

2013

Introduction of the Panelists: The Untold Secrets of Eagle Street (Symposium)

Penelope Andrews

Vincent Martin Bonventre

Patrick M. Connors

Rosemary Queenan

Michael J. Hutter

See next page for additional authors

Authors

Penelope Andrews, Vincent Martin Bonventre, Patrick M. Connors, Rosemary Queenan, Michael J. Hutter,
and Donna E. Young

INTRODUCTION OF THE PANELISTS

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DEAN ANDREWS: Let me start by thanking the members of the *Albany Law Review* for putting together this program. You do a splendid job, and it's a great delight to work with you. Thank you. I also want to welcome all the esteemed guests, the members of the Court of Appeals, alums, staff, faculty, and students to this event.

This is a special occasion, not just because we have the full Court of Appeals bench here today, but also because the newest member of the bench, Judge Jenny Rivera was my friend and colleague at CUNY Law School for fifteen years. So I'm really, really thrilled that she's joining us today.

It is my task to introduce the Honorable Jonathan Lippman, who is the Chief Judge of the State of New York and the Chief Judge of the Court of Appeals. As you know from his biography, he was appointed by Governor Patterson in January 2009 and confirmed by the New York State Senate in February 2009.

I'm not going to read his biography. You have these biographies

* Dean, Albany Law School; LL.M., Columbia University School of Law, New York; LL.B., University of Natal, Durban, South Africa; B.A., Natal, Durban, South Africa, B.A.

** Editor, State Constitutional Commentary; Faculty Advisor, Albany Law Review; Ph.D., M.A.P.A., University of Virginia; J.D., Brooklyn Law School; B.S., Union College; Professor of Law, Albany Law School; Blog: New York Court Watcher.

*** Professor of Law at Albany Law School where he teaches New York Practice and Professional Responsibility.

**** Associate Lawyering Professor, Albany Law School; J.D., New York Law School; B.A., University of Maryland.

***** Professor of Law at Albany Law School; Special Counsel to the Albany law firm of Powers & Santola, LLP; B.S., Brown University; J.D., Boston College Law School; Commissioner of the New York State Law Revision Commission; Chair of the Board of Directors of the Capital Defender Office.

***** Professor of Law, Albany Law School; B.S., University of Toronto; LL.B., Osgoode Hall Law School of York University; LL.M., Columbia University School of Law.

in the program, but I think it is worth noting that Judge Lippman has a particularly deep and robust knowledge of the court system here in New York. I don't think I'm engaging in hyperbole when I state that no other person knows the court system like Judge Lippman. As you will note from the program, he has served over four decades in numerous roles, starting as an entry-level court attorney and making his way up through the court system. If we were so inclined—and as a good Catholic I'm so inclined—we could appoint him the judicial pope of New York.

In this contemporary moment in our society, in which the legal profession is often treated with disdain, sometimes with hostility, and sometimes contempt, Chief Judge Lippman's vision is a powerful antidote to such hostility, disdain and contempt. In his four years as Chief Judge, he has demonstrated in the most compelling ways what the law should mean and should be, not just for the powerful and privileged amongst us, but also those who are marginalized and disempowered. Access to justice, which is his clarion call to all of us, represents the finest of what the legal profession is all about.

There are many things about Judge Lippman's tenure that I can talk about to illustrate his commitment to access to justice, but I've been given two minutes to do this introduction, and I think I may have reached the limits here. So let me conclude by becoming personal here with Chief Judge Lippman, and to give you a few paparazzi-type snippets about him. And this is courtesy of Google, Twitter, and Michelle Mallette.

Chief Judge Lippman is an avid New York Yankees and Knicks fan. He once worked so late into the evening on a project that shortly after leaving the office, he couldn't remember if he was on his way home after a long day, or on his way back from a short respite at home, showing he's a very hard working man. And the third bit of Google and Twitter information, Stephen Colbert has invited Chief Judge Lippman countless times to be on his program, and Jon Stewart has done the same. Judge Lippman has not accepted their invitations, because he's a little nervous about their lack of decorum. This last fact is based on a true rumor.

So I'd like to say in closing that since Chief Judge Lippman was appointed as Chief Judge, he has spoken at Albany Law School four times, including this symposium, and he has a great relationship with the school and the *Law Review*. And we are very grateful for that. Thank you.

PROFESSOR BONVENTRE: Don't you just love that Dean? I don't know where she gets the accent from, I'm pretty sure she was born in Brooklyn.

As the Faculty Advisor for the *Law Review*, I'd like to welcome you all here tonight. And I'd like to give special thanks to the *Law Review* students, who always make me look good. I'd especially like to thank our Editor-in-Chief, Mary D'Agostino, who actually has been juggling her duties with being a mother of a newborn infant, Lucca, who by the way was just screaming down in the *Law Review* suite. I went down there and it was clear that he needed his dad to change his diaper.

And the State Constitutional Editor, Michelle Mallette, who also has been juggling her duties as State Con Editor with her motherly duties for her one-year old daughter, Maggie. And I'm told she's got another one coming in the cooker. So it has been an absolute delight to work with Michelle all year long. She reminds me of being in the Army, and that she's the general and I'm her private.

As you've heard, this is our seventh State Con Symposium. The past symposiums have brought to this school some of the most eminent judges, justices, chief justices, and chief judges in the entire United States, but to be brutally candid, it is never as thrilling as when we have the Court of Appeals.

This is just the best. And I tell you that in the years since we've been doing this symposium, the justices come from all over the country; whether it's Utah, Wisconsin, whether it's Florida, whether it's North Carolina, Connecticut, no matter where it is. And they tell me that this is the court that they read. This is the court that they follow. This is the best Court in the country. And we're so proud really to have them here as our neighbors and to have them here today.

Earlier this week, we had the Third Department and we had my colleague, Professor Hutter, arguing a case.² Professor Hutter is so awesome that his adversary did not show up. It's true. It's absolutely true. So really, I mean, the Third Department hears their cases here on Tuesday; you have the Court of Appeals here on Thursday. I mean, come on, this is worth the price of admission. Right?

Okay. Now to my special duties to introduce Judge Graffeo. And

² Bloom v Van Lenten, 965 N.Y.S.2d 661 (App. Div. 3d Dep't 2013).

I'm absolutely delighted and it's not just because in my view, she holds the Italian seat on the Court of Appeals, or as my mother says, no, she's Judge Graf-fé-o, it's the Sicilian seat on the court. But Judge Graffeo actually holds the Albany Law School seat on the Court of Appeals, one that was also held by Chief Judge Lawrence Cooke, after whom this symposium is named and who was our graduate in 1938. I think Judge Graffeo graduated a couple of years after that? Forty years after that.

She was born in Long Island, but her parents were smart enough ultimately to move up to God's country here in upstate New York. But in between, she actually lived in a hamlet in the Berkshires in Massachusetts. She and her family lived right next to the Victoria Motel, which was named after her. Now I bet Judge Pigott doesn't have a motel named after him, or Judge Smith. But it's true, right? Victoria Motel.

JUDGE GRAFFEO: My parents owned it.

PROFESSOR BONVENTRE: Well, when it came time to go to college, Cornell University tried to lure her there with a scholarship, but instead she chose to go to the State University of New York at Oneonta, and boy weren't they thrilled to get her.

After that, she came to Albany Law School, and I have to tell you, within four years, she argued a case before the New York Court of Appeals. I tell students all the time you've got to know about the Court, because you just might be arguing in front of them pretty soon. Four years out of Albany Law School, arguing in front of the Court—she also won. Right? You also won that case.

Right after that, she had a pretty meteoric rise. She was the Counsel to the Assembly Minority. Then she was appointed Solicitor General of the State of New York. Shortly after that, she ran for State Supreme Court and won. Shortly after that, she was appointed to the Appellate Division. And then, in the year 2000, she was appointed to the Court of Appeals.

Now what's responsible for this meteoric rise? Well, while she was here at Albany Law School, she had part-time work in the firm of International House of Pancakes. And I'm told that while she was a waitress at IHOP, apparently her sister got much better tips than she did, so she decided she might as well become a judge.³

³ Victoria A. Graffeo, *Victoria Ann Graffeo*, in *THE JUDGES OF THE NEW YORK COURT OF*

Anyway, we are so thrilled to have Judge Graffeo here. She's part of our Albany Law community; we love her, we admire her and we're very, very proud of her.

Thank you for being here, Judge Graffeo.

PROFESSOR CONNORS: I just want to thank all the members of the Court for coming. We're so lucky here at Albany Law School that you're so generous with your time year after year.

Judge Read is to my right. She was born in Gallipolis, Ohio. Like me, she lives in Saratoga Springs with her husband, Howard. She went to Ohio Wesleyan University undergrad, and then the University of Chicago Law School.

She has had a very interesting and remarkable career. She was the Deputy Counsel for Governor Pataki, and then she went on one of the most interesting courts in the world, the New York State Court of Claims, and she served there for I believe five years, Judge. And then in 2003, you went on to the New York Court of Appeals.

And you've issued so many interesting, important decisions, but to me the big one was the case in 2007, the *Arons*⁴ decision, which we caress in New York practice and we study in legal profession, and it's the case that keeps giving, because so many issues have come out of that case. And there was a lot of controversy about it, Judge, but that case received early induction into the New York Practice Hall of Fame, and you should be very proud of that.

Many of you may go up north of here to the Saratoga Performing Arts Center (SPAC). Is anyone going to go up there for Dave Matthews' concert in a couple of months? Some of you, I know have been to the Zac Brown Band concert, Florence and the Machine, that's beyond me, but you've been up there. Well, if you're up there, you may see Judge Read, because she's also the Chairwoman of the Saratoga Performing Arts Center Board of Directors. And she really does so much for the community up there.

And one of my favorite things about seeing Judge Read around town, either at SPAC or at the race track, is we can have conversations about the *Arons* case. And then we can turn to music. And we can talk about Dave Matthews or the Bruce Springsteen concert, and then, we can turn around and talk about the ballet and

APPEALS: A BIOGRAPHICAL HISTORY 971 (Albert M. Rosenblatt ed., 2007) [hereinafter JUDGES OF THE NEW YORK COURT OF APPEALS].

⁴ *Arons v. Jutkowitz*, 880 N.E.2d 831 (N.Y. 2007).

whether George Balanchine's vision is being carried out.

And then, finally, we can talk about something really important, who's going to win this summer's Alabama. So Judge, thanks so much for coming, and they just released the futures pool for the Kentucky Derby, this is the third pool, and I like Shanghai Bobby.

PROFESSOR QUEENAN: I have the honor of introducing Judge Robert S. Smith. Judge Smith was born in New York, New York. He graduated with honors from Stanford University in 1965 and Magna Cum Laude from Columbia Law School in 1968. He served as the Editor-in-Chief of the *Columbia Law Review*.

It might surprise you to learn that when Judge Smith entered law school, he had no interest in becoming a practicing attorney. He wanted a career in politics, but there was a significant woman in his life, his wife, Dian, who wasn't fond of some aspects of politics, and gave Judge Smith an ultimatum, politics or her.⁵

Judge Smith wisely chose Dian. So we can thank her for Judge Smith's impressive legal career, which began after graduation with the prestigious law firm Paul, Weiss, Rifkind, Wharton & Garrison. Ironically, Judge Smith's son Ben is a political journalist and blogger.

During Judge Smith's thirty-five year tenure with Paul, Weiss, he made a name for himself as a brilliant litigator in complex corporate law. He was particularly adept at cross-examining expert witnesses.

After years in private practice, Judge Smith's ambition turned to pursuing a judicial career and in November 2003, he was appointed to the Court of Appeals. He was the first non-judge to rise directly to the Court in twenty years.⁶ As a judge, he is best known for his independent decision making and challenging oral argument questions, often testing the weakest aspects of a lawyer's position, by drawing the lawyer into a series of tough hypotheticals. Please join me in welcoming Judge Robert Smith.

PROFESSOR HUTTER: Judge Lippman, Associate Judges and especially the Albany Law students, it's great to see you here and taking advantage of what we can offer you.

⁵ Rosemary F. Smith, *Robert Sherlock Smith*, in JUDGES OF THE NEW YORK COURT OF APPEALS, *supra* note 3, at 988.

⁶ *Id.* at 987.

I was asked to say a few words about Judge Pigott and I think I can say safely, and looking at a couple of past *Albany Law Review* issues, we think here at Albany Law School he's great.⁷ And no doubt about it, his accomplishments and everything else have been really fine-tuned in some very good student pieces in the *Albany Law Review*.

What I thought I would do is, let's see what his alma mater thinks about him, at the University of Buffalo Law School, that other law school out in western New York somewhere. So I called a classmate of mine, Fred Konefsky, and I asked him about Judge Pigott. And he said, well, I joined the faculty after Judge Pigott, but if you want to know about his quote, unquote "academic achievements," you might want to talk with Ken Joyce.

Ken Joyce served as a member of the Albany Law School faculty for a couple of years and then went back to Buffalo. I got a hold of Ken, who's now retired on the Cape, and he said, "sure, I'd love to talk about Judge Pigott. He's a fine leader, a great representative." And I said, "well, what was he like as a student?" And Ken said, "well, I know he was enrolled in a couple of my classes, but whether he attended them, that may be another story."

But he then said to me that there's one fatal flaw in his character. I said, "what could that be?" Now you have to realize Ken Joyce, some of the faculty members here may remember, Ken is what we call a three hatter. He went to three Jesuit Schools: Boston College High School, Boston College Undergraduate, and Boston College Law School. So with that in mind, he said, "Judge Pigott started out at a Jesuit high school, McQuaid in Rochester, and then went to a Jesuit institution, Le Moyne in Syracuse, but then he blew it. He went to the University of Buffalo and he went there during the turmoil of the anti-Vietnam era." And he said, "just think what Judge Pigott could have accomplished if he had gone to a Jesuit school like Boston College or Georgetown." But then he said, "of course, he's accomplished much and they're quite proud of him."

It's interesting when I talk about the Buffalo connection. I was in Buffalo about a couple of months after the Judge was named to the Court of Appeals, and I was visiting a friend of mine in his old law firm, Offermann, Cassano, Greco, Slisz & Adams. And as I walked in—this firm had been at the Statler Hilton for fifty-three years

⁷ See, e.g., Benjamin L. Loefer, *The Pert Perpend: Associate Judge Eugene F. Pigott, Jr.'s Journey From Buffalo to Rochester and Albany*, 73 ALB. L. REV. 1081 (2010).

until it disbanded about two years ago—I ran into Frank Offermann, who then and still is the Dean of the Buffalo Bar.

I met Frank about twenty years earlier, and I just said hello to him. My friend was not there, and when I was talking with Mr. Offermann, and again I can't call him Frank, I mean, he's so well regarded. And just by chance I said, "you guys must really be proud of the fact now that you have a judge on the Court of Appeals in your office."

Now this is a firm, I don't think it ever had more than ten lawyers. They produced six judges, three Appellate Division judges, including Judge Pigott, and three supreme court judges, which is really remarkable.

But I asked him that because there's an old story, and I mentioned this last year when I introduced Chief Judge Lippman, about a desk and the Cardozo desk at the Court of Appeals. And I said to Mr. Offermann, I said, "well, where's the Pigott desk? Who now has claimed the Pigott desk?"

So he—with a little twinkle in his eye—he said, "I'll show you." So we go through this maze of rooms there, and there in the coffee room is Judge Pigott's desk, with all the coffee makers on it. And he simply said, "he was just one of us, just one of us."

As I think back to that distinguished stature of that firm, it's amazing how you develop six really terrific judges and probably one of the best lawyers in that firm was Frank Offermann, who never really wanted to practice law, and it leads to my final comment. One of the hallmarks of a great law firm is not so much the cases that the firm wins, because a lot of it depends upon the facts that are given to you and any lawyer can win a case with good facts or controlling law.

Rather, the hallmark of a good law firm is the lawyers, the men and the women who compose that firm. And when you think back now to the Offermann, Cassano firm producing six judges like that, obviously you have a lot of discussions among one another, you have some real brain power. It's that brain power that I think Judge Pigott has brought to the Court of Appeals. And it really gives him the ability to see issues and see things, and again each of the judges will look at something from their different perspective.

But Judge Pigott really brings that very broad perspective of the practitioner—whether it's on the private side or representing a Plaintiff or Defendant—representing the County of Erie with the perspective now that we want with diversity of judges on the Court

of Appeals to give an open view to everything.

And I think in that respect, Judge Pigott brings a true experience to the court, and I kind of got a laugh when he came in—I don't know if you noticed, he went right up to the jury railing, and as a former trial lawyer you saw him grabbing that railing, and he was ready to start a summation.

Judge Pigott, glad to have you.

PROFESSOR YOUNG: Judge Jenny Rivera, doesn't that have a beautiful sound? Those were the words of Albany Law alumnus Andrew Cuomo, announcing Judge Rivera's confirmation.

It's my pleasure to introduce Judge Jenny Rivera, who as you know, is the newest member of the Court of Appeals.

She's a graduate of Princeton University and New York University Law School. After graduating from law school, Judge Rivera clerked in the Second Circuit Court of Appeals Pro Se Law Clerk's Office. Then she went back to law school and received her LL.M from Columbia Law School, and that was shortly after Dean Andrews got her LL.M from Columbia Law School and the time that Professor Halewood got his LL.M from Columbia Law School and just before I got my LL.M from Columbia Law School.

And then, Judge Rivera clerked for Supreme Court Justice Sonia Sotomayor when she sat as the District Court Judge on the Southern District of New York.

Judge Rivera has a long history of public and community service. She served as the Associate Council for the Puerto Rican Legal Defense and Education Fund, as a Commissioner of the New York City Commission on Human Rights, as Special Deputy Attorney General for Civil Rights, and as a Bureau Chief of the Civil Rights Bureau of the State of New York, Office of the Attorney General.

Prior to Judge Rivera's nomination to the Court of Appeals, she taught as a law professor at Suffolk University School of Law, American University, Washington College of Law, and most recently, at CUNY School of Law, where she served as the Director of the Center on Latino and Latino Rights and Equality.

Judge Rivera's commitment to diversity and her service to the poor and to those who seek a voice in the legal arena is widely acknowledged, and is evidenced by her recent recognition by the New York State Bar Association, who awarded her the 2012 Diversity Trailblazer Lifetime Achievement Award.

Now it's pretty clear to most of us that looking at her impressive

list of accomplishments, she's eminently qualified to be a judge. But I'd like to turn for a moment to the title of this discussion, *The Untold Secrets of Eagle Street*. It's a bit ominous.

And then, I don't know if you noticed this, but there's a bit of a subtitle on the program and it says that the Court will talk about their inner workings.

So this got me wondering, not only about the sorts of secrets that will be revealed here today, but also what sorts of secrets were revealed to Judge Rivera when she showed up to work that first day. So we're going to ask you about that.

And so my mind kept going back to this image when I was thinking about these secrets about whether she's been taught the secret high court handshake. And then, I was thinking about whether there is a high court handshake and whether when Judge Rivera showed up, that the bench maybe changed the handshake to reflect this year's change in the judicial selection process. And for those of you who don't know, and many of you do know, the Senate Judiciary Committee gave her a real grilling, kind of unprecedented.

And so, I was thinking about the secret handshake. I know, it probably doesn't exist, but I like to think it does. So I thought, instead of this kind of relatively simple and straightforward secret handshake, I wonder whether the new secret handshake involves a much longer, more arduous procedure, requiring many different postures and expressions of puzzlement, you know, to reflect the Senate Judiciary confirmation process.

But whatever the secrets might have been in store for her on Eagle Street, I'm told on good authority that as long as Judge Rivera has her nieces, her dogs, Valencia cakes and is able to grab a good vegan meal every now and then, she'll do just fine.

So I'd like to welcome Judge Rivera as our newest member of the New York Court of Appeals.

And I'll now turn it over to Chief Judge Lippman who is the moderator for this evening.