

A TRIBUTE TO HONORABLE MATTHEW JOSEPH JASEN,  
(1915–2006) COURT OF APPEALS (1968–1985)

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The son of Polish immigrants, Judge Matthew J. Jasen was born in Buffalo, New York, on December 13, 1915. As an adult, he rose quickly to prominence in Buffalo legal circles. His many honors include recognition by Canisius College as one of its most distinguished alumni, and receipt of the Distinguished Alumnus Award from the University at Buffalo Law School.<sup>1</sup> In addition to serving on the New York State Supreme Court for ten years, he was an Associate Judge of the New York Court of Appeals for eighteen, during which time he authored more than 429 majority and 284 dissenting opinions.

But Judge Jasen's legacy is not about accolades, titles, and impressive numbers; it is about his well-reasoned, honest, commonsense jurisprudence that embodied his genuine concern for basic human rights and the need to extend the law's protection to those least able to protect themselves.

Judge Jasen worked as a postal clerk in his youth to help his family through difficult times during the Great Depression. While his humble, industrious upbringing may have shaped his egalitarian mindset when it came to the practice of law, it was his tenure in Germany as a military judge in the 1940s, and as a civilian judge there afterwards, that solidified it.

In Germany, Judge Jasen witnessed the brutality and horrors of the Holocaust first-hand. The carnage and evil that corrupt government power can inflict upon its citizens when left unchecked by the judiciary made an indelible impression on him. During his retirement ceremony he remarked:

Never in the history of mankind were so many innocent men,

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<sup>1</sup> Today, the University at Buffalo Law School annually recognizes Judge Jasen's legacy by awarding the Judge Matthew J. Jasen Appellate Practice Award for outstanding achievement in appellate advocacy to one of its graduating students.

women and children singled out for persecution and destruction by one man and his followers. This spectacle of human evil unleashed upon the world was officially sanctioned by the Nazi government—and the courts of that country enforced this reign of terror.

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... I was shocked to learn that the judicial branch of that government acquiesced in this spectacle of human evil. Recognizing the moral consequences of judicial action, as well as inaction and silence, I resolved, then and there, to do my part to insure that our judiciary remained strong, and dedicated to government in accordance with the rule of law and not man. It is fidelity to the rule of law which has served, for 28 years, as the foundation of my judicial faith.<sup>2</sup>

While Judge Jasen returned to private practice in Buffalo in 1948, his ultimate destiny lay on the side of impartial justice. In 1957, Governor W. Averell Harriman would appoint him to the New York State Supreme Court, where he presided for the next 10 years. During that time “[h]e was a well-regarded trial justice who treated lawyers and their clients with thoughtfulness and respect.”<sup>3</sup>

Judge Jasen’s noteworthy and energetic tenure in the New York State Supreme Court would prove to be a harbinger of great things to come. He was elected to the New York Court of Appeals in 1967 after receiving the support and endorsements of all four of the major political parties. His eighteen years on the court were “marked by high industry and impeccable integrity.”<sup>4</sup> Given the energy with which he served the court and his penchant for a challenge, it is not surprising “he would be a leader, and often the leader, in number of opinions authored.”<sup>5</sup>

Today, Judge Jasen’s opinions are regarded as “models of clarity, scholarship, and independence of thought,”<sup>6</sup> and his unpretentious style of writing is remembered for allowing the reader to “grasp at a

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<sup>2</sup> Hon. Matthew J. Jasen, Remarks at the Ceremony Marking Retirement of Senior Associate Judge Matthew J. Jasen (Dec. 17, 1985), *in* 66 N.Y.2d vii, ix (1985). Judge Jasen also recognized the importance of education in avoiding the horrors of genocide. In fact, he was a key contributor to a New York State Department of Education text concerning the Holocaust and genocide.

<sup>3</sup> Alan D. Scheinkman & Edward A. Sheridan, *A Tribute to Judge Matthew J. Jasen*, 35 BUFF. L. REV. 14, 15 (1986).

<sup>4</sup> *Id.* at 14.

<sup>5</sup> *Id.* at 16.

<sup>6</sup> Chief Judge Sol Wachtler, Remarks at the Ceremony Marking Retirement of Senior Associate Judge Matthew J. Jasen (Dec. 17, 1985), *in* 66 N.Y.2d vii, vii (1985).

glance the significance of the case.”<sup>7</sup> Statistically speaking, he dissented no more frequently than other members of the court.<sup>8</sup> But when he did, he stated his reasons in an easily discernable and persuasive manner. As a colleague once observed:

Perhaps more than any other judge on the court, he was reluctant, if he differed with the majority, to let his difference pass unwritten. His views were strongly stated in terms of deeply held principle, both of legal theory and of societal values. He regularly lifted up what he perceived to be the controlling principle and obliged the other members of the court to confront and publicly address his concern.<sup>9</sup>

For example, in *People v. Ferber*,<sup>10</sup> Judge Jasen vehemently disputed the majority’s position that New York’s criminal laws against child pornography violated the United States Constitution. The United States Supreme Court would later reverse *Ferber*, deciding unanimously, as had Judge Jasen, that the State’s interest in protecting children from sexual exploitation supersedes a pornographer’s purported First Amendment right to publish erotic material involving minors.<sup>11</sup>

Similarly, *People v. P.J. Video, Inc.*<sup>12</sup> saw the Court of Appeals address the adequacy of an affidavit supporting a search warrant authorizing the seizure of obscene materials. In notable dissent, Judge Jasen singularly argued that the issue was not “whether the defendants are guilty beyond a reasonable doubt . . . but rather, simply whether the magistrate, in issuing the warrant to seize the movies, had probable cause to believe that they were obscene.”<sup>13</sup> The United States Supreme Court granted certiorari, and, following Judge Jasen’s reasoning, reversed in a 6-3 decision.<sup>14</sup>

As a capstone to his long and distinguished career, Judge Jasen authored a majority opinion in 1984 that symbolizes his integrity and commitment to deciding cases honestly, fairly, and according to the law, even when against his own personal interests. In *Maresca v. Cuomo*,<sup>15</sup> Judge Jasen, at the age of sixty-nine, carried a 6-0 majority that upheld the constitutionality of the mandatory

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<sup>7</sup> Scheinkman & Sheridan, *supra* note 3, at 16.

<sup>8</sup> Michael B. Powers, *A Tribute to Judge Matthew J. Jasen*, 35 BUFF. L. REV. 23, 24 (1986).

<sup>9</sup> Hon. Hugh R. Jones, *A Tribute to Judge Matthew J. Jasen*, 35 BUFF. L. REV. 7, 7 (1986).

<sup>10</sup> 422 N.E.2d 523 (N.Y. 1981).

<sup>11</sup> *New York v. Ferber*, 458 U.S. 747 (1982).

<sup>12</sup> 483 N.E.2d 1120 (N.Y. 1985).

<sup>13</sup> *Id.* at 1125 (Jasen, J., dissenting).

<sup>14</sup> *New York v. P.J. Video, Inc.*, 475 U.S. 868 (1986).

<sup>15</sup> 475 N.E.2d 95 (N.Y. 1984).

retirement age of seventy. With that decision, Judge Jasen was required to leave his cherished Court of Appeals the following year.

Judge Jasen was a man of immense ability, integrity, and compassion. He was dearly loved and will be sorely missed by all of us.