

**New York County Lawyers Annual Dinner  
December 13, 2016  
Honoring the NYS Supreme Court Appellate Division, First Department  
Acceptance Speech by Acting Presiding Justice Peter Tom**

There is no institution such as ours that arrives on the scene fully formed and ready to dispense law. So, I think that it's also appropriate that we recognize the prior generations of Judges and staff, and the lawyers who have practiced before us.

Over the course of more than a century some of the nation's leading jurists and barristers have walked our halls and stood before our bench, contributing to the formation of this magnificent court which is truly a temple of the law. Our court was established by legislation as an intermediate appellate court in 1896 and, on January 2, 1900, when our first judges took up residence of the beautiful courthouse overlooking Madison Square Park.

The Appellate Division was created to streamline appeals and to facilitate the development of precedential legal principles which would then guide the many lower courts of the day. Every kind of issue that could lead to disputes in this city at that time passed through our court, and because of how jurisdiction was devised, most cases ended in the Appellate Division. Thus, from its inception, the Appellate Division was the epicenter of the New York legal jurisprudence and, the guardian of this great city it was intended to serve - a city of unparalleled wealth but also unimaginable and too often unrelenting poverty.

The cases that came through the Appellate Division in the past century were a reflection of the history of this great city. As the 20<sup>th</sup> century in New York City traveled in time through the Progressive Era, this city experienced: the carefree roaring 20's and prohibition; the birth and increasing entrenchment of organized crime; the Great Depression; the War years; the prosperity and economic expansion of the 1950s; the clamor and protests of the 60s; the crime waves and drug epidemics of the 70's and 80's; the economic uncertainties of the 90's; and the shockwave of 9/11 and its aftereffects – all of these trends and events inevitably spawned conflicts that had to be litigated and resolved by our court. While most of the cases ended in the Appellate Division, some cases touching on some of the most important and volatile issues of each era, proceeded after us to the Court of Appeals and even to the United States Supreme Court.

However, our court played an important role in redefining the law to meet the needs of the time and with our rulings helped to reshape our politics and our society.

So, tonight, the New York County Lawyers Association honors not just the present and current members of our bench and its staff, but in a larger sense you are also acknowledging a century and more of our law and its continuing refinements, and also the prior judges, staff members and lawyers who help shape the court to what it is today.

So, with this history, what kinds of cases do we decide today as we work our way into the 21<sup>st</sup> century? Well, many of the same, although many of the circumstances have changed. People still get hurt, even if it's car accidents rather than trolleys. Workers still have accidents, although modern work safety laws have reduced, although not eliminated, mortality and severe injuries at construction sites. There is always crime, although today we have to address electronic crime, sophisticated financial crimes, Fourth Amendment issues involving social media, and many concerns that were unimaginable only a few decades ago. In sum, almost every kind of litigation that can be imagined for New York law, excepting maybe agricultural cases, will cross the desks of our staff and will land on our bench.

The ratio of cases may also reflect the era. For instance, our caseload in the 1980s and 1990s was heavily weighted towards criminal appeals. They reflected the crack epidemic and other drug scourges that devastated many lives in this city. In contrast, today we have much fewer street crime cases, and our civil caseload is proportionately higher - 831 criminal appeals versus 2,138 civil appeals in 2015 - which also accords with historic trends: New York City today is very safe and very much open for business.

However, in the area of commercial litigation, the First Department has long enjoyed a reputation for preeminence. New York City sits at the apex of commerce and finance, both nationally and internationally, and complex commercial appeals have also become an especially important part of our caseload. Our court reviews approximately 500-600 complex commercial appeals each year.

Our court actually has several functions that are not usually thought of in an adjudicatory context - admissions to the bar, attorney disciplinary matters, assigning counsel, administering the representation of persons civilly committed for reasons of mental illness, and more. However, our main function is to review the decisions of lower courts.

I've had the privilege of serving as the Acting Presiding Justice for almost a year now. It's a privilege that I had twice before. So, now I'd like to give the guests here tonight some insight into what we have been doing in recent months to improve our services to the bar, and to the public at large.

First, I firmly believe that justice delayed is, too often, justice denied. There are faces of people behind each appeal. The outcome of the appeal affects many individuals in their businesses, in their health and mobility for injured plaintiffs, in their homes for many tenants and, even for landlords in their ability to rent out apartments or commercial premises. In criminal cases, the appeal affects people's lives. So I am acutely conscious of the need to expeditiously move an appeal along to a definite resolution, whatever the outcome for the particular case.

During the past year, along with my judicial colleagues and our staff, I have been reviewing our internal procedures with a view towards issuing decisions quickly so that the Court can become current and stay that way.

When I took the helm last January, we had accumulated a backlog of too many appeals. To alleviate this problem I have added additional cases to each sitting over the course of this year. This achieves two purposes: 1) it reduces our inventory of appeals and 2) it shortens the time between when the appeal is perfected and when it is calendared for argument. By having an appeal placed on the calendar on a faster track, the parties are already assured of a quicker decision.

The members of our bench have responded very diligently, even though it adds on to their already heavy caseload. The judges have stepped up and are working harder in order to review and decide cases quicker, without sacrificing accuracy or quality.

There has long been a tendency for work to accumulate over the summer due to vacation days of the judges. This means that cases often are left undecided at the end of the June term when judges are away on vacation. Since the members of the bench may be out of touch with one another, a backlog tends to accumulate before we start the September term.

To alleviate this problem, this past summer we tried a new procedure to overcome this disconnect among the judges sitting on an appeal. Each judge, even while on vacation, remained in contact by email with the court. When a decision was finalized, it was emailed directly to all

of the judges on the particular bench wherever they may have been. So, each judge, even if vacationing, remained available for work. Each judge was expected to quickly email his or her vote on the proposed decision. This ensured that any appeals left over from the beginning of summer would be subject to continuing processing over the course of the summer. This new procedure actually reduced a large number of appeals over the summer months.

We will continue to put in place procedures to increase our efficiency while remaining attentive to the quality of our review and our decisions, so that the lawyers who practice before us and their clients can more reliably plan post-appeal.

Now, I'd like to make a final observation about the Appellate Division, First Department. In so many respects, we reflect this great city that is our home. We live amidst its blessings and its problems, and above all, among its people. Our staff and our bench reflect the cultural diversity of the City. In my earlier years on the First Department bench, I have been joined by judges having the more traditional Irish, Italian and Jewish backgrounds - and Leo Milonas proudly represented the Hellenic tradition - but increasingly, up to present, by judges and staff who have African-American and Hispanic backgrounds and, as is obvious as I stand here now, also Asians. I think that it is especially remarkable at this point in our city's history that my good friend Justice Randy Eng is the Presiding Justice of our sister-court in Brooklyn while I am Acting Presiding Justice of the First Department. This is the first time in the history of New York State that two Asians preside over two of the four judicial departments. After a century in existence, this court is beginning to reflect the diverse population of the city.

New York City truly is a melting pot, a metropolis with a complicated and fascinating history whose best days may well be ahead of us. And I think that we can all anticipate that our historically esteemed courthouse, and its skilled, diligent and diverse bench and staff, will be proficiently and professionally generating top quality work for generations to come.

Thank you again to the New York County Lawyers Association, for the honor you have bestowed upon the Appellate Division, First Department in this beautiful holiday setting of the Waldorf.

I wish all of you a happy and healthy holiday! Once again thank you.