

PROFESSOR DAVID D. SIEGEL: *AMICUS CURIAE*—A SPECIAL  
RELATIONSHIP WITH THE COURT OF APPEALS

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It was Saturday, December 29, 1984. The Court of Appeals convened in a special session to address a constitutional question that went to the very heart of New York's judicial system. A trial court in New York had ruled that the mandatory retirement provisions of state law for state-court judges (requiring retirement at age seventy) abridged the due process and equal protection clauses of the Federal Constitution. The appeal had to be finally decided by the Court of Appeals before midnight on December 31, 1984, at which time newly-elected judges were scheduled to assume office. Senior Associate Judge Matthew J. Jasen—for whom I was a law clerk in 1984 and 1985—was acting Chief Judge, and we traveled from Buffalo to Albany for the special session. After oral argument and consultation with the judges of the court, Judge Jasen endeavored to draft an opinion for the court.

The court confronted several questions including whether state law violated the equal protection clause by permitting justices of the supreme court to receive "certification" (which would allow those justices to serve until the age of seventy-six) while denying the same opportunity for certification to undeniably accomplished judges serving on other courts such as civil court, criminal court, county court, surrogate's court and court of claims. As is evident from the court's opinion, Judge Jasen put the policy considerations underlying state law to one side and considered whether there was a rational basis for the law's distinctions. As the court's opinion shows, the answer was found in Professor Siegel's authoritative treatise on New York Practice. In a unanimous opinion that was handed down on New Year's Eve, Judge Jasen stated:

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\* John Halloran attended Albany Law School in the early 1980s at which time he studied New York Practice and Conflict of Laws with Professor David D. Siegel. Upon graduation, Mr. Halloran served as a law clerk to Judge Matthew J. Jasen of the Court of Appeals in 1984 and 1985. Mr. Halloran is a member of the New York and District of Columbia bars, and his law practice focuses on civil litigation and dispute resolution, with an emphasis on international cases and controversies. This is his personal tribute to Professor Siegel.

Mindful of the State-wide reach of Supreme Court jurisdiction, the absence of maximum monetary limitations upon invocation of Supreme Court jurisdiction, and the conferral of jurisdiction over certain simple or specialized matters upon other courts, the complexity of Supreme Court matters may rationally be deemed to require greater experience and manpower than are necessary in other courts. Where, as here, significant reasons of fiscal concern and the proper administration of the courts exist, or could conceivably exist, to justify distinctions between judicial offices, the lack of mathematical symmetry within the unified court system shall be disregarded.<sup>1</sup>

This is a perfect exemplar of the special relationship that Professor Siegel had with the New York Court of Appeals. Under unusual time constraints, Judge Jasen turned to a trusted and reliable partner in the shared mission of the development of the law of New York—David D. Siegel—in deciding a question of constitutional and state-wide importance.<sup>2</sup>

Professor Siegel's writings have transcended procedure and influenced the substantive merits of cases. For example, in *Pludeman v. Northern Leasing Systems, Inc.*,<sup>3</sup> the Court of Appeals addressed the issue of whether plaintiffs sufficiently pleaded a cause of action for fraud against individually-named corporate defendants under CPLR 3016(b) which provides that in fraud cases, "the circumstances constituting the wrong shall be stated in detail."<sup>4</sup> In an opinion by Judge Theodore T. Jones, the court ruled that the complaint was sufficient and "where concrete facts 'are peculiarly within the knowledge of the party' charged with the fraud, it would work a potentially unnecessary injustice to dismiss a

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<sup>1</sup> *Maresca v. Cuomo*, 475 N.E.2d 95, 99–100 (N.Y. 1984) (citing DAVID D. SIEGEL, NEW YORK PRACTICE § 12 (1st ed. 1978)).

<sup>2</sup> Judge Eugene F. Pigott, Jr. of the Court of Appeals recognized that *Maresca* had personal significance for Judge Jasen, and illustrated his dispassionate commitment to the rule of law:

One last case that I thought was kind of telling about Judge Jasen was the case of *Maresca v. Cuomo*, which was decided in 1984. And in that case, the question was whether or not the mandatory retirement age of 70 for Supreme Court Judges was constitutional. Now he wrote this when he was 69. And he wrote that, yes, it was, and so in writing that opinion had kind of foreshadowed his retirement from the Court the next year. And in 1985, he retired as a result of the mandatory retirement age of the Court of Appeals.

Eugene F. Pigott, Jr., Symposium, *Judge Matthew J. Jasen*, 71 ALB. L. REV. 1081, 1086 (2008).

<sup>3</sup> *Pludeman v. Northern Leasing Sys., Inc.*, 890 N.E.2d 184 (N.Y. 2008).

<sup>4</sup> N.Y. C.P.L.R. 3016(b) (McKinney 2014).

case at an early stage where any pleading deficiency might be cured later in the proceedings.”<sup>5</sup> In reaching this conclusion, the court quoted Professor Siegel’s real-world observation that “[m]isrepresenters have not been known to keep elaborate diaries of their fraud for the use of the defrauded in court.”<sup>6</sup> In light of these considerations, the court declined to adopt a pleading standard under CPLR 3016(b) that would have closed the courthouse to potentially meritorious causes of action.

It was in the area of New York Practice that Professor Siegel was an *amicus curiae* in the truest sense of the term. Chief Judge Judith S. Kaye’s important opinion for the court in *Brill v. City of New York*<sup>7</sup> provides an apt illustration. In *Brill*, the court addressed “a recurring scenario regarding the timing of summary judgment motions that ignores statutory law, disrupts trial calendars, and undermines the goals of orderliness and efficiency in state court practice.”<sup>8</sup> Specifically, the City of New York failed to file its summary judgment motion within the requisite 120 days specified by CPLR 3212(a), and it did not submit any reason for the delay.<sup>9</sup> In a comprehensive overview of the summary judgment procedure in New York, Chief Judge Kaye, citing to Professor Siegel’s treatise on New York Practice, set the stage for the court’s decision:

Summary judgment permits a party to show, by affidavit or other evidence, that there is no material issue of fact to be tried, and that judgment may be directed as a matter of law, thereby avoiding needless litigation cost and delay. Where appropriate, summary judgment is a great benefit both to the parties and to the overburdened New York State trial courts.<sup>10</sup>

Chief Judge Kaye, applying CPLR 3212(a) as written, ended “the practice of eleventh-hour summary judgment motions”<sup>11</sup> and made it clear that “practitioners should move for summary judgment within the prescribed time period or offer a legitimate reason for the

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<sup>5</sup> *Pludeman*, 890 N.E.2d at 187.

<sup>6</sup> *Id.* (citations omitted) (quoting David D. Siegel, *Practice Commentaries*, C3016:3, in N.Y. C.P.L.R. 3016 (McKinney Supp. 2003)).

<sup>7</sup> *Brill v. City of N.Y.*, 814 N.E.2d 431 (N.Y. 2004).

<sup>8</sup> *Id.* at 433.

<sup>9</sup> *Id.* at 434.

<sup>10</sup> *Id.* at 433 (citations omitted) (citing DAVID D. SIEGEL, *NEW YORK PRACTICE*, §§ 278–79, at 438–40 (3d ed. 1999)).

<sup>11</sup> *Brill*, 814 N.E.2d at 434.

delay.”<sup>12</sup>

The Chief Judge evidently recognized the widespread, practical ramifications of the court’s decision and included in her analysis specific guidance concerning the process on remand. In a virtual conversation with Professor Siegel, Chief Judge Kaye observed:

As Professor David Siegel—who has tracked this “controversial topic”—has promised, “we’d think better of judicial decisions that absolutely refuse to extend the time for meritorious summary judgment motions if they would tell us what is to happen in the case.”

What is to happen in this case is that summary judgment will be reversed and the case returned to the trial calendar, where a motion to dismiss after plaintiff rests or a request for a directed verdict may dispose of the case during trial. Hopefully, as a result of the courts’ refusal to countenance the statutory violation, there will be fewer, if any, such situations in the future, both because it is now clear that “good cause” means good cause for the delay, and because movants will develop a habit of compliance with the statutory deadlines for summary judgment motions rather than delay until trial looms.<sup>13</sup>

Chief Judge Kaye’s opinion was a public service to the bench and the bar. It enhanced the orderly administration of justice. It exhibited our Chief Judge’s intellectual engagement with academia. Indeed, it also provided an insight into the constructive supporting role played by Professor Siegel in the development of New York law.

In sum, Professor Siegel’s monumental body of work stands at the intersection of civil procedure, substantive law, and public policy, and has animated the development of the law for generations. He has made—and indeed, through his writings, will continue to make—an indelible and lasting contribution to the law and society. It is a legacy that is both unparalleled and breathtaking.

#### THE MAESTRO

Professor Siegel was an inspired and inspiring teacher. He was the maestro and the very embodiment of professionalism. Professor

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<sup>12</sup> *Id.* at 435.

<sup>13</sup> *Id.* (footnote omitted) (citations omitted) (citing DAVID D. SIEGEL, *NEW YORK PRACTICE* § 279, at 440 (3d ed. 1999); David D. Siegel, *Strict Time Limit Placed on Motion for Summary Judgment*, SIEGEL’S PRAC. REV. 1 (Nov. 1996); David D. Siegel, *Time Limit on Summary Judgment*, 79 SIEGEL’S PRAC. REV. 2 (Jan. 1999)).

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Siegel lectured with supreme confidence, perfect diction and a total mastery of the substance (New York Practice, Conflict of Laws and more). In the classroom, he was effervescent, passionate, brilliant, direct, fearless, and independent. He instilled in us an understanding of the day-to-day problems in the practice of law that could be foreseen and avoided (or fixed), and a healthy fear of those hazards that were insurmountable, such as unforgiving statutes of limitations. And he insisted on open windows in the classroom in the dead of winter, convinced that a cool breeze would enhance our attentiveness. Many have commented on his sense of humor; it is true, he had perfect timing, excellent material, and a comedic touch. But it was all about *communication* in the classroom. Through light humor, sophistication, and a linguist's discriminating choice of words, he made the law come alive for his students.

#### A DEBT OF GRATITUDE

This tribute would be incomplete without my most sincere expression of gratitude to Professor Siegel for his role in my appointment as a law clerk to Judge Jasen.

In August 1983, Judge Jasen invited me to an interview for the position of law clerk, and I sought out Professor Siegel for advice. He was all business. He cross-examined me on the status of "your uphill battle" to amend the state constitution to enlarge the jurisdiction of the Court of Appeals to allow it to respond to certified questions from certain federal courts.<sup>14</sup> He wanted to know who I admired in the law and why; we discussed our shared appreciation for the clarity of style of Justice Robert H. Jackson.<sup>15</sup> Stressing the collegiality that exists in well-functioning chambers, he fondly recalled the dignity of Chief Judge Albert Conway of the Court of Appeals, for whom he clerked in the 1950s. Professor Siegel ended the meeting by handing me the *Practitioner's Handbook for Appeals to the Court of Appeals of the State of New York*, a 1981 softcover publication of the New York State Bar Association for which he was reporter and principal author. With the benefit of hindsight, I now understand that our meeting was much more than Professor

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<sup>14</sup> See Judith S. Kaye & Kenneth I. Weissman, *Interactive Judicial Federalism: Certified Questions in New York*, 69 FORDHAM L. REV. 373 (2000); Sol Wachtler, Lecture, *Federalism is Alive and Well and Living in New York*, 75 ALB. L. REV. 659 (2011/2012).

<sup>15</sup> As it turns out, both Judge Jasen and Justice Jackson were natives of Western New York and their paths crossed in post-war Europe, at which time Justice Jackson encouraged Judge Jasen to pursue judicial office in New York. *Pigott*, *supra* note 2, at 1083–84.

Siegel's extraordinarily generous expenditure of time. It was an intense, rapid-fire "moot court" in the crucible of his office that helped to prepare me for my interview with Judge Jasen. I later learned from my senior clerk, Vin Bonventre—who possesses an exquisite sense of humor along with the qualities of a great legal scholar—that Judge Jasen had in fact reached out to Professor Siegel to confirm my suitability, and "Judge Jasen announced Professor Siegel's strong recommendation, which basically closed the deal—regardless of my protests!"

With Professor Siegel's passing, I take a small comfort from the fact that I was able to express to him several times over the years my enduring gratitude for his vote of confidence. He would wave off such sentiments, preferring to discuss today and tomorrow. Over the years, our teacher-student relationship evolved into one of warm collegiality, with Professor Siegel always savoring new court opinions, new challenges, and new problems to be solved. His passing is a loss beyond measure. Thank you, dear Professor Siegel, for everything.