

Demystifying the Courts: The Court of Claims

John Caher:

The New York State Court of Claims is often a below-the-radar court in the state court system. It rarely makes news. Its jurisdiction is limited to civil cases against the state and some of its entities. There are no jurors, so each case is decided by a judge. And since the judges are all appointed by the Governor, they never interact with the public in the way that judges campaigning for public office do.

Welcome to Amici, news and insight from the New York Courts. I'm John Caher.

Today, we are going to demystify the Court of Claims with three guests uniquely qualified to do so: The Honorable Richard E. Sise, the Acting Presiding Judge of the Court of Claims, and Court of Claims Judges Catherine Leahy-Scott and Ramón Rivera.

Your Honors, thank you for joining the program. Judge Sise, why don't we start off with you? What is the Court of Claims and how did it come to be?

Judge Sise:

Let's go back to 1620. The Mayflower left England with the 102 pilgrims aboard heading for the New World and religious freedom, and struck a rock, stopped right over there in Plymouth, Massachusetts, and the colony was begun. But the most important thing about that voyage, those pilgrims brought with them the beginning of the justice system, but also the "sovereign immunity" that was enjoyed by the King of England came over with those pilgrims.

The State of New York, and all states initially, had "sovereign immunity." You could not sue the state without special permission from the Legislature. It would pass certain appropriation bills that allowed a citizen to sue. The Court of Claims is the court where you sue the State of New York.

How did we get there? There are certain things that happened in the history of our state that are important to know, certain things that Governors have done over the years that have really had great impact on the court itself.

From the beginning of the New York State colony to becoming a state in 1788, sovereign immunity was in place. In 1817, the Erie Canal Act was

passed. Governor DeWitt Clinton was the man who pushed that so there was a way to get the ships from the Atlantic Ocean, up the Hudson and across the canal to the Great Lakes. When they built the canal, they had to take land across the State of New York. And indeed they decided, within that Canal Act of 1817, to allow the homeowners to bring a direct action against the State of New York to be compensated for the taking of their land. So that was the first statutory provision and the constitutional provision that allowed a citizen to sue the State of New York. Over the years, that immunity has dissolved.

During the construction of the canal, there was some damage to the contiguous property, and they could bring claims for the damage to the property. Then people might've been injured by the state employees' constructing, as it were, or traveling upon the area canal so they can sue the state directly for those torts. There were many different bodies for these suits. At one point, it was called the Board of Canal Appraisers. Another time, the Canal Commissioners, Board of Audit, Board of Claims, Court of Claims, back to the Board of Audit. These are the different names of the entities that actually heard these claims.

It wasn't until 1949 that the Court of Claims achieved constitutional status, permanent status. These other entities would serve for a while, legislation would change it up and so forth, and people came and went. But they needed to have some permanency and the people of the State of New York in 1949 voted to create a constitutional court.

As I said, over the years, the immunity has just been waived. There's very little now that you can't sue the State of New York for, like any other corporation, and currently it's a statewide court.

Over time, additional matters occurred during history. In 1971, that horrific uprising at Attica. Prior to that uprising, citizens of the State of New York who were imprisoned could not bring a claim directly against the State of New York in the Court of Claims. They brought them to the prison officials. But as a result of that uprising, in which 43 people were killed, there was an agreement that the inmates, now known as "incarcerated persons," could bring a direct cause of action against the State of New York in the Court of Claims. So that quadrupled the number of cases in our court.

And then a couple of years later, Nelson Rockefeller was Governor, and the Rockefeller Drug Laws were enacted May of '73. At that time, I think there were 18 judges in the Court of Claims hearing claims against the state. They recognized — the Legislature did and the Governor's people

— that we're going to need judges for all these cases that come in under the new Rockefeller Drug Law, all these felony cases. So they realized they could expand the Court of Claims. That's provided in the Constitution; the Legislature can increase the number of judges on the court. So it went from 18 to 32. The 18 who were hearing cases against the state became "Paragraph A" under the statute, and then "Paragraph B" were the Rockefeller Drug Law judges who were sitting in New York hearing heavy, heavy felony cases.

And indeed the court has expanded over time. We have other paragraphs up through E, and there's a total of 86 judges statewide, 27 of those judges are the Paragraph A side of the court that hears claims against the State of New York. Certain Governors have continued to expand our court by the number of judges, and of course the jurisdiction of the court has expanded as well.

We just hear cases against the State of New York on the Paragraph A side. Those on the other paragraphs are immediately made Acting Justices to the Supreme Court and they have either civil or criminal jurisdiction, depending on where the Chief Administrative Judge assigns those judges. That basically is the history of the court and some of our other panelists here will get into the specifics as to actually how the court moves forward.

John Caher: Let me just take a step back. So only 27 of 86 are hearing classic Court of Claims cases?

Judge Sise: Yes, that's right. The Governor selects, nominates, and the Senate actually confirms. And the Governor decides who's going to hear the claims against the State of New York and puts those folks on the paragraph A side, the original constitutional court.

John Caher: Judge Rivera, let's fast-forward back to the present. What type of cases do you hear and decide as a Court of Claims judge?

Judge Rivera: The types of cases I preside over are what are referred to as "civil cases." They're matters where claimants are seeking legal remedies in the form of damages against the state of New York. Our court doesn't award equity relief or injunctions. We don't deal in that area. And we also don't award relief for domestic relations or family law matters. There are no juries in the Court of Claims, and I often have to remind attorneys that we're not in Supreme Court and they don't have to engage in the theatrics; it's just me. They are just presenting their case before me. In

the Court of Claims judges decide claims based on a review of the evidence, the testimony that's been provided, and the post-trial briefs.

Our decisions are provided in written form, and like most trial courts, our decisions can be appealed to the Appellate Division. The rules of evidence in the Court of Claims are pretty much the same as they are in Supreme Court. The burden of proof is the same except for claims involving unjust conviction and confinement where the burden of proof is a little higher. In these types of cases the burden of proof is by clear and convincing evidence. Would you like me to talk about what kinds of cases within the civil context I deal with?

John Caher: Yes.

Judge Rivera: Sure. I preside over cases involving civil lawsuits such as a slip and fall accident where a person is injured on state property. I also preside over matters that involve property damage. For example, I had a case where the New York State Department of Transportation entered onto private property and allegedly removed trees without authorization to do so. In that situation the owner of the affected property can bring a claim against the state for damages.

We also deal with breach of contract matters. For example, a private IT company has entered into a contract with a state governmental entity and alleges that the state's failure or alleged deficiencies prevented it from completing the contract or live up to expectations required of the contract.

We also preside over matters involving unjust conviction. Judge Sise mentioned the Attica uprisings. Since the Attica uprisings, we do deal with matters involving incarcerated individuals, which Judge Leahy-Scott will elaborate on further. But those are the types of claims that I typically preside over in court as a Paragraph A judge.

John Caher: Now, there are also a fair number of personal injuries—slip and falls at the Empire State Plaza or a tree comes down on somebody on the Taconic Parkway. So someone has been injured to some extent. And so that case would also be in the Court of Claims, right?

Judge Rivera: Absolutely. Anytime the state is alleged to be responsible for causing a claimant's damages. Because our jurisdiction is limited, we don't have jurisdiction over people. Our jurisdiction is limited to matters involving the state or its related entities.

John Caher: I understand. Judge Leahy-Scott, Judge Rivera mentioned unjust convictions and incarcerated individuals, which brings me to you because I know a significant number of your cases are brought by individuals who are incarcerated at any of the many state prisons. What sort of claims do these people bring? What are the cases that come before you?

Judge Leahy-Scott: Sure. Our docket has many cases filed by incarcerated persons. And generally, they fall into about five categories, one being a bailment claim where an incarcerated person, through no fault of their own, has had their property either lost or stolen or missing, they will sue the State of New York in a bailment claim to recover the value of that property that has been lost or stolen. Another type of claim involves assaultive conduct where one incarcerated person may assault another incarcerated person, and the question always is whether there was a duty for the Department of Corrections and Community Supervision to have known or have reasonably foreseen that that incident could have happened. We also deal with assaults where correction officers may assault an incarcerated person.

A third type of case involves medical malpractice or medical negligence. Incarcerated persons are under the care or responsibility of the state, and therefore they're entitled to health services, meaningful health services. It's unfortunate that we do see cases that involve medical malpractice or medical negligence. And a fourth type of case would be that which we've already spoke about, some personal injury and tort cases where an incarcerated person may slip and fall in a facility, may slip and fall while playing basketball because of some defect. Incarcerated persons are involved in work programs, and they may become injured while involved in those work programs. For instance, if they're working in a kitchen and they are scalded by some steam or if they work in a constructions shop and they're injured by some kind of machinery, those are examples of personal injury tort type cases.

And then lastly, there's a type of case called "wrongful confinement." If an incarcerated person is subjected to sanctions as a result of discipline, they could be placed in the special housing unit, which is called the "SHU," or they could be placed in "keeplock," where they're confined to their cell. And if there is some issue relative to the due process, the hearing to which they're entitled, it would be considered a wrongful confinement, and we as judges would hear those types of cases and make the determination and award a monetary damages for the amount

of time in which they were wrongfully confined. So those are generally the five areas that we deal with on our dockets.

John Caher: Just to make clear, what we're talking about here is *monetary relief*. If someone believes they've been wrongly convicted, you can't let them out of jail, you can't grant them a new trial. You can compensate them because their liberty was wrongfully taken from them for X number of years and they suffered various financial damages, correct?

Judge Leahy-Scott: That's correct. That's on the wrongful confinement in SHU or keeplock. As Judge Rivera had referred to, on our IAS dockets, we have what's called the wrongful conviction cases, which are different. Those are folks who have been convicted of a crime, and later on, they have been exonerated for some reason that's consistent with our statute, and those cases are presented to us that they were wrongfully confined for a number of years and we award monetary damages for the length of time that they were wrongfully confined in our state prison system. So I just wanted to point out the distinction between the two types of cases.

Judge Sise: Of course, John, there's the liberty loss, there's conscious pain and suffering, what they actually endured during a period of time, what they actually witnessed. So that would be psychological damage perhaps, and physical damage as well if they're injured while they're there, if something happens.

John Caher: I understand.

Judge Sise, Judge Rivera mentioned the—I think maybe a couple of you mentioned—that in the Court of Claims, you're never going to see a jury. And how does that change things? Judge Rivera mentioned that sometimes he needs to remind lawyers that, "Hey, you're talking to me. You're not talking to anyone else." So how does that change the dynamics of what goes on in a Court of Claims trial?

Judge Sise: John, this is going to sound terribly, terribly arrogant. Jurors can be led astray by very, very good attorneys who have tremendous powers of persuasion and maybe, dare I say, chicanery. So having been trained in the law as a law student, then a young lawyer, and a trial practitioner myself, and then having been on the bench for many, many years, you get to see these tricks. As Judge Rivera said you have to remind them, "This is not a jury." With the jury, sometimes the lawyer will beat that dead horse. I've often said, "Not a jury here, you may move on," my way of telling the attorneys, "I get it. I get it." And when all the histrionics start, I can say, "Not a jury here," and then they understand.

And many of the attorneys who bring claims in this court are Supreme Court practitioners and they're not used to just trying the case before the judge who will decide the case. So I give them a heads-up, it's a little different in that regard. Not to say you don't want them prepared and have the appropriate-sized exhibit. Used to always drive me nuts when someone would bring in a three-by-five photograph and I would say, "Hey, I know there's no jury here, but could you spend a few bucks and blow it up a little bit?" Those types of things. And you usually do with a little bit of a twinkle in your eye when you say that. But it is interesting how some attorneys don't quite understand that we are the finders of fact. So you can prepare in that fashion. And nowadays, with all the great technology, we do see a lot of electronic images that come up and experts' proposals of accident reconstruction, et cetera. That's all very helpful to us as well as the finder of fact.

John Caher: Are there attorneys who specialize in Court of Claims cases? I understand, to one extent, a trial is a trial. On the other hand, football and rugby are different games.

Judge Sise: Certainly, with the incarcerated persons, we do see a number of firms that handle many of those cases. And I think maybe the incarcerated persons tell one another, "So-and-so's my attorney," and then phone calls go to that firm. So they got a little niche there. But, someone certainly doesn't just say, "All we're going to do is Court of Claims cases in our firm," but there are some firms that have more than others, and they become familiar with the procedures in our court.

Years and years ago, I did a "Demystifying the Court of Claims." I mean, 20 years ago. There was a subtitle, "Don't refer that case!" And I would stress to the lawyers as we appeared in front of different bars to give this CLE, "Look, just read the statute. Read the Court of Claims statute." There are differences, but it's not black magic. You just got to read it so you can prepare.

First, know it so you can do the proper pleadings and so forth, because we do have strict pleadings in this court and it goes back to the whole waiver of immunity. If you're going to play in our game, you got to play by our rules because, remember, the State of New York is self-insured. It's the public, if you will, coffers. So, yes, we're going to waive immunity, but you got to do A, B, C, D. And if you don't, you're out of court and there's nothing we can do about it. You're out of court.

Judge Leahy-Scott: I'm an Albany resident judge. I think the same attorneys and firms that have tort and civil cases, personal injury cases in Supreme Court, are the same attorneys and law firms that we see in the Court of Claims. And to Judge Sise's point, so long as they're versed in the Court of Claims Act, it's fine. The transition is fine.

Judge Sise: And I'm down in New York City, John, so there's a bigger pond, if you will. So I see a lot more firms down there than in a smaller community. That's why I couldn't tell you right now, what firm would you say has been in front of you more times than the others? I really can't say because there's so many different firms now that handle litigation, civil litigation, of this nature, torts, and so forth, contracts-

Judge Rivera: In Syracuse I see many of the same lawyers who have developed a certain expertise in the Court of Claims. We're a smaller community, and people do tend to gravitate towards the things that they do best. The majority of attorneys practicing in my court are from two or three local firms.

Judge Sise: There's eight districts across the State of New York in the Court of Claims. West going east—Buffalo, Rochester, Syracuse, Utica, down to Binghamton, Albany, White Plains, New York City. The New York district is New York City and Long Island. We're really the last circuit-riding court. When you come to the New York State Court of Claims, you're going to sit where there's a need. So, all of us have had occasion to be assigned to a different district.

When I first got in, my first two years, I was in Long Island, yet my home was up here in the Capital District. We're expected to travel. And indeed under the Rockefeller Drug Laws, many of the judges from around the state were sent down to New York City. And to this day, some upstaters might get assigned to a Paragraph B court, acting JSC, and they're expected to be there during the week and work.

John Caher: So it's not like there's a Court of Claims in every courthouse or every county?

Judge Sise: Correct.

John Caher: Judge Rivera, if an attorney is about to argue a case before you in the Court of Claims who's never been there before, what is your advice to that attorney? "Be sure to do this. Do not do that." What would you recommend?

Judge Rivera: I have a script that I go through, just letting people know what the Court of Claims is, and "If you haven't been to our court, this is how we handle things. We remind attorneys to let the court monitor know which exhibit they wish to have displayed. The monitor then pulls the exhibit for display." And some of the attorneys who've never been in the court will ask that question, "What's the Court of Claims like?" I usually refer them to the Court of Claims website to familiarize themselves with the Court of Claims Act. I advise them that "it lays out the procedure and the process here. And these are the rules that we follow in court." And it's pretty much the same as what you would expect to adhere to in Supreme Court. We do have certain nuances that are a little different, but it's not unlike most civil courts that you've been in. In some respects, we're a little more civil when it comes to how we behave in court. I mean, surprisingly civil, how well the attorneys behave towards each other in court.

John Caher: Why do you say that?

Judge Rivera: It's just a different vibe. I've heard court officers who've stated, "Judge Rivera, I've got to tell you, your court is so professional, the way that things are handled here. The lawyers aren't screaming at each other."

I lay it out early. As Judge Sise pointed out earlier, I make a point to remind them that, "This is a bench trial format. There are no juries here. You're speaking to me. Present your evidence. Be respectful. If you need a break, let me know." I go through a whole outline of things regarding behavior, and conduct, and the decorum that I expect the attorneys to adhere to in court. And that usually sets the tone. I require them to stand when they're asking questions because I remind them that, "These microphones, they don't amplify your voice, they are only for recording purposes, I need to hear you, opposing counsel needs to hear you, and the monitor needs to hear you." There's just this specific conduct that I'm requiring of them upfront, and it usually tends to work. There's no discord. It's one of the most civil environments I've ever been in.

Judge Sise: Judge Rivera just mentioned about the recording process. We don't have stenographers like you see in the other courts. It's recorded into the computer hard drive. When I first got here, it was actually a tape recording. But now, it goes right into the computer. So we have to remind attorneys, "Unless I say 'off record,' whatever you say, even sotto voce at your table, I hear." And sometimes there's pretty funny comments, especially when they're commenting on the judge! It's pretty funny.

Judge Leahy-Scott: And in the days now of virtual trials, we also have to remind the counsel to turn their microphones off on the virtual Teams platform because, unfortunately, they have said a few things that they would not want the opposing party to hear, including the judge.

One of the things that we have done in the Court of Claims is we've developed a PowerPoint presentation called "Demystifying the New York State Court of Claims," which the three of us— Judges Sise, Rivera, and I as well as many of my Paragraph A judicial colleagues—have been presenting to bar associations and attorneys around the state, which provides them with the historic background of the Court of Claims and also how we practice here in the Court of Claims.

We provide them with basically the answers to the test that they may be asking, and the most important thing you need to know about the Court of Claims is the Court of Claims Act. You have to know that backwards and forwards because, as Judge Sise spoke to earlier, with the sovereign immunity issue, there are specific ways in which you must bring a claim in the Court of Claims—the timeliness around it, what should be included in the claim—and those matters could potentially be jurisdictional defects.

So we have been making these presentation now for in excess of a year, educating attorneys on the Court of Claims and the Court of Claims practice, first, because we'd like to have these attorneys know about us, and secondly, it's because of our equal justice in the court's initiative that we have here in the Court of Claims that I could speak to if you want.

John Caher: Absolutely. Please, do.

Judge Leahy-Scott: Okay. So we have a very robust Equal Justice in the Court Committee here in the Court of Claims. And you've heard the type of work that all of the Paragraph A judges preside over. And many of the judges, as part of our Equal Justice Initiative, identified, first with specificity, incarcerated persons who may not be able, in the best manner, to present and prosecute their claim. And it was because they were unfamiliar with either the Court of Claims Act or the Court of Claims process. And then, as we spoke collectively with all the judges in Paragraph A, it was decided that perhaps we, as a court, should start establishing an attorney referral program to have attorneys first, again, learn about the Court of Claims, and secondly, to volunteer to represent incarcerated persons. We've expanded that not to include just incarcerated persons, but really

anybody pro se in the Court of Claims who is in need of attorney for assistance.

So we have been working on this initiative for quite some time now, and it's really been a two-pronged approach, which is, first, to initiate and establish a pilot program which we are finalizing now with our partner stakeholders, and we appreciate very much the Attorney General's office because the Attorney General represents the state and defends the state on all claims, and secondly, we're going to start our pilot program involving several correctional facilities and incarcerated persons within those correctional facilities. So, another partner and stakeholder is the Department of Corrections and Community Supervision. And both agencies have signed on and are also very excited about this initiative in the Court of Claims because the best cases are obviously those in which the clients are represented and represented well.

So, the first prong is to have those stakeholders involved so we can start a program. It will be a pilot program, again, for several facilities in the State of New York, where attorneys agree to participate in this program and represent the claimants—incarcerated persons.

And then the second prong, which I previously spoke about, is to educate attorneys as to Court of Claims, the Court of Claims practice, and to really be soliciting attorneys to join this program. And we are very fortunate that one of our retired judges, just retired last summer, Judge Deb Martin, has agreed to stay on in a volunteer capacity at this juncture to assist us with this program, and she is the Director helping us put this program together.

So any of your listeners who are interested in joining the attorney referral service program that we're starting and representing claimants in the Court of Claims, they could reach out to Judge Martin, and her email address is damartin@nycourts.gov. And if they would just contact her, we could put the attorney on a roster that we're developing to represent incarcerated persons.

John Caher: Judge Sise, Judge Leahy-Scott spoke about the Equal Justice Initiative. Why is that important to you as the Acting Presiding Judge?

Judge Sise: The Attica uprising gave the incarcerated persons access to the court. The Equal Justice in the Court initiative, which we're putting forth now, is looking to get attorneys who are willing and able to represent the incarcerated persons.

As I've likened it, it'd be like me walking into the ring with Tyson Fury, the WBC heavyweight boxer, and I walk into the ring and not only am I in the ring with a professional boxer, my arms are tied behind my back. Incarcerated persons all these years have been prosecuting their own cases against trained lawyers with the Attorney General's office. And one of the things that I always try to do, and I try to impart to all the judges who come to our court, is give the litigants an even playing field. It has never been an even playing field, having an uneducated, certainly not a legally-educated, person bring their own claim or represent themselves against an experienced trial lawyer. So by creating this panel of volunteer lawyers, it's going to give representation.

Now, John and Jane Q. Public, their first thought, may be, "Why should we? They're in prison for doing something nasty, something terrible."

Well, the answer is these folks who are convicted, they got to do their time. The whole idea is rehabilitation, because they will rejoin our community. So, sure, take away their time, their liberty. That's the punishment. But if they're injured as a result of the negligence by the proprietor—the State of New York— who's charged with the responsibility to take care of them, give them an avenue, which they had since Attica, but also give them representation so they have a fair chance of representing themselves, and perhaps if they're lucky enough and they have the evidence, get compensation for the injury they sustained as a result of the negligence of the proprietor, the State of New York.

John and Jane Q. Citizen should recognize they're returning to society, and the vast majority are there for a lot of economic crimes, a lot of drugs and so forth. Certainly, there are those in prison who have committed violent crimes, but some of them are just passion, some of them are because they were intoxicated when they did it, et cetera. But they're going to get back into society so treat them like fellow human beings while they're in. Treat them like real people.

I'm very excited about the program. I do hope some of the attorneys that are listening, some of the firms that have young lawyers who aren't getting into court all that quickly, reach out to Judge Deb Martin, get on the list. We'll get you some cases.

John Caher: There seems to be a dual benefit in that. I mean, one, the obvious benefit is to the individuals who may not be equipped to represent themselves, but it seems there's also a benefit in the development of the law. You occasionally deal with novel issues that probably ought to be fully developed because they're going to be appealed and they may decide what the law is. And it would seem that it would be advantageous to have someone trained in the law, someone who can point out those issues, someone who can develop them. So if the appellate court reviews it, you get a full review of whatever the novel issue happens to be. Is that right?

Judge Sise: Absolutely. And then finally, if there's injuries occurring as a result of the negligence of the State of New York and how they run their prisons, well, then they got to correct the problem so others don't get injured, right? When you get injured, there's more cost to the taxpayers where you're taking care of these people. Attorneys should understand, we're not just soliciting volunteers to do pro bono. You'll have an opportunity to handle cases where indeed you'll be able to collect a one-third contingency.

Judge Leahy-Scott: There are some types of cases, for instance, the bailment cases, that don't involve large amounts of money. And we would anticipate that we would have a pro bono panel to represent incarcerated individuals relative to those claims.

However, as Judge Sise said, medical malpractice, medical negligence, your slip and falls, your torts, and your assaultive conducts, could potentially have verdicts that involve large amounts of money. So we would anticipate having the attorney referral service and saying to the attorneys, "You are entitled to a contingency fee, that's between you and the client, we are just a court-based service to put the client and the attorneys together."

John Caher: That's fascinating. Now, I'd like to know how you came to the Court of Claims. We only touched on how somebody becomes a Court of Claims judge, and I'm hoping that we can amplify that with your own individual stories. So, Judge Sise, why don't you start off with that?

Judge Sise: Sure, sure. Just backing up a little bit because I'm not sure we covered it, but it is a gubernatorial nomination, and it's on the advice and consent of the Senate. So, it's a Senate confirmation process. It's a nine-year term. And it's a static end date. So for instance, I came in when Judge Jim Kane retired at 70. He only had four years left of his nine-year term when I was nominated and confirmed in 2000. I took the balance of his term. So I've

been up a couple times since and gotten full terms, and now I'm actually in a holdover status waiting to be reappointed.

So how did I become involved? Well, John, you know that I'm from a family of judges. I grew up with a judge. My dad was a judge for 30 years. My brother, Joe, became a judge before I did. And I think four or five of the nine sons are lawyers. So we've been in the law forever and a day. It was part of who the Sises were. And I did get involved in politics, didn't intend to, but I backed into it for different reasons. And I got very much involved in it and ended up becoming a town chairman, then a county chairman and so forth. So I actually got to know some of the players on the state level and I realized that there was a Court of Claims and I realized it was gubernatorial appointment.

And as my brother Joe said to me, "These icebergs rarely open, and then they close for a long time. If you have an opportunity to seek an appointment, nomination, and confirmation to this court, Court of Claims, go for it." I said, "Okay, I'd give it a shot." I gave it a shot all those years ago, and that's how I did it.

I went through, if you will, the political way.

But I had many years as a trial lawyer, initially as a Bronx Assistant District Attorney for a number of years, then in a private practice in Manhattan before I came back home to Montgomery County to Sise and Sise, the family business. I did all the litigation. I was in court all the time. So I do feel good about the fact that, yes, it was a political appointment, no question about that, but I brought to the table a lot of years, 18 years, of practice before the courts. So that's how I got here.

Judge Leahy-Scott: Mine's a little different because I've spent the bulk of my career in the public sector. I've been a local and a state prosecutor. I was also a defense counsel. My last employment before becoming a judge, I was the Inspector General of the State of New York. And in that capacity, I had many investigations which were reported in the press and otherwise, but the last most notable investigation involved the two incarcerated individuals who escaped from Dannemora. And I wrote a report, and Ben Stiller decided to do a movie on it in which Bonnie Hunt played me.

And I do believe as a result of the various investigations I was involved in as Inspector General, and particularly that last one, that the then-Governor nominated me to the Court of Claims position, which quite frankly was very much a surprise because I had intended to continue as the Inspector General for a third term. And when I was approached and

was nominated, I was extremely privileged and honored, and it was a humbling experience. I went before the Senate Judiciary Committee and the Senate, I was confirmed. And so now I've been a judge for almost five years. But that really was my path to how I became a judge.

John Caher: Judge Rivera, what's your story?

Judge Rivera: Oh, gosh. Nothing as colorful as Judge Sise or Judge Leahy-Scott. I mean, I practiced law for 27 years before I applied for appointment to the Court of Claims. Before that, I was a professional boxer, and was a champion amateur boxer. The law has always been something that I always wanted to pursue from a young age. And practicing law grew into a desire to want to become a judge someday. I went through the application process, was fortunate enough to have been nominated and confirmed by the Senate. I've been on the bench for two years. It was a remarkable experience going through the whole process, and a very emotional culmination of a lifelong dream. I truly was overcome with emotion after having gone through that process, being nominated by the Governor and confirmed by the Senate. That's my story.

John Caher: So let's say a young attorney hears this podcast and thinks, "Gee, I'd like to be a Court of Claims judge someday." How do they do it?

Judge Sise: First, you got to be a member of the bar for 10 years before you're eligible. You've been a member of the bar for 10 years, you can apply. You should go to the Governor's website. Go to the New York State Governor's Judicial Screening Committee, and you'll see the composition of that committee, and then there's an attachment and you can get right to the application form, a 47, 48-page application form that you have to fill out. Takes some time. It does take some time. You fill it out and you submit it to the Governor.

Governor looks at it through the counsel's office and they set up a screening, if you will, interview before the Judicial Screening Committee. You then appear before the Judicial Screening Committee. You're either found highly-qualified or not qualified. If you're found highly-qualified, you're passed on to the Governor. The Governor decides whether she wants to nominate you to the Court of Claims. That's what you do from your end.

Obviously, since it is a nomination by the Governor, and it is a trial court position, that first 10 years of your practice, try to get into court as often as you can, become known as a trial practitioner because that's awful nice when you come to the Court of Claims. It's not absolutely necessary,

but it's great to have that trial experience. I can tell you as the Acting PJ of the Court of Claims, I like it best when I see somebody who's got some trial experience, has been in the courtroom. Makes it easier, if you will.

And then of course, you can get involved in politics as well. Join a local political party and volunteer your time. Let the political folks know who you are, because at some point, you may be asking that person, "Could you write a letter for me? Could you contact the senator? Could you contact Governor's office and let them know I've submitted my application?" It's going to up to the Governor and the Senate as to whether or not you'll be selected and confirmed. That's really how you get it.

Judge Rivera: Dovetailing on what Judge Sise said, for a young attorney out there, it's important to make sure that you guard their reputation in the legal community. A lot of the people that you're going to be asking to give referrals on your character and fitness for judicial office are going to be folks that you run into in the courtroom, and on the street. I tell young attorneys when they ask, "Judge, what should I do?" I say, "Guard your reputation as if it were gold. Pretend that every encounter that you have, whether it be in court or whether it be in an office, whether it's with your adversary, pretend that you're on an interview because you are being interviewed. People. Remember the kind of person that you are projecting yourself to be."

The person who was reviewing my background and qualifications had contacted everybody I had provided on the list, in addition to other people that they had asked those on the list to refer them to. And thankfully, my reputation was key. They wanted to know what kind of person I am. So that's one of the most important pieces of information or advice that I can give a young attorney. Make sure that you prepare, as Judge Sise said, get as much trial experience as you can, get in the courtroom as often as you can, but guard your reputation. Don't be a difficult person to deal with.

Judge Leahy-Scott: And keep in mind that you are seeking a judicial nomination. So it is about civility, it's about respect to everyone and the fact that you are going to be judging. So to Judge Rivera's point, every person you meet, you must be civil, you must be respectful. Because that's what is going to be expected of you when you become a judge.

John Caher: So my journalistic roots bring me back to a follow-up question, which I can't help but asking. So what are the similarities and differences between being a Court of Claims judge and a boxer, Judge Rivera?

Judge Rivera: Well, it doesn't hurt as much, that's for sure!

John Caher: I'm glad to hear that! Judges, thank you so much for your time and your service.