

WHOSE SEAT ON THE NEW YORK COURT OF APPEALS DO YOU HAVE?

*Alan J. Pierce**

I. INTRODUCTION

In July 2009, the *ABA Journal* ran a one page “article” that is really a chart, entitled: “Who Died and Made You Supreme Court Justice?”¹ The chart traces each of the nine seats on the Court from as far back as 1789.² Ever since seeing that article almost eight years ago, I have always wanted to do a similar chart for the New York Court of Appeals, as I am a great follower of, and a person who thought he knew quite a bit about, New York’s highest court. This article is the result of that strong interest and has led to more work than I expected when I started many months ago. I hope you enjoy reading the chart and the information that I have collected as much as I was delighted to create it.³

As explained below, I had to start somewhere and since I worked backward from the 2016 court, I discovered that the best place for me to end was July 4, 1870, when today’s modern seven-member Court of Appeals was created. I will provide some detailed

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¹ Nick Summers, *Who Died and Made You Supreme Court Justice?*, NEWSWEEK, July 20, 2009, at 68.

² *Id.*

³ A great resource that I was not able to obtain for this article is Bernard Meyer, Burton Agata, and Seth Agata’s book, entitled: *The History of the New York Court of Appeals, 1932-2003*, which continues the work started by Judge Bergan’s book that covers the years 1847 to 1932. See BERNARD MEYER ET AL., *THE HISTORY OF THE NEW YORK COURT OF APPEALS, 1932-2003* (2006). Judge Meyer was an associate judge of the court from 1979 through 1986.

information about the makeup and workings of the court and then proceed without further ado to the chart entitled: “Whose Seat Do You Have?”

II. BRIEF HISTORY OF THE STRUCTURE AND JUDICIAL MAKEUP OF THE COURT OF APPEALS

The Court of Appeals was created by the New York State Constitution in 1846 to replace both the Court for the Correction of Errors and the Court of Chancery.⁴ The court had eight judges: four elected by general ballot at state elections, and the other four were chosen annually from among state supreme court justices.⁵ The first four judges elected at the special judicial state election in June 1847 were Freeborn Jewett (two-year term), Greene Bronson (four-year term), Charles Ruggles (six-year term), and Addison Gardiner (eight-year term).⁶ The four elected judges and four justices of state supreme court took office on July 5, 1847.⁷ Afterward, every two years, one judge was elected in odd-numbered years to an eight-year term.⁸ In case of a vacancy, a judge was temporarily appointed by the Governor, and at the next odd-year state election, a judge was elected for the remainder of the term.⁹ The Chief Judge was always the elected judge who had the shortest remaining term.¹⁰ The court also had a Clerk, who was elected to a three-year term.¹¹ The new court inherited over 1,500 pending cases from the Court for the Correction of Errors.¹² After twenty years of operation, the New York State Constitution’s judiciary article was reviewed at the 1867, 1868, and 1869 constitutional conventions.¹³

⁴ N.Y. CONST. of 1846, art. IV, § 2 (“There shall be a court of appeals.”); THE JUDGES OF THE NEW YORK COURT OF APPEALS: A BIOGRAPHICAL HISTORY xxxii (Albert M. Rosenblatt ed., Fordham Univ. Press 2007) [hereinafter JUDGES].

⁵ JUDGES, *supra* note 4, at xxxii.

⁶ *Id.* Under statute, in July 1847, the four judges drew ballots to determine their term lengths: two, four, six, or eight years. *Id.* Judge Jewett drew the ballot for the shortest term, thus making him Chief Judge. *Id.*

⁷ *Id.* at xxxii–xxxiii.

⁸ N.Y. CONST. of 1846, art. IV, § 4.

⁹ *Id.* § 13.

¹⁰ FRANCIS BERGAN, THE HISTORY OF THE NEW YORK COURT OF APPEALS, 1847-1932, at 35 (1985).

¹¹ N.Y. CONST. of 1846, art. IV, § 19.

¹² JUDGES, *supra* note 4, at xxxiii.

¹³ See JUDITH S. KAYE, THERE SHALL BE A COURT OF APPEALS (1997), https://www.nycourts.gov/history/legal-history-new-york/documents/History_COA-Kaye-There-Should-Be.pdf.

Many problems had become obvious. The court annually lost half of its membership and acquired four different justices from the [state] supreme court. Every two years, the term of one of the judges elected statewide would end, so that frequently more than half of the court was replaced at the end of a year. In the first twenty-three years of the court's existence, one hundred and twenty[-]three judges were members of the Bench [including twelve different Chief Judges].¹⁴

In 1869, the proposed new state Constitution was rejected by the voters, but the "Judicial Article," which re-organized the Court of Appeals, was adopted by a small majority.¹⁵ The Court of Appeals was wholly re-organized, taking effect on July 4, 1870. All sitting judges were legislated out of office, and seven new judges were elected by general ballot at a special election on or about May 17, 1870.¹⁶ The new Court of Appeals that was seated on July 4, 1870, was really the beginning of the modern Court of Appeals. Several significant changes adopted then continue today, including that: (1) each judge was elected to a fourteen-year term; (2) the Constitution mandated the retirement of the judges at the end of the calendar year in which they reached the age of seventy; (3) five judges were required for a quorum, while at least four must concur for a decision; (4) "the court had power to appoint and remove its clerk, reporter[,] and attendants;" and (5) in case of a vacancy due to death or resignation, a judge was appointed by the Governor until a successor was chosen at the next state election, who would then be elected to a full fourteen-year term.¹⁷

In the interest of minority political party (then, the Republicans) representation on the new court, "the 1869 Constitution provided that two appointed Republican judges would be members of the Court of Appeals."¹⁸ The five remaining vacancies (Chief Judge and associate judges) were filled in 1870 by special election.¹⁹ Sanford Church defeated Henry Selden for Chief Judge.²⁰ There were only four ballots for associate judges.²¹ The members of the new court

¹⁴ *Id.*; see also BERGAN, *supra* note 10, at 41.

¹⁵ BERGAN, *supra* note 10, at 91.

¹⁶ JUDGES, *supra* note 4, at xxxiv.

¹⁷ N.Y. CONST. of 1846, art. IV, § 13.

¹⁸ KAYE, *supra* note 13.

¹⁹ *Id.*

²⁰ JUDGES, *supra* note 4, at xxxiv.

²¹ KAYE, *supra* note 13.

therefore were: Sanford Church as Chief Judge, with William Allen, Rufus Peckham, Martin Grover, Charles Rapallo, Charles Andrews and Charles Folger as associate judges.²²

Rather than impose the existing backlog of cases (approximately 800 pending appeals) on the newly created court, a Commission on Appeals was created under the 1869 Constitution to deal with the backlog, thus allowing the new Court of Appeals to start with a fresh docket.²³ “The commission consisted of five commissioners—the four judges elected statewide to the old court, with a fifth commissioner appointed by the Governor.”²⁴

The commission’s “tenure was limited to three years which, by a later constitutional amendment, was extended by two years.”²⁵ Thus, the Commission on Appeals operated from July 1870 to July 1875.²⁶ The members of the commission were: Chief Commissioner John Lott, Robert Earl, Alexander Johnson (1870-1873), Ward Hunt (1870-1872), Hiram Gray, William H. Leonard, Charles C. Dwight (1874-1875), and John H. Reynolds (1873-1875).²⁷ The commission went out of business in 1875 when it resolved the entire backlog of cases.²⁸

In 1889, a “Second Division” of the Court of Appeals was established temporarily to help decide another large backlog of pending cases.²⁹ Its seven members were designated by Governor

²² JUDGES, *supra* note 4, at xxxiv; BERGAN, *supra* note 10, at 112–15; KAYE, *supra* note 13. All of the judges elected were Democrats. JUDGES, *supra* note 4, at xxxiv. Judges Folger and Charles Andrews were the top two Republican vote finishers, so they assumed the two “reserved” Republican seats on the new court. BERGAN, *supra* note 10, at 114. Martin Grover was the only sitting judge who was re-elected. Heather Davis, *Martin Grover*, HISTOR. SOC’Y N.Y. CTS., <http://www.nycourts.gov/history/legal-history-new-york/history-legal-bench-court-appeals.html> (last visited Aug. 19, 2017). “The inaugural meeting of the new Court of Appeals took place on Monday, July 4, 1870[,] in the Senate Chamber of the old Capitol.” KAYE, *supra* note 13. “As required by the Constitution, each judge certified his age under oath and over his own signature.” *Id.* “Chief Judge Church certified his age at 55, Judge Allen at 61, Judge Grover at 57, Judge Peckham at 61, Judge Rapallo at 46, Judge Folger at 52[,] and Judge Andrews at 43.” *Id.*

²³ Jason C. Rubenstein, *John A. Lott*, HISTOR. SOC’Y N.Y. CTS., <http://www.nycourts.gov/history/legal-history-new-york/history-legal-bench-court-appeals.html> (last visited Aug. 19, 2017).

²⁴ KAYE, *supra* note 13. Because Judge Grover from the “old” court was elected to the “new” July 4, 1870, court, there were two appointees to the original commission: Hiram Gray and William Leonard. JUDGES, *supra* note 3, at xxxiv.

²⁵ KAYE, *supra* note 13.

²⁶ Rubenstein, *supra* note 23.

²⁷ Isaac Grant Thompson, *The Commission of Appeals*, 12 ALB. L. J. 33, 36 (1876).

²⁸ JUDGES, *supra* note 4, at xxxiv, 1008 (noting that this was Judge Reynolds’ only service at the Court of Appeals).

²⁹ *Id.* at xxxv, 1009; BERGAN, *supra* note 10, at 132–35.

David B. Hill.³⁰ The Second Division was continued through October 1892.³¹ In 1891, the state Constitutional Commission, headed by future Court of Appeals Judge William Hornblower (1914), drafted an amendment to abolish the Second Division, which was adopted by the voters.³²

Because the workload of the court remained backlogged after the abolition of the Second Division, a constitutional amendment was proposed and adopted by the voters in November 1899 that permitted the Governor, at the request of a majority of the judges of the Court of Appeals, to designate up to four justices of the state supreme court to serve as “additional judges” of the Court of Appeals until the court’s calendar was reduced to below two hundred cases.³³ This goal was finally reached in 1921, and since then, no state supreme court justices have been designated under the amendment of 1899 to serve on the Court of Appeals.³⁴

³⁰ JUDGES, *supra* note 4, at 1009. The following judges served on the “Second Division” of the Court of Appeals from March 1889 to October 1892: Chief Judge David Follett; Alton Parker; Joseph Potter; George Bradley; Irving Vann; Albert Haight; and Charles Brown. *Id.* at xxxv.

³¹ KAYE, *supra* note 13.

³² The Court of Appeals, *The Commission Wants the Second Division Abolished*, N.Y. TIMES (Jan. 25, 1891), <http://query.nytimes.com/mem/archive-free/pdf?res=9B0DE3DD1F3BE533A25756C2A9679C94609ED7CF>; JUDGES, *supra* note 4, at 373, 1009.

³³ John H. Freedman, *Suggestions to Remedy the Delays in the Administration of Justice*, 65 ALB. L. J. 40, 43 (1904); BERGAN, *supra* note 10, at 224–25; JUDGES, *supra* note 4 at xxxv, 310, 995.

³⁴ Mark P. Gergen & Kevin M. Quinn, *Common Law Judicial Decision Making: The Case of the New York Court of Appeals 1900-1941*, 60 BUFF. L. REV. 897, 915 (2012). The following judges served as appointed “additional judges” on the Court of Appeals under the 1899 Constitution from 1899 through 1921:

1. William Andrews (1917-1921): elected to the court in 1921. See Brian Quinn, *William Shankland Andrews*, HISTOR. SOC’Y N.Y. CTS., <http://www.nycourts.gov/history/legal-history-new-york/history-legal-bench-court-appeals.html> (last visited Aug. 20, 2017).
2. Francis Crane (1917-1920): elected to the court in 1920. See Barbara B. Mistishen, *Frederick Evan Crane*, HISTOR. SOC’Y N.Y. CTS., <http://www.nycourts.gov/history/legal-history-new-york/history-legal-bench-court-appeals.html> (last visited Aug. 20, 2017).
3. Cuthbert Pound (1915-1916): elected to the court in 1916. See Robert S. Smith, *Cuthbert Winfred Pound*, HISTOR. SOC’Y N.Y. CTS., <http://www.nycourts.gov/history/legal-history-new-york/history-legal-bench-court-appeals.html> (last visited Aug. 20, 2017).
4. Benjamin Cardozo (1914-1917): appointed and elected to the court in 1917. See Judith S. Kaye, *Benjamin Nathan Cardozo*, HISTOR. SOC’Y N.Y. CTS., <http://www.nycourts.gov/history/legal-history-new-york/history-legal-bench-court-appeals.html> (last visited Aug. 20, 2017).
5. Nathan Miller (1913-1915): resigned. See Gordon Lyon & Dee Rajan, *Nathan Louis Miller*, HISTOR. SOC’Y N.Y. CTS., <http://www.nycourts.gov/history/legal-history-new-york/history-legal-bench-court-appeals.html> (last visited Aug. 20, 2017).

In 1977, a constitutional amendment was adopted by the voters, championed by Chief Judge Breitel, to change New York's election of judges on the Court of Appeals to an appointment process.³⁵ Jacob D. Fuchsberg and Lawrence H. Cooke were the last judges elected by general ballot at the state election in November 1974.³⁶ Since 1978, the judges on the court have been appointed by the Governor from a list provided by the Commission on Judicial Nomination, created in 1977, and then confirmed by the New York State Senate.³⁷ To date, no nominee by the Governor has ever been rejected by the Senate.³⁸ The first judge appointed under this new procedure was Chief Judge Lawrence H. Cooke to replace Chief Judge Breitel, effective January 1, 1979.³⁹

Since July 4, 1870, there have been twenty-five different Chief Judges and nearly one hundred different associate judges on the Court of Appeals.⁴⁰ Most of the Chief Judges previously served as

6. Emory Chase (1906-1920): elected to the court in 1920; died in June 1921. See Albert M. Rosenblatt et al., *Emory Albert Chase*, HISTOR. SOC'Y N.Y. CTS., <http://www.nycourts.gov/history/legal-history-new-york/history-legal-bench-court-appeals.html> (last visited Aug. 20, 2017).

7. Frank Hiscock (1906-1913): elected to the court in 1913. See Albert M. Rosenblatt & Timothy M. Kerr, *Frank Harris Hiscock*, HISTOR. SOC'Y N.Y. CTS., <http://www.nycourts.gov/history/legal-history-new-york/history-legal-bench-court-appeals.html> (last visited Aug. 20, 2017).

8. William Bartlett (1906-1907): elected to the court in 1907. See William A. Lawrence, *Willard Bartlett*, HISTOR. SOC'Y N.Y. CTS., <http://www.nycourts.gov/history/legal-history-new-york/history-legal-bench-court-appeals.html> (last visited Aug. 20, 2017).

9. William Werner (1900-1904): elected to the court in 1904. See Albert M. Rosenblatt, *William Edward Werner*, HISTOR. SOC'Y N.Y. CTS., <http://www.nycourts.gov/history/legal-history-new-york/history-legal-bench-court-appeals.html> (last visited Aug. 20, 2017).

10. Edgar Cullen (1900-1904): elected to the court in 1904. See Fawn Arnold, *Edgar M. Cullen*, HISTOR. SOC'Y N.Y. CTS., <http://www.nycourts.gov/history/legal-history-new-york/history-legal-bench-court-appeals.html> (last visited Aug. 20, 2017).

11. Judson Landon (1900-1902). See *Judson Landon*, HISTOR. SOC'Y N.Y. CTS., <http://www.nycourts.gov/history/legal-history-new-york/history-legal-bench-court-appeals.html> (last visited Aug. 20, 2017).

³⁵ See N.Y. CONST. art. VI, § 2; N.Y. JUD. LAW § 62 (McKinney 2017); James W. B. Benkart, *Charles David Breitel*, HISTOR. SOC'Y N.Y. CTS., <http://www.nycourts.gov/history/legal-history-new-york/history-legal-bench-court-appeals.html> (last visited Aug. 20, 2017).

³⁶ Vincent R. Johnson, *Judge Bernard S. Meyer: First Merit Appointee to the New York Court of Appeals*, 75 ALB. L. REV. 963, 970 n.40 (2012).

³⁷ *Id.* at 970 n.37.

³⁸ Joel Stashenko, Cravath Partner Nominated for N.Y. Court of Appeals, N.Y.L.J., Jan. 16, 2017.

³⁹ See Joseph W. Bellacosa, *A Quarter Century in Albany: A Period of Constructive Progress*, 72 N.Y. ST. B.J. 5, 7 (2000); JUDGES, *supra* note 4, at xxxvi, 772.

⁴⁰ See *infra* Table 1. The number of judges noted includes the judges in the chart below and: (1) the "Second Division" judges, whose authority was co-extensive with the regular post-

an associate judge on the court.⁴¹ Interestingly, Judge Charles Andrews of Syracuse served as Chief Judge and associate judge on two separate occasions, as noted below, between 1870 and 1897.⁴² Judge Maynard served as an associate judge of the court by appointment only (rather than by election), for two different vacancies that ran consecutively from January 1892 to December 1893.⁴³ Judge Judson Landon served both as a member of the Second Division and as an “additional judge,” but was never a full-time member of the court.⁴⁴

III. CHART OF THE COURT OF APPEALS JUDGES SINCE JULY 4, 1870, AND WHO EACH REPLACED ON THE COURT⁴⁵

I started this chart with the court of 2016 and in the seniority of the judges from left to right. It was easy to get the judges in the correct column since appointments began in 1978, and the Commission on Judicial Nomination’s website lists each vacancy and who replaced the departing judge.⁴⁶ It was much more difficult when multiple judges were elected to the court in the same year. Fortunately, many judges were appointed to fill a vacancy first and then sought election to a full fourteen-year term on the court afterward. In November 1972, for example, Judges Jones, Wachtler, and Gabrielli were all elected and took office on January 1, 1973.⁴⁷ I was able to place them correctly (I believe) based on who replaced them as associate judge, as well as on information in

1870 court; and (2) the “additional judges” of the court, who sat with the regular post-1870 court as equal members while serving as such. JUDGES, *supra* note 4, at 995. It does not include any “acting” Chief Judges of the court, where the senior associate judge served in that capacity due to a temporary vacancy in the Chief Judge position. See *infra* Table 1.

⁴¹ See *infra* Table 1.

⁴² JUDGES, *supra* note 4, at 180–81.

⁴³ *Id.* at 257, 258.

⁴⁴ *Id.* at 996, 1002–03.

⁴⁵ To see the geographic diversity of the court, “D” denotes a “downstate” judge and “U” denotes an “upstate” judge. For point of reference, Judge Rosenblatt from Poughkeepsie is the most southern judge labeled an “upstate” judge in my chart. The court has generally had a four downstate and three upstate judge balance through most of the last fifty years. Notably, closer in time to 1870 and for years after that, the number of upstate judges dominated over downstate judges in the seven-judge makeup of the court. See *infra* notes 49–85.

⁴⁶ See N.Y. STATE COMM’N ON JUDICIAL NOMINATION, CANDIDATES NOMINATED FOR APPOINTMENT TO THE NEW YORK STATE COURT OF APPEALS: 1979 TO PRESENT, <http://nysegov.com/cjn/assets/documents/CJN%20Nominees%20for%20Court%201979%20to%20present.pdf> (last visited Aug. 20, 2017).

⁴⁷ See James T. Potter, *Domenick Luciano Gabrielli*, in JUDGES, *supra* note 4, at 715–16.

Judge Rosenblatt's book.⁴⁸

If I have committed any errors they are my fault and they are unintentional. This project was a great labor of love because of my love and admiration for the New York Court of Appeals, the greatest common law court in the United States.

Table 1.⁴⁹ Whose Seat Do You Have?

Year	Chief J.	Assoc.	Assoc.	Assoc.	Assoc.	Assoc.	Assoc.
2018				Feinman-D			
2017		Wilson-D					
2016	DiFiore-D						Garcia-D
2015					Fahey-U	Stein-U	
2013			Rivera-D	A-Salaam-D			
2009	Lippman-D						
2007				T. Jones-D			
2006		Pigott-U					
2003					R. Smith-D		Read-U
2000						Graffeo-U	
1999				Rosenblatt-U			
1997					Wesley-U		
1994			Ciparick-D				
1993	Kaye-D						Levine-U
1992		G.B. Smith-D					
1987						Bellacosa-D	
1986			Hancock-U				
1985	Wachtler-D	Alexander-D		Titone-D			

⁴⁸ Judge Rosenblatt was kind enough to review my chart and gave his approval, stating: "I do not see that I can add anything. Yours is a unique and stellar work." Interview with Albert M. Rosenblatt, Former Associate Judge, New York Court of Appeals, in Poughkeepsie, New York (February 13, 2017). Thank you, Judge Rosenblatt, this would have been impossible without your book.

⁴⁹ All information in this chart is from Judge Rosenblatt's book. *See generally* JUDGES, *supra* note 4.

1983					Simons-U		Kaye-D* ⁵⁰
1979	Cooke-U					Meyer-D	
1975						Cooke-U*	Fuchsberg-D
1974	Breitell-D ⁵¹					Rabin-D ⁵²	Stevens-D
1973		Jones-U		Wachtler-D*	Gabrielli-U		
1969		Gibson-U ⁵³					
1968			Jasen-U				
1967	Fuld-U ⁵⁴					Breitell-D*	
1966		Keating-U/D					
1964					Bergan-U		
1963				Scileppi-D			
1960	Desmond-U				Foster-U ⁵⁵		
1955	Conway-D ⁵⁶						Burke-D
1953	Lewis-U ⁵⁷		Van Voorhis-U ⁵⁸				

⁵⁰ This notation denotes that this associate judge later became Chief Judge.

⁵¹ Appointed effective January 1, 1967, to fill the vacancy created by Judge Fuld's election as Chief Judge; elected to full term in November 1967. See James W.B. Benkardt, *Charles David Breitell*, in JUDGES, *supra* note 4, at 688; Sidney H. Stein & Jonathan Goldin, *Stanley Howells Fuld*, in JUDGES, *supra* note 4, at 595.

⁵² Judge Rabin and Judge Harold Stevens were appointed to the court in 1974. See Robert J. Rabin, *Samuel Rabin*, in JUDGES, *supra* note 4, at 748.

⁵³ Appointed in September 1969 to fill the vacancy created by Judge Keating's resignation to be U.S. Ambassador to India; elected in November 1969. See Robert Barker, *James Gibson*, in JUDGES, *supra* note 4, at 706.

⁵⁴ Appointed in April 1946 to fill the remainder of Judge George Medalie's term when he died; elected in 1946 and re-elected associate judge in 1960; elected Chief Judge in 1966. See Stein & Goldin, *supra* note 49, at 595.

⁵⁵ Appointed in 1960 to fill the vacancy caused by the election of Judge Desmond as Chief Judge in 1960; elected in November 1960 to full term. See Albert M. Rosenblatt & Timothy M. Kerr, *Sydney Francis Foster*, in JUDGES, *supra* note 4, at 649-50.

⁵⁶ Appointed associate judge in early 1940 to fill the vacancy due to Judge John O'Brien's resignation; elected to full term in November 1940; appointed Chief Judge in January 1955. See Louise G. Conway, *Albert Conway*, in JUDGES, *supra* note 4, at 533.

⁵⁷ Appointed in January 1940 to fill the vacancy created by Judge Irving Hubbs's resignation; elected to full term in November 1940; appointed Chief Judge in April 1953 after the death of Chief Judge Loughran; elected to full term in November 1953. See Mary Lou Crowley, *Edmund Harris Lewis*, in JUDGES, *supra* note 4, at 528.

⁵⁸ Appointed in 1953 to replace Judge Lewis, who was appointed Chief Judge; elected to full term in November 1954. See Eugene Van Voorhis, *John Van Voorhis*, in JUDGES, *supra*

1950				Froessel-D			
1949				Bromley-D ⁵⁹			
1946						Fuld-D*	
1945	Loughran-U ⁶⁰	Dye-U				Medalie-D ⁶¹	
1943				Thacher-D ⁶²			
1941					Desmond-U*		
1940	Lehman-D		Lewis-U*		Sears-U ⁶³		Conway-D*
1937		Rippey-U					
1935	Crane-D ⁶⁴			E. Finch-D			
1934						Loughran-U*	
1932	Pound-U ⁶⁵	Crouch-U ⁶⁶					
1929			Hubbs-U				

note 4, at 625–26.

⁵⁹ Appointed effective February 1, 1949, to succeed Judge Thomas Thacher, who resigned due to illness; lost 1949 election. John Hupper, *Bruce Ditmas Bromley*, in *JUDGES*, *supra* note 4, at 605.

⁶⁰ Appointed in May 1934 to fill the vacancy created by Judge Henry Kellogg's resignation; elected to full term as associate judge in November 1934; appointed Chief Judge in 1945 due to the death of Chief Judge Lehman; elected to full term as Chief Judge in 1946. See David J. Kaplan, *John Thomas Loughran*, in *JUDGES*, *supra* note 4, at 500–01.

⁶¹ Appointed in September 1945 to fill the vacancy created by Judge Loughran's resignation when he was appointed Chief Judge; died in office in March 1946. See Jennifer O'Friel, *George Zerdin Medalie*, in *JUDGES*, *supra* note 4, at 586–87.

⁶² Appointed in May 1943 to fill the vacancy created by Judge Edward Finch's retirement; elected to full term in November 1943; retired in 1948 due to failing health. See Avshalom Yotam, *Thomas Day Thacher*, in *JUDGES*, *supra* note 4, at 566.

⁶³ Appointed to fill the vacancy caused by Judge Lehman becoming Chief Judge in January 1940; remained until his mandatory retirement at the close of 1940. See Suzanne Aiardo, *Charles Brown Sears*, in *JUDGES*, *supra* note 4, at 521, 523.

⁶⁴ Elected associate judge in 1920; elected Chief Judge in November 1934. See Barbara B. Mistishen, *Frederick Evan Crane*, in *JUDGES*, *supra* note 4, at 427–28.

⁶⁵ Elected associate judge in November 1916; re-elected in 1930; appointed effective March 8, 1932, as Chief Judge to replace Chief Judge Cardozo upon his appointment to the U.S. Supreme Court; elected Chief Judge in November 1932; retired at age seventy on December 31, 1934. See Robert S. Smith, *Cuthbert Winfred Pound*, in *JUDGES*, *supra* note 4, at 411–12.

⁶⁶ Appointed in 1932 to fill the vacancy created by the appointment of Judge Pound to Chief Judge; elected to full term in 1934; retired December 31, 1936, at the age of seventy. See Barbara M. Mistishen, *Leonard Callendar Crouch*, in *JUDGES*, *supra* note 4, at 492–93.

1927	Cardozo-D ⁶⁷					Kellogg-U	O'Brien-D ⁶⁸
1924					Lehman-D*		
1922			W. Andrews-U ⁶⁹				
1921			Chase-U ⁷⁰	Crane-D*			
1919			Elkus-D ⁷¹				
1917	Hiscock-U ⁷²	Pound-U*				McLaughlin-U ⁷³	Cardozo-D*
1916							
1915		Seabury-D					
1914	W. Bartlett-D	Hornblower-D ⁷⁴				Hiscock-U*	
1913			Cuddeback-U		Hogan-U		
1910				Collin-U ⁷⁵			

⁶⁷ Appointed associate judge in January 1917; elected to full term in November 1917; elected Chief Judge in 1926. See Judith S. Kaye, *Benjamin Nathan Cardozo*, in *JUDGES*, *supra* note 4, at 381.

⁶⁸ Appointed effective January 1927 to fill the vacancy created by the appointment of Judge Cardozo as Chief Judge; elected to full term in November 1927; resigned effective December 31, 1939, and then passed away on December 25, 1939. See Justin Long, *John Francis O'Brien*, in *JUDGES*, *supra* note 4, at 476–77.

⁶⁹ Elected in November 1921 following the death of Judge Chase; retired on December 31, 1928. See Brian Quinn, *William Shankland Andrews*, in *JUDGES*, *supra* note 4, at 436–37.

⁷⁰ Elected in November 1920; died in office in June 1921. See Albert M. Rosenblatt et al., *Emory Albert Chase*, in *JUDGES*, *supra* note 4, at 337.

⁷¹ Appointed in 1919 to fill Judge Cuddeback's unexpired term after his death; defeated in 1920 election by Judge Emory Chase. See Sebrina A. Barrett, *Abram I. Elkus*, in *JUDGES*, *supra* note 4, at 444–45.

⁷² Elected in November 1913; elected Chief Judge in 1916. See Albert M. Rosenblatt & Timothy M. Kerr, *Frank Harris Hiscock*, in *JUDGES*, *supra* note 4, at 364.

⁷³ Appointed on January 16, 1917, to fill the vacancy created by Judge Hiscock's election as Chief Judge in November 1916; elected to full term in November 1917; retired at age seventy in December 1926. See James Costello, *Chester Bentine McLaughlin*, in *JUDGES*, *supra* note 4, at 421.

⁷⁴ Appointed in February 1914 to replace W. Bartlett following his election as Chief Judge; died in June 1914. See Albert M. Rosenblatt, *William Butler Hornblower*, in *JUDGES*, *supra* note 4, at 371.

⁷⁵ Appointed in October 1910 due to Judge E. Bartlett's death; elected in November 1910 and served until 1920 when he reached the mandatory retirement age of seventy. See Thomas M. Kernan, *Frederick Collin*, in *JUDGES*, *supra* note 4, at 331.

1908		W. Bartlett-D*					
1905							Werner-U ⁷⁶
1904	Cullen-D ⁷⁷						
1898	Parker-U						
1896							Martin-U
1895			Haight-U		Vann-U ⁷⁸		
1894				E. Bartlett-U/D			
1893	C. Andrews-U ⁷⁹						Maynard-D
1892	Earl ⁸⁰			Maynard-D ⁸¹			

⁷⁶ Elected associate judge in November 1904; died in office in March 1916. See Albert M. Rosenblatt, *William Edward Werner*, in *JUDGES* *supra* note 4, at 316, 317.

⁷⁷ Appointed Chief Judge in 1904 upon Chief Judge Parker's resignation to run for President of the United States; elected in November 1904; reached retirement age of seventy in 1913. See Fawn Arnold, *Edgar Montgomery Cullen*, in *JUDGES*, *supra* note 4, at 310.

⁷⁸ On December 31, 1895, he was appointed associate judge to fill the vacancy caused by the resignation of Judge Peckham Jr., who had been appointed to the U.S. Supreme Court; elected in November 1896 to a full term on the Court of Appeals; was re-elected in 1910 and remained on the court until the end of 1912 when he reached the constitutional age limit of seventy. See Lisa LeCours, *Irving Goodwin Vann*, in *JUDGES*, *supra* note 4, at 285, 286.

⁷⁹ Elected as an associate judge on the Court of Appeals in 1870 under the 1870 reorganization of the court by the 1869 amendment to the New York State Constitution; in 1881, he was appointed as Chief Judge to succeed Chief Judge Folger, who had resigned to accept the office of Secretary of the U.S. Treasury. See Brian Quinn, *Charles Andrews*, in *JUDGES*, *supra* note 4, at 180. In November 1882, Andrews lost the election for Chief Judge to his next-door neighbor, William C. Ruger. *Id.* "After his defeat, Judge Andrews resumed his place as associate judge and at the end of his first term in 1885 was re-elected as associate judge for a second term of 14 years." *Id.* at 180-81. In 1892, Andrews was elected Chief Judge, replacing Ruger, who had passed away in January. *Id.* at 181. On December 31, 1897, Andrews retired after having served twenty-seven years. *Id.*

⁸⁰ Appointed in November 1875 to fill the vacancy due to the death of Judge Martin Grover; elected in November 1876 to a full fourteen-year term; re-elected in 1890; appointed in early 1892 as Chief Judge to succeed Chief Judge Ruger who passed away in 1892; left office on December 31, 1894, having turned seventy during the year. See Veronica Benigno, *Robert Earl*, in *JUDGES*, *supra* note 4, at 130.

⁸¹ Appointed in January 1892 to fill an associate judge vacancy created by Robert Earl becoming Chief Judge; re-appointed in December 1892 to replace Judge Andrews upon his elevation to Chief Judge; lost election in November 1893. See Jason C. Rubinstein, *Isaac Horton Maynard*, in *JUDGES*, *supra* note 4, at 256-58.

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Judicial Succession on the Court of Appeals

1295

1890		D. O'Brien-U					
1888						Gray-D ⁸²	
1887					Peckham Jr.-U		
1883	Ruger						C. Andrews-U*
1881	C. Andrews-U						Tracy-U/D ⁸³
1880	Folger-U ⁸⁴		F. Finch-U ⁸⁵				
1879		Danforth-U					
1878		Hand-U ⁸⁶					
1875				Earl-U	T. Miller-U		
1874					Johnson-D ⁸⁷		
1870	Church-U	Allen-U	Folger-U	Grover-U	Peckham Sr.-U	Rapallo-D	C. Andrews-U*

⁸² Appointed in January 1888 to fill the vacancy from Judge Rapallo's death; elected November 1888; re-elected 1902; retired at age seventy at the end of 1913. See Margery Corbin Eddy, *John Clinton Gray*, in *JUDGES*, *supra* note 4, at 242, 244.

⁸³ Appointed in December 1881 in place of Judge C. Andrews who was appointed Chief Judge; remained on the court for only one year, declining re-nomination in 1882 after work affected his health. See Susan S. Dautel, *Benjamin Franklin Tracy*, in *JUDGES*, *supra* note 4, at 221.

⁸⁴ Appointed Chief Judge in 1880 to replace Chief Judge Church upon his death; elected Chief Judge in November 1880; resigned in 1881 to serve as Secretary of the U.S. Treasury. See Sebrina A. Barrett, *Charles James Folger*, in *JUDGES*, *supra* note 4, at 164.

⁸⁵ Appointed on May 25, 1880, to fill the vacancy of Judge Folger being elevated to Chief Judge; re-appointed on January 1, 1881; elected to a fourteen-year term in November 1881. See Jean Joyce, *Francis Miles Finch*, in *JUDGES*, *supra* note 4, at 210, 211.

⁸⁶ Appointed in June 1878 to fill the vacancy created by the death of Judge William Allen; left the court following the election of Judge Danforth. See Joshua Jacobson, *Samuel Hand*, in *JUDGES*, *supra* note 4, at 196.

⁸⁷ Appointed effective January 1, 1874, to replace Judge Peckham Sr., who passed away unexpectedly; lost election in 1874 to Judge Miller. See Clifton R. Branch Jr., *Alexander Smith Johnson*, in *JUDGES*, *supra* note 4, at 42.