

SYMPOSIUM

JUDGES ON JUDGES: THE NEW YORK STATE COURT OF APPEALS JUDGES' OWN FAVORITES IN COURT HISTORY

INTRODUCTION

*Vincent Martin Bonventre**

Chief Judge Lawrence H. Cooke was a giant of a man with a common touch. He was a giant who was always humble and warm, gentle and kind. He was a giant who helped ensure that, while the United States Supreme Court changed directions and its role, the New York Court of Appeals would continue to be an independent force and a national leader in safeguarding our rights and liberties.

Chief Judge Lawrence H. Cooke, from the Albany Law School Class of 1938, helped found *State Constitutional Commentary*. In fact, he served as our Honorary Chair for the last several years of his life. Henceforth, this annual symposium will be named after him.

We will hear more about him in a few minutes.

I'd like to point out that members of Chief Judge Cooke's family are here today. Several generations, in fact, from his children, grandchild, and even a great grandson, as well as other family members. If I could get you to stand and take an applause. (Applause).

Thank you.

This is a very special event. I mean with every single Judge on the Court of Appeals, and each one of them about to speak to us about her

* Editor, *State Constitutional Commentary*; Faculty Advisor, *Albany Law Review*; Professor of Law, Albany Law School; Ph.D., M.A.P.A., University of Virginia; J.D., Brooklyn Law School; B.S., Union College.

or his favorite Judge in the Court's past.

I must point out, however, that seated here up front is everybody's favorite judge. That is Presiding Justice Anthony Cardona of the Appellate Division, Third Department.

Also here are other members of that glorious Third Department, and other members of the judiciary whose chambers are here in the Albany area. We welcome all of you.

Those of us who had the opportunity to work at the New York Court of Appeals have seen firsthand some great Judges. Those of us who are close observers of the Court, and on rare occasions may even criticize the Court, nevertheless understand full well what a great institution this is. How could it be otherwise when one considers the Judges who have served on this Court?

When I think of the Judges, even if only those that were at the Court while I served as a law clerk, it's an extraordinary cast of characters.

Matthew J. Jasen, from Buffalo. Incomparable wisdom and courage. A man willing to stand alone. But most important, from the perspective of one who clerked for him, a man who treated his law clerks as family, as his own children. You will hear more about Judge Jasen later.

I would like to point out that his daughter Carol is here. Thank you for coming, Carol. (Applause).

The second Judge I clerked for at the Court—I couldn't get another job, so I kept taking these clerkships—Stewart F. Hancock, Jr. A man whose brilliance is matched only by his charm and his graciousness. And there's the utter delight he took in his work at the Court. Whether writing an opinion like *People v. Scott*,¹ where he said that certain United States Supreme Court decisions were repugnant to the fundamental right to be let alone, or the perverse joy he would take in writing about the rule against perpetuities, I never saw anybody enjoy his work so much.

I remember a particular case in which Judge Hancock was writing the majority opinion. Judge Richard Simons was writing a dissent. Judge Hancock, in response to the dissent, decided to drop a footnote. A little nasty, a little sarcastic, but entirely cute. Judge Simons comes storming into our chambers—that is, Judge Hancock's chambers. He

¹ 593 N.E.2d 1328 (N.Y. 1992).

says to me, “Where is that S.O.B.” He didn’t use the acronym. He says, “Where is that S.O.B. He’s going to remove that footnote.” Well he goes into Judge Hancock’s office, he’s yelling at Judge Hancock, and Judge Hancock is just cackling at the top of his lungs.

The footnote was removed, and that’s really the way opinions are written at the Court of Appeals.

With specific regard to Richard Simons, we hear in this presidential year a good deal about the straight-talk express. Well let me tell you, this was a straight-talking, straight-voting, straight-writing Judge. He was always clear, you always knew where he stood, and you knew he was being forthright about it. It is no wonder he was so greatly admired at the Court.

And if this event were about favorite opinions, there’s certainly one that I would nominate. That is Judge Simons’ majority opinion in *People v. Bing*.² In that 1990 case, the Court actually reduced the right to counsel protection it had previously afforded to criminal suspects. And whether or not one agrees with the vote in that case—

CHIEF JUDGE KAYE: I dissented.

PROFESSOR BONVENTRE: That’s right.

The fact is that there were two magnificent opinions. Some of us might wish the votes had gone the other way. It was four to three for Judge Simons’ opinion. But both opinions, majority and dissent, were magnificent. They were civil; they were analytical, thoughtful, strong, beautifully crafted and argued. These are the qualities of great Judges and a great Court. And, as we have now heard from Chief Judge Kaye herself, she—then-Judge Kaye—wrote the dissenting opinion.

Another in that category of great ones is another four to three decision, *People v. Robinson*.³ In that 2001 case, the Court of Appeals upheld pretextual automobile stops. Again, regardless of whether one agrees with the final vote in the case, the fact of the matter is that there were two magnificent opinions, authored by two superb Judges. The opinions bear all the marks of considerable negotiation, discussion, and back and forth between the opposing sides.

The majority opinion in that case was written by George Bundy Smith. The hallmarks of Judge Smith were his independence and his boldness. He had an exquisite sense of fairness and a persistence for reaching the substance of a case and not being obstructed by procedural obstacles.

² 558 N.E.2d 1011 (N.Y. 1990).

³ 767 N.E.2d 638 (N.Y. 2001).

The dissenter in *Robinson*, Howard Levine, actually was not yet on the Court of Appeals during the years I was there as a law clerk. Except that it was almost as though he was the Court's eighth Judge. That's because the easiest job as a law clerk was whenever the Court of Appeals was reviewing a decision of the Appellate Division, Third Department on which Judge Levine sat, and he had written an opinion. Invariably, the decision of the Court of Appeals would be however Howard Levine had voted at the Appellate Division, and for the very reasons he had argued whenever he wrote an opinion—majority or dissent.

Prior to Chief Judge Kaye's elevation to the center seat on the Court of Appeals, and immediately following tenure of Chief Judge Cooke, was Sol Wachtler. Prior to Chief Judge Wachtler's departure from the Court, this man was a towering figure. He was an extremely persuasive voice within the Court, and outside the Court, he was a proud, witty and eloquent spokesperson for the Court, and, indeed, for the entire state judiciary.

I, obviously, cannot leave out Judge Vito Titone. I loved Judge Titone. Not only because his family and mine derived, ultimately, from the same little town in Sicily, but because he was so loving, so well loved, and so darned loveable. This was as warm and as generous a human being as you'd ever meet. Yes, his perspective on the law is quite evident when you read his opinions. But more than that, he was always a wise and a loyal friend to all who sought his advice. And let me tell you, a lot of us did, and he always gave plenty of good counsel and support. We will hear more about Judge Titone later.

Finally, in these troubled times for the government of this State that we love, the people of New York can, nevertheless, rest assured that there are institutions that remain strong and have earned our confidence and are sources of our pride. The Court of Appeals is foremost among these. With the good and the bad, under turbulent times and more serene, the Court of Appeals has stood as a beacon of hope and as an example of what is best in government and best in a free society.

And when the people of this state look for leadership, there is one other Judge who was at the Court of Appeals when I served as a clerk. She actually began as a Judge on the Court as I began as a clerk. There is simply no finer Judge, or public servant, or person. There is no one more decent, more devoted, more ethical, more selfless. No better a leader in this state or the nation than our own Chief Judge

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Judith Kaye. (Long applause).

Well now that I've served the warm-up, let's get on with the feature of the day.

Our moderator is retired Court of Appeals Judge Albert M. Rosenblatt. When I approached Judge Rosenblatt proposing this event, he was immediately enthusiastic, not the least because he had just finished editing the newly published extraordinary volume, *The Judges of the New York Court of Appeals: A Biographical History*.⁴ By the way, the book will be on sale, and there will be Judges to sign it if you so wish, right after this event.

In any event, I recounted to him the proposal and he was more than willing to broach the subject with the Court and to serve as the moderator. I must say that during his tenure on the Court of Appeals—his much too brief tenure—Judge Rosenblatt's voting and opinions were not quite what some had originally expected. But that's one indication of a great Judge.

Indeed, Judge Rosenblatt is the walking, talking illustration of what I view as the idiocy of the law that forces great Judges, such as himself, to retire at the youthful age of 70.

JUDGE ROSENBLATT: That's forty-six.

PROFESSOR BONVENTRE: I'm honored to welcome, and present to you, Judge Rosenblatt.

⁴ See generally THE JUDGES OF THE NEW YORK COURT OF APPEALS: A BIOGRAPHICAL HISTORY (Albert M. Rosenblatt ed., 2007).