

## CHIEF JUDGE LAWRENCE H. COOKE

*Chief Judge Judith S. Kaye\**

Thank you all, and thank you especially, Judge Rosenblatt, for that wonderful introduction to the program and to each of the members of the Court. You can tell just from listening to those brief remarks what fun it was to serve alongside Judge Rosenblatt, can't you? I want to assure you—and I think Judge Jones would be the first to say this, Al—that no one has replaced you on the Court of Appeals, great as Judge Jones is. Thank you, *Albany Law Review*, for this great occasion, and Vin Bonventre, for your kind words and a very accurate portrait of our beloved Court, might I say.

The only ground rules, as you've heard, for selecting our subjects today, were no living judges and no Cardozo (about whom mountains have been written).

There have been 108 Court of Appeals Judges, from which number I subtract the eight former "livings" and seven incumbents. That left 93 delightful subjects from which to choose. And I can tell you that I have many, many times lost myself in the wonderful biography book. What a perspective on history; what a perspective on humanity; what a perspective on jurisprudence, people of every imaginable background!

I am convinced that there is absolutely nothing about us that you cannot find in this book. Most recently, I did a quick survey of my predecessors' post-bench lives: Guess why? Again, an incredible range, from Governor (Nathan Louis Miller), cabinet member (Charles James Folger) and presidential candidate (Alton Brooks Parker); to law school dean (Francis Miles Finch) and manager of a state lunatic asylum (Alexander Smith Johnson)—I'll let that option go—and student of French (Hiram Denio); to pitching hay and tending the family farm (Addison Gardiner).

But, for me, the choice of Chief Judge Lawrence H. Cooke—an Albany Law School alum, I might add—the choice was a no-brainer. It was an easy one for so many reasons—I'll mention just a few—and

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I'm so pleased to be standing here facing his children, his grandson, and especially you, Teddy, because you didn't have the chance to know your great-grandpa, as I did. So I'm going to tell you a few things about him.

The first reason I picked Chief Judge Cooke, of course, is immensely and intensely personal. We were both born and raised in the Village of Monticello, New York.<sup>1</sup> At the time of my birth, his father was "Judge Cooke" (a triple-hat county court, children's court and surrogate judge). By the time of my graduation from our mutual alma mater, the Monticello High School, Lawrence Cooke was the triple-hat judge, and he continued on the bench until his retirement 31 years later.

Among the many adjustments I had to make coming directly from a private commercial litigation practice in New York City to the Court of Appeals, I think the hardest was calling him "Larry." While it was commonplace throughout Monticello, indeed throughout Sullivan County, if not the entire country, to address him as "Larry"—the Town Justice by contrast, was known as "Judge"—by the time I left Monticello for college, I had not yet fallen heir to that tradition. For months after my arrival on the Court of Appeals, I didn't address him by name at all. I simply cleared my throat when I needed to get his attention.

To say merely that Chief Judge Cooke was "beloved" by our community—the people who knew him absolutely the best—is a vast understatement. And for him, that sentiment, that love, was never a matter of entitlement. He worked hard to earn the respect and affection of the community by the quality of his life among the people—living in the same house for more than 60 years; a committed volunteer firefighter; a parade leader; a patron of the Miss Monticello Diner at dawn; a modest man who always "took the high road" (oft-repeated advice received from his own father); a model of fairness, decency and humanity all the years I knew him, and that was a lot of years. I think the essay by Joyce and Lou Adolfson beautifully captures the person, including his achievements and reforms as Chief Judge. And, here, I especially underscore his advocacy for gender equality, which I have to tell you, was not high on anyone's list when Chief Judge Cooke was out there advocating for equal rights for

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<sup>1</sup> We are in fact the second and third Chief Judges to come from Monticello. Though not born in Monticello, William B. Wright settled there as a lawyer. He served as Chief Judge in 1868. His biography begins at page 79. See *THE JUDGES OF THE NEW YORK COURT OF APPEALS: A BIOGRAPHICAL HISTORY* (Albert M. Rosenblatt ed., 2007).

women.

I mention the personal quality first not only because it is predominant and overwhelming, but also because it underlies the second reason I picked Chief Judge Cooke as my subject for the *State Constitutional Commentary* Symposium. And that is his keen interest in the development of state constitutional law. Committed as Chief Judge Cooke was to fairness in life, and in his jurisprudence, it is no surprise that he was also a stalwart of the State Constitution. The State Constitution, of course, allows the Court to recognize greater, but never lesser, individual rights than the Federal Constitution.

The case that springs to mind when I think of Chief Judge Cooke's jurisprudence is *Sharrock v. Dell Buick-Cadillac, Inc.*,<sup>2</sup> likely because it remains the classic reference whenever the Court of Appeals ventures beyond the Federal Due Process Clause to Article 1, Section 6 of the New York State Constitution. In *Sharrock*, the Court invalidated provisions of the New York Lien Law authorizing a garage owner's ex parte sale of an automobile on the ground that the statute failed to comport with traditional notions of due process embodied in our State Constitution. As Chief Judge Cooke reminded us:

[T]he mere fact that an activity might not constitute State action for purposes of the Federal Constitution does not perforce necessitate that the same conclusion be reached when that conduct is claimed to be violative of the State Constitution. Indeed, on innumerable occasions this court has given our State Constitution an independent construction, affording the rights and liberties of the citizens of this State even more protection than may be secured under the United States Constitution. This independent construction finds its genesis specifically in the unique language of the due process clause of the New York Constitution as well as the long history of due process protections afforded the citizens of this State and, more generally, in fundamental principles of federalism.<sup>3</sup>

Our Court has relied on *Sharrock* in a wide variety of cases, civil and criminal, including in its last three death penalty decisions: *People v. Taylor*,<sup>4</sup> *People v. LaValle*,<sup>5</sup> and *People v. Cahill*.<sup>6</sup> The

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<sup>2</sup> 379 N.E.2d 1169 (N.Y. 1978).

<sup>3</sup> *Id.* at 1173 (internal citations omitted).

<sup>4</sup> 878 N.E.2d 969 (N.Y. 2007).

<sup>5</sup> 817 N.E.2d 341 (N.Y. 2004).

<sup>6</sup> 809 N.E.2d 561 (N.Y. 2003).

decision has been cited by State and Federal courts innumerable times throughout the land, as well as in treatises and in law review articles.

Chief Judge Cooke also added immeasurably and enduringly to the Court's state constitutional jurisprudence in the area of right to counsel. He authored three landmark decisions that remain the bedrock of New York's right to counsel long developed independent of the Sixth Amendment: *People v. Skinner*,<sup>7</sup> *People v. Rogers*,<sup>8</sup> and *People v. Settles*.<sup>9</sup> I'm sure these are familiar to the law students who are here today. And what a pleasure it was, again, in preparing for today, to scan the countless references to these terrific decisions in cases—State and Federal—articles, and treatises all through the land.

Beyond state constitutional cases, I next think of Chief Judge Cooke's strong advocacy of a free press. And while I have myself not done a "most cited opinion" study (I recognize that the number of times a case is cited does not alone reflect the importance of its principle), probably the opinion I most often return to, because we have such a large tort docket, is *Pulka v. Edelman*,<sup>10</sup> a nuts-and-bolts discussion of foreseeability and duty in the tort context. I see a lot of heads going up and down. Yes, you know *Pulka*, don't you? The *Pulka* quotations you see always are from the paragraphs of the writing that discuss foreseeability and duty. But every time I reread that decision, I most hear Chief Judge Cooke's strong voice in the concluding paragraph, giving human context to the abstract legal principle. "If mere foreseeability were the test of negligence," Judge Cooke cautions, "just think of what that rule would mean in New York City, with its countless parking lots and garages, its office buildings, and shopping centers." In his jurisprudence, just as in his life, Chief Judge Cooke was fair, but he was also very practical.

Nothing in my experience has approximated the treasured fifteen months that I served alongside Chief Judge Cooke, and Judges Matthew J. Jasen, Hugh R. Jones, and Bernard Meyer—all four, at the time that I arrived on the Court of Appeals, nearing the end of distinguished careers on the bench that totaled just under 100 years, a full century of judicial service. It was, needless to say, a great tutorial for a brand new judge in the collegial traditions and institutional values of the Court of Appeals of the State of New York.

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<sup>7</sup> 417 N.E.2d 501 (N.Y. 1980).

<sup>8</sup> 397 N.E.2d 709 (N.Y. 1979).

<sup>9</sup> 385 N.E.2d 612 (N.Y. 1978).

<sup>10</sup> 358 N.E.2d 1019 (N.Y. 1976).

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But the kind and caring and immensely able Chief Judge Lawrence Cooke, the Chief Judge at the time, holds a very special place in my mind and in my heart.