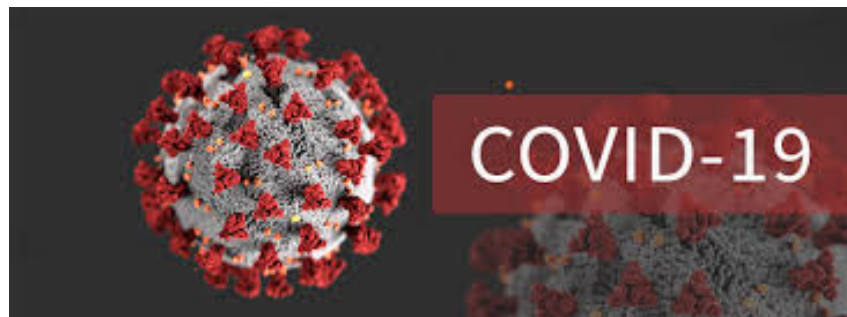


# The Review



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## LEADING THE WAY



March 2020 was a challenging period of deployment and adjustment after all Appeals Court personnel were unexpectedly instructed to stay at home due to the COVID-19 pandemic. Despite all personnel working remotely throughout the Commonwealth, the Court quickly pivoted back to near "business as usual" operations. Indeed the Appeals Court has continued its mission of doing justice under the law by rendering well-reasoned appellate decisions in a timely and efficient manner. The Court continues to:

- Receive and docket new filings and appeals, primarily via its electronic filing

- system, as well as accept paper filings of some self-represented parties;
- Answer questions from and assist the public with procedural questions;
- Promptly respond to emergency and non-emergency matters;
- Conduct over 160 remote video oral arguments for May and June sessions, as well as prepare "how to" guides and online practice sessions for the Bar and public;
- Access and distribute case materials to all who need them;
- Circulate draft opinions among the Justices and staff attorneys for editing;
- Release opinions and Rule 1:28 decisions (with 21 opinions and 214 1:28 decisions issued in April and May); and
- Run our administrative and fiscal operations.

And thanks to the extraordinary efforts of our Clerk Joe Stanton and his team, with the support and encouragement of the Justices, all of whom desired to conduct public oral arguments, we now are conducting oral arguments by Zoom video conference, with all participants in remote locations, and live streaming those arguments on the Appeals Court's new [\*YouTube channel\*](#).

To be sure, some of these remote operations reflect an expansion of capabilities we have used to some degree for several years. But the ability to perform the operations fully, with the Justices and staff in remote locations throughout the Commonwealth is the product of coordinated efforts by our hardworking personnel in the Appeals Court's various court departments during a short, intense period. And while technology made much of this possible, it has been the teamwork of all Appeals Court personnel, in cooperation with the bar and the parties that has made it happen.

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## FINDING VALUE & LEARNING IN CRISIS

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When the Appeal's Court's annual Law Day "away" sitting in Worcester on May 1 was cancelled due to the pandemic, Judge James Lemire coordinated with the local bar, and the high school students who had planned to attend our hearings, to participate virtually – to great success. After that experience, panel chief Judge Mary T. Sullivan suggested that we might offer the same opportunity to other educators around the Commonwealth who might be hungry for content as they conduct remote classes. To that end, we decided to reach out to the Massachusetts Department of Education and offer an assist to remote learners around the Commonwealth. The below flyer has also been shared with our counterparts around the country so that those courts might consider sharing their virtual hearings with local educators as well.

While much of our attention during this difficult time necessarily has been on how to meet our court's basic operating needs, this team effort to put it into action, illustrates the opportunity – not just locally but nationally – to find value and learning in this crisis. Click directly on the flyer below for additional information.



## About Oral Arguments

- ❖ At oral argument, the attorneys for each side of a case argue the legal issues before a panel consisting of three justices.
- ❖ Each side of the case has 15 minutes to argue. During the 15 minutes, the justices may pose questions to the attorneys.
- ❖ During a typical oral argument session, the panel of justices hears six cases, usually three criminal and three civil.



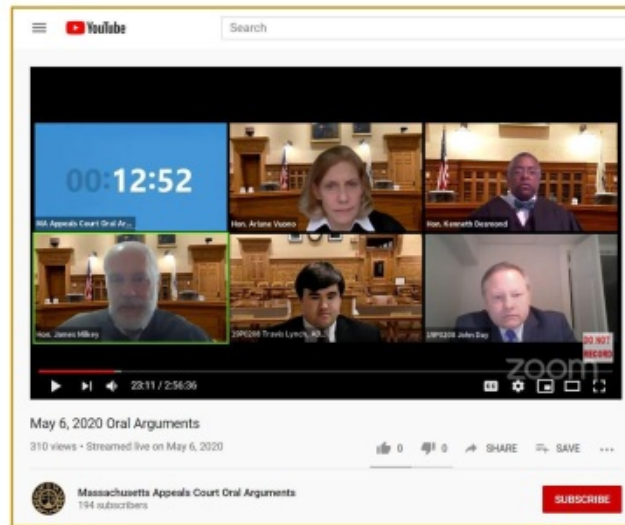
Please direct any questions about this program to:

Gina DeRossi, Esq.  
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# A Peek Inside the Judicial Branch: *Massachusetts Appeals Court Virtual Oral Arguments*

Founded in 1972, the Appeals Court is the intermediate appellate court in the Massachusetts judicial system. The Appeals Court is composed of twenty-five justices who decide over 1,000 cases each year. Three justices preside as a "panel" hearing oral arguments presented by attorneys and parties in criminal and civil appeals involving a range of legal questions. Learn more about the Appeals Court [here](#).

Typically, cases are argued before the Appeals Court at the John Adams Courthouse in Boston and are open to the public. However, due to the COVID-19 pandemic, all Appeals Court oral arguments are now being conducted through videoconference and are broadcasted live to the [Massachusetts Appeals Court Oral Arguments YouTube channel \(link\)](#). Oral arguments will be live broadcasted throughout May, June, and July; the oral argument schedule can be found on the [court's calendar \(link\)](#). All sessions are recorded and available on the YouTube channel.



This virtual format presents an opportunity for Massachusetts citizens, including students and educators, to view their judicial branch in action.

Justices of the Appeals Court may be available to speak to educational groups about the role of the judicial branch and the Appeals Court to give context to oral arguments. We hope that the Appeals Court's oral arguments can provide an interesting and unique educational resource to educators during this unprecedented time.

## LONGTIME FIRST ASST. CLERK **Lena Wong** RETIRES AFTER 27 YEARS OF SERVICE TO THE JUDICIAL BRANCH

First Assistant Clerk Lena Wong retired on May 1, 2020, after 27 years of service to the Judicial Branch and 34 years total to the Commonwealth. After graduating from Cornell University and Boston College Law School, Lena worked as a trial and appellate attorney in the Department of Correction before the Justices of the Appeals Court appointed her an Assistant Clerk in 1993, and as First Assistant Clerk in 1998. Lena recounts that initially she was afraid of the Justices but then realized, "What do I care?"

Lena respectfully answered questions from the Justices, with her favorite reminder, “Do what you want, you’re the judge!” During her years in the Appeals Court, Lena made one regrettable mistake – becoming First Assistant Clerk of the Supreme Judicial Court for the Commonwealth in 1999. Upon further review of how much she enjoyed the more hectic pace, substantive legal work, and family atmosphere of the Appeals Court, she remanded herself in 2001 and worked “happily ever after” in the Appeals Court as an Assistant Clerk and, again, after 2010, as First Assistant Clerk.

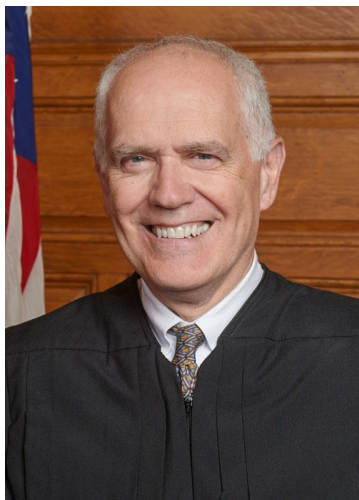
During her tenure, Lena was loved and well respected among the Justices, the bar, and court personnel for her good humor, quick wit, and knowledge of the court’s procedures; and admired for the extensive shoe collection stored under her desk. Lena consciously organized her time off to allow colleagues with children to be off around the holidays and school vacation weeks. She was an expert on single justice practice and procedure, such that then Chief Justice Philip Rapoza tasked her with training new associate justices and assistant clerks during their first forays with the single justice session. Although Lena preferred working with paper, she supported and acclimated to the Appeals Court’s transition to electronic filing and paperless practices. The IT department’s motto was, “If Lena can do it, anyone can.”

Much to her colleagues’ surprise, Lena’s first activity in retirement was to purchase an iPad. She is busy planning her first post-pandemic trip to somewhere warm and exotic. Hopefully, she will continue her tradition of mailing postcards from her travels to the court. Lena departed the Appeals Court by expressing, “I am lucky and grateful that the Justices of the Appeals Court gave me the chance in 1993. It has been my privilege to work with you.” Lena is an original and will be missed.

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## A LOOK BACK: JUSTICE MILKEY WINS BATTLE TO ARGUE...AND THE CASE

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NPR's program *Living on Earth* is a weekly, hour-long and award-winning environmental news program distributed by Public Radio Exchange. Hosted by Steve Curwood, the program features interviews and commentary on a broad range of ecological issues, exploring how humans interact with their landscape.

On the May 8th installment of the NPR program, a portion of the broadcast entitled “Rule of Five” featured a tribute to our very own Justice James Milkey, including the following exchange between host Steve Curwood and his guest, Professor Rick Lazarus.

Against long odds, in 2007 the United States Supreme Court decided the case *Massachusetts v. EPA* in favor of the states and environmental groups that had sought regulation of climate disrupting emissions. The case had enormous implications for environmental law, and it laid the legal groundwork for the Obama administration’s climate change policies as well as the global Paris Climate Agreement. Harvard Law Professor Richard Lazarus, the author of the new book “The Rule of Five: Making Climate History at the Supreme Court,” discusses with Host Steve Curwood the gripping behind-the-scenes story of how *Massachusetts v. EPA* made it all the way to the Supreme Court. The following is a small portion of the interview:

CURWOOD: Let's go back for a moment to Jim Milkey's situation. You gave us one

instance, and the other?

LAZARUS: The other is that when the case was before the United States Supreme Court, Jim Milkey presented the oral argument, for all the groups. In the US Supreme Court, the Justices only let one person argue per side. There were, you know, about 35, 36 or more petitioners on the same side. But the Supreme Court says, we don't care. You have to have one person present your argument. There is a battle, and a battle royale, about who should argue the case. Everyone always agrees on the easy thing: we should have the best person argue the case. And then, they tend to disagree about who the best person is. Jim Milkey prevailed in this case. And Jim Milkey really did present one of the single best oral arguments I have ever heard in the United States Supreme Court. And I could certainly tell you that a lot of people thought he wouldn't do that before he stood up there. But that day he was on all cylinders.

Professor Lazarus elsewhere describes the case as the environmental equivalent of *Brown v. Board of Education*.

For a link to the program, [click here](#).

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## UPCOMING 2020 APPEALS COURT "OFF-SITE" SITTINGS:

**While the pandemic necessitated the cancelling of our off-site hearings from April through June, as noted earlier, we were able to conduct video conference hearings in May and share them on our YouTube channel with many of those communities.**

**Decisions about upcoming off-site sittings will be announced at a later date as more information becomes available.**

September 10: Essex County Superior Court  
September 17: UMass Law School, Dartmouth  
October 8: UMass Amherst  
October TBD: Western New England Law - Springfield  
November 5: Mass School of Law - Andover

**Stay Tuned for Additional Information!**



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