JUDGE MATTHEW J. JASEN

Judge Eugene F. Pigott, Jr.*

I intend to aim my remarks at the students here, saying to my colleagues as I was listening to each one of these really great stories, that some of you may be talking about some of us one of these days, because we couldn’t talk about any living Judge, obviously not our own colleagues.

Judge Jones and I are not even in Judge Rosenblatt’s book; we’re judge pocket part, and we aspire to that someday. And in conference, when I first got appointed to the Court and Ted joined us not too long after, I said to my wife, I said, you know, at conference, you know, I’ve got Judge Smith to my right and Judge Jones to my left. And she says, what are you, in the witness protection program? And because we couldn’t do any research on our colleagues, I cannot tell you that Judge Smith and Judge Jones, that those are the real names, but I’m going to assume that they are and that everything you see here is true.

I do want to thank the Albany Law Review and the Albany Law School for having us here, and Vin Bonventre for inviting me. I have him down here twice because Vin was one of the law clerks for Judge Matt Jasen, about whom I’m about to speak, as was Mike Hutter, Mike Powers, John Halloran. A true cavalcade of great legal minds that Matt Jasen was very quick to credit for much of what he had done.

But I’m going to, I want to divide this up in very short order, to tell you about Judge Jasen’s pre-law days, his days before the Court of Appeals, and then talk about a few of his writings. And I’ll be brief about each, but I think each one of them, and the general picture you’re going to get is an extremely principled individual whose principles were imbued in him very, very early.

I went to see Judge Jasen a few years ago. He was going to talk to the Appellate Division, Fourth Department, the new lawyers who

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were being sworn in, and I wanted to talk to him about the venue and what he would be saying, and, in his office, he had two pictures on the wall; one of the pictures was a picture of him being thrown in the air by French soldiers because he had been part of the American Army that liberated France, and they were the first ones to this one area in France where these French soldiers had been held as prisoners of war. And they shot off the locks, and they went in, and of course, the French soldiers were so gratified to see them that they took Lieutenant Jasen, and they were throwing him in the air. And a photographer, a British photographer for *Life Magazine* took a picture of that, and it was in *Life*. And, Matt said, “That was about as close to getting injured during the war as I ever was.” I thought they were going to drop me.

The other picture he had was a picture of the Bishop of Cracow, Poland, and Matt was very proud of his Polish heritage, very proud of his Roman Catholic religion. And he had worked on having the Bishop come to Buffalo for certain ceremonies, and the Bishop by then was Cardinal Karol Wojtyla, who became Pope John Paul II. And in two very interesting snapshots in his life that he had on his wall, you got a sense of what made Judge Jasen, Matt Jasen, the person that he was, the Judge that he was and the decisions that he made, and the principles upon which they were based.

His father and his mother escaped from Poland, Russian-occupied Poland, around the turn of the 20th century, and came to Buffalo. His father had a fourth grade education. He was a tailor and rose very quickly in the business as a chief tailor for one of the major garment manufacturers in Buffalo, but he insisted that Matt was not going to learn the trade. And Matt said the one thing that my father made absolutely sure was that I was going to get an education, that I was going to study, and that I was going to work hard. And he did all of that, and he went to the public schools in Buffalo, went to Canisius College, a Jesuit school in Buffalo, where he graduated with honors, and then went to the University of Buffalo Law School.

All the time that he was doing that, he was working, and he talked to me one time about the fact that he worked at the library. He said back then, they didn’t have minimum wage laws or anything like that. He said, I had a job and I was getting paid 20 cents an hour. And he says, and we did the job, and then the depression hit and they were cutting everybody, all of their wages by 20 percent. He says, they cut me down to 19 cents an hour. And he said, then I quit. I couldn’t take it. So, he went and he got another job, and all the while he was
working and going to law school.

He was admitted to the practice of law in 1940. He had been born in 1915, so at that time the war was about to begin, as you know, Pearl Harbor occurred in 1941. He joined the military, and in 1943 was commissioned a Lieutenant. He got married that same year. And it was at that time that he went to Europe and he was in three major campaigns with the United States Army in Europe. At this very young age, he’d only been practicing law for three years before he joined the Army. Not only was he commissioned as a Lieutenant but he was then made a Civil Affairs Officer and, at the end of the war, was put in charge of an entire section of Germany where he was—as he liked to say, effectively the law. He decided the law; he had civil and criminal jurisdiction over an entire part of Germany near Heidelberg.

And he loved to tell the story that he would make decisions. He would make decisions on all kinds of things that affected how people were treated and how the law was going to be promulgated in that area.

And he made *Stars and Stripes Newspaper* on a fairly regular basis, and they always put it in that it was Lieutenant Jasen from Buffalo, New York who was doing this and doing that. Well, there was another person from western New York, who was also in Germany at the end of the war, and who kept reading about this Judge Jasen, Judge Advocate General Jasen, from Buffalo, and he called him up. And the Adjutant said to Judge Jasen at the time, he says, there’s a Robert Jackson on the phone. And Matt knew that it had to be one of his friends pulling a trick on him, and so he wasn’t really sure. He said, why would Supreme Court Judge Robert Jackson, who at that time was the prosecutor at Nuremberg, want to talk to me? But he took the call and it indeed was Robert Jackson.

Now Robert Jackson, by the way, who attended Albany Law School, Robert Jackson grew up in Jamestown, New York, and he did one year of law school, and it was here—apparently that was enough. And he, as most of you know, became one of the better writers and one of the better known United States Supreme Court Judges, and was then asked to become the prosecutor at the Nuremberg trials, and he did. And he called Matt because he said, I keep reading about this other judge from western New York. Why don’t you come over and talk to me in Nuremberg.

And another turning point, so to speak, in Matt’s life, he talked to him, and Judge Jackson said, you know, well, I can tell that you’re
interested in being a judge, and I can tell your politics, he says, you’re obviously a good Republican. And Matt says, no, I’m a Democrat. And the reason that was important in a sense was there had never been a Democrat elected in the Eighth Judicial District in Buffalo to the Supreme Court bench. But, nevertheless, Robert Jackson had encouraged Matt to do it, and I want to read something to you about Matt’s time there in Germany and what effect it had on him. And, as I mentioned to you before, he was very sensitive to the underprivileged, to those who he believed needed protection. And he said:

Never in the history of mankind were so many innocent men, 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. 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 ensure that our judiciary remain 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.1

And I don’t think anyone could have summed up his history as a Judge any better than he himself when he made that statement at a time when he was reflecting on his career.

When he came back from the war, he was appointed to the Supreme Court by Governor Averell Harriman, and, as I say, a Democrat had never been elected in the Eighth Judicial District. He was. And he won overwhelmingly. And he won, he believes, because of his interest in the common man, his hard work. Everyone knew Matt; everyone knew Matt for the fact that he was a great judge, but that he was a great lawyer too. And that he cared about people so much.

He then, of course, ran for and was elected to the Court of Appeals, where he served for 18 years. And all of the time that, when you talked to him about this—and I think his former clerks would echo these remarks—his concern was always the same. If you talked to

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1 Ceremony Marking Retirement of Senior Associate Judge Matthew J. Jason, December 17, 1985, 66 NY2d vii, ix (1985).
him about his military time, if you talked to him about the time when he was practicing law, or his time on the bench, it was always with respect to how the rule of law was going to protect people, protect their rights, and do the right thing.

And I want to mention just three cases without cites, you can look them up, you probably know them all, but in People v. Ferber, he issued a very strong dissent from the majority holding of this Court of Appeals, that New York’s criminal laws against child pornography were unconstitutional. And his great satisfaction in writing this very strong dissent about that was that his dissent formed the basis of the United States Supreme Court’s decision reversing the Court of Appeals on that issue.

In the case of People v. P.J. Video, which I think showed really how principled he sometimes was and how he wasn’t shy about showing it, the issue there was whether or not the affidavits in support of a search warrant for movies and obscene material at P.J. Videos were sufficient to sustain the search. And he dissented again from this Court’s decision which says that a higher standard needs to be applied in determining whether or not a search warrant, which affects freedom of speech, is to be, the determination was to be enforced or not. And he dissented very strongly about that.

Not only did he dissent very strongly, but he decided that to make the point—he was going to attach the affidavits to his dissent. And if you look at the case of People v. P.J. Video, you will see attached to the dissent these affidavits, which, trust me, are adult material. Because it was the officers who went to the P.J. Video and said, Debbie Does Dallas, and would describe what was on Debbie Does Dallas. Now don’t go running out and get that opinion right now.

But it caused a great deal of consternation in the Court that we were going to have these documents attached to a Court writing. Nevertheless, he did it, and attached it to his dissent. That case went to the United States Supreme Court, and the United States Supreme Court reversed the Court of Appeals generally on the same grounds that Judge Jasen had put in his dissent, and they attached the affidavits to their opinion. So if you don’t want to read it in the New York Courts, you can read it in the United States Supreme Court Reports. But he was very proud of the fact that what he was doing in the child porn case, and what he was trying to do in the P.J. Video

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One last case that I thought was kind of telling about Judge Jasen was the case of *Maresca v. Cuomo*, which was decided in 1984. And in that case, the question was whether or not the mandatory retirement age of 70 for Supreme Court Judges was constitutional. Now he wrote this when he was 69. And he wrote that, yes, it was, and so in writing that opinion had kind of foreshadowed his retirement from the Court the next year. And in 1985, he retired as a result of the mandatory retirement age of the Court of Appeals.

For the next 20 years, he practiced law in Buffalo. And everyone in the town knew Judge Jasen, and it always struck me when you look at his picture, in any picture I've ever seen of him, and any time you saw him, there was always a little twinkle in the eye. And I think that twinkle in the eye was one thing that I've always taken away from my knowledge of Matt Jasen and the way he lived his life, is he lived it in the present. When you talked to him, he was talking to you. And he was always, he always existed right in the here and now. And his whole philosophy seemed to be that if you take care of today, tomorrow will take care of itself.

And if you look at the way his life went, from this hard work to take care of himself and his family, and to take care of those who needed help, to his Army career, that because of what he had done, he had met a Robert Jackson, to what then led him to be a Judge and ultimately to this Court of Appeals, I think you can see how one thing led to another.

And I hope sitting in this room here today are those who are going to follow us. Because I think if you were to ask the seven of us, or the eight of us with Judge Rosenblatt, if at the time we were sitting in law school we expected ever to be on the Court of Appeals of the State of New York, we'd all say no. In fact, I think we'd all say we probably didn't even expect to be Judges. And yet we all are. And we all are because of circuitous roots very similar, but nowhere near as awesome as Judge Jasen's. And I think if you take nothing else away from these great biographies you're hearing today, it's that hard work, paying attention and being sincere and true to yourself can lead you to what I hope would be a great career in the law and, hopefully, some of you will be replacing us some day and telling stories about Judge Smith when he used to sit on the Court of Appeals. Thank you.

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4 475 N.E.2d 95 (N.Y. 1984).