JUDGE ROWAN D. WILSON: AN ADVOCATE ON THE COURT OF APPEALS

Sarah A. Besson[*]

I. INTRODUCTION

To most, very little was known about the Long Island resident appointed to New York's highest court last February. Most outsiders likely would have expected to see a Judge heavily influenced by his work in commercial litigation. Few, perhaps apart from those who know him well, would have predicted that Judge Rowan Wilson's strongest opinions would be in criminal cases.

II. BACKGROUND

In terms of prior experience, Judge Rowan D. Wilson is in many ways an anomaly on the current New York State Court of Appeals. Unlike his six colleagues, Judge Wilson has never been a judge or worked in government (apart from a two-year clerkship at the Ninth Circuit after graduating from Harvard Law School in 1984).[1] Instead, he brings to the Court thirty years of complex commercial litigation experience from the powerhouse law firm Cravath, Swaine & Moore LLP.[2] During his long tenure at Cravath, where he became the firm's first African American partner,[3] Judge Wilson demonstrated a commitment to serving the public as leader of Cravath's *pro bono* program and as Chair of the Neighborhood Defender Service of Harlem.[4]

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[*] J.D. 2018, Albany Law School; B.A. 2013, Binghamton University. Thank you to my friends and colleagues on the *Albany Law Review* for their tireless commitment to Volume 81.

[1] *See Honorable Rowan D. Wilson*, STATE OF NEW YORK COURT OF APPEALS, https://www.nycourts.gov/ctapps/jwilson.htm (last visited May 6, 2018).

[2] *See id.*

[3] *See* David B. Wilkins, Symposium, *Brown at Fifty: from "Separate is Inherently Unequal" to "Diversity is Good for Business": The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548, 1552 n.25 (2004).

[4] *See Cravath Partner Rowan Wilson Nominated as Associate Judge on New York State Court of Appeals*, CRAVATH, SWAINE & MOORE LLP (Jan. 16, 2017), https://www.cravath.com/Cravath-Partner-Rowan-Wilson-Nominated-as-Associate-Judge-on-New-York-State-Court-of-

Judge Wilson was no stranger to the Court of Appeals selection process; he had been on the short list five times since 2013 before finally being chosen by Governor Andrew Cuomo to replace Judge Eugene Pigott.[5] On February 6, 2017, Wilson was confirmed as an Associate Judge on the Court of Appeals.[6] It was expected that he would be the last appointment to the Court until 2021[7]—a prediction that was vitiated by the unexpected death of Judge Sheila Abdus-Salaam a mere two months after Wilson joined the Court.[8] Prior to her untimely death, the presence of both Abdus-Salaam and Wilson on the Court represented the first time in history that two African Americans served concurrently on the New York State Court of Appeals.[9]

III. WILSON ON THE COURT OF APPEALS

Observers of the Court of Appeals have been eager to see what Judge Wilson will do in action, considering that his lack of judicial experience has given no insight into any judicial philosophy he may have. Every vote that he casts is contributing to his previously nonexistent record, and his written decisions give snapshot views of how he perceives his role as a judge on the state's highest court. In researching Judge Wilson's decisions from 2017, one aspect stood out clearer than any other: Judge Wilson—while he may be the "rookie" on the Court—is not afraid to dissent from his colleagues. In fact, in the time from February 16, 2017, to December 19, 2017, Judge Wilson dissented fourteen times; ten of those were dissents that he wrote

Appeals-01-16-2017/; *The Right Leader for New York's Courts*, N.Y. TIMES (Nov. 9, 2015), https://www.nytimes.com/2015/11/09/opinion/the-right-leader-for-new-yorks-courts.html?_r=0.

[5] *See* Colby Hamilton, *Cuomo Taps Private Litigator Rowan Wilson for High Court*, POLITICO (Jan. 16, 2017), https://www.politico.com/states/new-york/albany/story/2017 /01/ private-litigator-rowan-wilson-selected-by-cuomo-to-join-the-states-high-court-108764. When asked about being passed over five times during his Judiciary Committee Public Hearing, Judge Wilson joked "my guess is that they found five better qualified people to be my colleagues, and that they realized that I could probably use a few more years of saving money because I have a five-year old." New York Senate, *Senator Diaz Questions Rowan D. Wilson at the Judiciary Committee Public Hearing*, YOUTUBE (Feb. 6, 2017), https://www.youtube.com /watch?v=IMMdV6nwKUk.

[6] *See* Honorable Rowan D. Wilson, *supra* note 1.

[7] *See* Hamilton, *supra* note 5.

[8] *See* Alan Feuer, *Death of Pioneering New York Judge is Ruled a Suicide*, N.Y. TIMES (July 26, 2017), https://www.nytimes.com/2017/07/26/nyregion/judge-sheila-abdus-salaam-suicide.html.

[9] *See* Doreen McCallister, *First African-American Female Judge on New York's Top Court Found Dead*, NPR (Apr. 13, 2017), https://www.npr.org/sections/thetwo-way /2017/04/13/523704631/first-african-american-female-judge-on-new-yorks-top-court-found-dead.

himself,[10] and the remaining four were dissents of colleagues that he joined.[11] This number of fourteen dissents is more than any of his other colleagues during that time period (although Judge Garcia is close behind, having dissented a total of thirteen times, with eleven of those being dissents written by himself).[12] Additionally, Judge Wilson wrote two dissents and a concurrence before he issued his first majority opinion in June.[13]

Table 1: Dissents Written or Joined from February 6, 2017 December16, 2017[14]

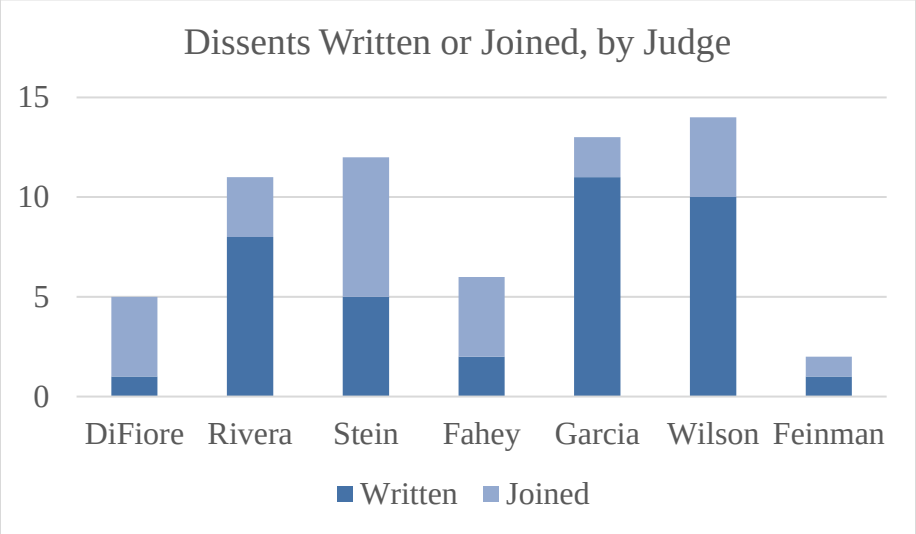
[10] *See* Lisa T. v. King E.T., 30 N.Y.3d 548, 557 (2017) (Wilson, J., dissenting); Chauca v. Abraham, 89 N.E.3d 475, 490 (N.Y. 2017) (Wilson, J., dissenting); People v. Arjune, 89 N.E.3d 1207, 1226 (N.Y. 2017) (Wilson, J., dissenting); New York v. Floyd Y., 87 N.E.3d 143, 145 (N.Y. 2017) (Wilson, J., dissenting); People v. Garvin, 88 N.E.3d 319, 345 (N.Y. 2017) (Wilson, J., dissenting); *In re* Hennel, 80 N.E.3d 1017, 1024 (N.Y. 2017) (Wilson, J., dissenting); Wilson v. Dantas, 80 N.E.3d 1032, 1032 (N.Y. 2017) (Wilson, J., dissenting); People & C. v. Viruet, 81 N.E.3d 828, 832 (N.Y. 2017) (Wilson, J., dissenting); *In re* 381 Search Warrants Directed to Facebook, Inc., 78 N.E.3d 141, 155 (N.Y. 2017) (Wilson, J., dissenting); People v. Smith, 75 N.E.3d 84, 91 (N.Y. 2017) (Wilson, J., dissenting).

[11] *See* Desrosiers v. Perry Ellis Menswear, LLC, 30 N.Y.3d 488, 499 (2017) (Stein, J., dissenting); People v. Hardee, 88 N.E.3d 354, 355, 361 (N.Y. 2017) (Stein, J., dissenting); People v. Valentin, 74 N.E.3d 632, 635, 639 (N.Y. 2017) (Stein, J., dissenting); O'Brien v. Port Auth. of N.Y. & N.J., 74 N.E.3d 307, 311, 318 (N.Y. 2017) (Rivera, J., dissenting).

[12] *See infra* Table 1.

[13] *See In re* Avella v. City of New York, 80 N.E.3d 982, 983 (N.Y. 2017) (Wilson, J. writing the opinion of the court on June 6, 2017); Kimmel v. New York, 80 N.E.3d 370, 380 (N.Y. 2017) (Wilson, J., concurring in the result and writing a separate opinion on May 9, 2017); *Smith*, 75 N.E.3d at 91 (Wilson, J., dissenting on March 28, 2017); *In re 381 Search Warrants Directed to Facebook, Inc.*, 78 N.E.3d at 155 (N.Y. 2017) (Wilson, J., dissenting on April 4, 2017).

[14] *See infra* Appendix Table 1. The chosen time of the data of this Table is based upon the timing of Judge Wilson's first opinion (February 6, 2017) and the last decisions of the Court of Appeals handed down in 2017 (December 17, 2017). Where a judge, for example, both concurred in the dissent of a colleague and also published a dissent of his or her own, this was only counted as a dissent written for sake of accuracy.



Interestingly, Judge Wilson has only ever joined dissents of his colleagues written by Judge Rivera or Judge Stein.[15] In some regards, this is unsurprising because they are among two of the most frequent dissenters on the Court.[16] However, as of January 1, 2018, Judge Wilson had never joined in a dissent of Judge Michael Garcia, despite many opportunities to do so considering that Judge Garcia is the second most frequent dissenter after Judge Wilson.[17] This can perhaps be accounted for by the differing political ideologies of the two judges: Judge Garcia is currently the only Republican on the seven-member court.[18]

[15] *See O'Brien*, 74 N.E.3d at 311, 318 (Rivera, J., dissenting, Wilson J. joining in dissent); *Valentin*, 74 N.E.3d at 635, 639 (Stein, J., dissenting, Wilson, J. joining in dissent); *Garvin*, 88 N.E.3d at 336, 345 (Rivera, J., dissenting, Wilson J. joining in dissent and writing separate dissent); *Hardee*, 88 N.E.3d at 355, 361 (Stein, J. dissenting, Wilson, J. joining in dissent); *Arjune*, 89 N.E.3d at 1217, 1226 (Stein, J., dissenting, Wilson J. joining in dissent and writing separate dissent); *Derosiers*, 30 N.Y.3d at 499, 507 (Stein, J., dissenting, Wilson J. joining in dissent).

[16] *See supra* Table 1.

[17] *See* Obey v. City of New York, 73 N.E.3d 850, 850 (N.Y. 2017) (Garcia, J., dissenting); *Kimmel*, 80 N.E.3d at 380, 381 (Wilson, J., concurring; Garcia, J., dissenting); City of New York v. N.Y. St. Nurses Assn., 82 N.E.3d 441, 444, 447 (N.Y. 2017) (Garcia, J., dissenting); Makinen v. City of New York, 86 N.E.3d 514, 520, 526 (N.Y. 2017) (Garcia, J., dissenting); Carlson v. Am. Intl. Grp., Inc., 89 N.E.3d 490, 493, 504 (N.Y. 2017) (opinion written by Wilson, J.; Garcia, J., dissenting); Lau v. Margaret E. Pescatore Parking, Inc., 90 N.E.3d 1276, 1276 (Nov. 21, 2017) (Garcia, J., dissenting); Torres v. Cergnul, 88 N.E.3d 899, 899 (N.Y. 2017) (Garcia, J., dissenting); B.F. v. Reproductive Med. Assoc. of N.Y., LLP, 30 N.Y.3d 608, 619 (2017) (Garcia, J., dissenting); People v. Smith, 30 N.Y.3d 626, 631, 638 (Dec. 19, 2017) (Garcia, J., dissenting).

[18] *See* Rick Karlin, *N.Y. State Court of Appeals Still a Liberal Bastion*, TIMES UNION (Nov.

Judge Wilson's dissents during his first year of judging indicate that he is a fierce defender of the rights of criminal defendants and that he has come to the bench prepared to challenge the status quo when he feels an error has been made in the Court's interpretation of a New York statute.

A. People v. Smith

The very first opinion written by Judge Wilson was a dissent in *People v. Charles Smith*. Charles Smith had been charged with attempted robbery in the first degree after walking into a check cashing store, "demand[ing] money, [telling] her repeatedly that he had a gun, verbally threaten[ing] to shoot her, and 'show[ing]' her, by means of a hand placed under his sweatshirt, that a gun was concealed there."[19] When Smith was arrested, there was no firearm found on his person.[20] In order for Smith to be found guilty of attempted robbery, it must have been proven that he "display[ed] what appear[ed] to be a pistol, revolver, rifle, shotgun, machine gun or other firearm[.]"[21] Judge Fahey, writing for the Court, affirmed Smith's conviction based on the Court's 1989 decision in *People v. Lopez*,[22] where the Court had stated that "[a] towel wrapped around a black object, a toothbrush held in a pocket, or even a hand consciously concealed in clothing may suffice [in constituting display of a firearm within the meaning of Penal Law § 160.15(4)], if under all the circumstances the defendant's conduct could reasonably lead the victim to believe that a gun is being used during the robbery."[23] Judge Fahey also noted that Smith could have requested an affirmative defense to reduce the offense to robbery in the second degree but that he failed to do so.[24]

Judge Wilson's sharply worded dissent began: "A homeless man walks into a check-cashing store. This sounds like the start of a bad joke, but instead is filled with pathos."[25] Judge Wilson argued that

19, 2016), https://www.timesunion.com/tuplus-local/article/N-Y-state-Court-of-Appeals-still-a-liberal-10625604.php.

[19] People v. Smith, 75 N.E.3d 84, 84–85 (N.Y. 2017).

[20] *See id.* at 85.

[21] N.Y. PENAL LAW § 160.15[4] (McKinney 2018).

[22] People v. Lopez, 535 N.E.2d 1328 (N.Y. 1989).

[23] *Id.* at 1331 (citing People v. Baskerville, 457 N.E.2d 752, 754 (N.Y. 1983); People v. Lockwood, 417 N.E.2d 1244 (N.Y. 1980); People v. Knowles, 436 N.Y.S.2d 25, 25–26 (App. Div. 1981); People v. Gilliard, 72 N.Y.2d 877, 878 (N.Y. 1988)).

[24] *See Smith*, 75 N.E.3d at 90–91 (quoting *Lopez*, 535 N.E.2d at 1332 n.2) ("[R]obbery in the second degree is the appropriate offense when, in fact, the defendant has simply used his hand to create the impression he is armed with a gun.").

[25] *Smith*, 75 N.E.3d at 91.

the legislative intent and plain meaning of the statute was at odds with the Court's interpretation of section 160.15.[26] In regards to the plain meaning of the statute, section 160.15 requires that the defendant "[*d*]*isplay*[] what appears to be a . . . firearm[.]"[27] After going through definitions of "display", Judge Wilson stated that,

> In Mr. Smith's case, even if he had possessed a firearm hidden under his hoodie, we would have referred to it as "concealed", not "displayed." To reach the conclusion that the legislature meant what, in common parlance, would be the opposite of what it wrote (i.e., "displayed" included "concealed"), we would need legislative history powerfully demonstrating that intent.[28]

Judge Wilson then went on to discuss the legislative intent behind Penal Law § 160.15 and noted that it was intended to make the job of the prosecution easier, since the prior statute required that the prosecution meet its burden in proving that "a gun openly displayed during the crime was loaded and operable."[29] By amending the statute, essentially a presumption was created that the gun was loaded and operable and the burden shifted to the defendant to show that "the firearm displayed was either unloaded or incapable of being fired"[30] as an affirmative defense.[31] Wilson argued that the majority (and prior Court of Appeals decisions beginning with *People v. Baskerville*) mistakenly placed the emphasis on the perception of and effect on the victim, when the legislative intent never meant for that to be a factor and was instead related to easing the burden on the prosecution.[32] "Neither the legislature nor Governor Rockefeller intended that a defendant, who displayed no object whatsoever during the commission of the crime, could be convicted of attempted robbery in the first degree."[33] The dissent subtly makes the reader question what justice is served by the imposition of a 16-year-to-life prison sentence for a homeless man who attempted to rob a check-cashing store without any sort of actual weapon.[34]

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[26] *Id.*

[27] N.Y. PENAL LAW § 160.15(4) (emphasis added).

[28] *Smith*, 75 N.E.3d at 92.

[29] *Id.* at 92 (citing People v. Ahmed, 277 N.Y.S.2d 444, 445 (App. Div. 1967); People v. Gordon, 243 N.Y.S.2d 573, 574–75 (App. Div. 1963)).

[30] *Smith*, 75 N.E.3d at 92.

[31] *See id.*

[32] *See Smith*, 75 N.E.3d at 94, 98 (citing People v. Baskerville, 457 N.E.2d 752 (N.Y. 1983)).

[33] *Id.* at 92.

[34] *See id.* at 91.

Judge Wilson was the only dissenter in *People v. Smith*.[35] His first written opinion challenged the decision of his colleagues and the prior precedent of the Court. But it seems that Judge Wilson is not afraid to stand alone in advocating for change and justice, since he would continue to do it throughout his first year on the bench.

B. Matter of State of New York v. Floyd Y.[36]

Judge Wilson sided with the defendant again in *Matter of State of New York v. Floyd Y.*[37] In *Floyd Y.*, the Court considered whether the evidence presented was legally sufficient to establish that the respondent had "'serious difficulty in controlling' his sexual conduct."[38] Under Mental Hygiene Law § 10.03(e), sex offenders can be subjected to civil confinement if it can be shown that they have a "mental abnormality."[39] The definition of "mental abnormality" includes a two-prong test where the offender must have a "'condition, disease or disorder . . . that [1] predisposes [a person] to the commission of conduct constituting a sex offense' and that '[2] results in that person having serious difficulty in controlling that conduct.'"[40]

The court memorandum constituting the majority decision found that the evidence was sufficient for a rational jury to conclude that Floyd Y. "had 'serious difficulty in controlling' his sexual conduct."[41] This conclusion was reached based on Floyd Y. having diagnoses of both pedophilia and antisocial personality disorder—a combination that makes men "more likely to act out sexually with children" according to the American Psychiatric Association.[42] There was additional evidence offered that Floyd Y. had admitted to struggling with sexual urges during sexual offender treatment, that he had been removed from sex offender treatment for being difficult, that he had explained his behavior by stating, "I want what I want when I want it," and that he had no relapse prevention program.[43]

Judge Wilson's dissent illuminated deficiencies in both the evidence and the legal standard, as well as the way that the two

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[35] *See id.* at 91, 99.

[36] *In re* New York v. Floyd Y., 87 N.E.3d 143 (N.Y. 2017).

[37] *See id.* at 145 (Wilson, J., dissenting).

[38] *Id.* at 144.

[39] N.Y. MENTAL HYG. LAW § 10.03(e) (McKinney 2016).

[40] *Floyd Y.*, 87 N.E.3d at 145–46 (Wilson, J., dissenting) (quoting N.Y. MENTAL HYG. LAW § 10.03(e)).

[41] *Id.* at 144–45.

[42] *Id.* at 144 (citing AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 699, 5th ed. 2013).

[43] *Id.*

categories are incompatible. For the evidence, Judge Wilson noted that his diagnosis of pedophilia had been made nearly twenty years ago when Floyd Y. was first incarcerated.[44] Floyd Y.'s statements during sex offender treatment about struggling with sexual urges, as well as his "I want what I want when I want it" statement, were similarly stale—having occurred over a decade earlier.[45] The dissent additionally highlights the conundrum presented by using statements made during sex offender treatment against the individual: "There is no protection in article 10 against using statements made while participating in sex offender treatment against the offender in later civil commitment proceedings. Conversely, failing to participate fully in sex offender treatment, which undoubtedly requires confession of past offenses, will also be used against the offender."[46]

Wilson's dissent did more than simply draw attention to the deficiency of the evidence that would subject Floyd Y. to indefinite confinement—it also brought to light serious deficiencies in the legal standard itself. Judge Wilson noted that "[m]ental health organizations have criticized . . . laws [such as N.Y. Mental Health Law § 10.03(i)] as scientifically unsound."[47] Most concerning is the standard at issue in the case for what constitutes "serious difficulty in control[ling]" sexual impulses and the near impossibility of differentiating whether an individual's mental abnormality causes the serious difficulty in controlling his or her behavior or whether that individual is a "volitional recidivist" whose behavior has redress in the criminal justice system.[48] Judge Wilson avers that "the legislative and judicial branches have erred in uniting psychiatric principles and an impossible legal standard in an unhappy marriage, when the experts themselves have plainly objected."[49]

Like in *State v. Smith*, here, too, Judge Wilson was alone in dissent.[50] And once again, Judge Wilson's opinion advocated for a member of a group that often falls through the cracks of the legal system. Judge Wilson admitted "[m]ake no mistake, [Floyd Y.] appears to be a person who has done many bad things . . . . The issue here, though, is not whether Floyd Y. is good or bad, or whether he

[44] *See id*. at 147, 152 (Wilson, J., dissenting).
[45] *Id.* at 147–48.
[46] *Id.* at 152.
[47] *Id.* at 150.
[48] *Id.* at 151.
[49] *Id*. at 151–52.
[50] *Id*. at 145, 153.

spent too little time in prison, or whether he will commit some future crime if released."[51] Instead, Judge Wilson drew attention to the fact that the Court and legislature were justifying *indefinite civil confinement* based on evidence that seemed far from "clear and convincing" and a legal standard that "does not allow [for the Court] to distinguish volitional conduct from conduct caused by a mental abnormality."[52]

C. Matter of 381 Search Warrants Directed to Facebook, Inc.[53]

One of the most-watched cases before the Court of Appeals in 2017 was that involving the 381 warrants that directed Facebook to hand over users' profiles, pictures, messages, and more as part of an investigation into Social Security disability fraud.[54] Coincidentally, it was also the first case that Judge Wilson heard oral arguments for after being confirmed.[55] Facebook argued that the warrants, which essentially directed that all user information be handed over for 381 users, was unconstitutionally overbroad.[56] Although the warrants were part of an investigation into Social Security fraud, many of the users whose information was being requested were not themselves under investigation.[57] LinkedIn, Google, Amazon, Microsoft, Twitter, and the New York Civil Liberties Union filed amicus briefs.[58] The case was expected to have broad implications for internet privacy but instead, while admitting that the case "implicate[d] novel and important substantive issues regarding the constitutional rights of privacy and freedom from unreasonable search and seizure," the majority focused on a jurisdictional issue on whether the decision to quash the warrants was appealable.[59] The Court found that the lower court's denial of Facebook's motion to quash could not be appealed and, therefore, there was no jurisdiction for the Court of

[51] *Id.* at 145.

[52] *Id.* at 146, 149, 152–53.

[53] *In re* 381 Search Warrants Directed to Facebook, Inc., 78 N.E.3d 141 (N.Y. 2017).

[54] *See id.* at 143; Josefa Velasquez, *These 6 New York Court of Appeals Cases Dominated in 2017*, N.Y. L.J., Dec. 22, 2017, https://www.law.com/newyorklawjournal/sites/newyorklawjournal/2017/12/22/these-6-new-york-court-of-appeals-cases-dominated-in-2017/.

[55] *See* Nick Niedzwiadek, *Vance Defends Facebook Search Warrants in Front of Court of Appeals*, POLITICO (Feb. 7, 2017), https://www.politico.com/states/new-york/albany/story/2017/02/ny-court-of-appeals-hears-facebook-appeal-on-search-warrants-109415.

[56] *See 381 Search Warrants Directed to Facebook*, 78 N.E.3d at 143.

[57] *See id.*

[58] James C. McKinley Jr., *Facebook Loses Appeal to Block Bulk Search Warrants*, N.Y. TIMES (Apr. 4, 2017), https://www.nytimes.com/2017/04/04/nyregion/facebook-bulk-search-warrants-new-york-state.html.

[59] *381 Search Warrants Directed to Facebook*, 78 N.E.3d at 142.

Appeals to rule on the merits of the Fourth Amendment arguments presented.[60] Those who were hoping that the Court of Appeals would provide clarity regarding the rights of social media platforms in the context of federal investigations were left disappointed.

Judge Wilson dissented from his colleagues, finding that the warrants operated more like subpoenas than warrants and therefore, should be appealable.[61] Although Judge Wilson would have remanded to the Appellate Division as opposed to deciding on the merits at the Court of Appeals,[62] his dissent clearly indicates his support of privacy rights.

> Although the framers of the U.S. Constitution knew only the technologies of the 1780s, the framers of the New York Constitution's provision against unreasonable searches and seizures worked 150 years later and knew more. Our state constitution, unlike its federal counterpart, includes explicit protections against unreasonable searches and seizures of electronic communications.[63]

One has to look no further than Judge Wilson's recitation of the facts to conclude that the warrants, in his opinion, are likely overbroad.

> On the basis of a single 93-page affidavit . . . Supreme Court issued 381 warrants. . . . The warrants compelled Facebook to produce not only any and all text, photos, or videos a user had shared with her limited universe of friends, but also any private messages exchanged between the user and another individual (who could have been a spouse, doctor, religious figure, or attorney), as well as information the user had chosen to no longer share with anyone, such as a previous e-mail address, a deleted friend, or a hidden post, and information the user had never intended to share with anyone, such as her searches and location.[64]

Notwithstanding the accuracy of Judge Wilson's legal reasoning, this case gives some insight into Judge Wilson's Fourth Amendment jurisprudence and suggests that should a similar case come before the Court in the future, Judge Wilson could be an ally on the bench for internet service providers pushing back against an overreaching government.

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[60] *See id.* at 152–53.
[61] *See id.* at 167, 169 (Wilson, J., dissenting).
[62] *See id.* at 174.
[63] *Id.* at 156 (citing N.Y. Const., art. 1 § 12 (2018)).
[64] *Id.* at 157–58.

IV. CONCLUSION: LOOKING AHEAD

In July, Judge Wilson gave remarks at the swearing-in ceremony for the National Academy of Criminal Defense Lawyers President Rick Jones.[65] During his remarks, Judge Wilson referenced a few of the criminal cases that had come before him during his first few months on the Court of Appeals.[66] Among the cases he alluded to was *People v. Smith*, his first written opinion.[67] "We are unnecessarily and unjustly depriving defendants of their lives. We are overincarcerating hundreds of thousands of people at a rate unmatched by any other country, and no decent society would imprison people merely because they are destitute, mentally ill, or addicted."[68]

Although Judge Wilson brings significant complex commercial litigation experience to the bench, we can expect that his most significant contributions *on the bench* will likely be advocating for reform and greater fairness in the criminal justice system. In Judge Wilson's own words:

> [W]e must . . . recognize that some fraction of our population will not be able to function as productive members of society, whether because of mental illness, physical illness, addiction, or otherwise. The question is not whether our society is going to spend money on such people; it is how we want to spend it—by incarcerating them or by caring for them in a more civilized way—and whether we want to spend more money to treat them cruelly rather than compassionately.
>
> I hope, in the 13+ years I have left to serve on the court, to make some difference in that regard.[69]

Judge Wilson has certainly hit the ground running during his first year as a judge. While it is too early to get a full picture of his judicial jurisprudence, we can be content in the knowledge that Judge Wilson

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[65] *See Rick Jones Sworn in as 2017-18 President of Nation's Criminal Defense Bar*, NAT'L ASS'N OF CRIM. DEF. LAW, (July 31, 2017), https://www.nacdl.org/Jones-President-Sworn-In/.

[66] *See* Rowan D. Wilson, *Verbatim: Making Justice a Reality for Those Farthest from its Reach*, 41 CHAMPION 55, 55 (2017) (describing the facts of *People v. Smith*).

[67] *See id.* ("My first opinion was a lone dissent in a criminal case in which an unarmed homeless man walked into a check-cashing store, told the teller he had a gun (she was behind bulletproof glass), spent 10 minutes repeatedly asking her for money, and then walked down the street, to be arrested 15 minutes later having traveled all of eight blocks. He was convicted of attempted armed robbery, and sentenced to 16 years to life.").

[68] *Id.* at 56.

[69] *Id.*

will continue to shine a light—through dissent, if necessary—on the problems impeding justice in New York State.