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U.S. Court of Appeals for the Second Circuit

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ONE HUNDRED TWENTY-FIVE YEARS OF THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT: A BRIEF PROJECT OVERVIEW

PREFACE

*Robert A. Katzmann**

One hundred twenty-five years ago, Congress created a court of appeals in each of the nation's nine circuits with the passage of the Evarts Act. What we now call the U.S. Court of Appeals for the Second Circuit began as a three-judge court covering New York, Connecticut, and Vermont, expanding over time to thirteen active judges as docket pressures increased, with the indispensable support of senior judges. In that century and a quarter, the Second Circuit appellate court has adjudicated thousands upon thousands of cases. With the rarity of U.S. Supreme Court review, our court is the tribunal of last resort in some 99 percent of the cases it resolves. With its strong tradition of oral argument, the Second Circuit is open to litigants, regardless of status, economic or otherwise.

As chief judge, I have the great privilege of serving with extraordinary colleagues—judges and court staff who all share the objective of adjudicating cases fairly and efficiently. We have benefitted from superior advocacy as we endeavor to resolve the matters before us. I launched the project for the 125th anniversary of our court not for self-celebration, but because any institution, in the effort to do its work well, should, on occasion, reflect on its past to better settle the present and meet the challenges of the future. To that end, I proposed, and my colleagues agreed, to establish a special committee to undertake a wide range of activities relating to that 125-year experience, as we had done some 30 years ago. That committee, very ably chaired by Judge Richard C. Wesley, consists of a dedicated group of judges, court staff, and members of the bar.¹ Activities include: a biographical collection of the judges of the

* Chief Judge, U.S. Court of Appeals for the Second Circuit.

1. The members of the committee are: Judge Richard Wesley, Chair; Circuit Executive Karen Greve Milton, Secretary; Judges José A. Cabranes, Denny Chin, Dennis Jacobs, Jon O. Newman, and John M. Walker; Circuit Librarian Luis M. Lopez; Director and Second Circuit Senior Staff Attorney Sally Pritchard; Clerk of the Court Catherine O'Hagan Wolfe; attorneys Robert J. Anello (Morvillo Abramowitz Grand Iason & Anello), Sheila S. Boston (Kaye Scholer), Michael A. Cardozo (Proskauer Rose), John D. Gordan III, Bettina B.

Second Circuit Court of Appeals; exhibitions documenting the court's cases and history; reenactments of some of our notable cases; lectures on the history of the court; remembrances of some distinguished jurists of the past, including Learned Hand, Henry J. Friendly, and Thurgood Marshall; reflections of four Supreme Court justices—Chief Justice Roberts, Justice Ruth Bader Ginsburg, Justice Sonia Sotomayor, and Justice Elena Kagan; and a program on the certification of opinions from our court to state high courts.

An important part of that 125th anniversary examination is found in the pages that follow: essays by prominent lawyers of the Second Circuit about some of the vital areas of law emanating from our court. Much gratitude is due to the editors of the *Fordham Law Review*; Michael Cardozo and Bettina Plevan, who painstakingly oversaw the issue; and to the lawyers who contributed their thinking and writings. Six articles have been specially drafted on: First Amendment/civil liberties, by Floyd Abrams; white collar crime, by Robert J. Anello and Miriam L. Glaser; antitrust, by Saul P. Morgenstern, Jennifer B. Patterson, and Terri A. Mazur; intellectual property, by Kenneth A. Plevan; national security, by David Raskin; and financial and securities regulation, by Karen Patton Seymour. Mr. Cardozo and Ms. Plevan have been the principal editors along with Yale Law School Professor John F. Witt, who himself provides an exceptional overview of the development of Second Circuit law. In addition, Fordham University School of Law Dean Matthew Diller and Benajmin N. Cardozo School of Law Professor Alexander A. Reinert have contributed an article on our court and administrative law. This issue also includes four notes on Second Circuit issues, written by students on the *Fordham Law Review*.

On reading these superb essays, we are reminded that law is not an abstraction, but has great impact on individuals and institutions. We are also reminded that all of us in the Second Circuit—courts and advocates alike—have weighty responsibilities as we seek to achieve the fair and effective administration of justice, with fidelity to what the law requires and in ways that maintain the trust and confidence of the public.

Plevan (Proskauer Rose), and Karen Patton Seymour (Sullivan & Cromwell); and Professors John Q. Barrett (St. John's University School of Law) and John F. Witt (Yale Law School).