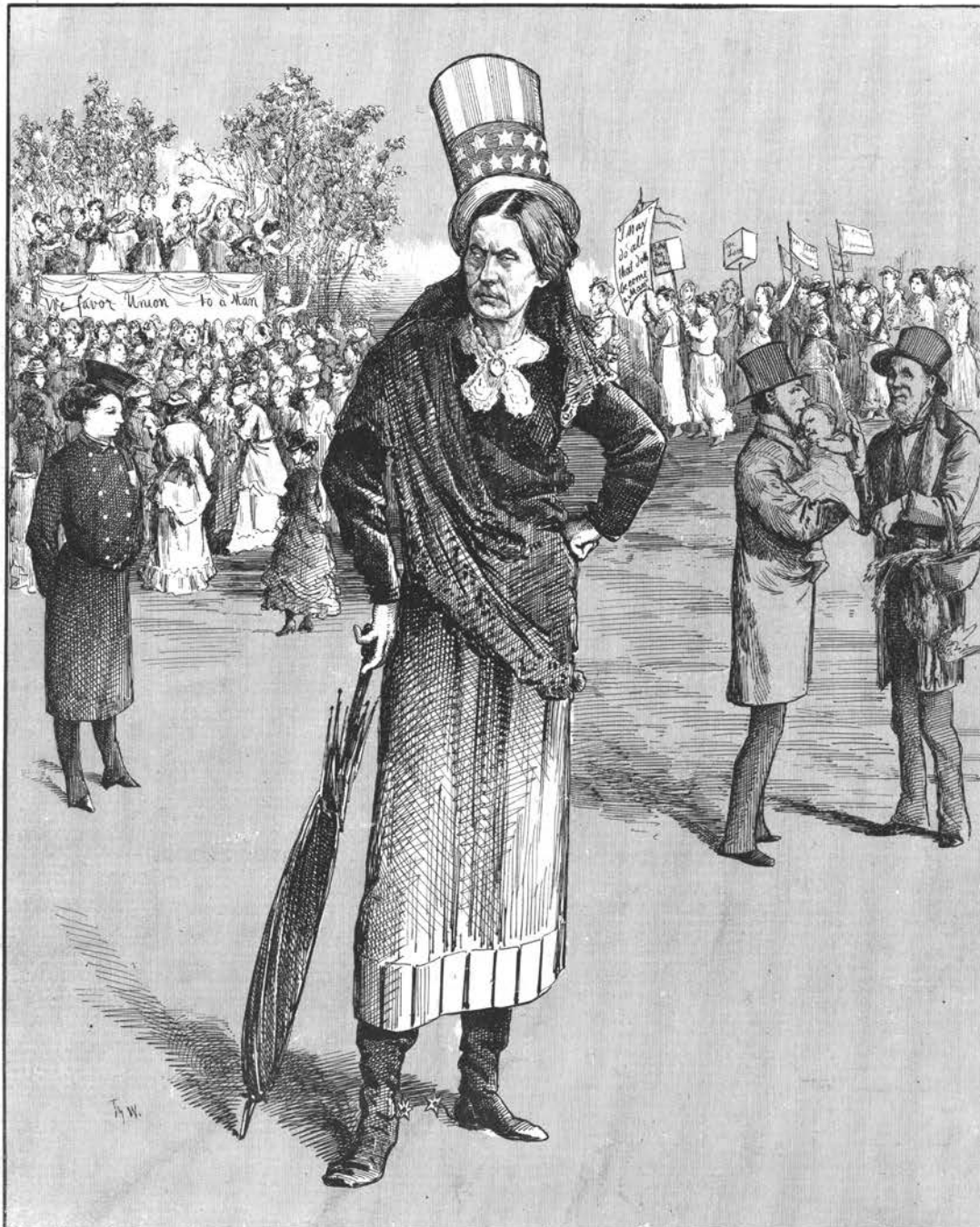
AN ILLUSTRATED EVENING NEWSPAPER.

39 & 41 PARK PLACE.

VOL. I—NO. 81.

NEW YORK, THURSDAY, JUNE 5, 1873.

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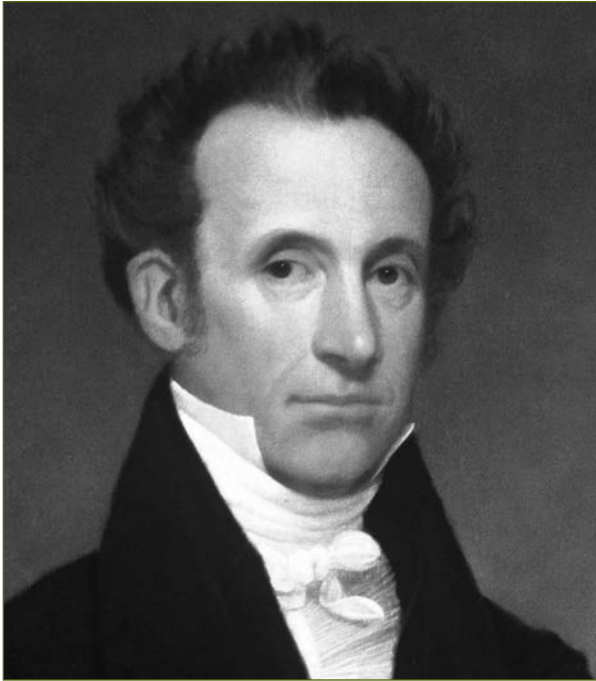
Cover of *The Daily Graphic*, depicting a cartoon of Susan B. Anthony after being charged with voting illegally. Women demonstrate for equality behind her, while men care for a child and carry groceries, 1873.

Library of Congress, Prints and Photographs Division, LC-DIG-ppmsca-55836



## Litchfield Law School Alumni on the New York Courts

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**Hon. Nathan Sanford, Chancellor of New York and Litchfield Law School alumnus.** Collection of the New York Court of Appeals



**Tapping Reeve, founder of the Litchfield Law School.**  
Courtesy of the Litchfield Historical Society

Lewis B. Woodruff, a graduate of Yale, was a contemporary of Ward Hunt at the Litchfield Law School. A leading lawyer in New York City for many years, he served as a trial court judge before being appointed to the Court of Appeals in 1868, the year Hunt became Chief Judge.

Among Woodruff's notable decisions was *King v. Talbot* (1869), a case that developed the "prudent investor" rule for trusts, in which he stated:

My own judgment . . . is that the just and true rule is that the trustee is bound to employ such diligence and such prudence in the care and management, as in general, prudent men of discretion and intelligence in such matters employ in their own like affairs . . . . The preservation of the fund and the procurement of a just income therefrom are primary objects of the creation of the trust itself, and are to be primarily regarded.<sup>10</sup>

Woodruff abandoned the former strict limitations on investments and gave trustees more discretion in deciding how to invest trust assets. The case increased the usefulness of trusts, thereby enhancing the trust-and-invest-

ment business for New York banks and other professional trustees—as well as for their lawyers.<sup>11</sup>

President Grant nominated Woodruff to the newly organized United States Circuit Courts for the Second Circuit, and he was sworn in as a federal judge in January, 1870. As it does today, the Second Circuit covered Connecticut, New York, and Vermont. Woodruff won high praise during his six-year tenure on that court for his mastery of the rules of federal procedure and of the special fields of admiralty, patent, and revenue laws.

Although Woodruff spent his professional life in New York, he returned frequently to Litchfield. In 1870, he bought Tapping Reeve's home as a summer residence and died there in 1875. When members of the Bar of New York City met that year to honor Judge Woodruff, one of the speakers remarked:

His library was select, but, until he became a judge, was not extensive, the main elements in it being 'Gould's Lectures,' in six volumes, copied by himself; and, whenever he had occasion to refer to authorities, those lectures were his principal assistance.<sup>12</sup>



## Litchfield Law School Alumni on the New York Courts

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The New York Constitution of 1846 specified that the Court of Appeals would consist of eight judges. Four were elected statewide and four were appointed (ex officio) from among elected trial justices. In its first twenty-three years, there were one hundred ex-officio members of the court.<sup>13</sup>

Four Litchfield Law School alumni, who were elected as justices of the Supreme Court, also served as ex-officio judges on the Court of Appeals:

- Henry Pierrepont Edwards in 1854
- Augustus Cincinnatus Hand in 1855
- Theron Rudd Strong in 1858
- Josiah Sutherland in 1862 and 1870<sup>14</sup>

One other Litchfield alumnus, Elijah Paine, Jr., deserves special mention. His decision as a judge of the Superior Court in the *Lemmon Slave Case* made him a hero in the North and a villain in the South.

In 1852, a Virginia family named Lemmon traveled to New York City with their eight slaves. A freed African-American tried to emancipate the slaves by filing a petition with Judge Paine, who ruled that the Lemmon slaves were entitled to their freedom under New York Law. He also held that the Fugitive Slave Act did not apply because they were not fugitives. The case went through two interim appeals and was finally decided in 1860 by the Court of Appeals in a vote of five to three, affirming Judge Paine's decision.<sup>15</sup>

In addition to those alumni who served as Chancellor and judges on the Court of Appeals, there were many others who spent part of their careers as surrogates and judges on New York's lower courts. It is likely that Tapping Reeve and James Gould, who were both Justices of the Connecticut Supreme Court, had a wide influence on their students not just as teachers but also as judicial role models.

In 1906, the last surviving alumnus of the Litchfield Law School, Henry J. Ruggles, died at the age of ninety-two. Ruggles, a New York City lawyer and Shakespearean scholar, was one of twelve students at the law school in 1832. Enrollment had peaked at fifty-five in 1813 and averaged thirty-two between 1810 and 1825, but declined steeply thereafter. Litchfield averaged only ten students in its final four years and closed for good in 1833.

Much has been written about what caused the law school to close, but a more fundamental question is:

how did it manage to survive as long as it did, given the many challenges it faced in its later years? It outlasted its founder, for one; Reeve finally decided to retire from the law school in 1820 at the age of seventy-six because of his health, with James Gould taking over after his departure. Gould, however, did not find his own successor.

But perhaps the biggest challenge the school faced was brought about by its own success. Having pioneered innovations in American legal education, the independent Litchfield would have required major changes in order to compete successfully with several new university-affiliated law schools, especially the ones founded at Harvard in 1817 and Yale in 1824.

A recent history of the Harvard Law School acknowledged, "In retrospect, both Harvard and Yale have envied Litchfield's success and wished to claim it as their ancestor."<sup>16</sup>

Although the teaching method developed by Reeve and Gould eventually became outmoded, it represented a major improvement over the traditional apprenticeship model and paved the way for further innovations in legal education. In view of its influence on the course of American jurisprudence as well as the significant achievements of its distinguished alumni, the Litchfield Law School deserves greater recognition for its important role in the history of the early republic.<sup>17</sup>



**Postcard of the James Gould Office, a part of the Litchfield Law School.**

Courtesy of ALitchfieldHistorian via Wikimedia Commons

## ENDNOTES

1. See Andrew M. Siegel, "To Learn and Make Respectable Hereafter: The Litchfield Law School in Cultural Context," 73 N.Y.U. L. Rev. 1978, 1998 (1998), *available at* <https://digitalcommons.law.seattleu.edu/faculty/644/>.
2. Burr completed his legal training in the office of a New York City lawyer after the war and was admitted to the New York bar in 1782.
3. Student records are made available online by the Litchfield Historical Society through the Litchfield Ledger which allows researchers to "browse students by name; dates of attendance; hometown, later residence; or profession." Litchfield Historical Society, "Litchfield Ledger: Browse," <https://ledger.litchfieldhistoricalsociety.org/ledger/browse> (last visited Dec. 11, 2020). Currently, the Ledger contains detailed information about 936 individuals.
4. See Donald F. Melhorn, Jr., "A Moot Court Exercise: Debating Judicial Review Prior to *Marbury v. Madison*," 12 Const. Comment. 327, 327–32 (1995), *available at* <https://scholarship.law.umn.edu/concomm/272/>.
5. Mark Boonshoft, "The Litchfield Network: Education, Social Capital, and the Rise and Fall of a Political Dynasty, 1784–1833," 34 J. Early Republic 561, 563 (2014).
6. See also Ann Sandford, *Reluctant Reformer: Nathan Sanford in the Era of the Early Republic* (2017). From 1777 to 1847, the Chancellor of New York held the highest judicial position in the state.
7. See a biography of Hunt by Laury A. Betha in *The Judges of the New York Court of Appeals: A Biographical History* (Albert M. Rosenblatt ed., 2007), *reproduced at* <https://history.nycourts.gov/biography/ward-hunt/>.
8. *United States v. Anthony*, 24 F. Cas. 829, 830 (C.C.N.D.N.Y. 1873).
9. Betha, *supra* note 7.
10. *King v. Talbot*, 40 N.Y. 76, 85–86 (1869).
11. Donald J. Paisley, "Lewis Bartholomew Woodruff," Historical Society of the N.Y. Courts (2007), <https://history.nycourts.gov/figure/lewis-bartholomew-woodruff/>.
12. Hon. Richard Goodman, Proceedings of the Members of the Bar in the City of New York, on the Death of the Honorable Lewis B. Woodruff, Circuit Judge of the Second Circuit (Sept. 15, 1875), in *13 Reports of Cases Argued and Determined in the Circuit Court of the United States for the Second Circuit* 535, 540 (Samuel Blatchford ed., 1887), *available at* <https://archive.org/details/reportscasesarg21blatgoog>.
13. Albert M. Rosenblatt, "The New York Court of Appeals," 11 Green Bag 2d 467, 467–70 (2008), *available at* [http://www.greenbag.org/v11n4/v11n4\\_rosenblatt.pdf](http://www.greenbag.org/v11n4/v11n4_rosenblatt.pdf).
14. Their biographies appear in Judge Rosenblatt's *The Judges of the New York Court of Appeals: A Biographical History*, *supra* note 7.
15. See generally John D. Gordan, III, "The Lemmon Slave Case," 4 Jud. Notice 1 (2006), *available at* [https://www.nycourts.gov/history/legal-history-new-york/documents/The%20Lemmon%20Slave%20Case\\_John%20Gordan.pdf](https://www.nycourts.gov/history/legal-history-new-york/documents/The%20Lemmon%20Slave%20Case_John%20Gordan.pdf).
16. Daniel R. Coquillette & Bruce A. Kimball, *On the Battlefield of Merit: Harvard Law School, the First Century* 53 (2015).
17. For a full history of the Litchfield Law School, see Paul DeForest Hicks, *The Litchfield Law School: Guiding the New Nation* (2019).





Bandits' Roost at 59 Mulberry Street, NYC, photographed by Jacob Riis, 1888.  
Courtesy of the Preus Museum, NMFF.002173



# The Tombs Angel:

## An Exemplary Life of Service

by John F. Werner & Robert C. Meade, Jr.\*

### John F. Werner, Esq.,

LL.B., Fordham University School of Law,  
LL.M., New York University School of Law.

His career in public service was in the New York State Court System, including as Chief Court Attorney for the Appellate Term, First Department, then as Clerk of Court for the Appellate Term, First Department, followed by 30 years, concluding in 2019, as Chief Clerk and Executive Officer of the Supreme Court, Civil Branch, New York County at 60 Centre Street. He is a longtime member of The Advisory Committee on Civil Practice to the Chief Administrative Judge of the Courts of the State of New York.

### Robert C. Meade, Jr., Esq.,

J.D., Fordham University School of Law.

Mr. Meade was in private practice and public service, including years as deputy to Mr. Werner. Mr. Meade is the author, co-author, or editor of four books and for more than 20 years was an editor of the annual guide to civil practice in Supreme Court published by the New York County Lawyers' Association.

Lately, notice has finally been taken of the paucity of monuments in the public parks, squares and buildings of our country and of New York City that pay tribute to women deserving of recognition. Until very recently, in all of Central Park there were no monuments honoring real women, only several commemorating fictional ones, and there are very few public monuments to deserving women throughout all of New York City.<sup>1</sup> This makes all the more remarkable the fact that *in 1904* a tribute was erected in lower Manhattan honoring Rebecca Salome Foster for her devoted, selfless attention to the inmates of the original Tombs Prison and other unfortunates, including many immigrants—work that earned her the sobriquet the “Tombs Angel.” Mrs. Foster was a one-person combination of social services agency, probation officer, and legal aid society working on behalf of the courts and the accused and convicted, as well as their families, at a time when government services for the poor were either non-existent or in their infancy.<sup>2</sup>

### Mrs. Foster and How Her Work Began

Rebecca Salome Elliott was born in 1848 into a large family in Mobile, Alabama. In 1865, she married John A. Foster (1833–1890), a Civil War infantry officer who, among other forms of service, took part in the investigation of the assassination of Abraham Lincoln conducted by the Judge Advocate General's Office, and who at his decommissioning held the rank of General. After the war, John Foster practiced law in New York City.

The historic Calvary Episcopal Church, which stands to this day at 277 Park Avenue South at 21st Street in Manhattan, where Mrs. Foster and her two daughters were married, played a central role in Mrs. Foster's life and in the work she undertook on behalf of immigrants and outcasts. It seems that the inspiration for her good works arose out of her church associations and the then-thriving and robust Anglican missionary movement. Rev. Henry Y. Satterlee (1843–1908), the rector of Calvary Church (1882–1896) and later the first Episcopal Bishop of Washington, D.C., helped Mrs. Foster through a spiritual crisis occasioned by the deaths of two of her children and motivated her to lead a life of service.<sup>3</sup>

\*A longer version of this article will appear in the near future on the website of the Historical Society of the New York Courts.

## The Tombs Angel: An Exemplary Life of Service

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**Portrait of Rebecca Salome Foster.**

From a scrapbook assembled by Mrs. Lila Elizabeth Elliott Duff, a sister of Mrs. Foster, courtesy of Jeremy Ann Brown



**Rebecca Salome Foster's husband, Union General John Armstrong Foster, in uniform, c. 1861.**  
Civil war photographs, 1861-1865, Library of Congress, Prints & Photographs Division, LC-DIG-cwpb-05319

Mrs. Foster's first foray into work on behalf of prisoners and their families came about by chance in 1884.<sup>4</sup> According to Rev. John Josiah Munro, a one-time chaplain of the Tombs Prison who heard the story directly from Mrs. Foster, her laundress asked for help after the woman's young son had been arrested for a theft of which he claimed he was innocent. John Foster agreed to defend the boy, but on the day the case was to be heard, Mr. Foster was too ill to appear in court as counsel. Instead, he sent Mrs. Foster with a note requesting an adjournment. When Mrs. Foster reached the court, the case was already on, and when an opportunity presented itself, she made a powerful plea on behalf of the boy. The judge, greatly impressed, discharged the boy. The judge then called Mrs. Foster's attention to the case of a young homeless girl who had been arrested that day for solicitation. Evidently reluctant to sentence the girl to incarceration, the judge asked Mrs. Foster to investigate the girl's story before he took final action. Mrs. Foster investigated the case, reported her findings to the court, and had the girl paroled into her own custody. She then returned the girl to her original home in another part of the country. The girl was thus saved from what would almost surely have been a wretched life.<sup>5</sup>

### What Mrs. Foster Did

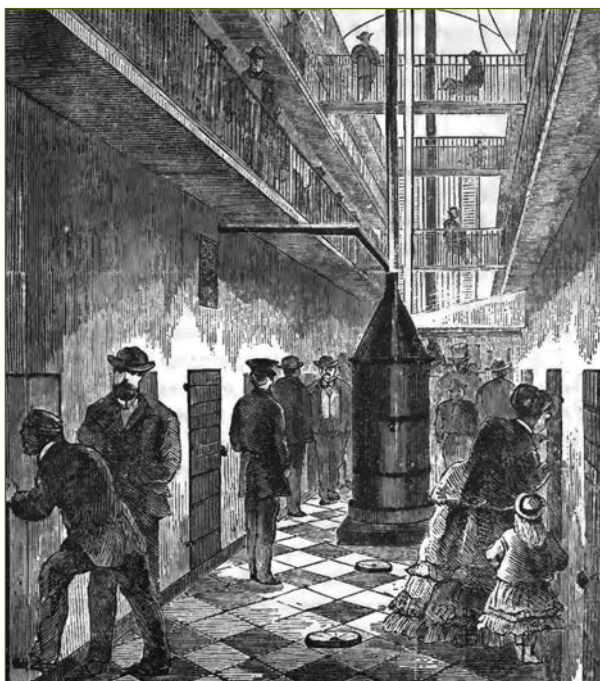
Thereafter, Mrs. Foster began to appear in court often, with judges frequently asking her to assist them in discerning the true circumstances of defendants before them—information that was otherwise unavailable. William T. Jerome, the District Attorney and a former judge, who in his time was very prominent in the City and beyond for those roles, knew Mrs. Foster well, and said that Mrs. Foster “would find out where the woman [defendant] worked - - what her life was, what her interests were, who her people were, what her surroundings had been, how she came to get into this trouble.”<sup>6</sup>

Before long, Mrs. Foster broadened her role beyond the gathering of information. She extended financial aid to suitable defendants and their families while legal proceedings were in process and, after sentencing or discharge, provided financial support, housing, and employment. She gave food, clothing, travel expenses, shoes, and other assistance. In effect, she made available through her own efforts a program of rehabilitation for defendants who, in her view, could be reclaimed: frequently, persons with no previous criminal offense on their record, especially young women. In the cases of



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**Inside the male prison, c. 1872.** Originally published in *Lights and Shadows of New York Life* by James McCabe



**Interior of the Tombs, Murderer's Row.** Originally published in *Darkness and Daylight* by Helen Campbell, 1895



**A boys' cell in the Tombs, 1870.** Mrs. Foster worked with the imprisoned, who were housed in cells such as these. The Miriam and Ira D. Wallach Division of Art, Prints and Photographs: Picture Collection, The New York Public Library





The backyard of a tenement, where laundry is drying and children and adults are outside, in the Five Points neighborhood, NYC, photographed by Jacob Riis, c. 1890. Courtesy of the Preus Museum, NMFF.002171

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such defendants, she often requested that the Judge either discharge the defendant into her care or release the defendant into her custody on a suspended sentence.

The judges often acted favorably upon Mrs. Foster's recommendations. As Judge Jerome put it:

*[I]f judgment was suspended [or the defendant was discharged, Mrs. Foster] would, especially in the case of young women, take them into her charge, procure situations for them, and exercise a general supervision over them for a considerable time, helping them wisely . . . For others she would procure lodgings, and frequently, when a woman was sentenced and sent to prison, she would look out for her children; and where men were sentenced she would look out for their wives, procure means to help them -- give them food and clothing, procure work for them.<sup>7</sup>*

Judge Jerome explained that the judges were willing to rely upon Mrs. Foster's information and recommendations because "she had rare good judgment."<sup>8</sup> Further, he said, "[h]er absolute sincerity and purity of motive impressed [themselves] upon every one and led them to trust her."<sup>9</sup>

For instance, there was the case of Jennie Purcell, who was convicted of grand larceny. When the judge came to sentence her, he said the following: "You have a bad record on the Bowery. I fear it is impossible for you to reform. But Mrs. Foster tells me she will care for you, so I will let you go."<sup>10</sup> So it was for many.

In order to do her work, Mrs. Foster visited defendants in the infamous Tombs Prison in lower Manhattan. She inquired into their histories and the charges against them; offered advice and encouragement to them; and learned about the needs of their families, which she would meet whenever possible. She frequently attended legal proceedings as the friend of the defendant. If her investigations showed that a defendant was not guilty of the charges pending or had previously had a good character, she would personally present the exculpatory or favorable facts to the court.

Not long after her work started, Mrs. Foster began the almost-daily practice of going to the Tombs early in the morning and inquiring of the staff about newly-incarcerated persons, especially young women. She would identify those defendants who seemed to her promising candidates for her assistance and would visit with them. She would develop a plan of assistance and, rather than waiting for a judge to ask for her help, she would often attend court at the scheduled appearance and initiate an application to the judge that she be allowed to provide assistance, including

in appropriate cases taking the defendant into her custody upon release or suspension of sentence.<sup>11</sup>

In pursuing this work, which then became her vocation, Mrs. Foster said, "I resolved that if I could save but one woman, my life would have been well lived."<sup>12</sup> She saved countless women and girls and countless men and boys too.

When Mrs. Foster was engaged in her work, there were hardly any women in the professions. Some women of means and education were then certainly striking out into the world, examples of which can be found in the first Women's Rights Convention at Seneca Falls, New York (1848), with its famous *Declaration of Sentiments*<sup>13</sup>; women's clubs and the Chautauqua Movement<sup>14</sup>; and the women's suffrage movement, which culminated in the 19th Amendment to the United States Constitution giving women the right to vote (1920). But at the time Mrs. Foster was attending to her many wards, very few women of her station were leaving the comfort of their parlors—and even the few who did would in most cases have steered well clear of such challenging environs as those of the Tombs Prison, the tenements, and the criminal courts.

Mrs. Foster's work took her "into all parts of the city, and among all sorts of people, and she . . . [became] very well known to all classes of the wretched and unfortunate who are unable to help themselves."<sup>15</sup> Mrs. Foster was so dedicated to her work, and so effective in it, that before long she became widely known among her beneficiaries by the name "the Tombs Angel." One of the judges said of her that "[s]he was not only a 'Tombs angel,' but a court angel."<sup>16</sup>

Mrs. Foster was described as "a bright woman and brave as a lion. Her own deep troubles [the deaths of her children and, later, her husband] roused her sympathy for the desolate." She was blessed with courage that was "prompt and unflinching."<sup>17</sup> Chaplain Munro of the Tombs Prison called her "a woman of much ability and considerable force of character," "generous to a fault," and "ready to help everyone in time of need, regardless of creed, color or race."<sup>18</sup>

The sheriff of the Tombs, who saw her almost daily, said of her:

*She was always bright and cheery, and had a laugh or a joke or a pleasant word for everyone. She used to come whisking in every morning, and trip through the place, saying good-morning to everyone by name. She always came bustling into my office as breezy and chipper as a young girl. It was always "Good morning to you, Sheriff; are you good-natured to-day?" You couldn't help warming up to her.<sup>19</sup>*



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**Calvary Episcopal Church, where the Fosters wed and from which Mrs. Foster drew spiritual support and inspiration, c. 1900.** Collection of the New-York Historical Society

Significantly, Mrs. Foster accepted no compensation for her work.<sup>20</sup> Some of the funds she expended came from her own resources. In time, however, word of her good work spread and she was able to raise funds. She raised monies from members of Calvary Church,<sup>21</sup> including the “Friends at Court,” a group that was established specifically to help her.<sup>22</sup> This group started with six members, but by 1902 had grown to about 200 regular subscribers. In its later years the group raised as much as \$3,000 annually (equal to almost \$100,000 in today’s dollars) to support Mrs. Foster’s work.<sup>23</sup> She also sometimes received support from well-known philanthropists and prominent wealthy families.<sup>24</sup>

After her husband’s death in 1890, Mrs. Foster devoted herself to this work all the more. She was “a very charitable lady, and in course of a year gave away much money, clothing, shoes and railroad tickets and meals, to hundreds of men and women as they came out of prison.”<sup>25</sup> Her daughter would later remark that she could not remember a “time when mother was not engaged in some charitable work or other.”<sup>26</sup>

In time Mrs. Foster became well known to and respected by all the newspaper reporters of the City—not

a naïve bunch—whom she sought to persuade against publicizing her work and her cases.<sup>27</sup> A reporter wrote that it was “difficult to tell” how many souls had been helped by Mrs. Foster due to her “extreme reticence about her work”—she “never talked” about it among her friends and family. When she began her work, she called the reporters together and specifically asked them to avoid making “stories” out of her and her cases because publicity would make it “impossible . . . to go on.”<sup>28</sup>

Dressed in full Victorian garb, all in black in memory of her husband, Mrs. Foster started her day with services at Calvary Church and went from there to the Tombs.<sup>29</sup> The sexton of Calvary Church reported that at these morning visits there would usually be people in need, sometimes as many as 20 or 30, waiting there for her and hoping for help, including impoverished persons not in trouble with the law. “She used [the church] as her uptown office,” the sexton said, “and she kept the clothes and things she gave away in the basement. She was always collecting every kind of thing and sending it here. Sometimes a wagon would drive up and unload.”<sup>30</sup>

Some greater sense of the nature of Mrs. Foster’s labors can be gleaned from her own words as she describes a typical day:

*I began at 9 A.M. in the vestibule of Calvary Church, where seven persons were awaiting me. To two I gave money for food, to one rent money, and to two orders for shoes. The others I took to superintendents of two Department Stores for positions.*

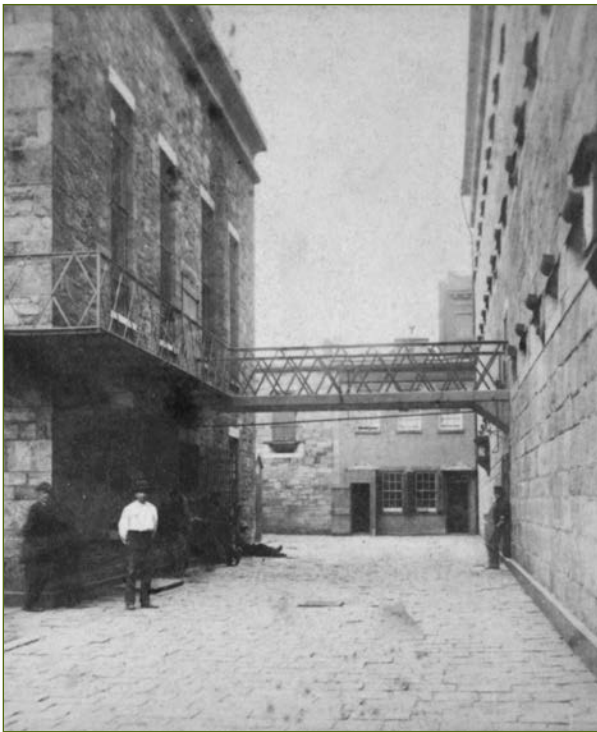
*Then to the Court of Special Sessions, for the Case of B.H. (previously investigated), accused of petty larceny, whose sentence was shortened to only 30 days. Met in the corridor a young woman, homeless and penniless, with month old baby in her arms, whose husband had just been sentenced for 3 months, and paid \$2 rent until I can get her work.*

*In the Court of General Sessions, four cases: M.C., aged 19, had stolen \$5, her first crime. Inquiry proved previous good character, and she was let off with ten days. A.B., 17, suspected of stealing [a] ring, was discharged in my custody. I took her to her mother, who will report to me regularly. M.N., when drunk, had broken a window. As it was her first offence, she was allowed to go on suspended sentence and her mother took her home. M.B.,*



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**View of the interior yard of the Tombs, also depicting the Bridge of Sighs, 1875.** The Miriam and Ira D. Wallach Division of Art, Prints and Photographs: Photography Collection, The New York Public Library

*20, servant, accused of theft. I had found all her employers for her three years in this country willing to take her back, but as the Court considers household thieves a most dangerous class, I was able only to get her sentence shortened to three months, on the ground of previous good record.*

*Next, in District Attorney's office, was promised speedy trials for three cases in prison. Then to 17th street and 10th avenue and to 87th street and Columbus avenue, inquiring [of the] characters of two girls whose cases are to come up to-morrow.*

*I then returned to the District Attorney's office, by his request, to consult about a young girl, a victim of the "Cadet System [the promotion of prostitution]." Saw the girl there, only 16, pretty and ignorant, an easy prey to vicious designs. Took her to St. Barnabas House, where she will be safe and whence I will take her back and forth*

*daily to Court till her trial is over, and afterwards I will care for her as long as she needs help and until she can get work. Then, summoned by Prison Ward officer to Bellevue Hospital, to see a young girl just brought in for having attempted suicide. She was unwilling to talk until the nurse explained who I was, when she readily confided all her griefs to me. I comforted her as best I could and promised to stand by her in Court when tried, and to ask the Judge to put her in my care.*

*Then home, at 6 P.M., to find a Subpoena Server waiting with two subpoenas for me to serve on two women I had taken into my care on parole eight months before, agreeing to produce them in Court when needed. As they were wanted the next day, I dined hurriedly and went to 106 Essex street and 82 Eldridge street, served the subpoenas, arranged to meet the women in Court the next morning, and returned home, my day's work done.<sup>31</sup>*

In early 1901, the Friends at Court reported to the parishioners of Calvary that, in the preceding year, Mrs. Foster had made 1,171 visits; helped 419 prisoners and 81 prisoners' families; sent 83 people to their homes in various parts of this country; and paid the traveling expenses to Germany of two girls, to Italy of a woman and child, to Ireland of two girls, and to France and Bermuda of one each. She had distributed 230 pairs of new shoes. In terms of raw expenditures, she had paid out \$463.98 for the traveling expenses of former prisoners, \$736.21 for food, \$281.00 for rents, \$181.90 for ice in prisons, \$152.38 for lodgings, and \$60.75 for coal and wood.<sup>32</sup>

In a report in 1896, Mrs. Foster recounted this story:

*In the early summer there came into the court a young woman, scarce eighteen years old, accused of stealing \$1,800, in open daylight, on the street. She was engaged to marry a man who made her help to him in getting this money a condition of their speedy marriage, and she consented to and did help him - - afterwards repented, and confessed. On my promise to care for her the judge suspended sentence, and gave her to me. I found work for her in the country - - a place which she has kept.<sup>33</sup>*



**Mulberry Bend, a part of the notorious Five Points neighborhood, NYC, photographed by Jacob Riis, c. 1890. Riis' photographs illustrate the harsh conditions of life in the tenements, from which emerged the consequences that Mrs. Foster sought to alleviate.**  
 Courtesy of the Preus Museum, NMFF.003400

Mrs. Foster described two more of the cases that touched her that summer:

*A young man, not yet twenty, but with a wife and babe, came to New York from Lowell, Mass., leaving his wife and child with his mother until he could find work, and send for her. The first day, while looking around for board - - a stranger in a strange city - - he met another young man in a restaurant, and told him what he wanted, and asked him if he could direct him to a good, cheap place. All the money he had with him was \$9.00. This man said he too was poor, a peddler, but he had a good room, and would gladly share it, and so help both. This was agreed on, and my man from Lowell went home with him. That very night both were arrested as receivers of stolen goods, and it was the peddler's business to sell them. I wrote to Lowell, got letters from the clergyman who baptized and married my boy, also his mother and wife, and so proved his innocence, and obtained his discharge. I was anxious he should go back home, and he was willing, so*

*I got him a ticket, and he returned to Lowell. Afterwards, through a friend, I obtained for him, work in Boston, which place he still has.*

*Another; a young woman, twenty-two years old, was employed in a boarding-house as waitress. One of the boarders accused this girl of stealing a ring, and had her arrested. The girl protested her innocence, and I saw every employer she had had in the seven years she had lived at service. She had only had three places, and every one declared her honest and faithful in every way. The ring was not found on her, but she was held for trial. I then saw the people in the boarding-house, and finally learned that this ring had been missed and declared lost before this girl had entered the house. On that evidence and her good character she was discharged. I found her service in the family of one of the people who were in the court house at once. She is still there.<sup>34</sup>*

Mrs. Foster did whatever she could to find attorneys for defendants in serious cases. With money in short





**The original Tombs Prison, facing Centre Street, and, to the north, the Criminal Courts Building, photographed in 1894.**  
Irma and Paul Milstein Division of United States History, Local History and Genealogy, The New York Public Library

supply, Mrs. Foster used her persuasive powers to prevail upon attorneys to take on cases *pro bono*. For instance, she often induced Samuel Seabury, Esq., who later became a very famous reformer and judge in New York, to take cases from her on this basis. Early on, when Seabury was in court one day, she came up to him and asked if he would act as counsel for some of her non-paying clients.<sup>35</sup> He accepted and thereafter threw himself enthusiastically into the cases she recommended to him. “She was kindly, sympathetic and humane and so great was my respect for her,” Seabury said, “that there was no case that she asked me to defend that I refused.”<sup>36</sup> For a young lawyer, this proved to be good, albeit not lucrative, experience. “There was no need to wait for causes and clients to come to me now,” Seabury said. “Mrs. Foster saw to it that I was well supplied.”<sup>37</sup> Other attorneys were likewise well-supplied: in the summer of 1896 alone, for example, she provided lawyers for 133 women and 84 men.<sup>38</sup>

Mrs. Foster also did what she could to help defendants in some very serious and notorious cases. One of these, a great scandal at the time, was the case of Maria Barbella.<sup>39</sup> Barbella, an immigrant from Italy, had killed a man who had abused her and refused her requests that he marry her. Barbella was incarcerated in the Tombs and put on trial for murder in 1895. Mrs. Foster took a great

interest in her case and aided her in every way possible. She was at Barbella’s side in court every day throughout the trial. Barbella was convicted. Mrs. Foster assisted Barbella during the sentencing hearing (the prisoner entered the courtroom “supported by Mrs. Foster, the Tombs Angel”) and stood up with her before the bar when the sentence was imposed.<sup>40</sup> The judge sentenced Barbella to death, which would have made her the first woman to die in the electric chair in New York State.<sup>41</sup>

Barbella was sent to Sing Sing the day sentence was pronounced and Mrs. Foster accompanied her. Because Barbella was in a deeply disturbed state, Mrs. Foster allowed herself to be locked in the cell with the prisoner overnight. The next day Barbella was in a better frame of mind, and Mrs. Foster returned to the city and her work.<sup>42</sup>

Thereafter, Mrs. Foster continued to work on Barbella’s behalf. Mrs. Foster helped to find a new attorney for Barbella and visited the editors of all the leading newspapers in an effort to persuade them to take positions in favor of clemency for Barbella or a new trial.<sup>43</sup> During the months that Barbella was incarcerated at Sing Sing, Mrs. Foster visited her frequently.<sup>44</sup>

New attorneys representing Barbella pressed an appeal on her behalf. The appeal succeeded the next year when the Court of Appeals ordered a new trial.<sup>45</sup> At



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the second trial in 1896,<sup>46</sup> Mrs. Foster once again sat at Barbella's side throughout.<sup>47</sup> Barbella's lawyers argued that their client had acted under the compulsion of extreme emotional upset. The argument succeeded and Barbella was acquitted.

One of Mrs. Foster's last cases was that of Florence Burns, a young woman who was charged with the murder of one Walter S. Brooks in another sensational case. During a hearing that lasted several days, Mrs. Foster stood by her as her best friend when all others had apparently abandoned her.<sup>48</sup> But, wrote Chaplain Munro, "this is just the kind of work Mrs. Foster had been doing - - of the most unselfish and loving character to prison unfortunates for nearly twenty years."<sup>49</sup> Burns would eventually be formally exonerated, although she remained under of cloud of suspicion.<sup>50</sup>

One of the safe houses Mrs. Foster used was Pelham Hall Shelter in New Rochelle, New York, which was established in 1895. A contemporaneous directory reported that the home was a refuge for erring girls between the ages of 15 and 25 years old who showed a sincere desire to reform. Mrs. Foster, who was on the Board of Trustees of the Shelter, regularly took girls who had been placed in her charge by the court to this home in order to give them safe living accommodations, food, and clothing while they learned a trade that might provide them support in a future life.<sup>51</sup>

In Manhattan, Mrs. Foster also worked with the Episcopal City Mission, especially St. Barnabas House on Mulberry Street and God's Providence Mission on Broome Street, to provide shelter for unfortunate women who were committed to her care by the courts or found by her in the streets.<sup>52</sup>

Mrs. Foster engaged in charitable endeavors beyond her prison work. She provided help to troubled or mentally impaired persons who were picked up in the streets or came to her attention directly or through the authorities. She was active in the settlement house movement of the period.<sup>53</sup> She ran and was a mainstay of a sewing school for poor young girls, mostly Jewish immigrants from the Lower East Side, located in God's Providence Mission.<sup>54</sup> She might have 250 sewing students in her school at a time. "Her work of prevention was pursued as aggressively and as affectionately as her work of restoration."<sup>55</sup>

### The Notorious Tombs Prison and Its Blighted Neighborhood

The original Tombs, where Mrs. Foster worked daily, was built between 1835 and 1840. It occupied a full block on the west side of Centre Street bordered by Elm (subsequently renamed Lafayette Street), Leonard and Franklin Streets (today the site of Collect Pond Park)<sup>56</sup> and also housed the quarters of the Court of Special Sessions. The prison quickly became known as "the Tombs" because of its Egyptian Revival-style architecture. The prison was ill-advisedly constructed on the former site of Collect Pond. The pond, the source of the City's drinking water in the colonial period, had become polluted by 1802 and was filled in and leveled by 1813.<sup>57</sup> The Tombs was dark, dank, and, thanks to the pond, more than damp. The filling of the pond and the subsequent construction were poorly done and, only months after the Tombs opened, the building began to sink, causing cracks in the foundation through which water leaked, forming pools on the floor.<sup>58</sup> The prison was plagued by water problems from then on. Difficulties with the building persisted for years. More than once a Grand Jury condemned the structure as unhealthy and unfit for its purpose, but it was not replaced until 1902.<sup>59</sup>

The Tombs, primarily a place of detention for those awaiting trial, was originally designed for about 300 inmates, housed two-to-a-cell,<sup>60</sup> but more than that number were being incarcerated there by the 1880s. Except for a period of exercise, inmates at the Tombs were kept locked in their cells day and night. Executions by hanging took place inside the Tombs. A bridge that connected the women's section to that of the men was known as the "Bridge of Sighs" because condemned men passed over it on their way to their execution.<sup>61</sup>

Charles Dickens came to New York City in 1842 and paid a visit to the Tombs. He was shocked by what he saw. He wrote:

*What! do you thrust your common offenders against the police discipline of the town, into such holes as these? Do men and women, against whom no crime is proved, lie here all night in perfect darkness, surrounded by the noisome vapours which encircle that flagging lamp you light us with, and breathing this filthy and offensive stench! Why, such indecent and disgusting dungeons as these cells, would bring disgrace upon the most despotic empire in the world!*<sup>62</sup>

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The neighborhood very near the original Tombs, in which Mrs. Foster spent so much time—what is today Foley Square and its environs, with its imposing court-houses at 40 and 60 Centre Street and 500 Pearl Street and many important state and federal government office buildings—was then a neighborhood largely of tenements, extreme poverty, and degradation. The neighborhood, of *Gangs of New York* fame, was known as “Five Points,” taking its name from an intersection of five streets, and it was thoroughly infamous:

*Five Points was the most notorious neighborhood in nineteenth-century America. Beginning in about 1820, overlapping waves of Irish, Italian, and Chinese immigrants flooded this district . . . Significant numbers of Germans, African Americans, and Eastern European Jews settled there as well . . . [T]he densely populated enclave was once renowned for jam-packed, filthy tenements, garbage-covered streets, prostitution, gambling, violence, drunkenness, and abject poverty. “No decent person walked through it; all shunned the locality; all walked blocks out of their way rather than pass through it,” recalled a tough New York fireman. A religious journal called Five Points “the most notorious precinct of moral leprosy in the city . . . a perfect hot-bed of physical and moral pestilence . . . a hell-mouth of infamy and woe.”*<sup>63</sup>

Many of those who were incarcerated in the Tombs and who looked to Mrs. Foster for assistance, and the families of those persons, came from this impoverished district. Faces like theirs stare at the viewer of the photographs in Jacob Riis’s *How the Other Half Lives*, which was published in 1890, when Mrs. Foster was working there.<sup>64</sup> Unlike most people of the time of her social standing, Mrs. Foster walked the streets of Five Points on a daily basis and entered its tenements, saloons, and other establishments, more often than not alone, demonstrating clearly that she was a person of considerable courage, determination, and dedication.

### Rebecca Foster’s Untimely Death

Mrs. Foster, at age 54, was in full stride pursuing her philanthropic work when she died, suddenly and tragically, on February 22, 1902 in a hotel fire that consumed a portion of the Park Avenue Hotel on Park Avenue South at 34th Street, where she resided. Sixteen others were killed as well. It was reported that Mrs. Foster, after having escaped from her sixth-floor room, had returned to assist an elderly hotel patron when both were overcome by smoke and then flames.<sup>65</sup>

Mrs. Foster’s untimely and very sudden death was a great shock to many and was much reported on by the papers. Especially hard hit by her death were the local legal community—judges, prosecutors, attorneys, and prison wardens—and, of course, the countless unfortunates who had been the direct beneficiaries of her good works.

The funeral service was, very fittingly, held at Calvary Church on February 25. The opening of the courts that day was postponed to allow Judges and court staff to attend.<sup>66</sup> Those present included many attorneys, Judges, prosecutors, and prison staff, and those who had been helped by her. Indeed, said one press account, “[a]lmost in the same pews with the Judges who dispense the criminal laws in our courts sat men and women who had been reclaimed from lives of crime by the one to whose memory they had come to offer silent tribute.”<sup>67</sup> This account went on:

*Prominent philanthropists and clergymen noted for their energy in many fields of charitable work mingled with turnkeys of the city prisons and attendants of the criminal courts. Children and young girls from the slums . . . mingled with men and women prominent in social life who had given generous financial aid to Mrs. Foster in her charitable work. Hundreds stood at the rear of the church and in the side aisles.*<sup>68</sup>

A large group of students from Mrs. Foster’s sewing school was there,<sup>69</sup> as were representatives of the Society for the Protection of Jewish Prisoners.<sup>70</sup> Throughout the service many women were noticed weeping silently in the rear of the church. Among those was Maria Barbella.<sup>71</sup> She brought flowers as a tribute to “my friend.”<sup>72</sup>

Mrs. Foster was buried in the family plot in Woodlawn Cemetery in the Bronx.





Lodgings advertised as "five cents a spot" in a Bayard Street tenement, NYC, photographed by Jacob Riis, 1889.  
Courtesy of the Preus Museum, NMFF.003396

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### A Rare Public Tribute

Not long after Mrs. Foster's death, funds were raised by public subscription to finance a fitting public tribute in her memory. Among those who contributed was President Theodore Roosevelt, who wrote that it was "a very real pleasure to testify even in so small a way to her work."<sup>73</sup>

In 1904, the monument to Mrs. Foster was installed in the old Criminal Courts Building.<sup>74</sup> The monument was a wall mounting approximately seven feet high, consisting of an elaborate, renaissance-style bronze frame; a marble medallion likeness of Mrs. Foster; and a large marble relief of an angel ministering to one in need. Underneath her name and dates were the very apt words, "On Her Lips Was The Law of Kindness." The sculpture was the work of the highly regarded Austrian-born sculptor and immigrant to America, Karl Bitter.

The fate of the Foster monument adds a melancholy story to the record of neglect of the contributions of women in New York City. The tribute to Mrs. Foster remained on public display in the Criminal Courts Building for more than three decades. Then, that building, which stood at the site of today's 111 Centre Street Courthouse, was torn down and a new courthouse was erected at 100 Centre Street in 1941. During construction, the Foster monument was dismantled and made its way into storage somewhere in the labyrinthian basement of the new building at 100 Centre Street. At this point the justice system and the courts for which Mrs. Foster had done so much during her lifetime proceeded to let her down; the monument was forgotten by those who ought to have protected it and restored it to public view. In the years following the removal of the monument to the basement of 100 Centre, the elaborate bronze frame and the medallion likeness of Mrs. Foster were stolen, lost, or discarded. Ironically, then, the woman who had devoted her life to helping those accused and those convicted of crime was victimized after her death by both official neglect and apparently by thievery. One cannot help but wonder if the fact that the monument was a tribute to a deserving woman and not to a man—deserving or not—led those in charge at the time to take it less seriously than should have been the case and contributed to its being abandoned, vandalized, and forgotten. Probably the only reason the marble relief was not stolen or discarded was because it was too heavy to cart away.

### The Monument Rediscovered

The surviving portion of the monument was rediscovered in 1983. After conservation by the Metropolitan Museum, it was delivered to the Supreme Court, Civil Branch, New York County, located in the New York County Courthouse, 60 Centre Street, only a few blocks from the site of the old Tombs. Finally, through the efforts of the Foster family, especially the family's representative, Mrs. Foster's grandniece Ms. Jeremy Ann Brown; the Supreme Court, New York County; the Public Design Commission; the Municipal Arts Society; and the City's Department of Citywide Administrative Services,<sup>75</sup> further restoration work was done by Ottavino Stone Corp. and, with financial assistance from the Porzeldt Foundation, a stand was built for the relief in the Courthouse by Ottavino. The stand was installed in a niche in the entrance lobby to the court and the sculpture was placed there in 1919.<sup>76</sup> A few days later, the surviving portion of the monument was rededicated in a public ceremony that celebrated Mrs. Foster and Karl Bitter.<sup>77</sup> A very large crowd, standing room only, attended this event honoring Mrs. Foster and her seemingly boundless devotion to the less fortunate. Among the participants in this rededication ceremony were members of the Foster family, including Ms. Brown.<sup>78</sup>

During the two years or so before the rededication of the Foster memorial, the New York Times had run a series of articles and op-ed columns about the dearth of tributes in New York City and beyond to women deserving of recognition, in contrast with the countless monuments to men, both deserving and otherwise.<sup>79</sup> Thus, the timing of the restoration to public view of the surviving portion of the Foster memorial could not have been more appropriate. Here we have a marble relief, a work of art that is impressive on its own terms, from a very rare historical monument to a woman—one who, during an important and difficult period in New York City's history, made great contributions to the City, the values that animate it, and its inhabitants, especially immigrants and the poorest and most abandoned. Finally, after much sad travail, the surviving portion of the memorial to the Tombs Angel has found a permanent home. It can be hoped that, today and far into the future, many who view the surviving relief and admire it for its beauty and the depth of compassion it conveys will remember the life and work of the Tombs Angel, and will perhaps even be inspired to go forth and put into practice in their own ways the law of kindness by which Mrs. Foster lived.



## The Tombs Angel: An Exemplary Life of Service

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**The Tombs Angel Monument,  
as originally installed in 1904.**

Collection of the Public Design Commission



**The surviving fragment of the Tombs  
Angel Monument, as installed in 2019.**

A rededication ceremony was held on June 25, 2019, and is available for viewing on the website of the Historical Society of the New York Courts at [history.nycourts.gov](http://history.nycourts.gov). Photo courtesy of the authors

# The Tombs Angel: An Exemplary Life of Service

## ENDNOTES

1. In August 2020, on the 100th anniversary of the 19th amendment, a monument was erected in Central Park honoring the suffragists Sojourner Truth, Elizabeth Cady Stanton, and Susan B. Anthony. Nora McGreevy, "Why the First Monument of Real Women in Central Park Matters—and Why It's Controversial," *Smithsonian Magazine* (Aug. 26, 2020), <http://www.smithsonianmag.com/smart-news/monument-controversy-women-pioneer-central-park-180975662/>.
2. For example, the role of professional probation officer was only introduced pursuant to legislation after 1900. The Legal Aid Society of New York was established in 1876 to provide legal assistance to low-income German immigrants; its remit expanded to the provision of legal aid generally only in 1896. *See generally* C. Lindner & M. Savarese, "The Evolution of Probation: The Historical Contributions of the Volunteer," 48 *Fed. Probation* 3 (1984); *see also* The Legal Aid Society, "History," <https://www.legalaidnyc.org/history/> (last visited Nov. 2, 2020).
3. Charles H. Brent, *A Master Builder: Being the Life and Letters of Henry Yates Satterlee, First Bishop of Washington* 85–86 (1916), available at <https://archive.org/details/masterbuilderbei00bren>. Rev. Satterlee was active in mission work among the poor of the lower East Side of Manhattan.
4. A report in 1899 seeking donations for Mrs. Foster's work recited that she had by then been engaged in the work for 15 years. 11 *Calvary Evangel* 55 (Feb. 1899).
5. John Josiah Munro, *The New York Tombs: Inside and Out* 250 (1909), available at <https://archive.org/details/cu31924080788643>.
6. Arthur Henry, "The Tombs Angel," in 72 *The Outlook: A Weekly Newspaper* (Sept.–Dec. 1902) 163, 164, available at <https://books.google.com/books?id=T71OQAAMAAJ>.
7. *Id.* at 165.
8. *Id.* at 164. Mrs. Foster was rarely deceived and would sometimes advise the court that the defendant had a bad character that argued against a suspension of sentence. Thus, Judge Jerome said, "when she reported to the court, the court felt that, as far as it was possible to ascertain them, all the facts of the case had been learned, and that it might act with perfect safety upon her report." *Id.*
9. *Id.* at 165.
10. "Society Girls Watch Justice and Mercy in a New York Court," *The World*, Feb. 5, 1898, at 5.
11. "The Angel of the Tombs," *The Sun*, Jan. 26, 1896, at 31.
12. "'Tombs Angel' Talks to Men," *N.Y. Times*, Apr. 1, 1901, at 6.
13. "Seneca Falls Convention," *History.com* (Nov. 20, 2019), <http://www.history.com/topics/womens-rights/seneca-falls-convention>.
14. Ferki Ferati, "The Rise and Decline of the Chautauqua Movement and Its Lessons for 21st Century Civic Adult Education" (2017) (unpublished Ph.D. dissertation, University of Pittsburgh School of Education), <http://d-scholarship.pitt.edu/32427/1/Ferki%20ETD%20dissertation%20SD%20July%2027%20%281%29%208.21.17.pdf>.
15. Letter of Sarah Renee Martin to the Editor, 10 *Calvary Evangel* 116 (1898).
16. *N.Y. Daily Trib.*, Mar. 2, 1902, at 8 (quoting Justice E.B. Hinsdale).
17. Brent, *supra* note 3, at 86, 89.
18. Munro, *supra* note 5, at 249. The District Attorney stated that "[t]o all, Jews and Christians and those of no faith, she extends a helping hand." "Helping the Prisoner," *N.Y. Daily Trib.*, Apr. 26, 1901, at 5.
19. Henry, *supra* note 6, at 166.
20. 11 *Calvary Evangel* 55 (1899).
21. Multiple issues of *The Calvary Evangel* (the bulletin of Calvary Church) cited in these notes reflect this. In one of these (cited in note 20), we even find a former Assistant District Attorney, who might be supposed to have been disinclined to extend too much indulgence to criminals, speaking at a meeting about Mrs. Foster's work and urging that funds be donated to support it. The goal at that time was to raise \$ 2,000 annually to assist that work. The ADA stated that before Mrs. Foster began her work, the People were often compelled to seek to send girls to prison upon their conviction of a first offense, but "[n]ow this good woman takes them into her care." Even her fellow parishioners knew of her as "the Tombs Angel" for she was referred to in this way in some of the bulletins.
22. Brent, *supra* note 3, at 89.
23. "Everybody's Friend: Incidents in the Life of the 'Tombs Angel,'" *N.Y. Daily Trib.*, Mar. 2, 1902, at 8.
24. "Little Stories of the 'Tombs Angel,'" *N.Y. Times*, Mar. 2, 1902, at 26.
25. Munro, *supra* note 5, at 252.
26. Rev. John B. Devins, "The Angel of the Tombs," in 25 *The Missionary Review of the World* (Jan. to Dec. 1902) 418, 419 (1902), available at <https://books.google.com/books?id=IMtWAAAAYAAJ>.
27. *Id.*
28. "Mrs. Foster's Memorial – Tablet to be Unveiled at City Club," *N.Y. Daily Trib.*, Dec. 24, 1903, at 5; *see also* Devins, *supra* note 26, at 420.
29. Henry, *supra* note 6, at 166.
30. *Id.*





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31. “One Day’s Work,” 14 Calvary Evangel 38–39 (Nov. 1901). During the time when Mrs. Foster was working, the term “cadet” as used in the quotation in the text referred to a pimp or a procurer who kept a supply of women for immoral purposes through entrapment, threats, fraud, etc. Emma Goldman, “The Traffic in Women,” 13 Hastings Women’s L.J. 9, 9–10 & n. 3 (2002); Stuart Marques, “A History of Prostitution in New York City from the American Revolution to the Bad Old Days of the 1970s and 1980s” (Aug. 30, 2019), <http://www.archives.nyc/blog/2019/8/29/a-history-of-prostitution-in-new-york-city-from-the-american-revolution-to-the-bad-old-days-of-the-1970-and-1980s> (citing a report of the “Committee of Fourteen” formed in the early 1900’s to combat prostitution in the City).
32. 13 Calvary Evangel 44 (Jan. 1901).
33. “Report by Mrs. Foster at a meeting of the Archdeaconry Committee of Calvary Church, Nov. 4, 1896,” *printed in* 9 Calvary Evangel 22 (Dec. 1896).
34. *Id.*
35. Herbert Mitgang, *The Man Who Rode the Tiger: The Life of Judge Samuel Seabury and the Story of the Greatest Investigation of City Corruption in this Century* 36 (1970).
36. *Id.* at 37.
37. *Id.*
38. Report by Mrs. Foster, *supra* note 33, at 22.
39. Barbella was called by other names in the press and elsewhere. On appeal before the Court of Appeals, she was referred to as Marie Barberi (*People v. Barberi*, 149 N.Y. 256 (1896)), but her mother told a reporter that her real name was Maria Barbella. “Maria Barbella to Die,” N.Y. Times, July 19, 1895, at 2; *see also* Joanna Molloy, “Maria Barbella and Her Date with the Electric Chair,” Chi. Trib., Mar. 7, 1996, at 3, *available at* <https://www.chicagotribune.com/news/ct-xpm-1996-03-07-9603070264-story.html>. The story of Maria Barbella is told in Idanna Pucci, *The Trials of Maria Barbella* (1996). The book recounts Mrs. Foster’s assistance to Barbella.
40. “Maria Barbella to Die,” N.Y. Times, July 19, 1895, at 2.
41. *Id.*
42. Chaplain Munro describes Mrs. Foster’s actions on behalf of Barbella. Munro, *supra* note 5, at 251. This story is reported as well in Pucci, *supra* note 39, at 117–21.
43. Pucci, *supra* note 39, at 92–97, 134–39.
44. *Id.* at 189.
45. 149 N.Y. at 267–79.
46. “Maria Barbella’s Second Trial,” N.Y. Times, Nov. 17, 1896, at 3.
47. Pucci, *supra* note 39, at 219.
48. Munro, *supra* note 5, at 253; *see also* “Florence Burns in Court,” N.Y. Times, Feb. 19, 1902, at 2.
49. Munro, *supra* note 5, at 253.
50. Phoebe Neidl, “On This Day in History, February 16: Murder!,” Brooklyn Daily Eagle (Feb. 16, 2012), <https://brooklyneagle.com/articles/2012/02/16/on-this-day-in-history-february-16-murder/>. For more on the case, *see* Virginia McConnell, *The Belle of Bedford Avenue: The Sensational Brooks-Burns Murder in Turn-of-the-Century New York* (2019).
51. Blake A. Bell, “Pelham Hall Shelter for ‘Erring Girls’ Was Established in August 1895,” Historic Pelham (Sept. 4, 2017), <http://historicpelham.blogspot.com/2017/09/pelham-hall-shelter-for-erring-girls.html> (quoting Charity Organization Society of the City of New York, *New York Charities Directory* 217 (1897)); *see also* “Good is Their Aim,” Daily Chron. (DeKalb, Ill.), Apr. 11, 1896, at 4.
52. “Everybody’s Friend: Incidents in the Life of the ‘Tombs Angel,’” N.Y. Daily Trib., Mar. 2, 1902, at 8.
53. The settlement house movement began in England and the United States in the 1880s. The first institution of this kind was Toynbee Hall in London, opened in 1884. The movement promoted social reform and improvement through the interaction of different social classes, with the focus in the United States on the alleviation of wretched living conditions in city slums. “Settlement houses” were established by a variety of groups, religious and secular, in poor urban areas heavily populated by immigrants. Volunteer middle-class workers resided in these houses as friends and neighbors (hence the term “settlement”) and provided information, skills, and resources to the poor residents of the area to give them a foundation by which they could overcome and escape the poverty of the neighborhood. Well-known figures in the movement included Jane Addams, the founder of Hull House in Chicago; Lillian Wald, founder of the Henry Street Settlement in New York City; Florence Kelley; and Frances Perkins. Margaret E. Berry, *One Hundred Years on Urban Frontiers: The Settlement Movement 1886–1986* (1986), *available at* <https://socialwelfare.library.vcu.edu/settlement-houses/settlement-movement-1886-1986>.
54. “Tablet to Mrs. Foster’s Memory,” N.Y. Daily Trib., Nov. 19, 1902, at 6. A philanthropist donated the building and the land on which it stood for the mission. *Id.*; *see also* Devins, *supra* note 26, at 419.
55. Devins, *supra* note 26, at 421.
56. *A Tale of the Tombs*, New York Correction History Society, <http://www.correctionhistory.org/html/chronicl/nycdoc/html/histry3a.html> (last visited Nov. 2, 2020).
57. Robert Pigott, “From Pond to Park: The History of the Collect Pond Site,” Blog at the Gotham Center for New York History (Dec. 10, 2015), <http://www.gothamcenter.org/blog/from-pond-to-park-the-history-of-the-collect-pond-site>. The draining of the pond required that a 40-foot-wide canal be created. This became Canal Street. “Collect Pond Park,” N.Y.C. Parks, <http://www.nycgovparks.org/parks/collect-pond-park/history> (last visited Nov. 2, 2020).
58. *A Tale of the Tombs*, *supra* note 56.
59. *Id.*



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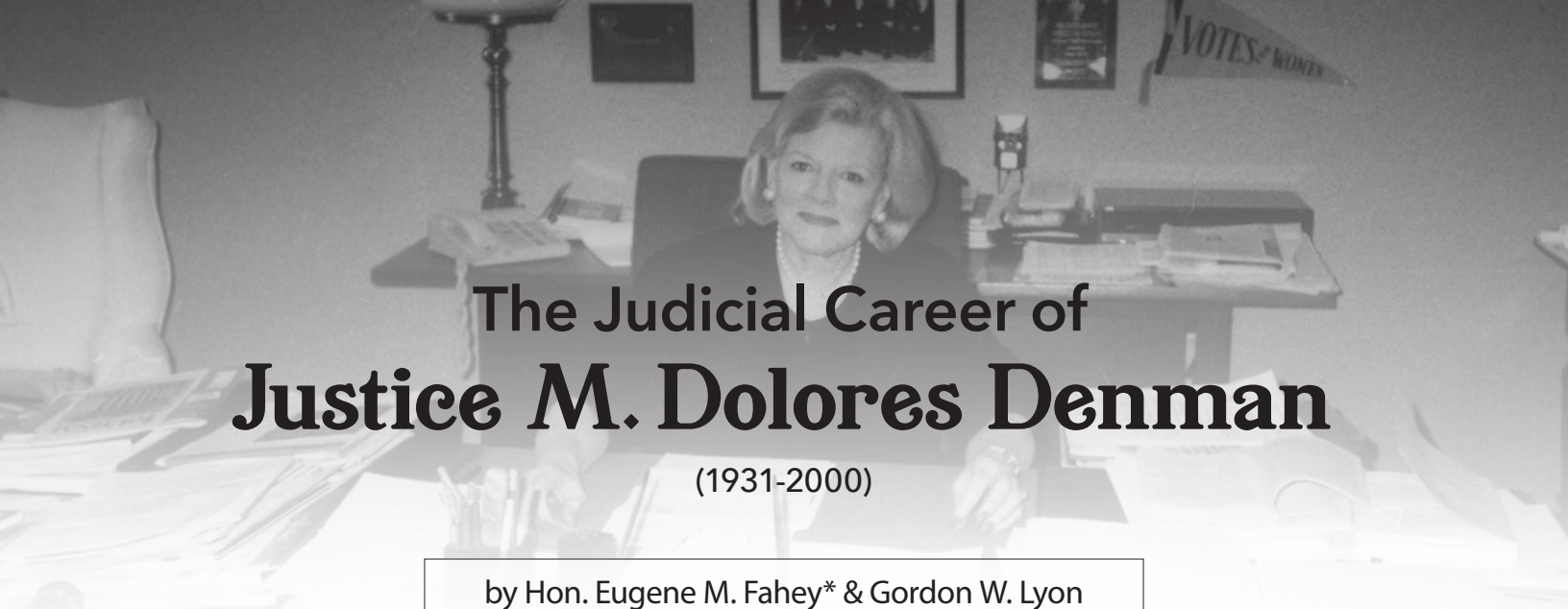
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60. "History of the Department of Correction of the City of New York," New York Correction History Society, <http://www.correctionhistory.org/html/chronicl/1946rpt/1946rpt.html> (last visited Nov. 2, 2020).
61. *Id.*
62. Charles Dickens, *American Notes for General Circulation* 38 (1842), available at <https://books.google.com/books?id=onI-WL7FpTAC>.
63. Tyler Anbinder, *Five Points* 1 (2001) (footnote omitted).
64. One of Riis's photographs shows "Murderers' Row" inside the Tombs in 1890 ([https://nygeschichte.blogspot.com/2014\\_06\\_01\\_archive.html](https://nygeschichte.blogspot.com/2014_06_01_archive.html)).
65. "Seventeen Dead in Hotel Horror," N.Y. Times, Feb. 23, 1902, at 1. "The last person who saw her alive says she lost her life trying to get back through the flames to a sick woman who was too ill to walk." Devins, *supra* note 26, at 420. A similar report appeared in "Mrs. Foster's Memorial," N.Y. Daily Trib., Dec. 24, 1903, at 5. This was also the understanding of her fate that was held at Calvary Church. Samuel H. Shoemaker, *Calvary Church Yesterday and Today: A Centennial History 178-79* (1936).
66. 14 Calvary Evangel 74 (Mar. 1902).
67. "Funeral of 'Tombs Angel,'" N.Y. Times, Feb. 26, 1902, at 16.
68. *Id.*
69. "At the Tombs Angel's Bier," The Sun, Feb. 26, 1902, at 11.
70. "Funeral of Mrs. Foster," N.Y. Daily Trib., Feb. 26, 1902, at 9.
71. "Funeral," *supra* note 67.
72. Devins, *supra* note 26, at 421.
73. Letter of President Roosevelt to Norton Goddard, April 21, 1902. The President might have come to know of Mrs. Foster's work during his service as President of the Board of Commissioners of the New York City Police Department (1895-1897), the headquarters of which were located at 300 Mulberry Street. Edmund Morris, *The Rise of Theodore Roosevelt* 494-96 (1979).
74. The City Record, Apr. 18, 1905, at 3133.
75. Representing the Court, the Commission, the Society and the Department were, respectively, John F. Werner, Esq., Keri Butler, Phyllis Cohen, and Lana Kim. The work by Ottavino Stone Corp. was performed under the direction of Kate Ottavino.
76. Due in good part to the vision and perseverance of pioneering city planner and preservationist, George McAneny, what is today Foley Square was developed on a portion of the Five Points tenement district. Charles Starks, *New York's Forgotten Master Planner: Rediscovering the Legacy of George McAneny* (New York Preservation Archive Project, 2016). Indeed, the New York County Courthouse, 60 Centre Street, is located at what was actually the intersection known as the "Five Points," the name of which intersection was given to the entire district. Thus, the placement of the Tombs Angel monument in the County Courthouse now puts this monument in exactly the location where Mrs. Foster at the turn of the last century and before did so much of her work.
77. The rededication of the surviving portion of the monument was the subject of articles in various publications. See, e.g., Meilan Solly, "Long-Forgotten Monument to Prison Reformer Will Be Reinstalled in New York Courthouse," Smithsonian Magazine (June 17, 2019), <https://smithsonianmag.com/smart-news/long-forgotten-monument-nyc-prison-reformer-will-be-reinstalled-state-courthouse-180972432/>; Peter Libbey, "An Angel of the City, Regaining Her Glow," N.Y. Times, June 17, 2019, at C1 (June 17, 2019). An appreciation of the marble relief and of the work of Karl Bitter generally by Prof. Jon Ritter of New York University during the rededication ceremony, as well as the entirety of the rededication, can be found on the website of the Historical Society of the New York Courts at the following address: <https://history.nycourts.gov/rebecca-salome-foster-the-tombs-angel-1848-1902/>. See also Jon Ritter, "The Expression of Civic Life: Civic Centers and the City Beautiful in New York City," in M. McGowan & E. Macaulay-Lewis (Eds.), *Classical New York: Greece and Rome in New York City's Art and Architecture, 1830-1940* (New York: Fordham Univ. Press 2018).
78. Given Mrs. Foster's long connection to the church and the central role it played in her life, it is significant that the current rector of Calvary Church, the Rev. Jacob Smith, and its archivist, Eric Stedfeld, were in attendance as well.
79. Julia Baird, "Putting Women on Pedestals," N.Y. Times, Sept. 4, 2017, at A21; Thomas Furse, "In London, Female Statue Nears Reality," N.Y. Times, Sept. 21, 2017, at A6; Julia Jacobs, "City Will Add 4 Statues of Women, Noting a Gender Gap And Starting to Fix It," N.Y. Times, Mar. 7, 2019, at A18; Gail Collins, "Where the Girls Aren't," N.Y. Times, Mar. 30, 2019, at A27; Julian Steinhauer, "Chisholm Monument Finds Its Designers," N.Y. Times, Apr. 24, 2019, at C1.





**Justice Denman.** Courtesy of the Appellate Division, Fourth Department  
Right: **Justice Denman at her desk in her home chambers in Buffalo's City Court Building, 1996.**  
Courtesy of the Appellate Division, Fourth Department



# The Judicial Career of Justice M. Dolores Denman

(1931-2000)

by Hon. Eugene M. Fahey\* & Gordon W. Lyon



Eugene M. Fahey, Associate Judge of the New York Court of Appeals, was born in Buffalo, New York, in September 1951. He served as Law Clerk to Judge Edgar C. NeMoyer in the Court of Claims before entering private practice in 1985, serving as house counsel for Kemper Insurance Company until 1993. Judge Fahey was elected to Buffalo City Court in 1994. He was elected to the Supreme Court in 1996, and was re-elected in 2010. As a Supreme Court Justice, Judge Fahey was assigned to handle a civil calendar as well as criminal Special Term and presided over a variety of cases in Erie County as well as the outlying counties in the Eighth Judicial District.\*\*



Gordon W. Lyon is a Senior Principal Law Clerk to Judge Eugene M. Fahey at the New York Court of Appeals. He has previously served as a Law Clerk to New York Court of Appeals Judges Albert M. Rosenblatt and Eugene F. Pigott, Jr. and U.S. Court of Appeals Judge Rosemary S. Pooler.\*\*\*

*“Nothing in this world is guaranteed but unstoppable is she who fights for what she wants and what she believes.”<sup>1</sup>*

First in her law school class. First full-time Housing Court judge in Buffalo. One of the first two women to serve on the Appellate Division in New York State. First woman to serve as Presiding Justice of any Appellate Division Department. Justice M. Dolores Denman was a pioneer whose achievements paved the way for a generation of women in law. Chief Judge Judith S. Kaye appropriately described Presiding Justice Denman as “a role model for women—indeed, for everyone who loves the law.”<sup>2</sup> This article examines Justice Denman’s roles as a trailblazing female jurist and as the author of a body of case law that is still influential today.

## Education and Early Professional Life

The future Justice Denman was born Mary Dolores Welch, in Buffalo, on February 16, 1931, the daughter of Rupert and Mary Welch. She attended St. Rose of Lima School and Holy Angels Academy, both in her native city. In 1957, Denman graduated from the University of Buffalo, as it was then known, with a Bachelor’s degree in English and American Studies and a minor in History.<sup>3</sup>

After college, Denman taught English for four years at Kenmore West High School, a public school in the Buffalo metropolitan area. While she enjoyed teaching, Denman decided that her true calling was the law. “I was always attracted to the law,” she would recall. “It seemed to me the only civilized way to settle disputes.”<sup>4</sup>

In 1965, Denman received her Juris Doctor degree from the State University of New York at Buffalo School of Law, graduating first in her class.<sup>5</sup> She married a law school classmate, James B. Denman.

Admitted to the bar in 1966, the two newly minted lawyers found jobs working for the federal government in the Panama Canal Zone, then an unincorporated territory of the United States. From 1966 through 1969, Dolores Denman was an associate counsel to the Governor of the Canal Zone, who



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**Portrait of Justice Denman, spring 1978.**

Ettore-Winter Photographers, Buffalo / Buffalo State College Archives, *Courier-Express* Collection

also led the Panama Canal Company. Then, in 1969, the Denmans returned home to Buffalo, and for three years Dolores Denman worked as an Erie County assistant district attorney, in Buffalo City Court.

In a 1996 profile, Justice Denman said that two of the most influential persons in her life had been her father and Michael F. Dillon, who was Erie County District Attorney when she was an ADA and who later became Presiding Justice of the Appellate Division, Fourth Department. Denman described her father as the most significant “influence on my life as far as character and philosophy and moral values” were concerned, while, in her professional life, Dillon “was a person of great integrity” and a greatly admired mentor who “shared the same moral values as my father.”<sup>6</sup>

### Early Trial Court Years

From 1972 to 1976, Denman served as an associate judge in Buffalo City Court. Initially appointed by Mayor Frank A. Sedita to fill a vacancy, Judge Denman was elected to a 10-year term on City Court in November 1972. She developed a “reputation for tough sentences

meted out to landlords convicted in arson schemes and property-code violations.”<sup>7</sup> In a contemporary interview with Buffalo’s *Courier-Express*, Judge Denman described her “responsibility” as a City Court Judge “to look into the human elements of each” case, and added that a female judge’s “intuitive sense of people and events helps her judge the human elements that are the underlying causes of problems”<sup>8</sup>—and, in particular, poverty and deprivation, “the root causes of crime.”<sup>9</sup>

During part of her tenure on City Court, Judge Denman served as Buffalo’s first full-time Housing Court judge. She urged the Common Council to correct omissions and deficiencies in city ordinances and proposed new state legislation to give City Court proper jurisdiction in housing cases. She also prompted investigations of possible conflicts of interest on the part of City housing inspectors.<sup>10</sup>

After more than four years on City Court, Judge Denman ran successfully for Supreme Court, remarking, “If you can handle City Court well, you can handle any court well. It requires patience, judicial temperament and a knowledge of the law. All the traditional judicial talents are put to the test.”<sup>11</sup>

In November 1976, Judge Denman was elected to a 14-year term on Supreme Court, Erie County, becoming the second woman, after Justice Ann T. Mikoll, on the Eighth Judicial District bench. Running with Democratic Party and Conservative Party endorsements, Denman was reportedly “the top vote-getter” among the eight candidates that year, which included an incumbent Supreme Court Justice and several City Court Judges.<sup>12</sup>

Justice Denman was appointed by Governor Hugh L. Carey to the Appellate Division, Fourth Department, on May 18, 1977—just a few months after her election.<sup>13</sup> On the same day Governor Carey announced the appointment of Justice Mikoll to the Third Department, making the two women the first female Appellate Division Justices in New York State.<sup>14</sup>

### *Gannett Co.*

Justice Denman wasted no time making her mark through her first writing for the Fourth Department,<sup>15</sup> *Matter of Gannett Co. v County of Monroe*.<sup>16</sup> A reporter applied under the Freedom of Information Law (FOIL) for access to the names, job titles, and salary levels of 276 workers whose employment had been terminated by



**Campaigning in the Catskills, summer 1978.**

Helene Blieberg, Grossinger Hotel and Country Club / Buffalo State College Archives, *Courier-Express* Collection

Monroe County. The County relied on a FOIL provision exempting the disclosure of items of a personal nature if it would result in economic or personal hardship and the records are not relevant or essential to the ordinary work of the municipality.

Writing for a unanimous Court, Justice Denman observed that *both* elements “must be applicable in order to make the paragraph operative” and that “[r]ecords regarding the termination of employees and their removal from the payroll are, by their very nature, relevant and essential to the ordinary work of the county.”<sup>17</sup> The Fourth Department held that “[t]he information sought is not of a ‘personal nature,’ ‘economic or personal hardship’ has not been documented and the type of records sought is certainly ‘relevant and essential to the ordinary work of the agency.’ To refuse disclosure would frustrate the intent of the statute.”<sup>18</sup> The Court ordered the County to grant access to documents that identified the employees and effectuated their removal.<sup>19</sup>

The New York Court of Appeals affirmed “on the opinion by Madam Justice M. Dolores Denman at the Appellate Division.”<sup>20</sup> The high court observed that “as noted by Justice Denman, the exception . . . is available only if . . . it is established that the records sought are not relevant or essential to the ordinary work of the agency

or municipality.”<sup>21</sup> Indeed, this would not be the last time that the Court of Appeals affirmed a decision of the Fourth Department “for reasons stated in the opinion by Madam Justice M. Dolores Denman,” according to the diction of that time.<sup>22</sup>

## The Attorney General Race

Just a year after her ascension to the Appellate Division bench, Justice Denman was persuaded to leave the judiciary in order to enter the race for Attorney General. Lieutenant Governor Mary Anne Krupsak had abruptly withdrawn from the Democratic ticket, creating a gender imbalance.<sup>23</sup> At the last moment, Denman’s name was advanced by Erie County Democratic Chairman Joseph F. Crangle, who was reportedly “irked by the downstate weight of the ticket.”<sup>24</sup> Denman also appealed to a Governor eager to court upstate voters.<sup>25</sup>

In June 1978, delegates at the Democratic Party state convention qualified Denman to run in the September primary for Attorney General. In order to be placed on the ballot without collecting petition signatures, a candidate needed 25% of the delegate vote. Denman won 32.5% of the vote “less than six hours after she agreed to





Justice Denman and her family at Buffalo Airport, June 16, 1978.

Ed Zagorski, Courier-Express, Buffalo / Buffalo State College Archives, Courier-Express Collection



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run,”<sup>26</sup> and immediately resigned from the judiciary to accept the designation.<sup>27</sup>

Denman quickly acknowledged what one might call “the Krupsak factor”: she had been asked to seek the nomination because of her status as “an upstate woman.”<sup>28</sup> She emphasized to reporters that it was “important for Upstate to have an Upstate candidate on November’s election ticket,” and equally “important to have a woman on the ticket.”<sup>29</sup> Returning to Buffalo’s Airport, Denman was crowned the “winner of [the] convention floor fight” and was photographed with her husband and children.<sup>30</sup>

Denman would compete against the party’s designee, Bronx Borough President Robert Abrams, in the primary. As an upstate candidate in a Democratic primary, Denman would be running as an underdog.

On the campaign trail, in a “heavy agenda of travel and debate,”<sup>31</sup> Denman proved “to be an energetic campaigner capable of delivering tough punches that belie her serene appearance.”<sup>32</sup> A *New York Times* profile characterized Denman as displaying “a natural talent for campaigning” across television interviews and meetings with politicians.<sup>33</sup>

Campaigning under the slogan “A Lawyer, Not a Politician,” Denman emphasized her credentials as a recent practicing lawyer, prosecutor, and judge, in contrast to her opponent Abrams’s career as a politician.<sup>34</sup> She told fellow Democrats that she favored changing the focus of the Attorney General’s office to include extensive criminal prosecution, with a particular focus on flagrant violators of consumer protection laws,<sup>35</sup> and also advocated incorporating into the Attorney General’s office those special prosecutors investigating Medicaid/Medicare fraud and corruption in the New York City criminal justice system.<sup>36</sup> The existing special prosecutors offices, she explained, were inefficient and a disproportionate burden on taxpayers.<sup>37</sup>

In a dispute that may appear incongruous in a race for Attorney General, Denman supported the death penalty “in a very limited number of” premeditated murder cases, whereas Abrams opposed it.<sup>38</sup> The debate was in a sense entirely theoretical; New York’s death penalty statute had been invalidated by the Court of Appeals in 1977,<sup>39</sup> and it was well known that Governor Carey was implacably opposed to efforts by the New York State Legislature to reauthorize capital punishment.<sup>40</sup> Nevertheless, at an August 1978 press conference in New York City, Denman reportedly described the primary as a “referendum . . . on the critical issues of capital punishment and criminal justice in this state,”<sup>41</sup> although she later clarified in a letter to the Rochester *Democrat and*

*Chronicle* that she did not consider the death penalty issue to be “a determining factor in this race,” as it was “not one where the attorney general makes policy.”<sup>42</sup>

Although Denman won personal endorsements from some local and state union leaders, the unions themselves would not endorse a candidate in the primary races.<sup>43</sup> Abrams’s campaign coffers far exceeded Denman’s, allowing him to engage in a “blitz” of television advertisements.<sup>44</sup> Abrams was also buoyed by substantial name recognition, especially in New York City, stemming in part from his unsuccessful run for Attorney General four years earlier—a profile that Denman struggled to match.<sup>45</sup> In the eventual September 12 primary, Denman carried Western New York counties by heavy margins,<sup>46</sup> but Abrams prevailed statewide by a ratio of almost two to one.<sup>47</sup>

It had been a risky decision to give up a 14-year judicial term and an Appellate Division position for the uncertainties of a run for statewide office.<sup>48</sup> “I thought I had to take a chance,” she said at the time. “It’s a risky thing. But I’ve always been adventurous in my career. That’s how you make things happen.”<sup>49</sup>

### Return to the Trial Bench

In the run-up to the November 1978 General Election, Denman endorsed Abrams.<sup>50</sup> She also accompanied Governor Carey, who had been challenged in his reelection bid by former State Assembly Speaker Perry B. Duryea Jr., at campaign stops in Western New York.<sup>51</sup>

Supporting the Governor proved to be a savvy political move. Governor Carey won reelection and, at the start of 1979, he appointed Denman to fill an interim vacancy back in Supreme Court, Erie County.<sup>52</sup> Campaigning for reelection to Supreme Court, Denman won the support of the Erie County Democratic and Republican parties, but was shunned by the Conservative Party after she told party delegates that while she was “personally opposed to abortion . . . [.] women should have freedom of choice in the matter.”<sup>53</sup> Nevertheless, in November 1979, Justice Denman won an uncontested bid to a 14-year term on Supreme Court.<sup>54</sup>

In March 1979, Justice Denman was one of eight people, including two women, recommended by a judicial nominating committee for two openings on the United States Court of Appeals for the Second Circuit.<sup>55</sup> Although Justice Denman was not selected, the other female candidate, Amalya Kearse, was ultimately recommended by the United States Attorney General and appointed by President

## The Judicial Career of Justice M. Dolores Denman (1931-2000)



RENEE MYRAE

Attorney general candidate M. Dolores Denman in Binghamton yesterday.

### *Candidate a twist to Democrat lines*

By STEVE SPERO

M. Dolores Denman frequently acts like two things she's not — a Republican and a candidate for the chief law enforcement officer of the state.

The 47-year-old mother of three is a Democrat and a candidate for attorney general, the chief legal officer of the state.

She resembles Republicans by her support of capital punishment, a crime remedy that most statewide Democratic candidates oppose and the four top Republicans favor.

Denman, who was in Binghamton yesterday to conduct a press conference, also favors imposing tough sentences on criminals who victimize the elderly.

Democratic Gov. Hugh L. Carey vetoed a similar proposal last year and the Republicans are taking him to task for that veto.

Denman, who is running against Bronx

crime, but says she will use the office to get the Legislature to reform the current system.

During her press conference yesterday at the Loyal D. Greenman senior citizen center, Denman said she would push for stricter penalties for habitual, violent juveniles.

She wants increased appropriations for emergency and crisis services for youth runaways and those without homes in urban areas.

And she is seeking an increase in the number of jail cells for juvenile felons.

Denman also said she would set up a group within the attorney general's office that would offer assistance to any local district attorney who asks for help in prosecuting a case.

While Denman faced news cameras and radio microphones during her press conference, former Broome County Democratic Chairman John W. Young and current Chairman Joseph P. Costa



AP Photo

Robert Abrams, Bronx borough president and Dolores Denman, Supreme Court Justice from Buffalo, shake hands after both won Democratic nomination for Attorney General.

### Woman a surprise entry in attorney general race

Justice Denman and Robert Abrams, her rival for Attorney General, June 1978. Associated Press / Newspapers.com



Justice Denman prepares to vote.

Ron Moscati, Courier-Express, Buffalo / Buffalo State College Archives, Courier-Express Collection

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Jimmy Carter.<sup>56</sup> Judge Kearsce became the first woman to sit on the Second Circuit Court of Appeals.<sup>57</sup>

In the same year, New York Court of Appeals Judge Lawrence H. Cooke was elevated to Chief Judge, and Justice Denman put her name forward for the Cooke vacancy. The State Commission on Judicial Nomination, created in 1977 to screen candidates for the Court of Appeals, had faced criticism “for presenting an all-male, all-white slate of seven candidates to [Governor] Carey for [the] appointment as chief judge.”<sup>58</sup> Nevertheless, the Commission did not advance Denman’s name to the Governor.

In 1981, Justice Denman issued an important decision, as trial court Justice, in a long-running breach of contract case involving a domed football and baseball stadium that Erie County had planned to construct in the Town of Lancaster. In 1969, Erie County had entered into a contract with a developer, but the County backed out in 1971, after construction bids came in at a price that was \$20 million higher than budgeted, and instead proceeded with plans for an open-air, football-only stadium in the Town of Orchard Park. Justice Denman found that the County had breached the contract, observing that the contract had set no limit on the price of the stadium.<sup>59</sup> The Appellate Division affirmed “for the reasons stated in” Justice Denman’s decision.<sup>60</sup> Subsequently, two damages trials ended in multimillion-dollar jury verdicts against the County, though these were reduced upon appeal.<sup>61</sup>

On January 5, 1981, despite urgings from the Monroe County Bar Association that he appoint a Rochester-area, not Buffalo-area, judge to the position,<sup>62</sup> Governor Carey once again designated Justice Denman a Justice of the Appellate Division, Fourth Department, filling a vacancy left by the retirement of Justice G. Robert Witmer.<sup>63</sup> After two and a half years’ absence, Justice Denman was back on the Rochester bench within the week.

### *Von Holden*

In 1982, the Fourth Department heard a civil appeal involving Mark David Chapman, the convicted murderer of the former Beatle John Lennon. Sentenced to 20 years to life, Chapman was transferred from Attica Correctional Facility to a psychiatric center after he refused to eat and expressed the intention of starving himself to death. The issue was whether the director of the center was properly authorized by judicial order to

feed Chapman intravenously or by a nasal gastric tube in order to sustain his life.

In *Matter of Von Holden v. Chapman*, the Appellate Division, speaking through Justice Denman, held that “the obligation of the State to protect the health and welfare of persons in its care and custody, its interest in the preservation of life, and its interest in maintaining rational and orderly procedures in its institutions, are countervailing considerations of such importance as to outweigh” Chapman’s claimed constitutional rights, which for the most part related to the guarantee of personal privacy.<sup>64</sup>

Justice Denman reasoned that “[e]ven overlooking the fact that Chapman’s status as a prisoner severely delimits his constitutional privileges, it is self-evident that the right to privacy does not include the right to commit suicide. . . . To characterize a person’s self-destructive acts as entitled to that constitutional protection would be ludicrous.”<sup>65</sup> In support of that conclusion, Justice Denman pointed to New York statutes demonstrating the State’s “legitimate and compelling interest in preventing suicide”<sup>66</sup> and the “high social value in our culture” attached to preserving human life.<sup>67</sup> The Court rejected the reasoning of the Supreme Court of Georgia upholding an inmate’s right to starve himself to death on the basis of the accepted right of a competent adult to refuse radical surgery or extraordinary medical treatment.<sup>68</sup> As the Appellate Division understood the matter, “[e]ven superficial comparison of the right to decline medical treatment with the right to take one’s life illustrates their essential dissimilarity and to argue that because the State has recognized the former it must permit the latter would be to engage in the most specious reasoning.”<sup>69</sup> *Von Holden v. Chapman* thus anticipated the United States Supreme Court’s careful distinction between a person’s refusal of life-sustaining medical treatment and suicide in *Vacco v. Quill*.<sup>70</sup>

Chapman took no appeal but, in 2013, the New York Court of Appeals addressed what amounts to the same question in *Matter of Bezio v. Dorsey*.<sup>71</sup> By this time, the Court of Appeals had clearly established a constitutional right to refuse or discontinue life-saving medical treatment.<sup>72</sup> In an opinion that cited *Von Holden* approvingly,<sup>73</sup> the Court of Appeals held that a prisoner’s constitutional rights, including his right to refuse medical treatment, were not violated by a judicial order permitting the State to feed him by nasogastric tube after he undertook a month-long hunger strike and his condition became life-threatening.<sup>74</sup>





**Appellate Division, Fourth Department bench in 1983 with Justice Dillon as Presiding Justice.**  
 Courtesy of the Appellate Division, Fourth Department

## Paving the Way

In 1982, Governor Carey's tenure came to an end, as Mario Cuomo was elected Governor of New York. Cuomo had pledged to appoint a woman to the New York Court of Appeals,<sup>75</sup> and newspaper articles mentioned Justice Denman as an "obvious" candidate,<sup>76</sup> often drawing comparisons with Justice Sandra Day O'Connor, the first female United States Supreme Court Justice, who had been appointed by President Ronald Reagan in 1981.<sup>77</sup> However, in December 1982, the Commission on Judicial Nomination recommended not a single woman for the opening on the Court of Appeals created by the retirement of Judge Domenick L. Gabrielli.<sup>78</sup> Governor Cuomo publicly criticized the small number of nominees (four), though not their qualifications,<sup>79</sup> and the governing statute was subsequently amended to allow up to seven nominees.<sup>80</sup>

Governor Cuomo also drew attention to a little-noted aspect of Justice Denman's prior appointments to the Appellate Division. As new Appellate Division Justices, Denman and Justice Mikoll had originally been designated "additional," rather than "Associate" or "constitutional" Justices, with a "temporary" (five-year) term.<sup>81</sup> On January 25, 1983, Governor Cuomo held a public ceremony in Albany following the Senate

confirmation of his unexpected choice for appointment to the Gabrielli vacancy, the respected Fourth Department Justice Richard D. Simons. At the ceremony welcoming Judge Simons to the Court of Appeals, Governor Cuomo announced that Justice Denman would be replacing Simons as an Associate Justice on the Fourth Department, and noted that she was the first female Associate Justice of any Appellate Division Department in New York.<sup>82</sup> Given that "governors do not usually put the public spotlight on such Appellate Division appointments," it was an unmistakable message that Governor Cuomo wanted a woman's name on the next list of nominees for the Court of Appeals.<sup>83</sup>

Notably, the list sent by the Commission to the Governor for the next vacancy on the Court of Appeals included two women, Judith S. Kaye and Justice Betty Weinberg Ellerin.<sup>84</sup> Kaye was appointed, becoming the first woman to serve on the Court.<sup>85</sup> The appointments of Justice Denman and Justice Mikoll to the Appellate Division in 1977 had paved the way for the nomination and appointment of the state's first female high court judge.



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rejected the view that the parents' professed love for their children, desire for their return, and mere compliance with referral to counseling and parenting classes together constituted the necessary planning for their children's future. "There must be evidence that [the parents] have gained insight into the problems which led to the finding of neglect in the first instance and that they are progressing in their efforts toward changing their behavior. The evidence here, to the contrary, was that respondents failed to perceive that their attitudes and behavior toward the children are wholly inappropriate and grossly damaging."<sup>92</sup> The dissent also observed that the majority's rule "gives rise to an irresolvable dilemma: parental rights cannot be terminated yet the children cannot be returned because the parents have shown no inclination to modify their behavior. The result, inevitably, is long-term foster care, a condition which is emotionally damaging to the children because of its uncertainty and instability."<sup>93</sup>

Reversing the Appellate Division's decision, the Court of Appeals agreed with the dissent, quoting its view that the parents had "gained no insight into their own behavior which had been so physically and emotionally damaging to the children and had required their removal."<sup>94</sup> The Court of Appeals held that the Family Court findings more closely comported with the weight of the evidence, and reinstated the termination of parental rights.

### Appointment to Presiding Justice

On November 19, 1991, following the sudden death in July 1991 of Justice Denman's long-time mentor, Presiding Justice Michael F. Dillon,<sup>95</sup> Governor Cuomo appointed Denman Presiding Justice of the Fourth Department. She became the first female Presiding Justice of any Department of New York's Appellate Division.<sup>96</sup> By this time, Justice Denman had been joined on the Fourth Department by Justice Elizabeth Pine, who told the *Democrat and Chronicle* that while the appointment of a woman as Presiding Justice "means the opportunity is open for women now," Denman had been chosen because she was "an outstanding jurist."<sup>97</sup> Denman was "a very highly qualified person," Pine added, "and I think it's very nice that she's a woman."<sup>98</sup> Denman took charge of a court system embracing three Judicial Districts in 22 New York counties.

In November 1993, Presiding Justice Denman easily won reelection to a 14-year term on Supreme Court, enabling her to continue her leadership of the Fourth Department. She had been endorsed by all four major parties: Democratic, Republican, Conservative, and Liberal.<sup>99</sup>

In addition to her Presiding Justice duties, Denman was the first woman to serve on the New York State Pattern Jury Instructions Committee, and served also on the Executive Committee of the New York State Supreme Court Association, and the American Bar Association's Council of Chief Judges of Intermediate Appellate Courts. She was also a member of the Administrative Board of the Unified Court System and the Judicial Conference of the State of New York and served as a Regent and Trustee of Canisius College in Buffalo. She was the first chairwoman of the Eighth Judicial District's Anti-Bias and Racial Fairness Committee and Chairwoman of the Eighth Judicial District's Committee on Women.

### *Father Belle Community Ctr.*

In 1996, Justice Denman authored a significant, oft-cited decision in the area of discrimination law, holding in *Father Belle Community Ctr. v. NY State Div. of Human Rights*, that the New York rule against imposing vicarious liability in discrimination cases does not preclude the imposition of liability on a corporate employer for acts of sexual harassment perpetrated by its highest managerial employee.<sup>100</sup>

Three women had complained of abusive behavior by the Executive Director of the corporation where they worked, alleging that he had threatened to fire them, demote them, or make their jobs unpleasant if they did not submit to his sexual advances. The State Division of Human Rights found, under the New York Human Rights Law, that the Director's conduct constituted discrimination based on *quid pro quo* harassment and creation of a hostile work environment—and that the corporation was responsible for his actions.

The Appellate Division granted a petition, filed by the agency under Executive Law § 298, for enforcement of its ruling. With respect to the vicarious liability issue, Justice Denman surveyed federal and state law and noted that, in New York law, *respondeat superior* liability based on an agency relationship is not available in cases involv-





**Justice Denman and family members with Judge Wesley.**  
Courtesy of the Appellate Division, Fourth Department

ing discrimination, including sexual harassment, and that generally the complainant must demonstrate that the employer acquiesced in the discriminatory conduct or subsequently condoned it. Nevertheless, writing for a unanimous Appellate Division, Justice Denman ruled that, where the harasser is a corporation's highest-ranking employee, "the corporate employer may be held directly liable for acts of discrimination perpetrated by [the] high-level managerial employee,"<sup>101</sup> independently of any showing of condonation by the employer.<sup>102</sup> Despite New York's rule against imposing vicarious liability on corporate employers, where the harasser engaged in quid pro quo behavior leading to alteration of the terms of subordinates' employment, strict liability would obtain.<sup>103</sup> The Appellate Division's doctrine remains good law.<sup>104</sup>

### **Battle For a New Courthouse**

In the mid-1990s, Justice Denman's considerable negotiation skills and political acumen were tested by the need for the Fourth Department to move from cramped quarters to a new location on Rochester's East Avenue—one large enough to house courtrooms, offices, and a library open to the public. The first step was to persuade State legislators to enact a bill requiring the State to take over from Monroe County the cost of maintaining the Fourth Department in Rochester (and to take over from New York City the cost of housing the First and Second Departments).<sup>105</sup> Justice Denman's "take-charge," "get-it-

done" approach, including a direct appeal to the Senate Judiciary Committee chairperson, Suffolk County's James J. Lack, is credited for the passing of that bill in 1995.<sup>106</sup>

The more difficult issue turned out to be the new location itself. The move would require the purchase and renovation of an existing six-story building, the construction of a new adjoining two-story building, and the demolition of a popular Rochester nightclub and music venue, Milestones.<sup>107</sup>

Although costs would be covered by the State, Monroe County officials were responsible for selecting the new location and submitting plans to a state court facilities review board for approval, and County lawmakers would have to approve the lease. Debate ensued about whether an influx of lawyers working in the area during the day or nighttime revelers would best reenergize a section of downtown Rochester often described as blighted. Meanwhile, July 1996 saw reports of protesters organizing in support of Milestones—another complication.<sup>108</sup>

Presiding Justice Denman set about identifying key allies among local elected officials, Albany lawmakers, and newspaper editorial boards. The County Executive and the Mayor of Rochester supported the proposal, but a diverse group of opponents, ranging from advocates of branding Rochester's East End as an entertainment district to patrons of the Fourth Department's existing law library on the west side of Rochester, opposed it.<sup>109</sup>

When a City Councilman suggested that the proposal clashed with the City's vision of the East End, Justice Denman remained firm, telling the Council that



**Justice Denman and Chief Judge Kaye.**  
Courtesy of the Appellate Division, Fourth Department



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the alternative was that the Court would move from Rochester, possibly to Buffalo or Syracuse.<sup>110</sup> In a letter to the *Democrat and Chronicle*, Denman outlined the history of the proposal and argued that the relocation would “enhance and stabilize the area, encourage new business and be a positive factor in the community for many years to come.”<sup>111</sup>

Justice Denman’s tough approach and perseverance triumphed. By August 1996, the University of Rochester, which operated the nearby Eastman School of Music, came out in support of Justice Denman’s proposal.<sup>112</sup> With County assistance, Milestones moved to a new location just a few blocks away, and broader opposition fizzled.<sup>113</sup> As her then-colleague Justice Richard C. Wesley (who would later serve on the New York Court of Appeals and the Second Circuit) put it, Justice Denman “willed the courthouse into existence.”<sup>114</sup> Or, as Senior Associate Justice Samuel L. Green, who worked with Justice Denman on the Appellate Division for 17 years (and knew her for more than twice that long) would recall, Justice Denman “had a way of making dreams come true.”<sup>115</sup>

When the new courthouse opened in the fall of 1998, local merchants, including the owner of a new bookstore and a restaurateur, eagerly awaited growing business, and the previously critical *Democrat and Chronicle* praised the “stately,” “handsome,” and “elegant” features of the newly constructed building, as well as its integration into the streetscape.<sup>116</sup>

The new building was dedicated on January 22, 1999. At the dedication, Chief Judge Kaye spoke of Presiding Justice Denman’s supervision of every detail of the construction project and complimented the building as “a judicial showcase full of beauty and style, yet . . . also highly substantive, functional, practical, ready for the give and take of appellate advocacy, accessible to parties and to the public, the very best of American justice.”<sup>117</sup>

### Death

On December 21, 1999, Presiding Justice Denman hosted a luncheon for her nine fellow Fourth Department Justices in her home chambers, located on the 10th floor of the Buffalo City Court Building. At the meeting, she told her colleagues that she had submitted her retirement papers the previous week, and would retire from the judiciary on January 14.<sup>118</sup> For some time, she had been



**The M. Dolores Denman Courthouse at its Dedication in 1999.**  
Courtesy of the Appellate Division, Fourth Department

receiving hospital treatments for cancer, and her condition had worsened.<sup>119</sup> “It was hard but she did it with great dignity,” Justice Pine recalled.<sup>120</sup> In wishing her a complete recovery, Retired Appellate Division Justice David O. Boehm described Justice Denman as someone who “not only led the court,” but “inspired it.”<sup>121</sup>

Presiding Justice Denman died at her second home, in Naples, Florida, on January 17, 2000, at the age of 68. As newspapers reported, her illness had “caused her to miss just one day of work.”<sup>122</sup> A Mass of Christian Burial was celebrated at St. Joseph Cathedral in Buffalo that week. In addition to James, her husband of 35 years, Justice Denman was survived by two sons, Daniel Stanton and James Lindsay Denman; a daughter, Diana Denman; a brother, M. Rupert Welch; and three grandchildren.<sup>123</sup>



The M. Dolores Denman Courthouse in 2020. Courtesy of Robert D. Cunningham

## Tributes

Tributes streamed in from Justice Denman's fellow judges and from attorneys all over New York State, most mentioning her status as the first woman to serve as a Presiding Justice in the Appellate Division.

In remarks delivered at St. Joseph Cathedral and published in the *New York Law Journal*, Chief Judge Kaye remembered meeting Justice Denman for the first time in 1979, when Kaye was a member of the panel that interviewed Denman and recommended her for appointment to the Second Circuit. "Judge Denman's entry into the conference room was stunning, breathtaking. I remember every detail: Her picture-perfect demeanor; her taupe suit and topaz jewelry; her consummate poise, elegance and style; her deep voice and throaty laugh. Every question put to her she hit right out of the ballpark—she was completely in command of the situation."<sup>124</sup>

Chief Judge Kaye remembered Presiding Justice Denman not only as a distinguished leader, "revered by her . . . court colleagues, and by the bar," but also as a "loyal . . . fiercely devoted friend" and a loving mother who kept photographs of her family "proudly displayed

in her chambers."<sup>125</sup> She spoke of Justice Denman's "wise, beautifully crafted opinions that reflect her intelligence and writing skill."<sup>126</sup> She spoke also of her last meeting with Justice Denman, 20 years later and a month before her death, when Denman was "picture-perfect, still the commanding presence," who had "thoughtfully, courageously written her own closing chapter."<sup>127</sup> Justice Denman would be remembered, Judge Kaye concluded, as "a principled public servant; a true dispenser of justice; a kind, effective, fun-filled, loving and much-loved human being."<sup>128</sup>

Judge Wesley, who had served with Justice Denman on the Fourth Department from 1994 to 1996, remembered her as "a scholar" and "a fair-minded and even-tempered person." Justice Denman "loved Shakespeare and she loved gin straight up. . . . She was Buffalo Irish, blue-collar heritage, and she was also the most elegant person I've ever known."<sup>129</sup> In short, Denman displayed "elegance with grit."<sup>130</sup>

Justice Denman's long-time colleague Justice Pine remembered her as exhibiting "a combination . . . of





intelligence, of sensitivity to people, [and] of determination to lead.”<sup>131</sup> The Bar Association of Erie County wrote appreciatively of Justice Denman’s tireless work as an advocate for gender equality and improvements in day-to-day management of matrimonial and family law in the Fourth Department and statewide,<sup>132</sup> contributions that fall outside the scope of this article.

New York State Supreme Court Justice Barbara Howe noted that Justice Denman “was absolutely a role model for . . . a whole generation of women attorneys,” and had “faced a terminal illness with courage and grace and dignity that was reflective of the way she lived.”<sup>133</sup> For Justice Vincent E. Doyle, the administrative judge of the Eighth Judicial District, Justice Denman’s loss felt like a deep blow to the Buffalo area. “Justice Denman was a powerful presence and a great leader,” he told the *Buffalo News*. “I don’t know how she can possibly be replaced, or what we can do without her. It is hard to envision this area without her at the helm.”<sup>134</sup>

United States District Court Judge Michael Telesca observed that when Denman started practicing law, there were few women in the profession and a female attorney “had to be of superb quality because there was resistance

to accepting women in the law and on the bench. They had to carve a way for themselves.” Justice Denman, he concluded, “was a pioneer.”<sup>135</sup>

Almost immediately, there were renewed calls to rename the Fourth Department’s new courthouse after Justice Denman.<sup>136</sup> In fact, that decision had already been reached and had been communicated to Justice Denman.<sup>137</sup> On April 14, 2000, at a ceremony presided over by Chief Judge Kaye, and attended by a large number of family members, friends, and colleagues, the building for which Justice Denman had struggled for so long was renamed the M. Dolores Denman Courthouse.<sup>138</sup>

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The peculiar nature of being a judge requires a rare combination of skills. One must be compassionate but firm, prudent but courageous, patient but decisive. One must be intellectually honest, while unafraid of new ideas. Few who have the job are able to master all of its intricacies. Justice Dolores Denman was a person who could. She did it with a natural grace that was unique in any profession.



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## ENDNOTES

\*I would like to thank Presiding Justice Gerald J. Whalen and the Justices of the Appellate Division, Fourth Department, as well as Robert D. Cunningham and the other members of the Court's Library Staff for their assistance. I am grateful for the help of Daniel DiLandro and Hope Dunbar at the Buffalo State College Archives, Courier-Express Collection. I would also like to acknowledge the assistance, and the exceptional quality of the work, of my research interns Benjamin M. Russo and John S. Zakour.

\*\*He was assigned to the Commercial Division in Erie County in January 2005 until his appointment by Governor George E. Pataki to the Appellate Division, Fourth Department in December 2006. In January 2015, Judge Fahey was nominated to the Court of Appeals by Governor Andrew Cuomo. The New York State Senate unanimously confirmed that nomination on February 9, 2015. He and his wife, Colleen Maroney-Fahey, live in Buffalo, New York. They are the proud parents of Ann B.D. Fahey.

\*\*\*A native of Durban, South Africa, Lyon holds a Ph.D. in Philosophy from the University of Cambridge and a J.D. from the State University of New York at Buffalo School of Law. He and his wife, Eileen Groth Lyon, live in Hamburg, New York. They are the proud parents of the late James W. Lyon.

1. The source of this quotation is unknown.
2. "M. Dolores Denman," N.Y. L.J., Jan. 19, 2000; Michael Zeigler, "Justice M. Dolores Denman, 68, dies," *Democrat and Chron.*, Jan. 19, 2000, at 12.
3. Ginger Lamb, "A Call to Justice: The Hon. M. Dolores Denman is First Woman to Become Presiding Justice of the Appellate Division," *Daily Rec. (Rochester) Special Supplement*, May 1, 1996; Ginger Lamb, "Legal Community Mourns Loss of Judge Denman," *Daily Rec. (Rochester)*, Jan. 19, 2000.
4. Lamb, "A Call to Justice," *supra* note 3.
5. Karen Brady, "Justice Denman dies at 68," *Buffalo News*, Jan. 18, 2000, at B1, 2000 WLNR 1227470, available at [https://buffalonews.com/news/justice-denman-dies-at-68/article\\_d89397fc-6efc-544d-b0ab-2bea03c49b2e.html](https://buffalonews.com/news/justice-denman-dies-at-68/article_d89397fc-6efc-544d-b0ab-2bea03c49b2e.html).
6. Lamb, "A Call to Justice," *supra* note 3.
7. Steven R. Weisman, "Candidate for New York Attorney General," N.Y. Times, June 19, 1978, at B3, available at <https://www.nytimes.com/1978/06/19/archives/candidate-for-new-york-attorney-general-mary-dolores-welch-denman.html>.
8. Mary Ann Lauricella, "Judge Denman in City Court," *Courier-Express*, Nov. 8, 1972; see also Brady, *supra* note 5.
9. Weisman, *supra* note 7.
10. Brady, *supra* note 5.
11. *Id.*
12. Robert C. Kraus, "Buffalo woman leads field of court victors," *Democrat and Chron.*, Nov. 4, 1976, at 50.
13. "Carey fills appellate court posts," *Democrat and Chron.*, May 19, 1977; Michael Hiltzik, "Pair Are First Women on State's No. 2 Court," *Courier-Express*, May 19, 1977.
14. Hiltzik, "Pair," *supra* note 13; "Carey Names 2 Women to Appellate Division," N.Y. Times, May 19, 1977, at 16, available at <https://www.nytimes.com/1977/05/19/archives/carey-names-2-women-to-appellate-division.html>.
15. In 2003, Justice Denman's writings were compiled into a bound volume titled *Justice Is a Woman: The Writings of Justice M. Dolores Denman*, edited by law librarian Maryanne Clark, for the Appellate Division, Fourth Department. See Nora A. Jones, "Collection Of Judge Denman's Writings Part of 'Women In Law' Library Collection," *Daily Rec. (Rochester)*, May 28, 2003.
16. *Matter of Gannett Co. v. County of Monroe*, 59 A.D.2d 309 (4th Dept. 1977), *aff'd*, 45 N.Y.2d 954 (1978).
17. *Id.* at 311-12.
18. *Id.* at 312.
19. *Gannett Co.* also stands for the proposition that a conclusory claim that economic or personal hardship will result from disclosure will not suffice to prevent access under FOIL. See, e.g., *Matter of Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 570 (1986).
20. *Gannett Co.*, 45 N.Y.2d at 956.
21. *Id.* Justice Denman would go on to explore the special concerns surrounding a FOIL request for criminal investigation records in *Hawkins v. Kurlander*, 98 A.D.2d 14 (4th Dept. 1983), *appeal withdrawn*, 62 N.Y.2d 804 (1984).
22. See *Dutton v. Olean*, 47 N.Y.2d 756 (1979), *aff'g* 60 A.D.2d 335 (4th Dept. 1978); see also *Niagara Frontier Transp. Auth. v. Tri-Delta Constr. Corp.*, 65 N.Y.2d 1038, 1040 (1985) (affirming "for reasons stated in the opinion by Justice M. Dolores Denman"), *aff'g* 107 A.D.2d 450 (4th Dept. 1985). In several appeals, the Court of Appeals expressly reversed or modified for the reasons stated in a dissent by Justice Denman. See, e.g., *Callan v. State*, 73 N.Y.2d 731 (1988), *rev'g* 134 A.D.2d 882 (4th Dept. 1987); *Gernatt Asphalt Prods., Inc. v. Bensal Constr., Inc.*, 60 N.Y.2d 871 (1983), *modifying* 90 A.D.2d 993 (4th Dept. 1982); *Meadvin v. Buckley-Southland Oil Co.*, 59 N.Y.2d 822 (1983), *rev'g* 84 A.D.2d 907 (4th Dept. 1981).
23. Michael A. Hiltzik, "Denman on Dem State Primary Ballot," *Courier-Express*, June 16, 1978.
24. "Woman wins Democratic primary spot," *Democrat and Chron.*, June 16, 1978. Monroe County Democratic Chairman Laurence K. Kirwan also supported Justice Denman's candidacy.
25. John Omicinski, "Old political hand and the new math," *Democrat and Chron.*, June 18, 1978.
26. Hiltzik, "State Primary Ballot," *supra* note 23. Denman reportedly agreed to run at 1:45 p.m. and won her spot on the ballot at about 7:30 p.m.
27. Michael A. Hiltzik, "Denman Resigns as Judge In Bid for Dem State Ticket," *Courier-Express*, June 17, 1978.
28. "She's running as an upstate woman," *Democrat and Chron.*, June 23, 1978; Betsy Buechner, "Bitter battle for attorney general spot," *Democrat and Chron.*, Sept. 3, 1978; Hiltzik, "State Primary Ballot," *supra* note 23.
29. Hiltzik, "State Primary Ballot," *supra* note 23.



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30. *Id.*
31. David Shaffer, "Finish line is in sight," *Democrat and Chron.*, Sept. 3, 1978.
32. Buechner, "Bitter battle," *supra* note 28.
33. Maurice Carroll, "Attorney General Primary Fight Raises Democratic Party Interest," *N.Y. Times*, July 26, 1978, at B3, available at <https://www.nytimes.com/1978/07/26/archives/attorney-general-primary-fight-raises-democratic-party-interest.html>.
34. E.J. Dionne Jr., "Berger's Campaign Ads Attack Veracity of Goldin," *N.Y. Times*, Aug. 2, 1978, at B3, available at <https://www.nytimes.com/1978/08/02/archives/bergers-campaign-ads-attack-veracity-of-goldin-bergers-signatures.html>.
35. "Attorney general candidate promises consumer support," *Star-Gazette (Elmira)*, June 24, 1978; "Mrs. Denman Campaigns in Olean," *Courier-Express*, June 24, 1978; Carol Trapani, "Office is not properly utilized, attorney general candidate says," *Poughkeepsie J.*, July 2, 1978; "Mrs. Denman Urges Better Crime Prevention," *Courier-Express*, July 16, 1978; Charles Wilson, "On campaign trail for attorney general," *Democrat and Chron.*, July 20, 1978.
36. Michael A. Hiltzik, "Denman Would Fire Two Prosecutors," *Courier-Express*, June 21, 1978; Steve Geimann, "Denman raps Abrams' legal record," *Press and Sun-Bulletin (Binghamton)*, June 24, 1978; Buechner, "Bitter battle," *supra* note 28.
37. "Attorney general candidate promises consumer support," *Star-Gazette (Elmira)*, June 24, 1978.
38. Weisman, *supra* note 7; Hiltzik, "Two Prosecutors," *supra* note 36; "Consumer Support," *supra* note 35; Trapani, *supra* note 35; Buechner, "Bitter battle," *supra* note 28.
39. *People v. Davis*, 43 N.Y.2d 17 (1977).
40. Michael Lumer & Nancy Tenney, "The Death Penalty in New York: An Historical Perspective," 4 J.L. & Pol'y 81, 96-97 (1995), available at <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1461&context=jlp>.
41. "Primary is 'death-penalty' vote," *Democrat and Chron.*, Aug. 30, 1978.
42. M. Dolores Denman, Letter to *Democrat and Chron.*, "Attorney general candidate on the issues," *Democrat and Chron.*, Sept. 9, 1978.
43. "Union Leader Endorses Denman," *Courier-Express*, Aug. 3, 1978; "Denman Gets New Support," Aug. 11, 1978.
44. Buechner, "Bitter battle," *supra* note 28.
45. "Abrams defeats Denman for attorney general nod," *Democrat and Chron.*, Sept. 13, 1978.
46. Michael Desmond, "Denman Loses Out To Abrams," *Courier-Express*, September 13, 1978.
47. "Abrams defeats Denman," *supra* note 45; Betsy Buechner, "Abrams trounces Denman by 2-1," *Journal News (White Plains)*, Sept. 13, 1978; Bob Seltzer, "Official primary vote count registers no major changes," *Journal News (White Plains)*, Sept. 23, 1978. Reports in some newspapers of a three-to-one ratio were incorrect. Abrams won in the General Election and served as Attorney General of New York from 1979 to 1993.
48. "No Regret, Says Denman of Race," *Courier-Express*, Oct. 19, 1978.
49. Michael Zeigler, "Denman, 68, dies," *supra* note 2.
50. Ray Herman, "Denman to Endorse Abrams Today," *Courier-Express*, Oct. 5, 1978; "She backs Abrams now," *Democrat and Chron.*, Oct. 6, 1978.
51. Richard Benedetto & Woodie Fitchette, "GNS poll results shake Duryea," *Democrat and Chron.*, Nov. 5, 1978.
52. "Mrs. Denman Is Picked For the Bench by Carey," *N.Y. Times*, Jan. 3, 1979, at B2, available at <https://www.nytimes.com/1979/01/03/archives/mrs-denman-is-picked-for-the-bench-by-carey.html>.
53. Ray Herman, "Conservatives Shun Justice Denman," *Courier-Express*, Sept. 25, 1979.
54. Dan McGuire, "Orleans GOP wins 8 out of 10 town seats," *Democrat and Chron.*, Nov. 7, 1979.
55. Ray Herman, "Denman Vies for Federal Judgeship," *Courier-Express*, Feb. 11, 1979; "2 Court of Appeals openings: Dolores Denman nominated," *Democrat and Chron.*, Mar. 6, 1979; "Denman Judgeship Submitted," *Courier-Express*, Mar. 6, 1979.
56. Arnold H. Lubasch, "Eight Approved By Carter Panel For 2 Judgeships," *N.Y. Times*, Mar. 6, 1979, at B3, available at <https://www.nytimes.com/1979/03/06/archives/eight-approved-by-carter-panel-for-2-judgeships-appeals-court.html>; Tom Goldstein, "Wall St. Lawyer and a U.S. Judge In Line for Federal Appeals Bench," *N.Y. Times*, Mar. 13, 1979, at A1, available at <https://www.nytimes.com/1979/03/13/archives/wall-st-lawyer-and-a-us-judge-in-line-for-federal-appeals-bench-two.html>; Michael Desmond, "Major Court Post Eludes Denman," *Courier-Express*, Mar. 14, 1979.
57. Tom Goldstein, "Amalya Lyle Kearse," *N.Y. Times*, June 25, 1979, at B2, available at <https://www.nytimes.com/1979/06/25/archives/amalya-lyle-kearse-woman-in-the-news.html>.
58. "Balancing act doesn't play," *Democrat and Chron.*, Feb. 11, 1979.
59. Richard J. Roth, "County Guilty in Stadium Contract Suit," *Courier-Express*, Nov. 13, 1981.
60. *Kenford Co. v. County of Erie*, 88 A.D.2d 758 (4th Dept. 1982), *leave dismissed*, 58 N.Y.2d 689 (1982).
61. *Kenford Co. v. County of Erie*, 108 A.D.2d 132, 135 (4th Dept. 1985), *aff'd*, 67 N.Y.2d 257 (1986); *Kenford Co. v. County of Erie*, 138 A.D.2d 946, 946 (4th Dept. 1988), *rev'd*, 73 N.Y.2d 312 (1989).
62. "Court vacancy should go to Monroe County," *Democrat and Chron.*, Dec. 24, 1980.



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63. "Carey Taps Justice Denman For Appellate Division Seat," *Courier-Express*, Jan. 7, 1981; Nancy Monaghan, "Rochester area snubbed: Erie woman gets appellate seat," *Democrat and Chron.*, Jan. 7, 1981.
64. *Von Holden v. Chapman*, 87 A.D.2d 66, 66–67 (4th Dept. 1982).
65. *Id.* at 67–68 (citations omitted).
66. *Id.* at 68.
67. *Id.* at 68–69.
68. *See id.* at 69–70 (citing *Zant v. Prevatte*, 286 S.E.2d 715 (Ga. 1982)).
69. *Id.* at 70.
70. *See Vacco v. Quill*, 521 U.S. 793 (1997).
71. *Matter of Bezio v. Dorsey*, 21 N.Y.3d 93 (2013).
72. *See Rivers v. Katz*, 67 N.Y.2d 485 (1986); *Matter of Fosmire v. Nicoleau*, 75 N.Y.2d 218 (1990).
73. *Bezio*, 21 N.Y.3d at 105.
74. *Id.* at 96.
75. Michael Oreskes, "Cuomo Seeking More Candidates To Fill Vacancy on Appeals Court," *N.Y. Times*, Dec. 16, 1982, at B4, *available at* <https://www.nytimes.com/1982/12/16/nyregion/cuomo-seeking-more-candidates-to-fill-vacancy-on-appeals-court.html>.
76. Marc Humbert, "State appeals court may no longer be for 'men only,'" *Sunday Democrat and Chron.*, Nov. 14, 1982.
77. Ray Herman, "2 Area Women in Line For Top State Court Posts," *Courier-Express*, Oct. 11, 1981.
78. Frank Lynn, Panel Said to Suggest 4 For Appeals Court Seat, *N.Y. Times*, Dec. 15, 1982, at B3, *available at* <https://www.nytimes.com/1982/12/15/nyregion/panel-said-to-suggest-4-for-appeals-court-seat.html>; S.W. Bell, "Appeals court list 'men only,'" *Democrat and Chron.*, Dec. 16, 1982.
79. Oreskes, *supra* note 75; David Margolick, "Cuomo Requests Greater Leeway to Select Judges," *N.Y. Times*, Dec. 30, 1982, at B1, *available at* <https://www.nytimes.com/1982/12/30/nyregion/cuomo-requests-greater-leeway-to-select-judges.html>.
80. John Caher, "Evolution of the Judicial Nomination Panel," *N.Y. L.J.*, Nov. 13, 2003.
81. "Woman judge named to Appellate Division," *Ithaca Journal*, Jan. 26, 1983, at 17; "Senate confirms Simons," *Post-Star* (Glenn Falls), Jan. 26, 1983, at 3.
82. "Senate confirms Simons," *supra* note 81.
83. "Woman Judge," *supra* note 81.
84. In 1999, Justice Ellerin had become the second woman to be appointed Presiding Justice of an Appellate Division Department when Governor George Pataki appointed her to lead the First Department. Daniel Wise, "Ellerin Tapped to Preside Over 1st Dep't," *N.Y. L.J.*, Mar. 5, 1999.
85. David Margolick, "Two Women on List for Top State Court," *N.Y. Times*, July 21, 1983, at B1, *available at* <https://www.nytimes.com/1983/07/21/nyregion/two-women-on-list-for-top-state-court.html>; Caher, *supra* note 80; Sam Roberts, "Judith S. Kaye, First Woman to Serve as New York's Chief Judge, Dies at 77," *N.Y. Times*, Jan. 7, 2016, *available at* <https://www.nytimes.com/2016/01/08/nyregion/judith-s-kaye-first-woman-to-serve-as-new-yorks-chief-judge-dies-at-77.html> [<https://perma.cc/V6MP-WM4G>].
86. *People v. Mott*, 94 A.D.2d 415 (4th Dept. 1983).
87. *Id.*
88. *Id.* at 418.
89. *Id.* at 418–419.
90. *See, e.g., People v. Nunes*, 168 A.D.3d 1187, 1193 (3d Dept.), *leave denied*, 33 N.Y.3d 979 (2019); *People v. Fick*, 167 A.D.3d 1484, 1488 (4th Dept. 2018), *leave denied*, 33 N.Y.3d 948 (2019); *People v. Griffin*, 151 A.D.3d 1824, 1825–26 (4th Dept.), *leave denied*, 30 N.Y.3d 949 (2017).
91. *Matter of Nathaniel T.*, 112 A.D.2d 692, 692 (4th Dept. 1985).
92. *Id.* at 696–97 (Doerr and Denman, JJ., dissenting).
93. *Id.* at 696 (Doerr and Denman, JJ., dissenting).
94. *Matter of Nathaniel T.*, 67 N.Y.2d 838, 842 (1986) (quoting *Nathaniel T.*, 112 A.D.2d at 696 (Doerr and Denman, JJ., dissenting)).
95. Justice Dillon had been Erie County District Attorney when Denman worked as an Erie County assistant district attorney in 1969–1972. Designated an Associate Justice of the Fourth Department in 1976, Dillon was appointed Presiding Justice on January 1, 1979 and reappointed to that position in 1987. *See Dolores Denman, "Judge Dillon's Passing Takes a Giant from the Bench," Buffalo News*, July 18, 1991, at B3, 1991 WLNR 951596, *available at* <https://bit.ly/3lcLm7q>; George Borrelli, "Denman is First Woman to be Chosen to Head Appellate Division of Court," *Buffalo News*, Nov. 20, 1991, at A10, 1991 WLNR 899074, *available at* <https://bit.ly/3j7kxjl>.
96. Martin Fox, "Cuomo Names First Female Presiding Justice; Denman to Head Fourth Department Court," *N.Y. L.J.*, Nov. 20, 1991; Borelli, *supra* note 95.
97. J. Leslie Sopko, "Buffalo jurist has presiding appellate job," *Democrat and Chron.*, Nov. 20, 1991.
98. *Id.*
99. Bruce Andriatch, "Sole incumbent, three others win," *Democrat and Chron.*, Nov. 3, 1993; Peter Simon, "Supreme Court Gets Denman and Sedita; Snag Casts Doubt on Two Other Seats," *Buffalo News*, Nov. 3, 1993, at B6, 1993 WLNR 957974.
100. *Father Belle Community Ctr. v. N.Y. Div. of Human Rights*, 221 A.D.2d 44, 45 (4th Dept. 1996), *leave denied*, 89 N.Y.2d 809 (1997).
101. *Id.* at 54.
102. *Id.*
103. *Id.* at 55.





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104. See, e.g., *Bianco v. Flushing Hosp. Med. Ctr.*, 79 A.D.3d 777, 779 (2d Dept. 2010); *McIntyre v. Manhattan Ford, Lincoln-Mercury*, 175 Misc. 2d 795, 803 (Sup. Ct. N.Y. Co. 1997); *Ames v. Black Entm't Television*, No. 98 Civ. 226, 2000 WL 827707, at \*1 (S.D.N.Y. 2000).
105. Gary Spencer, "Bill Allows City to Recover Cost of Appeals Courts," N.Y. L.J., July 5, 1995. The State already bore the cost of operating and maintaining the Third Department's facilities in Albany.
106. *Id.*; Michael Zeigler, "Presiding justice gave spur to change for court," *Democrat and Chron.*, July 25, 1996; Michael Zeigler, "Denman, 68, dies," *supra* note 2.
107. Michael Caputo, "Court move means demolishing shops," *Democrat and Chron.*, July 10, 1996; Michael Caputo & Mara D. Bellaby, "Appellate Court's plans stir up storm," *Democrat and Chron.*, July 19, 1996.
108. Caputo, "Demolishing," *supra* note 107; Caputo & Bellaby, *supra* note 107.
109. Michael Caputo, "Appellate Court plans roil East End," *Democrat and Chron.*, July 25, 1996; Sherrie Negrea & Michael Zeigler, "Cross-town move irks patrons of law library," *Democrat and Chron.*, July 25, 1996; Sherrie Negrea, "Doyle defends effort to move Appellate court," *Democrat and Chron.*, Oct. 1, 1996.
110. Mara D. Bellaby, "Judge: East End only viable solution for court," *Democrat and Chron.*, July 26, 1996.
111. M. Dolores Denman, "Defending new venue: Court's move to aid East End," *Democrat and Chron.*, July 29, 1996.
112. Michael Caputo, "UR joins cause of East End project," *Democrat and Chron.*, July 29, 1996.
113. Michael Caputo, "Appellate court on the move," *Democrat and Chron.*, Apr. 14, 1997.
114. Richard C. Wesley, "Judge Denman Willed Court Into Existence," *The Daily Record (Rochester)*, Jan. 31, 2000.
115. "Special Session Commemorating the Life of Honorable M. Dolores Denman, April 14, 2000," in *Memorial Honoring the Honorable M. Dolores Denman, Presiding Justice, Supreme Court, Appellate Division, Fourth Department* 34 (2000).
116. Donna Jackel, "Verdict in on judges' new space: 'Beautiful,'" *Democrat and Chron.*, Sept. 9, 1998.
117. *M. Dolores Denman Courthouse*, <http://www.nycourts.gov/courts/ad4/Chouse/chouse-index.html>; see also Henry J. Scudder, "Fourth Department," N.Y. L.J., Oct. 30, 2013.
118. Matt Gryta, "Top justice set to retire, sources say," *Buffalo News*, Dec. 22, 1999, at A1, 1999 WLNR 1342714, available at [https://buffalonews.com/news/top-justice-set-to-retire-sources-say/article\\_fc52c985-481c-509d-b94f-010dd4467280.html](https://buffalonews.com/news/top-justice-set-to-retire-sources-say/article_fc52c985-481c-509d-b94f-010dd4467280.html).
119. *Id.*
120. Gary Craig, "Appellate Court leader announces retirement," *Democrat and Chron.*, Dec. 23, 1999.
121. *Id.*
122. Brady, *supra* note 5.
123. *Id.*; "M. Dolores Denman, 68, Pioneering Judge," N.Y. Times, Jan. 29, 2000, at B7, available at <https://www.nytimes.com/2000/01/29/nyregion/m-dolores-denman-68-pioneering-judge.html>.
124. Judith S. Kaye, "A Remembrance: Tribute to Presiding Justice Denman," N.Y. L.J., Jan. 26, 2000.
125. *Id.*
126. *Id.*
127. *Id.*
128. *Id.*
129. Michael Zeigler, "Denman, 68, dies," *supra* note 2.
130. Wesley, *supra* note 114.
131. Michael Zeigler, "Denman, 68, dies," *supra* note 2.
132. *Justice Denman Leaves a Legacy of Compassion and Professionalism*, Bar Association of Erie County Bulletin, Vol. 40, No. 6, Feb. 2000.
133. Brady, *supra* note 5.
134. *Id.*
135. Lamb, "Legal Community Mourns," *supra* note 3.
136. "Judge Dolores Denman," *Democrat and Chron.*, Jan. 20, 2000.
137. Kaye, *supra* note 124.
138. Ginger Lamb, "Special Court Session Slated To Honor Justice Denman," *Daily Record (Rochester)*, Apr. 3, 2000; Matt Gryta, "Appellate Courthouse Named for Jurist Denman," *Buffalo News*, Apr. 15, 2000, at C4, 2000 WLNR 1207405, available at [https://buffalonews.com/news/appellate-courthouse-named-for-jurist-denman/article\\_3d5767eb-11ae-5b81-8fe7-9401ec3eb179.html](https://buffalonews.com/news/appellate-courthouse-named-for-jurist-denman/article_3d5767eb-11ae-5b81-8fe7-9401ec3eb179.html); "Judicial Showcase," *Daily Record (Rochester)*, Apr. 17, 2000.



Official portrait of United States Supreme Court Associate Justice, Hon. Ruth Bader Ginsburg, 2016.  
Collection of the Supreme Court of the United States, Photographer: Steve Petteway.

# Ruth Bader Ginsburg

## Litigating Against Gender Discrimination ... and Remembering One Such New York Case

by John Q. Barrett\*



John Q. Barrett is a Professor of Law at St. John's University in New York City, Elizabeth S. Lenna Fellow and a Director at the Robert H. Jackson Center in Jamestown, NY, and a Trustee of the Historical Society of the New York Courts. He is biographer of U.S. Supreme Court justice Robert H. Jackson and writes "The Jackson List," which reaches well over 100,000 readers worldwide; hundreds of these essays, including two from 2020 about Justice Ginsburg, are at <http://thejacksonlist.com>. At St. John's, Professor Barrett teaches Constitutional Law, Criminal Procedure, and Legal History. He previously was Counselor to the Inspector General in the U.S. Department of Justice, an attorney in the Office of Iran-Contra Independent Counsel Lawrence E. Walsh, and a U.S. Third Circuit law clerk. He is a graduate of Georgetown University and Harvard Law School.

*Ruth Bader Ginsburg was, of course and intrinsically, a New Yorker.*

She was born in Brooklyn on March 15, 1933. Her parents named her Joan Ruth Bader (and "Joan" in time disappeared). She attended public schools in Brooklyn, graduating from James Madison High School in 1950.

Ruth Bader then became a New York State "upstater." She attended Cornell University, where she majored in government and took courses taught by a star professor in the government department, Dr. Robert E. Cushman.<sup>1</sup> Deeply impressed by Cushman's teaching of civil liberties during that era of Cold War "McCarthyism," Ruth became one of his research assistants, tracking "blacklists" in the entertainment industry. Cushman's work showed her how lawyers defend people's rights and liberties and he strongly influenced her decision to become a lawyer.

At Cornell, Ruth met and began to date a fellow student, Martin D. ("Marty") Ginsburg, also born in Brooklyn. Marty was in Cornell's Class of 1953, graduating one year ahead of Ruth. During her senior year (1953–1954), he was a first-year student at Harvard Law School. After Ruth's graduation from Cornell with high honors in spring 1954, they married.

Ruth Bader Ginsburg lived away from New York State (except for visits home) for the next four years. In 1954, the United States Army called Marty Ginsburg, a reservist, up to active duty at Fort Sill, Oklahoma. The newly-married Ginsburgs lived in Oklahoma for the next two years. Ruth first found work as a law firm secretary, then took the U.S. Civil Service examination and qualified as a Social Security claims adjuster, a higher-paying position. Later, when a government supervisor learned that Ruth was three months pregnant, the supervisor told her that she could not attend the training that was required for further advancement. In due course, the Ginsburgs became parents and Ruth stopped working outside the home.

During her senior year at Cornell, Ruth applied to Harvard Law School, was admitted, and then deferred because she knew that Marty would be taking a leave for military service. After Marty completed that, he and Ruth both were law students at Harvard from 1956–1958 (his 2L and 3L years, her 1L and 2L years). In her first year, she ranked, based on grades, 14th out of about 525 classmates and earned a position on the *Harvard Law Review*. After her second year, she ranked 15th out of about 460 students. (It seems that Harvard Law School in those days really did flunk out many students after their first year.)





Photograph of Ruth Bader Ginsburg, 1977. During this time,  
Ruth was co-director of the American Civil Liberties Union's Women's Rights Project.  
Collection of the Supreme Court of the United States

## Ruth Bader Ginsburg Litigating Against Gender Discrimination

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After Marty Ginsburg graduated from Harvard Law School in 1958, he and Ruth moved home to New York City. He passed the New York State bar examination and became an associate at Weil, Gotshal, and Manges in Manhattan. She transferred to Columbia Law School for her 3L year. In 1959, she graduated—tied for first in her class—and then passed the New York bar exam.

### Lawyer, Researcher, Professor

No New York City law firm would hire Ruth, despite her top academic records at Cornell and at both Harvard and Columbia law schools. A relatively new federal judge, U.S. District Judge Edmund L. Palmieri (SDNY), although dubious about hiring the mother of a young child, was persuaded by hard pushing from Columbia law professor Gerald Gunther to hire Ginsburg as a law clerk.<sup>2</sup> Judge Palmieri employed her for two years, 1959–1961.

Ginsburg then worked for two years for Columbia Law School's Project on International Procedure, headed by Professor Hans Smit, including for a time as a researcher in Sweden.<sup>3</sup>

In 1963, Rutgers Law School hired Ginsburg to join its faculty. She was a law professor from Fall 1963, first at Rutgers and then at her *alma mater* Columbia, until 1980, when she was appointed a judge of the U.S. Court of Appeals for the District of Columbia Circuit.

As a law professor, Ruth Bader Ginsburg became a well-regarded teacher and scholar, particularly in the field of federal civil procedure.

### Attorney for Equal Rights

Professor Ginsburg also became a pathmaking thinker and litigator for the equal rights of women and men. As co-director of the American Civil Liberties Union's Women's Rights Project from 1972 until 1980, she was involved in high-impact litigation, especially at the U.S. Supreme Court. She participated in briefing thirty-four cases. She also, between January 1973 and November 1978, argued six times before the Court. She was on the winning side in five of the six cases. The cases were:



**Martin D. and Ruth Bader Ginsburg at Fort Sill, where Martin was stationed in the U.S. Army in the 1950s. Ruth perhaps was pregnant with the couple's daughter in this photograph.**  
Collection of the Supreme Court of the United States.

- *Frontiero v. Richardson* (argued January 17, 1973): Ginsburg argued for the ACLU as *amicus curiae* in support of U.S. Air Force Lieutenant Sharron Frontiero. The Court applied heightened scrutiny to strike down as unconstitutional a federal law that automatically granted wives of male U.S. military personnel, but not husbands of female military personnel, dependent status benefits.<sup>4</sup>
- *Kahn v. Shevin* (argued February 25–26, 1974): Ginsburg represented Mel Kahn, a widower who was denied the property tax exemption that Florida had granted to widows since 1941. The Court decided, 6-3, that this gender-based policy was constitutional because following a spouse's death, women often face greater financial hardships than men do.<sup>5</sup> Kahn was the only one of Ginsburg's oral argument cases where the Supreme Court decided against her client (and her).





Photograph of Ruth Bader Ginsburg as a Columbia Law Professor, 1980.

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## Columbia Law Snares a Prize in the Quest for Women Professors

BY LESLEY OELSEN

In a new accelerating competition among the nation's law schools, Columbia University has just scored a major coup: its law school, to its undisguised glee, has just bid for and won a woman for the job of full professor—the first in its 114-year history.

The glee comes in part because the woman, Ruth Bader Ginsburg, is what the school's dean, Michael Sovern, calls "so distinguished a scholar," that her credentials and honors would stand out in any catalogue of professors.

It comes too, as the University of Michigan Law School dean, Theodore St. Antoine, says, at a time when many of the country's best law schools have been "scrambling" for women, often for the same one. Most have no women at any rung of the professorial ladder, and, according to other sources, the woman Columbia got was among those being scrambled for.

And the glee is likely to spread far beyond the Columbia law faculty and into the law schools, where women students have long sensed an anti-female bias.

The appointment of Mrs. Ginsburg does not add to the handful of women now working as full professors of law, for she has been a full professor at Rutgers, the State University of New Jersey, since 1969. It does, however, mark the first time that Columbia Law has chosen a woman for a full-time post higher than lecturer, or a part-time post higher than adjunct professor.

### Several Women Chosen

Beyond that, it coincides with the selection this winter of women by a few equally well-regarded schools, including Stanford, the University of California at Los Angeles and Yale, as assistant or associate professors. All the appointments are, as in Mrs. Ginsburg's case, subject to approval by the governing boards of the respective universities and effective next fall.

The deans say that the search for women, begun a couple of years ago but intensified considerably since then, is now under way from Harvard to Indiana University to Stanford. A major reason for this new effort, the deans said in interviews, is the in-

creased number of women now coming out of law school, now about 10 per cent of the graduates and growing. The lack of available women in the past, they said, was the reason for the present paucity of female faculty members.

But there were other reasons offered for the present effort too, ranging from the demand by the increasing number of female law students for female professors to an appreciation of the benefits of a diversified faculty, to the "realization," in Mr. St. Antoine's words, that "law is a profession that a woman can handle as well as a man" — or, as Murray Schwartz of U.C.L.A. put it, to the fact that "whatever bias or prejudice or whatever you'd call it by the male faculty against hiring women" has disappeared.

### Philosophical Attitudes

Professor Ginsburg, for her part, takes a philosophical stance—pleased with some of the progress to date and delighted to be going to Columbia, but anything but polyanish as to prospects for future change.

In an interview she recalled that when she gradu-

ated from Columbia Law she was tied for first place in her class.

But she could not get a job with a law firm, she said. At first, when the rejection notices started coming in, she thought something might be wrong with her, but then, she said, "when I got so many rejections, I thought it couldn't be they had no use for me—it had to be something else."

So she got, upon graduation, a job clerking for a Federal district judge — whereas, as anyone familiar with the subject knows, and as she refrained from pointing out, a man with those grades from that school could have gotten a clerkship in a Federal appeals court, if not the United States Supreme Court.

Later she went to Rutgers, where, for her first few years, she feels, there was some discrimination. That stopped after a while, she said, but last fall, as a visiting professor at Harvard Law, giving a course involving women's rights, she noticed a little of the same male wariness there too.

"The law teachers are like that mostly," she said, feel-

ing that the women's movement "threatens a way of life they find very comfortable."

What does she expect, and how will she act, she was asked, when she goes to Columbia this fall, to teach procedure, conflicts and a special course, in conjunction with the American Civil Liberties Union, on sex discrimination?

Said Professor Ginsburg, the 38-year-old wife of a successful tax lawyer and mother of a girl, 16, and a boy, 6: "The only confining thing for me is time. I'm not going to curtail my activities in any way to please them."

"I don't think I'll have any problem," she added a moment later. "People will be pleasant on the outside. Some of them may have reservations about what I'm doing, but I don't think they'll be expressed."

At any rate, her new role is far from what was expected of her in her girlhood, when, she recalled: "No one ever expected me to go to law school. I was supposed to be a high school teacher, or how else could I earn a living?"



The New York Times/Lee Rosen  
Ruth Bader Ginsburg discussing her post at Columbia

The New York Times, January 26, 1972. Copyright the New York Times.

- *Edwards v. Healy* (argued October 16, 1974): Ginsburg represented plaintiffs challenging the constitutionality of Louisiana's law automatically exempting women, but not men, from jury service. The Court remanded the case for the trial court to assess possible mootness given state constitution and statutory changes.<sup>6</sup>
- *Weinberger v. Wiesenfeld* (argued January 20, 1975): Ginsburg represented Stephen Wiesenfeld, whose wife was their family's larger income-earner until she died in childbirth. The U.S. Social Security Administration denied Wiesenfeld the benefits he needed to stay home and care for his baby because the Social Security Act provided survivor benefits only to wives and children based on deceased husbands' earnings, and not to surviving husbands of deceased wives. The Court unanimously agreed with Ginsburg that this gender-based classification was unconstitutional.<sup>7</sup>
- *Califano v. Goldfarb* (argued October 5, 1976): Ginsburg, representing Leon Goldfarb, challenged the constitutionality of Social Security's requirement that a widower seeking survivor's benefits must have been receiving half of his financial support from his wife at the time of her death. No such requirement applied to widows. The Court decided, by a 5-4 vote, in Goldfarb's favor, building on *Wiesenfeld*, Ginsburg's 1975 victory.<sup>8</sup>
- *Duren v. Missouri* (argued November 1, 1978): Ginsburg, representing Billy Duren, argued that selection of his criminal trial jury from a pool from which women were exempted violated his constitu-

tional right to a jury drawn from a fair cross-section of the community. The Court agreed, 8-1, finding that the exemption was unsupported by any significant state interest.<sup>9</sup>

### Sontag v. Bronstein: The Dumbbell Case

Although Professor Ginsburg did almost all of her litigating in federal courts, she had a role in a significant gender discrimination case in New York State court. The plaintiffs were Marilyn Sontag, employed on a provisional basis by New York City as an audio-visual aid technician at Hunter College in Manhattan, and Sophie Stepinoff, similarly employed by the City at Hunter High School. In early 1972, each flunked a physical strength test that was part of New York City's civil service examination for her position: she was unable to lift a twenty-pound dumbbell above her head with her left arm, or to lift a twenty-five-pound dumbbell above her head with her right arm. Based on flunking the weight-lifting component of the test and thus the civil service test as a whole, the City moved to dismiss each employee.

Sontag and Stepinoff sued New York City—its personnel director—in state court. They were represented by the New York Civil Liberties Union (NYCLU), the local affiliate of the national ACLU. They challenged, on federal and state statutory grounds and on federal constitutional grounds, the City's use of the dumbbell test as a qualification for their positions. They alleged that passing the test was not a *bona fide* qualification for performance of their jobs, and that tests of physical strength are suspect because they have, on average, disparate detrimental impacts on women—as Sontag told a reporter, "Weight lifting is weight lifting. I think it's probably a marvelous



## 2 Women Call Bar Bell Test Unfair

By DEIRDRE CARMODY

Marilyn Sontag is a graphic artist at Hunter College. She has a master's degree, has studied in Italy and Germany and has had a number of one-woman exhibitions. At Hunter, she designs posters, makes titles for film strips and advises professors on how best to illustrate their lectures with audio-visual aids.

But Miss Sontag and Sophie Stepinoff, a grandmother who is an audio-visual aid technician at Hunter High School, might lose their jobs because neither woman was able to lift a 25-pound bar bell with one hand over her head, as required in the Civil Service examination for the job.

Both women say their jobs involve little lifting of any kind. Occasionally, they are called upon to slide 16-mm film projectors from carts onto shelves, but they say that their superiors have told them to call building maintenance men if any heavy equipment must be moved.

They say it is inconceivable that in the course of their jobs they would ever be called upon to lift anything over their heads with one hand.

### Obstacle Course

So the test came as a surprise.

Each woman received a card in the mail telling her where to appear and, puzzlingly, instructing her to wear rubber-soled shoes. When the women arrived at the test site, they found they had to run an obstacle course in 20 seconds starting from a prone position, and lift a 20-pound weight overhead with the left hand and a 25-pound weight overhead with the right hand.

"I was wearing a skirt," Mrs. Stepinoff recalled. "I felt that it might have taken more time to run the course in a skirt, so they found an old pair of slacks somewhere and I managed to get into them."

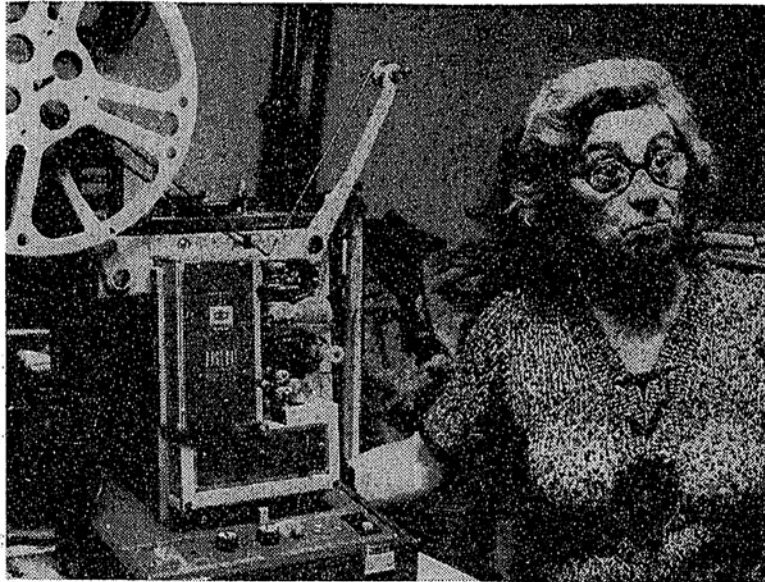
Neither Miss Sontag nor Mrs. Stepinoff, who were the only women among the 45 persons taking the examination, was able to lift the weights. They were immediately told that they had failed the test, but neither realized that this failure meant that they would lose their jobs.

Mrs. Stepinoff received a 96 on the written part of the test, placing her 11th on the list of 45 persons. Miss Sontag received an 81, placing her 32d.

### Test Called 'Capricious'

"Weight lifting is weight lifting," Miss Sontag said. "I think it's probably a marvelous test for weight lifters."

"I think the assumption was that no women would take the test," she said. "It's some kind of elimination test. It's a capricious kind of attitude that puts this forth as determining someone's qualifications."



Photographs for The New York Times by JACK MANNING  
Mrs. Sophie Stepinoff, audio-visual technician at Hunter High School, with projector



Marilyn Sontag, graphic artist and audio-visual adviser at Hunter College at worktable

The city Department of Personnel, which administers the Civil Service examinations, does not think that weight lifting is an incongruous test. Spokesmen say that the category of audio-visual aid technician is a city-wide job description, and that many persons holding this job are called upon to lift heavy equipment into and out of cars.

The women have been in their jobs for a number of years as provisionals because the exam for audio-visual technicians is given only every few years.

Mrs. Stepinoff was hired in 1965 by Hunter to work part time conducting an audio-visual laboratory at the Bronx campus, now Lehman College. In 1971 she became

a full-time audio-visual aid technician at Hunter High School and, according to a number of letters written on her behalf by her superiors, she is excellent at her job.

### Dismissal Protested

Miss Sontag was hired as an audio-visual aid technician at Hunter in September, 1970, and later became a graphic artist there, although her job definition was never changed. Her superiors have written a number of letters to the city Director of Personnel stating that her dismissal would be unfair and would create a great loss.

Although neither woman has received formal notice that she has been dismissed, each has been told that she is being replaced.

The women have since gone to court and are being represented by the New York Civil Liberties Union. On May 1, Judge Sidney Fine ruled in State Supreme Court that they could not be dismissed until final decision had been reached in the case.

The weight lifting has only recently been incorporated into the test, according to William Roskin, counsel for the Department of Personnel. He said that after recent Supreme Court decisions saying in effect that all exams should be job-related, the department conducted a job audit and found that "technicians often have to carry equipment."

"The whole thing is false and spurious," Miss Sontag said.

## Ruth Bader Ginsburg Litigating Against Gender Discrimination

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test for weight lifters. I think the assumption was that no woman would take the test. It's some kind of elimination test. It's a capricious kind of attitude that puts this forth as determining someone's qualifications."<sup>10</sup> They petitioned the court to excise the dumbbell test from the civil service examination for their positions and, based on their otherwise successful performances on the exam, to certify them for employment.

In the trial court, Sontag and Stepinoff won an injunction against their dismissals until the courts resolved their cases.<sup>11</sup> But then New York State Supreme Court Justice Max Bloom summarily denied their petitions. He ruled that because their job descriptions involved lifting equipment weighing approximately 40 pounds, "[i]t cannot be argued . . . that no test of physical strength was appropriate," and the "precise form" of the test selected was a "discretionary matter"; because the weight lifting test "related to some part of the job required to be performed," it was not arbitrary, capricious, or discriminatory.<sup>12</sup>

The plaintiffs and their attorneys were unpersuaded. As NYCLU attorney Eve Cary stated, "[b]oth women are perfectly capable of carrying projectors, and only some looney would carry the projector over her head with one hand."<sup>13</sup> So they appealed. In the Appellate Division of the Supreme Court, however, they lost again. In December 1972, a panel (all men) voted 3-2 to affirm "on the opinion of Mr. Justice Bloom at Special Term."<sup>14</sup> Of the two dissenters, Justice Louis Capozzoli wanted to know more about "the exact duties performed by audio-visual aid technicians" and "the relation between those duties and the lifting of heavy weights," voting to remand for a hearing.<sup>15</sup> Justice Theodore Kupferman, also in favor of a hearing, voiced suspicions that the test was indeed arbitrary, especially given ongoing miniaturization of technology brought about by the solid-state transistor.<sup>16</sup>

Sontag then took her case to the New York Court of Appeals. (Stepinoff did not; she had moved on to a non-civil service position at the City University of New York.) Because of the posture of the case, the appeal was as of right, not discretionary.

At the New York Court of Appeals, the NYCLU attorneys were assisted by their colleagues at the national ACLU's Women's Rights Project. Sontag's brief in the Court of Appeals was filed in the names of four attorneys: Eve Cary of the NYCLU; Ruth Bader Ginsburg of the Women's Rights Project; Paul G. Chevigny of the NYCLU;

and Andrea Stavin Hayman, Ginsburg's volunteer assistant at the Women's Rights Project.

Cary, who was in her second year as a lawyer, argued the case at the Court of Appeals in Albany on October 16, 1973. It does not seem that Professor Ginsburg attended the argument. But (as will be seen) she was familiar with the briefing on which her name appeared.

Marilyn Sontag, Eve Cary, and her colleagues including Ruth Bader Ginsburg won in the New York Court of Appeals. The Court held that Justice Bloom had erred by not holding an evidentiary hearing to determine whether the civil service-required dumbbell test was rationally related to Sontag's ability to perform her audio-visual technician job. As Judge Matthew Jasen wrote for the unanimous Court (of seven men):

*[a]djudication of petitioner's claim that the dumbbell lift subtest lacks . . . a rational relationship [to job performance] and, thus, discriminates invidiously on the basis of sex, turns on the relationship, if any, between the duties of the audio-visual aid technician and the handling, moving, carrying, etc., of heavy objects. In this regard, the record is insufficient and, accordingly, we remand for a hearing.<sup>17</sup>*

It seems that no such hearing ever occurred; it appears that after the Court of Appeals ordered the case remanded, the City and Sontag reached a settlement.

Since 1973, *Sontag* has not been cited by courts or scholars for any significant legal proposition relating to gender discrimination. Its last citation in a New York court majority opinion was over 30 years ago, in 1990's *Doe v. Roe, Inc.*, where a First Department panel that included the vindicated Justice Kupferman and future Court of Appeals judge George Bundy Smith quoted *Sontag* for its recitation of the rational relationship standard in an employee-test context.<sup>18</sup> And in a 1995 article, Professor William E. Nelson of New York University described the *Sontag* Court of Appeals decision, not unkindly, as a "relatively straightforward case[]," that "merely required the clear and easy application of assimilationist equality principles requiring that women be given the same opportunities as men," praising the "clarity" of the Court's decision but not commenting on Ginsburg's involvement in the suit.<sup>19</sup> So it is fair to say that this litigation is generally not remembered.



To be argued by  
EVE CARY

3-17-73

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**Court of Appeals**  
**OF THE STATE OF NEW YORK**

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In the Matter of  
MARILYN SONTAG,  
*Petitioner-Appellant,*  
—against—

HARRY L. BRONSTEIN, individually and as Director of the  
New York City Department of Personnel; and RICHARD G.  
UNGER, individually and as Director, Bureau of Examina-  
tions B, New York City Department of Personnel,

*Respondents-Respondents.*

For Review under Article 78 of the CPLR of the deter-  
mination by the Respondents that Petitioners are unquali-  
fied for the Civil Service job of Audio-Visual Aid Tech-  
nician.

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**APPELLANT'S BRIEF**

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POINT II. THE REQUIREMENT THAT APPLICANTS  
FOR THE POSITION OF AUDIO-VISUAL  
AID TECHNICIAN LIFT TWENTY-FIVE  
POUNDS ABOVE THEIR HEADS WITH ONE  
HAND DISCRIMINATES AGAINST WOMEN.

Although women throughout history have proven themselves capable of lifting and carrying twenty-five pound weights -- the weight of an infant between twelve and eighteen months -- perhaps with greater frequency than men, a disproportionate number of women as compared to men cannot lift a twenty-five pound barbell above their heads with one hand (R 81). In the instant case, all of the male applicants who took the barbell test passed it while both of the female applicants failed (R 10). Courts have consistently accepted statistics of this kind as prima facie evidence of discrimination. Fowler v. Schwarzwald, 351 F.Supp. 721 (D. Minn. 1972); Carter v. Gallagher, 452 F.2d 315 (8th Cir. 1971).

Further, only a small discrepancy in passing rates has been held to show unconstitutional discrimination. For example, in Chance v. Board of Examiners, 330 F.Supp. 203, aff'd 458 F.2d 1167 (2nd Cir. 1972), a case involving a test given for the position of school principal, discrimina-



## Ruth Bader Ginsburg Litigating Against Gender Discrimination

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### Memory and Legacy

But Eve Cary no doubt remembered *Sontag v. Bronstein*. Indeed, I suspect that she sometimes taught the case or at least mentioned it, because following her time as an NYCLU attorney she taught at Brooklyn Law School for almost twenty-five years. Her courses included Appellate Advocacy, Legal Writing, Criminal Law, and Prisoners' Rights.

Ruth Bader Ginsburg definitely remembered the *Sontag* case. She specifically remembered the brief to the New York Court of Appeals, which her name was on but which she credited to Eve Cary. Indeed, Justice Ginsburg kept that brief close at hand. It was somewhere nearby in 1996 when she wrote the landmark gender equality decision, *United States v. Virginia*, that recognized the constitutional right of intellectually and physically capable women to become cadets at the Commonwealth of Virginia's Virginia Military Institute (VMI).<sup>20</sup> The "VMI" decision was in many senses the culmination of the constitutional lawyering that Ginsburg, Cary, and their colleagues had done two decades earlier.

We know all this because Justice Ginsburg wrote it in a memorial essay about Eve Cary following her passing:

*The first woman to serve as staff counsel at NYCLU, Eve litigated pathmaking cases in the 1970s . . . . To this day, I preserve among my favorite briefs one she filed in the New York Court of Appeals in 1973, in Sontag v. Bronstein. Eve was attorney for the appellant, Marilyn Sontag.*

*In 1970, Sontag had been engaged at Hunter College as an audio-visual-aid technician. Some two years later, despite her capable performance on the job, she was disqualified for failure to pass a newly devised test that required lifting a 25-pound barbell [sic—dumbbell] overhead with one hand. Sontag was unable to lift the weight higher than her shoulder. All the men taking the test passed. The only other woman put to the test also failed. Eve's winning brief left no stone unturned. My favorite line from it: "[W]omen throughout history have proven themselves capable of lifting and carrying 25-pound weights—the weight of an infant between 12 and 18 months [old]." Women did not carry that*

*weight overhead, of course, but in a far more sensible and protective way. Eve's argument and briefing yielded a resounding victory. A test neutral in form but disparate in impact would no longer escape attentive review.*

*As the barbell [sic] case illustrates, Eve lived to see great changes in women's chances, and she was an active participant in making them happen.<sup>21</sup>*

\* \* \*

Ruth Bader Ginsburg lived into her eighty-eighth year, until September 2020. She too saw, across her life, great improvements in "women's chances"—in government, and in private actors also, giving equal treatment to equal persons.

She did so very much—indeed, it seems right to say that she did more than any other attorney in U.S. history—to clarify that the U.S. Constitution is a high barrier to gender discrimination.

# Ruth Bader Ginsburg Litigating Against Gender Discrimination

## ENDNOTES

\*I thank Richard Greenberg, Anne Greenberg, Paul Chevigny, Andrea Stavin, Brenda Feigen, Kathleen Peratis, Jane Ginsburg, Mary Hartnett, Paul Bender, Leon Friedman, Hal Kennedy, Frances Murray, Margaret Wood, and Sarah Walzer for very helpful conversations and background information and Sarah E. Catterson for excellent research assistance.

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1. See John Q. Barrett, “‘R. Cushman’ and Justices Kagan, Jackson, and Ginsburg,” Jackson List (July 2, 2020), <https://thejacksonlist.com/wp-content/uploads/2020/07/20200702-Jackson-List-Cushman-Ginsburg.pdf>.
2. See Gerald Gunther, “Ruth Bader Ginsburg: A Personal, Very Fond Tribute,” 20 U. Haw. L. Rev. 583 (1998). Judge Palmieri had been appointed by President Eisenhower in 1954, and served until his death in 1989. See Federal Judicial Center, “Biographical Directory of Federal Judges: Edmund Louis Palmieri,” <https://www.fjc.gov/node/1386046>.
3. See Ruth Bader Ginsburg, “Tribute to Hans Smit,” Columbia Law School (Jan. 9, 2012), <https://www.law.columbia.edu/news/archive/tribute-hans-smit-us-supreme-court-justice-ruth-bader-ginsburg>.
4. See *Frontiero v. Richardson*, 411 U.S. 677 (1973), <https://www.oyez.org/cases/1972/71-1694>.
5. See *Kahn v. Shevin*, 416 U.S. 351 (1974), <https://www.oyez.org/cases/1973/73-78>.
6. See *Edwards v. Healy*, 421 U.S. 772 (1975), <https://www.oyez.org/cases/1974/73-759>.
7. See *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975), <https://www.oyez.org/cases/1974/73-1892>.
8. See *Califano v. Goldfarb*, 430 U.S. 199 (1977), <https://www.oyez.org/cases/1976/75-699>.
9. See *Duren v. Missouri*, 439 U.S. 357 (1979), <https://www.oyez.org/cases/1978/77-6067>.
10. Deirdre Carmody, *2 Women Call Bar Bell [sic] Test Unfair*, N.Y. Times, June 10, 1972, at 33, available at <https://www.nytimes.com/1972/06/10/archives/2-women-call-bar-bell-test-unfair.html>. A barbell is a long metal bar with weights attached at each end, to be lifted with two hands. A dumbbell is a short bar with weights at each end, to be lifted with one hand. The *Sontag* case was about the latter—New York City prescribed one-hand weight lift requirements for these women to work for the city as “AV” technicians.
11. See *id.*
12. *Sontag v. Bronstein*, 70 Misc. 2d 1072, 1073 (Sup. Ct., NY County 1972).
13. *2 Women Lose Round in Job Fight*, N.Y. Times, June 23, 1972, at 41, available at <https://www.nytimes.com/1972/06/23/archives/metropolitan-briefs.html>.
14. *Sontag v. Bronstein*, 40 A.D.2d 972, 972 (1st Dept. 1972).
15. *Id.* (Capozzoli, J., dissenting).
16. See *id.* at 972–73 (Kupferman, J., dissenting).
17. *Sontag v. Bronstein*, 33 N.Y.2d 197, 200 (1973).
18. *Doe v. Roe, Inc.*, 160 A.D.2d 255, 256 (1st Dept. 1990).
19. William E. Nelson, “The Changing Meaning of Equality in Twentieth-Century Constitutional Law,” 52 Wash. & Lee L. Rev. 3, 90 (1995).
20. See *United States v. Virginia*, 518 U.S. 515 (1996).
21. Ruth Bader Ginsburg, “In Memoriam,” NYU Law Magazine, Aug. 4, 2010, at 118, available at <https://blogs.law.nyu.edu/magazine/2010/eve-cary-in-memoriam/>. Eve Cary was a 1971 graduate of New York University School of Law.





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# Remembering Justice Ruth Bader Ginsburg



We at the Society mourn the passing of a Society friend and fellow New Yorker, Supreme Court Justice Ruth Bader Ginsburg. Justice Ginsburg was the second woman to serve on the Supreme Court bench after Justice Sandra Day O'Connor and held this position for 27 years—the culmination of a truly remarkable legal career dedicated to equal justice for all.

In her memory, we proudly return to two of our programs, filled to overflowing, at the New York City Bar Association, in which Justice Ginsburg graciously participated. These two programs were presented by us in partnership with the United States Supreme Court Historical Society. They are *Ladies of Legend: The First Generation of American Women Attorneys* and *John Jay: A Family Affair*. You can watch the video of Ladies of Legend on our website, which features a particularly warm and engaging exchange between Justice Ginsburg and our founder Judge Judith S. Kaye.

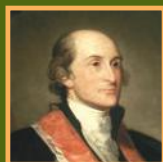
The strong and sure presence of Justice Ginsburg on the high court as well as her outreach as a role model to women and indeed us all will be deeply missed.



Chamber of the old Capitol at Albany. N.Y.  
5-1870 The Judges were sworn in by Homer A. Nelson, Secretary  
of State, each judge certifying to his age as follows, Chief  
Judge Church, 55, Judge Allen 61, Judge Groves 57,  
Judge B. B. B. 66, Judge T. B. 52, Judge J. B. 61



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