

## LEAVEWORTHY

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The Newsletter of the NYSBA Committee  
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A reminder to our readers: your contributions regarding cases, articles, interesting events and the like will all be considered for publication in future issues. Submissions can be sent to [appcourts@nysba.org](mailto:appcourts@nysba.org).

## *In Memoriam Remarks for Judge Jones*

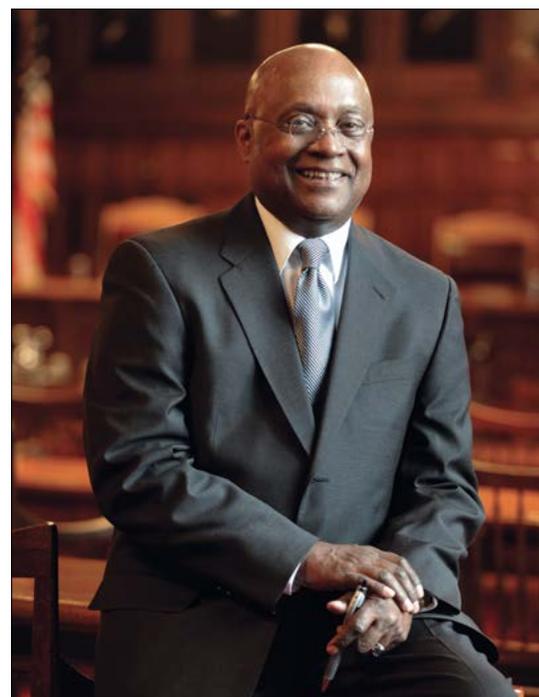
*By Hon. Jonathan Lippman*

As the January 2013 Term of our court begins, we pause to reflect on the life of our colleague Theodore T. Jones, Jr. who unexpectedly passed away in November.

Ted Jones was a New York original. There was no one quite like Ted, either in his hometown of Brooklyn or in the history of the Court of Appeals. Ted fought for his country in Vietnam, was a passionate criminal defense attorney, a fighter for diversity and the rights of those wrongfully convicted of crimes, a stellar trial judge and court administrator and, for 5 storied years, a member of the Court of Appeals. In all these roles, Ted Jones combined academic vigor and a mental toughness, with a sweet and gentle nature and a wonderful smile and laugh that captivated all of us in the Court of Appeals and the legal community.

He was a New York City hero for his role as a Supreme Court judge in presiding over the 2005 transit strike with common sense and a laser like focus on the well-being of the residents of the City he loved. This led to his being named the Administrative Judge of the Supreme Court in Kings County where his solid judgment and people skills were evident to all.

Judge Jones was appointed to the Court of Appeals by Governor Spitzer, who recognized in Ted a humility and a humanity that so complemented his great skills as a lawyer and Judge. Once appointed, Ted's warm demeanor, and his insightful grasp of the intricacies of the legal cases confronting the Court, made him an instant favorite of his colleagues and the lawyers practicing before the



Court. When Ted Jones spoke at conference or asked questions from the Bench, we all listened knowing that he was always wise, cogent and insightful in expressing his views on the law.

Judge Jones' writings in so many areas of New York's jurisprudence will stand as testament to his legal acumen and skills. However, his legal abilities only told part of the story of the Judge and his life. Ted Jones had a passion for equal justice for all that he demonstrated time and time again. He was the head of the Court's diversity committee and fought tirelessly to ensure that all New York-

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## Judge Jones: A Memoir

By Juan C. Gonzalez, Esq.

It is difficult to capture the true nature of Judge Theodore T. Jones, Jr. "the man" in the limited space allowed here. But Judge Jones had a long and fulfilling life, to be sure. He was a Brooklyn native and a product of the public schools in New York City. After college at Hampton University, Judge Jones served in the United States Army from 1967-1969 and was stationed in Vietnam, attaining the rank of Captain. After the military Judge Jones attended St. John's University School of Law, graduating in 1972. After two years with the Legal Aid Society, Jones clerked for a Court of Claims Judge and then was a criminal defense attorney in Brooklyn before his election to the Supreme Court in 1989. Judge Jones was re-elected in 2003, and in January 2006, he became the Administrative Judge of the Civil Term of Kings County. Just a year later, Governor Spitzer nominated Judge Jones to the Court of Appeals, and by February 2007, he was unanimously confirmed by the Senate.

This professional background – storied as it was – has been oft-repeated. I can only hope that what follows provides an additional perspective on the philosophy of Theodore T. Jones, Jr., a tireless advocate for justice for all. Judge Jones was by any measure, a powerful man, strong in personality with an infectious collegiality and a disarming smile. His powerful persona was complemented with no less than a first-rate intellect and unmistakable integrity, old-fashioned in sensibilities though unmistakably forward-thinking.

As a member of Judge Jones' inaugural class of law clerks at the Court of Appeals, I had the distinct honor of witnessing Judge Jones "in action" in chambers, deep in the marbled halls of 20 Eagle Street. When not engaged in our case discussions, I and my fellow clerks relished the opportunity to listen to Judge Jones' countless stories, never dull and always lined with an important lesson or life observation. But most memorable were what I and my co-clerks fondly remember as Judge Jones' favorite one-liners. At the start of any confidential case discussion, Judge Jones would quip that the "Cone of Silence is down," a reference to a joke from "Get Smart," the 1960s T.V. comedy spy series; and then there was the memorable "flaps down, we're about to hit the runway," which Judge Jones was fond of saying as he returned to chambers following case conferences on the last day of the Court's session, a humorous reminder that it was time to head back home after a long two-week session in Albany. Last but not least was "Into the valley of Death Rode the six hundred," a quote from Lord Alfred Tennyson's 1854 poem, "The Charge of the Light Brigade," which Judge Jones frequently uttered before taking the bench for oral arguments. In Judge Jones' presence, one was never far from his unwitting reminders to laugh once and a while.

As memorable as his personality was Judge Jones' total respect for the rule of law, and his place at Court of Appeals Hall. What Jones ap-

preciated as well as anyone else was that judges come and go, and only the Court lives on. His life was marked not only by his personal successes and his sacrifice in service of his country in Vietnam, but also by his unbending dedication to improve the legal profession and the fair administration of justice. Above all, he was a people's judge and, given his background as a trial lawyer and later a trial judge, he was a lawyers' judge more so than a judge's judge. At every opportunity I had to attend one event or another with Judge Jones, the consistent comment I heard from practitioners was that Judge Jones truly understood the challenges of lawyers, and because of this, he always enjoyed a lasting respect from the Bar. From non-lawyers who knew anything about Jones, the consistent sentiment I heard was just how humble, warm and selfless he was. There was never a dissenting opinion on these fronts.

In addition, throughout his career, whether as a criminal defense attorney – paid or pro bono – or then as a Justice of the Supreme Court as a trial judge and later as the Administrative Judge for Kings County, Judge Jones tirelessly sought to make the law an instrument of greater fairness.

His infectious sense of humor and unique smile aside, Judge Jones was a thoroughly practical man, deeply rooted in New York State's legal community and always interested in improving access to justice for all. Judge Jones cared deeply about the cases being litigated before the Court, and he understood that as a member of the state's Court of last resort, his decisions on each individual case would guide the conduct of others for a long time to come, whether they are criminal defendants, personal injury litigants or businesses large and small. At heart, Judge Jones was a quiet, gentle and unassuming man and judge, but he held in abundance those traits that forever mark the able jurist: a deep knowledge of and humane approach to the law, marked by an innate and practical wisdom to see to it that simple justice be done in every case, dictated, of course, by sound principles and precedent.

Though his time on the Court of Appeals was short, in a real sense Judge Jones has not passed on. No doubt, he lives on, not just in his written opinions, but also in the traditions of the great Court of Appeals, to which he richly contributed. And last but not least, Judge Jones lives on through the indelible mark he left imprinted in the minds and hearts of his colleagues of the Bench and the Bar statewide. While we mourned the passing of a wise and warm-hearted Judge and friend, we take solace and comfort in the legacy of his wisdom and integrity.

And the citizens of this State will continue to take solace in the good work he helped propel as Co-chair of New York State's permanent Justice Task Force. In this role Judge Jones was instrumental in spearheading efforts to eliminate systemic causes of wrongful convictions in New York.

Under his leadership, the Task Force made several lasting recommendations towards accomplishing its mission, including videotaping police interrogations, expanding post-plea access to DNA testing, as well as better practices to increase the reliability of witness identifications.

Judge Jones' creed also lives on in his written opinions. Although his time on the Court of Appeals was all too short – a mere five years – in that time Judge Jones authored decisions that will have a lasting impact on his legacy. In the field of criminal law, Judge Jones cared deeply about a fair process to best protect against wrongful convictions. Judge Jones once lamented: "There is absolutely no disagreement on the fact that one of the most horrendous results we can conjure up is to wrongfully convict a defendant," but "[e]qually troubling is the fact that when that happens, the true perpetrator is still out there. If the public loses faith in the integrity of criminal convictions, then we have lost control of our entire system." (Stashenko, *'Serious' Effort On False Convictions*, N.Y.L.J., July 15, 2009)

Judge Jones' decisions in the field reflect this belief system and his mission to eradicate wrongful convictions, or what he later called a "taint on the criminal justice system."

His notable criminal law decisions include *People v. Bryant*, 8 N.Y.3d 530 (2007), in which Judge Jones reemphasized for a unanimous Court the practical approach that courts must take in assessing the sufficiency of defendant's factual allegations in support of a motion for a hearing to suppress evidence proffered against him or her – no doubt an important tool against wrongful convictions. In particular, Jones wrote that the People could not both refuse to disclose a key piece of evidence – such as an informant's identity – "or at least some facts showing a basis for the informant's knowledge the police relied upon to establish probable cause for the arrest," and at the same time "insist" that defendant's averments in his pleadings were insufficient to warrant a hearing.

Another notable tie-in to his later work on the Task Force was *People v. LeGrand*, 8 N.Y.3d 449 (2007), in which Judge Jones wrote for a unanimous Court that, where a case turns on the accuracy of eyewitness identifications and there was little or no corroborating evidence connecting the defendant to the crime, it is an abuse of discretion for a trial court to exclude expert testimony on the reliability of eyewitness identifications (assuming, of course, that the testimony is relevant and satisfies *Frye* and other tests).

In *People v. Bedessie*, 19 N.Y.3d 147 (2012), Judge Jones dissented (joined by Chief Judge Lippman) on the first-impression issue of the admissibility of expert testimony proffered to inform the jury on the reliability of confessions. Judge Jones urged that *LeGrand* naturally "should be extended to the phenomenon of false confessions," at least where "there is little or no evidence connecting the defendant to the charged crime." As in *LeGrand*, Judge Jones was concerned about the problem of wrongful convictions and urged that it is an abuse of discretion to exclude relevant expert testimony that "seeks to prevent a taint of the criminal justice system-wrongful convictions," especially where

"there is little or no corroborating evidence connecting the defendant to the crime."

In *People v. Bailey*, 13 N.Y.3d 67 (2009), Judge Jones wrote for a 5-2 majority that held that mere knowledge of possession of a forged instrument is insufficient, without more, to support a count for possession of a forged instrument. Jones concluded that defendant's admission that he knew he was carrying counterfeit bills, plus the fact that he was in a shopping district, was insufficient, and that by not requiring more on the question of intent (an element distinct from knowledge), the lower courts "effectively stripped the element of intent from the statute and criminalized knowing possession" alone. Significantly, "when the Legislature intends for there to be a presumption or inference of intent by mere possession, it so specifies in the statute."

While these and similar cases will have an enduring impact on the quest to reduce the number of wrongful convictions in New York State – no doubt to be continued through the important work of the Task Force – one memory is sure to last: Judge Jones was a champion of justice, exacted evenly, for all. In the end, an important legacy of Judge Jones that we are left with is the promise of "faith in the integrity of criminal convictions," a promise that surely will live on.

*Juan C. Gonzalez, Esq. is with the firm of Shaub Ahmuty Citrin & Spratt LLP. From 2007 to 2008, he served as Senior Law Clerk to Judge Jones.*

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#### *In Memoriam Remarks for Judge Jones*

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ers had the chance that Ted himself had to be a part of the American dream. Judge Jones also co-chaired the Justice Task Force, dedicated to eliminating systemic causes of wrongful convictions in New York. In that role, he forged numerous proposals relating to DNA evidence, eyewitness identifications and false confessions. In his prior career as a criminal defense attorney, he was legendary for his commitment to providing quality representation to people who were accused of crimes but had little in the way of financial resources. To Ted Jones, what was most important was that every person had a right to their day in court, regardless of their wealth or status in life. There was no one more dedicated to making the ideal of equal justice a reality in New York.

The defining measure of Judge Theodore T. Jones, Jr. in the end, was his humanity. His concern for other human beings permeated the very fibre of his being and informed his professional and personal life. He was a unique jurist and person who will forever be a part of our court family and the great history of the Court of Appeals.

*Hon. Jonathan Lippman is the Chief Judge of the New York Court of Appeals.*



Left to right: Hon. Theodore T. Jones, Jr., Hon. Carmen Beauchamp Ciparick, Hon. Robert S. Smith, Chief Judge Jonathan Lippman, Hon. Susan P. Read, Hon. Victoria A. Graffeo, Hon. Eugene F. Pigott.

## THEODORE T. JONES - A LIFE DEDICATED TO JUSTICE

<b>1944</b>	Born in Brooklyn, New York	<b>1975-1989</b>	Private criminal defense attorney in Brooklyn
<b>1965</b>	Graduated Hampton University (B.A., History and Political Science)	<b>1989</b>	Elected Justice, Supreme Court, Kings County
<b>1967-1969</b>	Served in the U.S. Army, attained rank of Captain and served in Vietnam	<b>2003</b>	Re-elected to the Supreme Court
<b>1972</b>	Graduated from St. John's University School of Law	<b>2006</b>	Served as Administrative Judge of the Civil Term, Kings County
<b>1973</b>	Admitted to practice in New York	<b>2007-2012</b>	Served as Associate Judge, New York Court of Appeals
<b>1973-1974</b>	Staff Attorney, Legal Aid Society, Criminal Defense Division	<b>2009-2012</b>	Served as Co-Chair of New York State's Justice Task Force
<b>1974-1975</b>	Law Clerk to Justice Howard A. Jones, New York Court of Claims		