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The Historical Society *of the* Courts *of the* State of New York

Why a Historical Society?

BY **Judith S. Kaye** AND **Albert M. Rosenblatt**

Computer whizzes are fond of saying that computers aren't really all that smart. They know only what you tell them. Same with a camera. It has very little imagination and no soul. In this respect, humans have it all over their computers and cameras. But humans have a serious shortcoming. When the heart stops beating, the mind's memory bank is lost forever. There are no film negatives and no floppy discs. It's all gone. Herodotus, Thucydides, Plutarch, Josephus, the Venerable Bede and James Boswell each had an extraordinary talent and a capacity for detail and perspective. But there is one thing they have in common—an achievement so memorable that we are forever in their debt. They wrote things down.

Without their writings we would have no permanent record of events. An oral history—passed on from generation to generation—is worth something, but one suspects that it is a bit like playing "telephone." And the first thing we want to do is capture that history and commit it to paper. Better frozen than clouded with layers of mythology, exaggeration and omission.

It is never too late to start preserving court history, or to form a historical society that does so. Centuries or even decades from now, our successors will want to know what life and law were like up through the dawning of this millennium. We should not disappoint them. Perhaps if we help them understand us and our forebears, they can improve on what we have done. So let's save what is about to be lost, assemble what we have and make a tableau for the future.

Already we have great riches. The New York State Supreme Court was established in 1691, and a minute book survives, at a library in Flushing. The blueprints of the New York City Hall (completed in 1703 and the site of the Zenger trial) are still intact, as is the roll of New York lawyers that bears the signature of Alexander Hamilton.

There are also the riches that we have yet to discover—the documents and relics in attics and basements that will turn up once we cast the net.

Our mission is clear: to preserve and collect, and to have fun doing it. We want to be inclusive because we know there are many readers who share our passion. We have a sign-up sheet for your convenience. So come join us, won't you?■

Engraved portrait of Brigadier General George Clinton, 1st Governor of the State of New York, courtesy of New York State Library - Manuscripts & Special Collections

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From the Executive Director

Welcome

WELCOME TO THE HISTORICAL SOCIETY OF THE COURTS OF THE STATE OF NEW YORK. This first edition of the newsletter begins our journey into the vast historical legacy of New York's courts that have shaped our State.

In this newsletter, Chief Judge Judith S. Kaye and Court of Appeals Associate Judge Albert M. Rosenblatt "cast the net" for historical "riches that we have yet to discover." Confident that readers will have much to contribute to the Historical Society's collection of materials, I join in the Judges' invitation to you to share with us photographs, documents and recollections pertinent to the New York courts.

Also in this newsletter, United States District Judge Edward Korman provides an enlightening description of his experience as a law clerk to Court of Appeals Judge Kenneth Keating from 1966-1968. Judge Korman offers us a living snapshot of the daily pace of the court and the relationships that punctuated its daily work. Former Court of Appeals Judge Stewart F. Hancock, Jr. adds a colorful survey of Barnes v. Roosevelt, a 1915 libel case the Syracuse Post-Standard deemed among "the greatest political contests in the history of the United States." Lastly, Pace Law Professor Merrill Sobie documents the 40-year history of New York State's Family Court .

A special thanks to Hank Greenberg, co-chair of the Publications Committee, whose determination and commitment has made this newsletter possible. Please enjoy this first edition and thank you for your support in creating a lasting resource for our courts and community. ■

Sue Nadel
Executive Director,
Historical Society of the Courts of the State of New York

Contributers to this Issue

Judge Judith S. Kaye, Chief Judge of the State of New York (1993 -), the first woman to occupy the State Judiciary's highest office, was appointed to the Court of Appeals in 1983. Prior to her appointment, she was for 21 years a trial lawyer in New York. She is a graduate of Barnard College and New York University School of Law.

Albert M. Rosenblatt has been a judge of the New York Court of Appeals since 1999. Before that he served on the Appellate Division, Second Department for ten years. He's a graduate of the University of Pennsylvania and Harvard Law School.

Edward R. Korman, U.S. District Court Judge (E.D.N.Y.) since 1985 and Chief Judge since 2000, was a law clerk to Associate Judge Keating (1966-68), and is a graduate of Brooklyn College, Brooklyn Law School, and New York University Law School.

Stuart F. Hancock, Visiting Professor, Syracuse University College of Law and of counsel to Hancock & Estabrook, LLP, served as a judge for 23 years, including eight years as an Associate Judge of the Court of Appeals. He is a graduate of the U.S. Navel academy and Cornell University School of Law.

Merrill Sobie, Professor at Pace Law School, specializes in family law and juvenile justice and is the author of numerous works on these topics, including McKinney's Commentaries on the Family Court Act.

Frances Murray, Chief Legal Reference Attorney at the Court of Appeals, is a graduate of University College Dublin, University College London, and SUNYA. A member of the New York Bar, she is also a solicitor admitted to practice in the Republic of Ireland.

Barnes v. Roosevelt

A HIDE GOES ON THE FENCE

Stewart F. Hancock, Jr.

"I'm going to Syracuse tomorrow to nail Roosevelt's hide to the fence."

TR, lawyer W.H. van Benschoten and FDR, who testified for Uncle Theodor in the Barnes trial, Syracuse, May 1915

So said William Barnes to Elihu Root on the eve of the historic trial of Barnes' libel lawsuit against Theodore Roosevelt for accusing Barnes of being a corrupt political boss. Root reportedly replied: "I know Roosevelt, and you want to be very sure that it is Roosevelt's hide that you get on the fence."

What would open the next day, April 19, 1915, in Supreme Court, Onondaga County before Justice (later Court of Appeals Judge) William S. Andrews, and a small town jury of farmers, artisans and shopkeepers, was much more than a libel trial. It was to be what the morning paper, The Post-Standard, had heralded as one "of the greatest political contests in the history of the United States."

As Barnes with his entourage broke through the expectant crowd in the corridor to enter the packed courtroom, he projected the aura of money and power. A large, heavy-set man, expensively attired in a gray suit and gray spats, he looked like what he was – a successful businessman and a domineering political leader. He ruled the New York Republican party as State Chairman. As the publisher of the Albany Evening Journal and the owner of a lucrative printing business, he shared the conservative outlook of his party's financial backers. Barnes stood for government through the party system and loyalty to the organization. He had long planned to cap his political career as a United States Senator. Victory over Roosevelt would make his election to the Senate by the New York Legislature all but certain.

Roosevelt, only 56 years of age, an ex-President of the United States, a former Governor of New York and the leader of the charge of the Roughriders at San Juan Hill, had commanding presence and boundless charm. Although officially retired from politics when Taft succeeded him in the White House in 1909, the "Colonel," or "T.R." or "Teddy," as Roosevelt was affectionately known, still had vast appeal as a national hero. The accounts of his hunting safaris had kept him in public view as a man of action. He exuded the vigor and self-assurance of a natural leader. He had built his reputation as the one-time Police Commissioner of New York, the co-founder of the Anti-Saloon League, the author, the explorer, the naturalist, the high-minded intellectual, the military hero and the crusader against crime, corruption and the big trusts. His image was that of the no-nonsense reformer who wanted to remake the political process and rid it of its evil ways.

The rivalry and mutual distrust between Barnes and Roosevelt, which had long simmered beneath the surface, erupted in a full-blown public dispute at the 1910 State Republican Convention. Roosevelt – still young and ambitious after returning from his African safaris – had decided to pick up the political career which he had put aside when he backed Taft for the White House in 1908. He had his eyes set on the Republican presidential nomination in 1912. As part of his move to rebuild his power base in New York, Roosevelt got his candidate, Henry L. Stimson, nominated for Governor, soundly defeating the choice of Barnes and the State Committee. Furious, Barnes resigned as chairman. When Stimson lost the election, Barnes, not surprisingly, put the entire blame on Roosevelt.

At the 1912 Republican National Convention in Chicago Barnes got even. Once again State Party Chairman and a prominent member of the Republican National

Edward Korman

The Court of Appeals Circa 1966 - 1968

This article is part personal memoir and part a description of the way the Court of Appeals operated from 1966 to 1968, for many years before and for some years after.

I still recall vividly the first time I entered the Court of Appeals Chamber. My co-clerk, Ira Sloan, who had clerked for Judge Marvin Dye and for Judge Keating ho succeeded him, accompanied me on the trip to Albany for the September 1966 sitting. We arrived in the evening and the courtroom would have been pitch black except for the light that filtered in from the outside. Ira went to the robing room, flicked a switch and suddenly the courtroom was bathed in light. I was stunned by the magnificence of that chamber which over the next two years would be the center of my life.

A 1967 picture of Judge Keating with his two law clerks Edward R. Korman and Margaret Hill.

The trip to Albany for the September sitting was part of a routine that had a significant effect on the atmosphere and workings of the Court. The judges did not live in Albany (except for Judge Bergan) and they came together there only for the monthly sittings that lasted two or three weeks. Even when they were in Albany for a sitting, they came up on Sunday evening and left on Thursday evening after the last argument.

At first blush, such an arrangement would not appear to be one that would encourage collegiality and personal relationships on the court. Just the opposite; it fostered an extraordinary degree of closeness and collegiality that would not have occurred if all of the judges and their staffs resided permanently in Albany.

Simply put, when we were in Albany, we only had each other. The judges spent almost the entire part of a two or three week sitting in each other's company. They spent every morning together in conferences which consisted largely of abbreviated references to the written memoranda that they had previously exchanged amongst themselves. After a luncheon break - to prepare for oral arguments - the judges would spend the afternoon on the bench and then join each other for dinner at the Fort Orange Club. As far as I could tell, they did not use meals or other social occasions as opportunities to discuss the cases. Often several judges would return to the Courthouse to work in their chambers after dinner.

The same circumstances also fostered an extremely close relationship among the law clerks who ate nearly all of their meals together. When the judges first went into conference in the morning, we gathered for a brief period in an ornate lounge just below them for coffee and our own discussions of the more interesting and contentious cases. The discussions frequently carried over into meals and even handball games together.

The fact that all of the judges with their clerks worked together long hours in the same spaces also fostered a warm relationship between the law clerks and judges for whom they did not clerk. These conditions created a role for the law clerks that went beyond the legal research, memoranda and opinion drafting that they performed for the judges for whom they clerked. In a very important way, the constant discussions among the law clerks provided an additional, informal line of communications between chambers besides the communications which the judges had directly with each other. Indeed, on occasion two or more law clerks might be discussing cases over a coffee break in the outer offices of a judges's chambers and the judge himself, coming upon the scene, would join in thereby getting directly the views of a law clerk for another judge.

This not to suggest that harmony was always the order of the day. Indeed, when consensus could not be negotiated, the battles that ensued in the form of formal memoranda, were often laced with Scalia-like

CONTINUED ON PAGE 11

A 1968 gathering of members of the Court of Appeals including law clerks Edward R. Korman is seated 3rd from right, Ray Cannon (Clerk of the Court) is standing 1st row, 4th from right and David Fager (currently a U.S. District Judge [E.D.N.Y.]) is 4th from right behind Ray Cannon.

Committee, Barnes openly led the conservatives in their successful fight for Taft's renomination, holding off a spirited effort by the progressives to nominate Roosevelt. Angered by his defeat, Roosevelt walked out of the convention with his progressive backers, formed his own "Bull Moose" Party and ran as its candidate. The result was Taft's defeat (he drew fewer votes than Roosevelt) and the election of President Wilson.

The third round – the clash that put the breach beyond any hope of repair and led to the libel suit – took place at the Republican State Convention at Saratoga in the summer of 1914. There, Roosevelt tried, without success, to repeat what he had done in 1910: nominate his own man for governor (this time, Harvey D. Hinman) over the opposition of Chairman Barnes and the regular Republicans.

Origin of the Lawsuit

The lawsuit stemmed from a press release Roosevelt had issued as the advocate of party reform in his aborted campaign at the 1914 Saratoga Convention to oust Barnes from control. In the release, Roosevelt charged that Barnes had acted in a clandestine alliance with his counterpart in the Democratic Party, State Chairman and Tammany Hall leader Charles Murphy. These two leaders, he said, had for years manipulated the machinery of the State government to the detriment of the people and solely for the personal political benefit of the two corrupt conspirators.

From the beginning of the jury selection, the scene at the courthouse had taken on the aura of a political nominating convention. Congressmen, State Senators, Assemblymen, party leaders and a former Governor greeted each other in the courtroom and huddled in the corridors. Many of them were on the witness list. Franklin D. Roosevelt, William Loeb, Jr., Edward T. Platt, Simon Guggenheim, Jonathan Wainwright, Alfred E. Smith and Harvey D. Hinman, among other notables, would eventually testify. Outside the courtroom, special telephone lines had been installed for the use of the country's top political reporters. Folding chairs had been arranged in tight rows along the courtroom walls to help seat the fortunate few who held the special yellow tickets required for admission.

While the adoring throng had come to see and hear the "Colonel," for the regular court watchers there was another drawing card – Barnes' attorney, William J. Ivins, described by the newspapers as one of New York's renowned courtroom performers and a "sarcastic and merciless cross-examiner." It was the combat between the confident and the ebullient witness and the adroit cross-examiner that the spectators anxiously awaited.

The testimony started with the words, "Mr. Roosevelt, take the stand." Ivins, in one of the surprise moves for which he was known, created a stir of excitement by calling the defendant as his first witness. Surprised or not, Roosevelt rose with no hesitation and – with the aplomb of an accomplished actor – walked to the witness chair to be sworn. No one doubted that he knew that this was his show and that he was the star performer. Ivins posed the few questions needed to prove that Roosevelt was the author of the statements and that they referred to the plaintiff. Ivins rested his case.

The defendant's case began immediately. His sole defense was truth and to sustain it, he had to prove that Barnes was what he said he was – a corrupt political boss. Roosevelt would be on the stand for eight days. Although the defendant's proof was persuasive, it fell short of portraying Barnes as an evil man or the blatantly cynical politico who reportedly had said about an upcoming political appointment: "I want a candidate for this office who is down and out, on his uppers, and has fringed clothes, then I can hoist him into office and he will be mine."

The Star on the Stand

The star performer held his audience for the full eight days. The witness chair had become his "bully pulpit." On the stand he gesticulated, orated and, ignoring the lawyers and the court, simply said what he wanted to say. The frustrated Ivins objected frequently, but to no avail, and even the Justice's gaveling couldn't stop him. It could hardly have been expected that he would have been much in awe of the court. After all, he and Justice Andrews had known each other as classmates at Harvard. The long awaited confrontation on cross-examination between the voluble witness and the merciless inquisitor produced few of the hoped-for sparks. Ivins carefully avoided questions which might give Roosevelt a chance to make a summation to the jury.

The case closed with stirring final summations to the jury by Ivins and Roosevelt's lead counsel, the accomplished and urbane New York lawyer, John M. Bowers. Bowers argued that Barnes was trying "to destroy Theodore Roosevelt's usefulness to the People" and that only the jury could prevent this loss to democracy and preserve any chance for political reform. "Stand for him, stand for the People" he pleaded. He finished by reading the Gettysburg Address.

A Decisive Verdict

The jury, after hearing over one hundred witnesses in almost five weeks of trial and deliberating for two days, reported its decision on May 22, 1915. It was a unanimous verdict for the defendant. As Elihi Root had warned, Barnes', not Roosevelt's, hide would go on the fence. Barnes' career as a political leader had ended. The trial ruined any chance that he might have had for a seat in the U. S. Senate and his influence decreased steadily thereafter.

Roosevelt made the most of his victory and bragged that democracy had triumphed over the machine. To his chagrin, however, the case had disappeared from the front pages of The New York Times, With the sinking of the Lusitania on May 7, the country's attention had turned to events in Europe. The victorious defendant's attempts to have the trial transcripts published for mass circulation failed for lack of interest.

The Colonel's political star regained some if its lustre, however, and there were brief rumors of a possible presidential nomination in 1916, and, again, in 1918 some talk that the Republicans might turn to him as their candidate in 1920. But Roosevelt died in January 1919, less than four years after the trial, his ambitions for a return to the political limelight unrealized. He was 61.■

FOOTNOTES ON PAGE 10

Merril Sobie

The Family Court— A Short History

The New York State Family Court was established in 1962. The framer's intent, which was largely achieved, was the formation of an omnibus tribunal capable of adjudicating every justiciable family related dispute. Accordingly, Family Court incorporated the former State Children's Courts, the domestic violence parts of the local criminal courts, and the paternity parts of the former Court of Special Sessions. In addition, Family Court was granted adoption and abandonment jurisdiction, concurrent child custody jurisdiction, and concurrent post-divorce modification and enforcement jurisdiction. This paper will outline the pre-Family Court history in synopsis form, and briefly describe the Court's post-1962 developments.

Resembling a very well appointed library more than anything else, the court room, strange though it may seem, attracts more than it repels juvenile incorrigibles. (Edison Monthly, May 1916)

The Court's roots run deep, reaching to the early nineteenth century. The initial measure separating children's issues from traditional common law rules was the 1824 legislative incorporation of a House of Refuge for Children to receive, and hopefully rehabilitate, "all such children [under sixteen years of age] as shall be convicted of criminal offenses, in any city or county of this state, and as may in the judgment of the court, before whom any such offender shall be tried, be deemed proper objects." Partly modeled upon the then new adult penitentiary system, children, unlike adults, received indeterminate sentences, which could remain in effect until age twenty-one. The idea was to segregate errant children where they could be educated, rehabilitated and, upon rehabilitation, be released to lead productive adult lives.

In 1851 a Juvenile Asylum was legislatively incorporated to house impoverished, neglected young children and, in 1853, the Children's Aid Society was founded to "rescue" immigrant children from the streets and poorhouses through placement in foster homes or farm apprenticeships.

The post-civil war era further awakened a perceived need to protect children who were maltreated, or who had lapsed into wayward behavior. The post war social repercussions, rapid industrialization, and massive immigration spawned a "child savers" movement which lobbied successfully for extensive children's legislation. In 1865 the legislature enacted the "Disorderly Child" Act, a statute roughly equivalent to the present status offense or PINS statute. Twelve years later the legislature passed an "Act for Protecting Children," a statute that may be fairly characterized as the state's first child neglect law; under its provisions children could be placed in public or private childcare agencies upon a finding of parental malfeasance. The initial adoption laws and compulsory education laws also date from that period. Administered by the criminal courts, the piecemeal enactment of "child saving" legislation was refined and codified as part of the 1881 Penal Code. By the late nineteenth century the major causes of action involving children had hence been enacted, and were enforced by public or private agencies, including the police and the societies for the protection of cruelty to children. Simultaneously, the legislature incorporated a plethora of childcare agencies to care for needy and maltreated children. Completing the evolutionary decriminalization of children's activities, a 1909 Act coined the term "juvenile delinquency." Thereafter, and until the enactment of the 1978 Juvenile Offender Act, any act short of murder committed by a youngster under the age of sixteen could not be deemed a crime.

The important contemporary proceedings heard before the Family Court, child neglect or abuse, juvenile delinquency, status offenses and adoption, were thus developed and applied in postbellum America. However, jurisdiction had been lodged in the criminal courts (a not illogical choice given the absence of specialized family tribunals). Given an increasing children's case-

load, the growth of the social sciences, the development of childcare agencies, and the inappropriateness of mixing children's and criminal proceedings, the progression to a specialized court was probably inevitable. In 1901, the year the first juvenile court in America was established in Chicago, the New York State legislature segregated juvenile cases by creating specialized children's parts within New York City. Within a decade, the children's court parts were operating in most of the state's urban areas.

Finally, joining the by then national movement, New York established a separate Children's Court in 1922. Children's issues, involving specialized social, educational and mental health expertise, were divorced from the criminal court milieu.

Separated from the mainstream of criminal and civil jurisdiction, the children's courts developed unique characteristics, including confidentiality, privacy of proceedings and the disuse, if not abhorrence, of procedural due process standards. The courts even substituted their own nomenclature for traditional legal terms; for example, the substitution of "fact finding" hearing for trial and "dispositional hearing" for sentence dates from the 1922 establishment of the Children's Courts.

The Children's Courts continued for forty years (1922-1962). By 1960, the court's limitations and deficiencies had been well documented. Split jurisdiction, the absence of legal representation and procedural anarchy were among the criticisms which led to the development of a Family Court concept. Of equal significance, in 1961 the state decided to reorganize the entire court structure, the first major judicial restructuring in almost a century. The reformers finally achieved the establishment of a Family Court, with the mandates and the compromises outlined at the beginning of this paper.

The Family Court Act, circa 1962, incorporated several landmark provisions (in addition to the grant of more extensive jurisdiction). For the first time, children were afforded assigned counsel, a measure which enhanced procedural and substantive safeguards. It also indirectly spawned litigation which expanded children's rights, such as the right (and the empowerment) to appeal adverse decisions, and the right to discover and present evidence addressing the child's interest. The Act also incorporated expanded child protective provisions affecting children and their parents.

In forty years the Family Court Act has changed in several respects, although the basic structure remains. Substantive statutory amendments include the expansion of termination of parental rights provisions (virtually unknown in 1962), the enactment of the Child Support Standards Act, which enhanced the economic responsibility of parents and, through several sequential amendments, the legislature has greatly enhanced the Court's domestic violence authority. The court has also grown exponentially, a phenomenon driven by many factors, including the enforcement of individual familial rights (of children, of parents and of extended family members), the unfortunate increase in family dysfunction and the expansion of procedural safeguards. Of perhaps paramount importance, the court has slowly shed the perception of "judicial stepchild," and is increasingly viewed as an co-equal branch of the unified court system.

The Childrenís Court - This impressive ionic structure is dedicated to the task of straightening out the snarls in the lives of little folks (Edison Monthly, May 1916)

Viewed in perspective, as an institution which has evolved progressively over the course of almost two centuries, Family Court has much to be proud of. At the same time the court remains a work in progress, a perhaps permanent attribute of a tribunal devoted to the family. The next step may be merger with the Supreme Court, a move that would enhance the court's stature and lead to a truly unified family tribunal that would encompass divorce jurisdiction and juvenile justice proceedings (now divided between juvenile delinquency, juvenile offender and youthful offender jurisdiction). The court has a rich history to cherish and, hopefully, to build upon throughout the twenty-first century. ■

...in 1853, the Children's Aid Society was founded to "rescue" immigrant children from the streets and poorhouses through placement in foster homes or farm apprenticeships

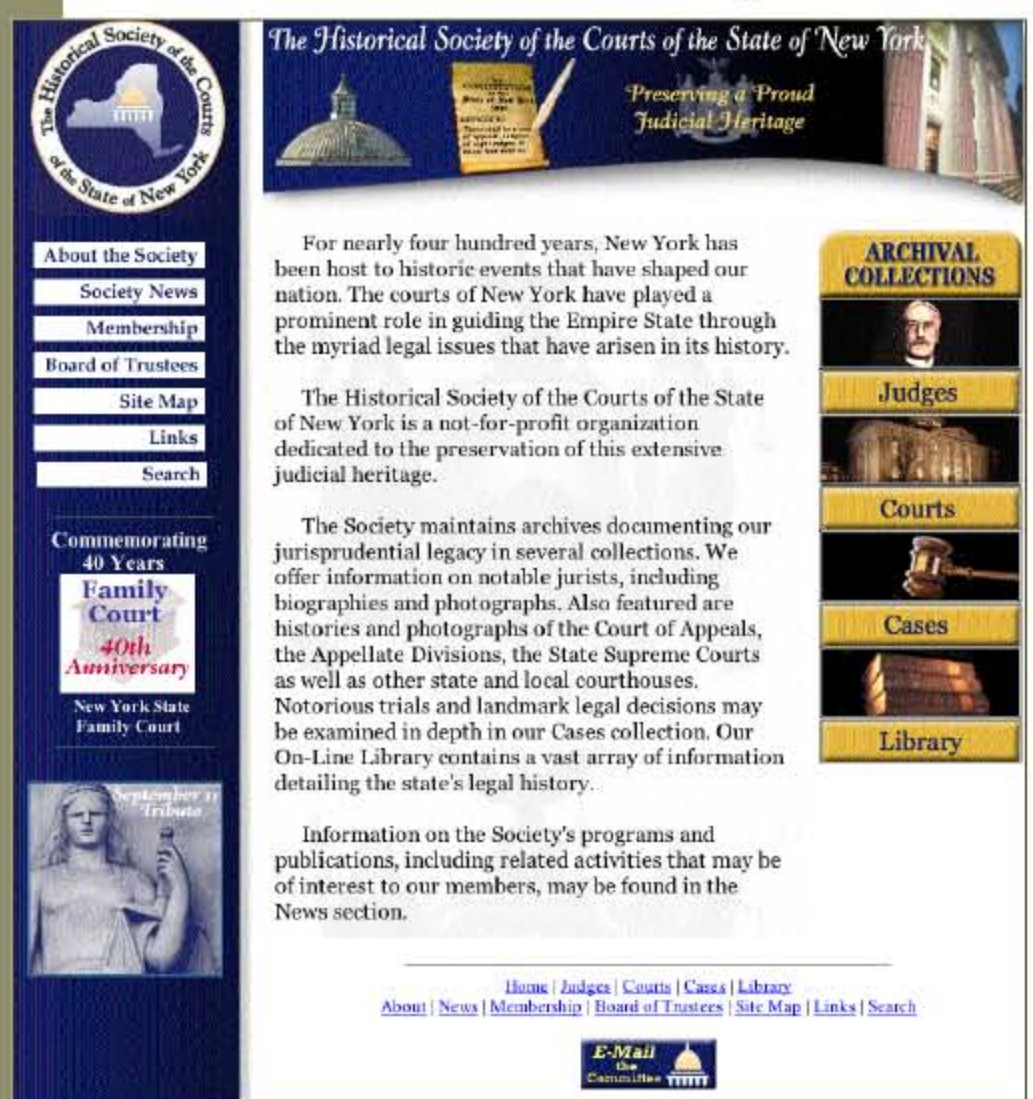
by Frances Murray

A Guided Tour of the Web Site

Early in the process of chartering The Historical Society of the Courts of the State of New York, it became apparent that among the elements that augured well for the success of a fledgling society, the existence of an excellent Web site was paramount. This presented me with a major dilemma – how to create a great Web site with no money and no expertise. Fortune smiled on the project when, on January 30, 2001, Mike Moran, Chief Legal Editor with the Law Reporting Bureau, agreed to volunteer his time and talent. Together, we formed an ad-hoc committee and Mike chose his team: John Lesniak and Cindy McCormick. The Unified Court System provided server space and the project was off and running. There was great excitement in some quarters at Court of Appeals Hall when the team arrived to present four possible designs to Chief Judge Kaye and Judge Rosenblatt. A front-runner quickly emerged and you can see the winning design each time you sign on to the Website.

WITH THE BASICS IN place under the guidance of Judge Rosenblatt, we were able to focus on content. Because the Society was not yet formed, and thus not in a position to generate new material, content was drawn from existing historical materials. The following is a pathfinder to the documents and pictures now available:

First, sign on to HTTP://WWW.COURTS.STATE.NY.US/HISTORY/. The Home Page will appear and you will see a series of gold buttons to the right of the screen.



JUDGES: The first button is labeled "Judges" and leads to an electronic collection of portraits and photographs of many of the judges who have served since the State came into existence. It is a work in progress, so if you know of any collection of judicial pictures from the 19th or early 20th century or of any group photographs from that time period, please contact me and I will make arrangements to have them imaged and added to the Web site.

The first section enables you to browse or search the collection of the portraits of Court of Appeals judges. These images are electronic reproductions of the portrait collection that hangs in Court of Appeals Hall.

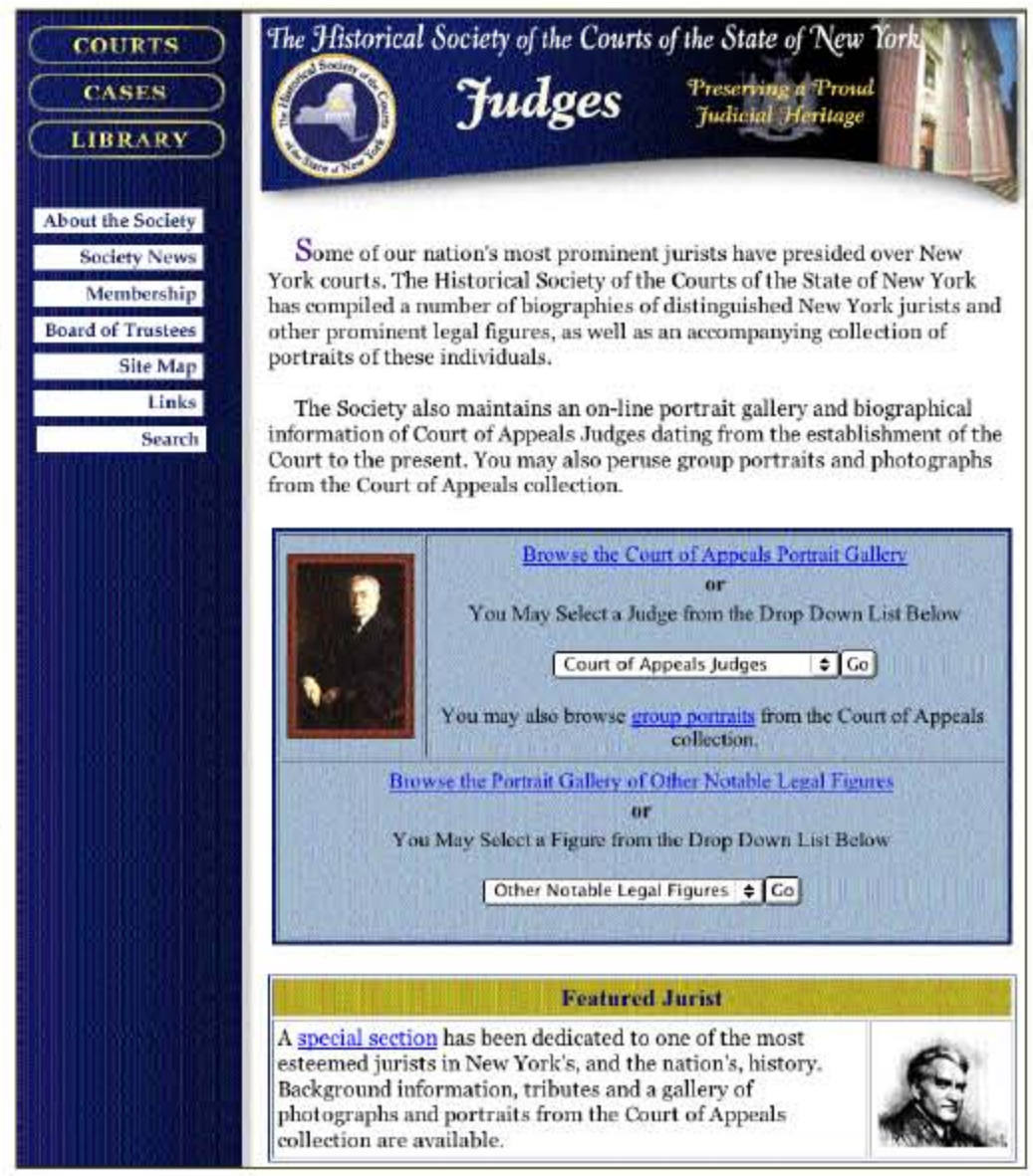
The second section leads to a collection of pictures of judges of the various courts and other notable legal figures - some, such as the portraits of John Jay and the six New York Chancellors were drawn from Court of Appeals Hall collections, while others were reproduced from illustrations in historical texts. The picture of Alexander Hamilton is part of the Lithgow mural depicting the trial of John Peter Zenger. Each picture is accompanied by a brief biography of the subject. Judge Rosenblatt plans to write in-depth biographies of the judges, and these will be added as they become available.

The third section under the gold "Judges" button is devoted to Judge Benjamin Cardozo. It contains photographs drawn from the Court of Appeals collection. It, too, is a work in progress and will be developed as time permits.

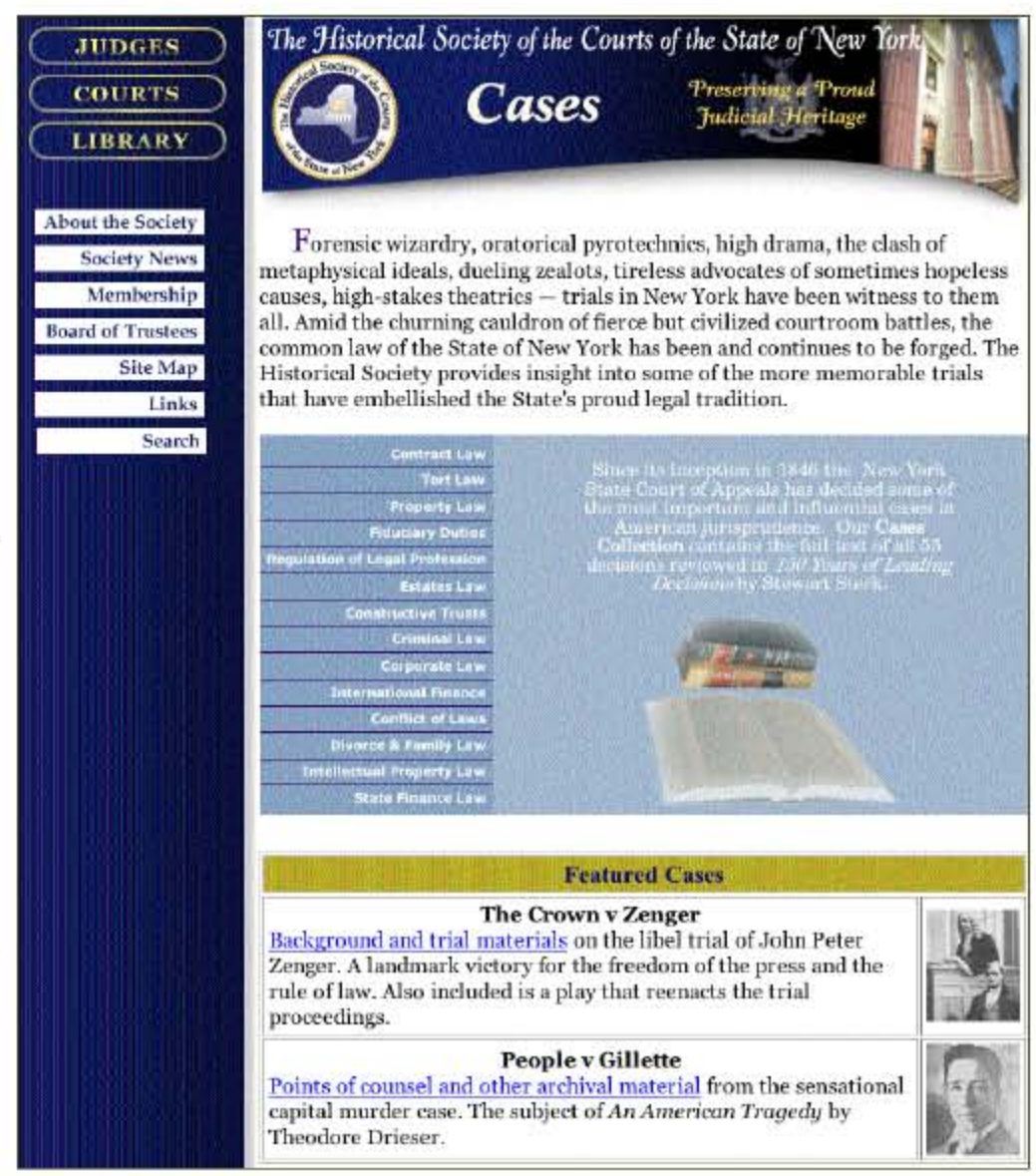
COURTS: The second gold button is labeled "Courts" and it contains pictures of existing and former courthouses in New York State. A brief history of the building accompanies each picture. If you have any copyright-free images of courthouses that you are willing to share with the Society, please contact me. Once we have scanned the picture, the original will be returned to you, safe and sound.

The second section under the "Courts" button consists of electronic versions of the commemorative booklets issued to celebrate the 150th anniversary of the Court of Appeals, the centennial of the Appellate Division and the 300th anniversary of the Supreme Court. All are full of interesting details and most contain pictures illustrating the history of these courts. Mike Moran and his team put a huge amount of work into ensuring that the electronic version matches the original. It took approximately one hour per page to format the text and images!

The third section features four courts in greater depth. Currently, it commemorates the fourtieth anniversary of the Family Court; the Fulton County Court House, "the oldest existing Court House in the State of New York and one of the oldest in the Nation still being used as a Court House today"; the courthouses of the Seventh Judicial District; and the Appellate Division, Third Department, Court and Courthouses. From time to time, different courthouses and Judicial Districts will be spotlighted.



CASES: The third gold button is labeled "Cases". The first of the three segments contains the text of the Court of Appeals cases considered most significant by Professor Stuart E. Sterk of Cardozo Law School. In the second section, you can find materials related to the Crown v Zenger, the landmark colonial case relating to freedom of the press, including electronic images of the original August 4, 1735 order in the case, the Lithgow mural depicting the trial and the New-York Weekly Journal account of the trial. The third section features People v Gillette, the Herkimer County murder case upon which Theodore Dreiser based his novel An American Tragedy. It includes photographs of the people involved briefs to the Court of Appeals and the decision of the Court.



LIBRARY: The fourth gold button is labeled "Library" and contains a constantly-growing collection of materials relating to the Judiciary in New York State. The featured archive is "Duely & Constantly Kept: A history of the New York Supreme Court and its predecessors from colonial times until 1847 and includes an index of state archival materials.

THE REMAINDER OF THE MATERIALS IN THIS SECTION ARE ORGANIZED UNDER A SERIES OF "TABS."

THE FIRST TAB, HISTORY, contains an excerpt from the Public Service of the State of New York (1880-1881-1882), an essay on the history of the Judiciary written in the early 1890s by Irving Browne, Editor of the Albany Law Journal under the supervision of Charles J. Folger, then Chief Judge of the Court of Appeals. This section also contains excerpts form the 1909 landmark constitutional history treatise by Charles Lincoln, and a reproduction of an 1947 article entitled "Reminiscences After Sixty-Four Years at the Bar" describing the professional life of a Binghamton attorney who was eleven years old when President Lincoln was assassinated.

THE SECOND TAB, JUDGES, contains the wonderful photographs included in the Public Service of the State of New York (1880-1881-1882), together with contemporary biographies. These provide a very colorful picture of some of the leading judicial figures of the day. Also in this section is Chief Judge Kaye's article on Kate Stoneman, the first woman to be admitted to the New York Bar, and Judge Wesley's Hugh R. Jones Memorial Lecture.

JUDGES
COURTS
CASES

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Preserving a Proud Judicial Heritage

Archival material rich in detailed information about the history and tradition of the New York courts is contained within our On-Line Library. It is your source for accounts, records and legal documents that illuminate more than three centuries of jurisprudential development. From colonial beginnings through Revolutionary turbulence to the dynamism of the electronic courtroom, this is the chronicle of legal progress in an ever-changing society.

The On-Line Library is classified under six general subject areas. The **History** section includes articles and book excerpts that pertain generally to the legal history of New York. The **Judges** section contains articles by and about the jurists of this State, past and present. The **Courts** section examines the history of some of our courthouses and also contains the anniversary pamphlets of New York's appellate tribunals. The **Events** section contains speeches and articles commemorating significant milestones in New York's legal history. The **Research** area contains the invaluable "Duely and Constantly Kept" which details State Archives holdings of legal interest. Finally, the **Constitutions** section reprints early New York Constitutions (and a precursor to our first Constitution) as well as interpretive materials.

History | Judges | Courts | Events | Research | Constitutions

HISTORICAL SOCIETY ON-LINE LIBRARY

Featured Archive

Duely & Constantly Kept
A history of the New York Supreme Court and its predecessors from colonial times until 1847, including an index of state archival materials.

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UNDER THE THIRD TAB, COURTS, you can find Judge Frederick Crane's 1933 essay describing his seventeen years on the Court of Appeals, with a detailed description of daily life at Court of Appeals Hall. There is also a 1959 essay by William Mattison describing the nine courthouses built in Brooklyn since the Civil War.

THE HIGHLIGHT OF THE FOURTH TAB, EVENTS, is the celebration to commemorate 250 years of the Supreme Court which took place in 1941. The fears and concerns for Europe and the British Common Law are evident in the messages and addresses of Governor Herbert H. Lehman, President Roosevelt, The Rt. Hon. Sir Wilfrid Arthur Greene, P.C., Master of the Rolls, Chief Judge Irving Lehman, Arthur L. Goodhart, Professor of Jurisprudence, Oxford University, and John W. Davis (of Davis and Polk).

THE FINAL TAB CONTAINS the text of the 1683 Charter of Liberties as well as the texts of the constitutions and constitutional amendments 1777, 1801, 1821, 1862, 1869 (Judiciary Article), and 1984. This section also contains a tabular record of every proposition to amend the constitution since 1777, together with the popular vote for and against.

As already mentioned, the Web site is a work in progress. The labor involved in converting scanned documents to usable electronic texts is time-consuming and to be honest, tedious. Fortunately, the end results amply repay the time and devotion lavished on the site. As of July 24, 2003, Web statistics indicate that there were 16,024 unique visitors, with 2,756 visiting more that once. The average visit lasted 15 minutes and the visitor viewed an average of 9 pages.■

Barnes v Roosevelt: Footnotes *continued from page 5*

1–Elihu Root, a prestigious New York lawyer and a long-time friend and political confidante of Roosevelt, had served in two Roosevelt administrations – first as Secretary of War and later as Secretary of State

2–The Post-Standard, July 1, 1934; see Blakey, "Calling a Boss: Did Roosevelt Libel Barnes in 1915?" by George T. Blakey in the April 1979 issue of "New York History" pp. 195-216; and an account of the trial in The Post-Standard, July 1, 1934.

3–Opening address, Van Benchoten, Record on Appeal, p. 172

*4–The chair is still in use in Supreme Court, Part I, where the trial was held. A 4" by 8" silver-plated plaque on the backrest is inscribed: "Theodore Roosevelt President of the United States of America testified as a witness from this chair * * * in the case of William Barnes v Theodore Roosevelt, Justice William S. Andrews presiding, April - May 1915.*

5–Mr. Bowers of the New York firm of Bowers and Sands was assisted by William Van Benschoten, also of that firm, and by Stewart F Hancock, Esq. and Oliver D. Burden, Esq., both of Syracuse

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Court of Appeals

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pejoratives. One of the causes of rivalry between chambers centered on which judge would write for the Court on a particular case. I stop here to describe briefly the bizarre case assignment system. The cases were assigned by the Clerk of the Court, Raymond J. Cannon, the night before oral argument was scheduled. A one page summary of each case, which was prepared by a staff attorney, was then circulated the night before the argument. After oral argument, the judge to whom the case was assigned would prepare a written (and sometimes oral) report with a recommendation to affirm, reverse or modify. If the recommendation carried, the judge who reported would write the opinion, if one was deemed necessary. If the recommendation did not carry, the judge who first circulated a memorandum in disagreement (a "redback") would draft the opinion.

This procedure essentially gave the Clerk of the Court a critical role in deciding who would write in a particular case; and it generated considerable suspicion (and no small measure of resentment) that the Clerk took particular care of whoever was the Chief Judge. After I had been clerking for awhile, I began to good-naturedly question Ray Cannon about the randomness of the assignment system. I made clear that I understood his solicitude for the Chief Judge; all I wanted him to do was to give Judge Keating first crack at the leftovers. Ray took a liking to me, and so before he assigned the cases for the next day, I looked through the pile and suggested which, if any, might be assigned to Judge Keating. Occasionally, he would throw me a bone.

This process, which also left the judges totally unprepared for oral argument, ended some years later when Judge Breitel became Chief Judge. So too, did another practice that I thought was foolish. This involved the tape recording of the conferences at which the judges discussed the cases and voted on them. Judge Keating, who was quite willing to compromise on the language of an opinion to get a vote, would sometimes ask me to listen to the tape to see if we could alter a draft opinion to satisfy a colleague. Other law clerks were permitted to do so as well. On the whole, the benefit of this process was minimal and did not outweigh the intrusion on confidentiality and privacy that it entailed.

I end here with the concluding words of a tribute to Judge Keating that I wrote over thirty years ago:

Judge Keating's tenure on the court was extremely short but the impact of his opinions on the law was very significant. As a law clerk just out of school, the two years I spent with the Judge were exciting and rewarding. . .[E]ach case seemed to become a vehicle for righting wrongs, clearing up some muddy area of the law, or overruling some outdated precedent. Needless to say this writer's judgment as to Judge Keating's contributions to the law is already fixed. Hopefully, the "laboratory of the years" will yield a similar judgment.

I continue to be grateful to Judge Keating for making possible a relationship with him and the Court of Appeals from which I learned so much and which was a source of enormous satisfaction. ■

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