THE NEW YORK COURT OF APPEALS, ALBANY LAW SCHOOL, AND THE ALBANY LAW REVIEW: INSTITUTIONS DEDICATED TO THE EVOLUTION OF THE LAW IN NEW YORK STATE

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It is a privilege to pay tribute in writing to the Albany Law Review on the occasion of its seventy-fifth anniversary issue. Dating back to our respective formations in 1846 and 1851, the Court of Appeals and Albany Law School have enjoyed a close and mutually beneficial relationship. The New York Court of Appeals has long been regarded as one of the preeminent state high courts in the nation and Albany Law School and its graduates deserve a share of the credit for the Court’s esteemed reputation. Seven Albany Law School alumni, including two Chief Judges, have served on the Court. And dozens of its graduates have served as law clerks over the decades, contributing greatly to the superb quality and professionalism of the Court’s work product.

Throughout its history, the Albany Law Review has brought serious scholarly attention to the work of the New York courts and to the Court of Appeals in particular. This heightened focus on New York law is particularly helpful as a practical resource for the state’s large and sophisticated Bar, but it is also immensely valuable in terms of providing insight into how the Court performs its critical institutional roles of settling and articulating the law, maintaining legal stability and predictability over time, and ensuring that the law remains responsive to the needs and expectations of a changing society.

From my perspective as Chief Judge of one of the largest and busiest judicial systems in the country, I not only value this Law Review’s traditional interest in New York law but also consider it essential and urgent. Many people have no idea that ninety-seven percent or more of all litigation is conducted in the nation’s state courts. More cases are heard there in a single day than are heard in an entire year by the federal judiciary. This point is made not to

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diminish the work of the federal courts, whose caseloads are, by any measure, extremely challenging, complex, and important, but rather to emphasize that it is in the state courts that the average American interacts with the justice system. It is in the state courts where the cutting-edge issues affecting the daily lives of our citizens, the quality of life in our communities, and the orderly progress of our society are being adjudicated by trial and appellate court judges working on the front lines. These judges handle a seemingly infinite variety of litigation, spanning highly complex, multibillion-dollar corporate disputes to home foreclosures, evictions, and consumer debt defaults in our civil courts; serious felonies, quality of life crimes, and the scourges of domestic violence and drug-related crime in our criminal courts; and the consequences of family breakdown, such as child abuse and neglect, child custody and support, and juvenile delinquency in our family courts.

The work of the state courts has an enormous impact on our society and is unquestionably worthy of the best legal scholarship. This is something that the Albany Law Review has been providing for seventy-five years—thoughtful analysis of important judicial decisions affecting the development of the law and the lives of millions of New Yorkers, and critical examination of how courts go about resolving novel and weighty constitutional, common law, and statutory interpretation issues.

In fact, Albany Law School can claim credit for publishing the country’s first student edited legal periodical, the Albany Law School Journal, which, along with news and other items of interest to the legal community, contained a number of substantive articles about New York law and court decisions.1 While this periodical was short-lived, it is regarded as the precursor to today’s academic law reviews.2 The publication of legal scholarship began again in earnest with volume one of the Albany Law Review in 1931, and since then generations of students have ably led and staffed the Law Review, publishing articles, notes, and comments, and devoting special issues every year to symposia that manifest the special connection between the Law School and the Court, including the Chief Judge Lawrence H. Cooke State Constitutional Commentary

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2 See Closen & Dzielak, supra note 1, at 34.
Symposium\(^3\) and the Hugh R. Jones Memorial Lecture.\(^4\) More recently, the *Albany Law Review* began publishing *New York Appeals*, which is dedicated specifically to examining important decisions of the Court of Appeals and the Appellate Division in New York, and is an especially helpful resource for state practitioners.

Of course, the nexus between the Court and this Law School reaches back farther and runs deeper than just the contributions of the *Law Review*. The Court of Appeals was created during the New York State Constitutional Convention of 1846, five years before Albany Law School was founded. One of the Law School’s founders, Green C. Bronson, was an original member of that Court and authored the Court’s very first opinion, *Pierce v. Delamater*.\(^5\) Judge Irving Vann, an 1865 graduate, sat on the Court of Appeals from 1896 to 1912 and authored a number of significant opinions that influenced the development of the common law, including *In re Totten*, which set forth the common law rules for what is today widely known as a “Totten Trust.”\(^6\)

Alton B. Parker, an 1878 graduate and the Court’s Chief Judge from 1898 to 1904, remains the only Court of Appeals judge to have run for President of the United States—an election he lost by landslide to a rather popular incumbent, Theodore Roosevelt.\(^7\) As author of the Court’s opinion in *People v. Lochner*, Chief Judge Parker embodied the progressive legacy for which the Court of Appeals became renowned. *Lochner* upheld a state law setting maximum work hours as being a proper exercise of the state’s police power “to promote and protect the health of the people.”\(^8\) The United States Supreme Court’s famous reversal of the *Lochner* decision is today recognized as a less than shining moment in that Court’s storied history.\(^9\)

In more recent times, the Court of Appeals was graced with the

\(^3\) Id. at 34 n.175; Jonathan Lippman, *Moderator’s Introduction*, 73 ALB. L. REV. 1201, 1201–02 (2010).


\(^8\) People v. Lochner, 177 N.Y. 145, 162 (1904).

presence of 1923 graduate Francis Bergan, who served from 1964 to 1972 and was himself a leading historian of the Court.\textsuperscript{10} Judge Bergan authored the decision in \textit{Boomer v. Atlantic Cement Co.}, a common law case granting an injunction against a continuing nuisance and one of the few, if only, cases that is routinely studied by first year law students in three separate disciplines—torts, property, and civil procedure.\textsuperscript{11} Domenick L. Gabrielli, a 1936 graduate who sat on the Court from 1973 to 1982,\textsuperscript{12} was a highly respected and beloved judge whose wisdom, collegiality, and humanity are still warmly recalled at Court of Appeals Hall. A loyal alumnus and long time member of the Board of Trustees, the Law School has honored him by sponsoring the National Family Law Moot Court Competition in his name.\textsuperscript{13}

Chief Judge Lawrence H. Cooke, a 1938 graduate, was elected to the Court in 1974 and was appointed Chief Judge in 1979 by Governor Hugh Carey under the new merit selection process established pursuant to a state constitutional amendment.\textsuperscript{14} Chief Judge Cooke had a strong influence on the jurisprudence of the Court of Appeals and the administration of the state court system. He introduced modern management principles to a judicial system that was facing dramatic changes and increases in its dockets. As a jurist, he was an early and vigorous proponent of the state constitution as providing greater protections for the rights and liberties of New Yorkers. As Chief Judge, he was a champion for equal justice and treatment for women and believed strongly that the justice system should ensure fairness and justice for all persons, regardless of their background or status. In his retirement years, Chief Judge Cooke stayed close to his alma mater as a lecturer and founding board member of the \textit{State Constitutional Commentary} of the \textit{Albany Law Review} and the \textit{Government Law and Policy Journal} of the New York State Bar Association’s Committee on Attorneys in Public Service.\textsuperscript{15}

It is my great privilege and pleasure today to sit on the Court of Appeals alongside 1977 graduate and former State Solicitor General

\textsuperscript{10} Michael Bergan, \textit{Francis Bergan}, in \textit{The Judges of the New York Court of Appeals: A Biographical History}, supra note 4, at 661.
\textsuperscript{11} Id. at 663; \textit{Boomer v. Atl. Cement Co.}, 26 N.Y.2d 219 (1970).
\textsuperscript{12} James T. Potter, \textit{Domenick Luciano Gabrielli}, in \textit{The Judges of the New York Court of Appeals: A Biographical History}, supra note 4, at 713.
\textsuperscript{13} Id. at 717.
\textsuperscript{14} Joyce Adolfsen & Lou Adolfsen, \textit{Lawrence Henry Cooke}, in \textit{The Judges of the New York Court of Appeals: A Biographical History}, supra note 4, at 769, 772.
\textsuperscript{15} Id. at 777.
Victoria A. Graffeo, a terrific colleague for whom I have the deepest respect and admiration. Her intellectual vigor, wise and well-reasoned decisions, and strong integrity and professionalism have made the Court of Appeals a stronger and better institution.

The long, rich history of cross-fertilization between our two institutions has roots in the nineteenth century when travel to the state’s capitol was measured in days rather than hours. A cadre of appellate lawyers made up heavily of Albany Law alumni sprang up in the Capital District, and their excellent advocacy before the Court of Appeals did much to shape the early common law of New York. The connections between the Court and Albany Law take many forms and continue to the present day, with retired Judge Howard A. Levine awarded the first Justice Robert H. Jackson Distinguished Professorship at Albany Law School, and with the growing number of judicial law clerks, including Professor Vincent Bonventre, who have passed through the Court on their way to distinguished academic careers at the Law School.

Since becoming Chief Judge it has been a true pleasure to witness the continued growth of the respectful relationship and intellectual interchange that exists between the Court, Albany Law School, and its Law Review. It is a relationship that the Court truly values. As we pursue our mission of providing justice and fair treatment for all under the constitution and laws of our state and nation, it is comforting to know that our work will continue to be examined, appreciated, and challenged for many years to come by talented and well-trained law students who cherish the central role of the New York Court of Appeals in our society and democratic system of government.