

JUDGE VITO J. TITONE

*Judge Carmen Beauchamp Ciparick**

Well, good afternoon. It's always difficult to follow Judge Kaye. But I want to thank her for her wonderful remarks. And thank you, Judge Rosenblatt, for the introduction. And thanks to the *Albany Law Review* and Professor Vincent Bonventre for hosting this wonderful event. And thank you for highlighting our Court in your upcoming issue of *State Constitutional Commentary*.

Before I begin, a lot of people have been recognized here today, but I see Professor David Siegel. I want to particularly recognize you, Professor Siegel. (Applause). Professor Siegel actually has three former students currently sitting on the Court of Appeals. He was my professor at St. John's, he was also Judge Jones's professor at St. John's, and he was Judge Graffeo's professor here at Albany Law School—so you have three of us.

DAVID SIEGEL: I need one more.

JUDGE CIPARICK: You need one more, right. Maybe Patrick Connors. (Laughter).

UNIDENTIFIED SPEAKER: I'll give you the fourth vote. He's my professor, too.

JUDGE CIPARICK: Today, I will be speaking about our beloved Judge Vito J. Titone.

I have selected Uncle Vito, as he is fondly referred to by some, not only based on Professor Bonventre's e-mailed list of characteristics, including a Judge's wisdom, influence, opinions, dissents, writing-style, jurisprudence, administrative accomplishments, personality, character, and politics, but on, "whatever other factor," and that other factor, for me, is plain fun. And the great affinity I felt for Judge Titone, being a graduate, as I am also, of that other great law school, St. John's. And Judge Jones, I'm sure, seconds that comment.

I joined the Court of Appeals in January of 1994, over 14 years ago, and was privileged to sit with Judge Titone for four and a half of those years until his early retirement from the Court in June of 1998. What

* Associate Judge of the New York State Court of Appeals (1994-present); J.D., St. John's University School of Law; B.A., Hunter College.

a tremendous experience, and what a caring colleague. He never forgot a birthday. In fact, he was fond of celebrating half, and even quarter birthdays. We racked up many more than seven cakes a year at Jack's on State Street. Anytime Judge Titone was feeling mischievous, which was often, or just plain wanted dessert, he declared it to be someone's birthday. And Jack's went along with him. They brought out the cake with candles; they sang happy birthday; they snapped a Polaroid shot. And I'm sure, after a while, they caught on to Judge Titone's playfulness. But they never complained.

Now Lisabeth Harrison, who we know as Libby, who was Judge Titone's law clerk for 12 of the 13 years that he was at the Court, wrote a most loving and thoughtful biography, which I hope you will get an opportunity to read. She wrote about Judge Titone: "[H]e never took himself or his robes too seriously. It is that trait, along with his irrepressible sense of humor and devotion to his family, that his colleagues and friends will remember long after the force of his judicial opinions has faded."¹ And how true.

As for his judicial opinions, Judge Kaye, in her remarks at our conference room ceremony marking Judge Titone's retirement in June of 1998, said, they were marked by:

"Clear thinking, concise writing, and common sense. From A to Z, adoptions to zoning, pausing especially on constitutional questions and matters affecting families, there are exemplary writings of Judge Titone sensibly articulating the law and the opinions for the Court."

And she also extended her heartfelt good wishes for many, many healthy, happy, challenging, and fulfilling years ahead. Unfortunately, that was not to be, as Judge Titone passed away in 2005 after a long illness.

Now Judge Kaye has related this story several times, in the ceremony I just mentioned, and in a dedication to a tribute to Judge Vito J. Titone published at—and if you want me to give you the citation, I will—61 *Albany Law Review*, in 1998.² The story goes like this:

She first met Judge Titone when he interviewed for the Court of Appeals before the State Bar Committee on the Judiciary, and was asked by a member of the committee what he, the Judge, would write

¹ See Lisabeth Harrison, *Vito Joseph Titone*, in *THE JUDGES OF THE NEW YORK COURT OF APPEALS: A BIOGRAPHICAL HISTORY* 842 (Albert M. Rosenblatt ed., 2007) [hereinafter Harrison].

² See Judith S. Kaye, *A Tribute to Law and Humanity: Judge Vito J. Titone*, 61 *ALB. L. REV.* 1391 (1998).

2008]

Judge Vito J. Titone

1063

if he were to write his own epitaph. Judge Titone's answer was eloquent, as Judge Kaye says, for its simplicity and sincerity. His response was, "Always he did his best to be a good and fair Judge."³ And a good and fair Judge he was.

Let me take you through some of Judge Titone's good and fair decisions. Professor Bonventre, writing an editor's forward for the same issue of the *Albany Law Review* I just mentioned, said the following,

Those who cherish constitutional guarantees and protection have had their strongest ally in Judge Titone. He has been sympathetic to victims of constitutional violation and insistent that guarantees of right and liberty be enforced. Like . . . Lawrence Cooke, . . . [for whom this symposium is named], Judge Titone has been his court's most consistent, persistent and emphatic voice for fairness, decency and fidelity to constitutional principles.⁴

That's what you wrote, Professor Bonventre. You further wrote: "Whether or not one agrees with a Judge Titone resolution of a specific issue, there is never a question that the issue has been dealt with fairly, frankly, and cogently."⁵

Now one decision that Judge Titone penned long before I arrived at the Court, which stands out in my mind, is *Braschi v. Stahl Associates Co.*⁶ There, the Court, led by Judge Titone, adopted an expansive view of the term family in a housing dispute, a view that has been adopted by many courts in resolving disputes concerning members of non-traditional households like gay and lesbian couples, and has certainly helped shape the current debate.

In *Tropea v. Tropea*,⁷ in 1996, involving the relocation of a custodial parent, with the attendant negative impact on visitation rights of the non-custodial parent, Judge Titone was careful to primarily advance the rights and needs of the children. Because, as he eloquently wrote: "[T]hey are innocent victims of their parents' decision to divorce and are the least equipped to handle the stresses of the changing family situation."⁸

Perhaps he is best known for his writings in the area of criminal

³ See Harrison, *supra* note 1, at 851.

⁴ Vincent Martin Bonventre, *Editor's Foreword*, 61 ALB. L. REV. 1395, 1395 (1998).

⁵ *Id.* at 1396.

⁶ 543 N.E.2d 49 (N.Y. 1989).

⁷ 665 N.E.2d 145 (N.Y. 1996).

⁸ *Id.* at 150.

law. Although Judge Titone hated labels, he was known in some circles as the most liberal member of the Court. Maybe that is so, if liberal means that he always stood up for what was right and just, a consummate defender of individual rights, a defender of the poor and the powerless with an unflinching commitment to the preservation of the constitutional rights of the accused.

As Judge Titone himself wrote in combined cases of *People v. Scott* and *People v. Keta* in 1992,

Our responsibility in the judicial branch is not to respond to these temporary crises or to shape the law so as to advance the goals of law enforcement, but rather to stand as a fixed citadel for constitutional rights, safeguarding them against those who would dismantle our system of ordered liberty in favor of a system of well-kept order alone.⁹

When you read Libby Harrison's biography of Judge Titone, you will get the feeling that not only did the Judge do his best to be a good and fair Judge but he that also effectively managed to be a good and loyal son, husband, father, grandfather, and friend. He was a great friend to those of us who had the privilege of working with him—Judges and court personnel alike. And his proudest accomplishments—as he was always so eager to tell us—were his children and his grandchildren. And we did invite his son to this event; however, he was unable to attend. His son is Matthew Titone, who currently sits in the Assembly representing Staten Island. How lovely for them to have had Vito in their lives, and how lucky for the State of New York to have had Judge Titone sitting on its highest court.

In conclusion, I would like to end with a few words from Judge Titone's farewell message to the Court.

“If I have learned anything in the 31 years that I have been a Judge, it is that in the final analysis, it is not the trappings of public office that count most in life; nor is it the praise of commentaries or the admiration of colleagues. Instead, what really counts are our relationships with family and friends, who are there for us in our successes and failures, who are there to share our beginnings and our endings.”

Thank you.

⁹ 593 N.E.2d 1328, 1345 (N.Y. 1992).