

LEAVEWORTHY



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on Courts of Appellate Jurisdiction

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A reminder to our readers:

Your contributions regarding cases, articles, interesting events, and the like will all be considered for publication in future issues. Submissions can be sent to appcourts@nysba.org.

The opinions expressed herein are those of the authors or article subjects only and do not reflect the official position of the Committee on Courts of Appellate Jurisdiction or the New York State Bar Association.

Welcome

The New York State Bar Association's Committee on Courts of Appellate Jurisdiction celebrates appellate law and seeks to improve appellate practice and appellate court operations in New York. In this edition of our semi-annual publication, LEAVEWORTHY, we honor two judges who recently departed from the Court of Appeals, the Hon. Victoria A. Graffeo and Hon. Robert S. Smith. Members of our editorial staff interviewed the judges about their reflections regarding the Court of Appeals, the legal profession, and their new roles. The discussions with those judges inspired us to reach out to other former Court of Appeals judges. We were able to reach most of them and present their brief discussions of the "after life" following their tenure on the state's high court. We dedicate this issue to our founding editor, William B. Stock, who serves in an advisory capacity offering valued insights and ideas.

Editorial Staff

LEAVEWORTHY

Committee on Courts of Appellate Jurisdiction

Judge Graffeo Reflects on Court Years

By Cynthia Feathers

Q. You have spoken about your Italian-American heritage and your grandparents' strong sense of duty and patriotism. Did that family tradition motivate your public service career, including as Solicitor General, chief counsel to Assemblyman Rappleyea, and judge?

A. Yes, it did. I was very close to a grandmother who had an influence on my public service career. She was involved in her community—and she wanted to be the officer of every community group she joined! My other grandmother did not speak English, so I couldn't get to know her as well. My grandparents had a tough time, and

they wanted me to be American, so I did not learn Italian at home, and it was not offered in school. But I still hope to learn the language at some point.

Q. When you were admitted in 1978, there were fewer women in the profession, and in 2000, you were only the third woman to serve on the Court of Appeals. How have things changed?

A. There have been advances for women in legal education, and there is greater acceptance of women in the profession. But it is still difficult for women to attain partnership

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Judge Pigott's Insights on Judge Smith (cont'd)

Our Court in a 4-3 decision ruled that the club was, indeed, subject to sales taxes. In a typically interesting dissent, Judge Smith took a different view. But I think the oral argument gives great insight into Judge Smith's judicial philosophy and reasoning.

I'm truly sorry that those who appear before us now have been deprived of Judge Smith's talents. At the end of his interview

[referenced above], he indicates that he would have favored an extension of the present age limit of 70 years on the Court of Appeals. I would have been in favor of that, if for no other reason than the citizens of the State of New York would have had the benefit of Judge Smith's talents longer than they did.

The "After Life" of Six Court of Appeals Brethren

By Mark Diamond and Sharyn M. Rootenberg

You are a Court of Appeals judge who has left the perfect job. How do you adjust? What are the lessons for those of us in the salt mines who see a day when we may leave a profession to which we have devoted our lives?



Judge Joseph W. Bellacosa was born in Bed Stuy, the son of immigrants. His dad was an iceman and baggage handler at Idlewild Airport, his mom a seamstress and homemaker. He started as staff attorney at New York Life Insurance Company; served as assistant dean and assistant professor

at his alma matter, St. John's Law School; and worked in a variety of roles in the court system, including law secretary in the Appellate Division, Chief Clerk and Counsel of the Court of Appeals, Chief Administrative Judge of the Unified Court System and, ultimately, Associate Judge for the Court of Appeals from 1987 to 2000.

Judge Bellacosa said he avoided a hard time adjusting to life after the bench by concentrating on family, friends, faith, and fun. And by not fully retiring.

"There are times in your life when you have to take a leap of faith," says Judge Bellacosa. "Leaving the bench gave me the time to be there for my mother when she fell ill, to be there for my kids and grandchildren, to resurrect my academic life, to serve as an arbitrator, to serve as dean and then lecture at St. John's, to patch together time to travel.

"You no longer have all the trappings of being a judge. But you fill the day, you pursue your passions. When you have been blessed, it is a big mistake not to give back. My most passionate pursuit, other than my wife, is my work on the "Bread and Life Mission" in Bedford-Stuyvesant. My advice is to try and figure out who the heck you are first. Then you can figure out what you want to do."



Judge Carmen Beauchamp Ciparick hails from a civil service family. Her dad was a bookkeeper for the Corps of Army Engineers. She started her career with the Legal Aid Society; worked as assistant counsel to the New York Judicial Conference, then as chief law assistant for the Criminal

Court, then as counsel to the Office of the New York City Administrative Judge; was appointed to the Criminal Court, then elected to the Supreme Court; and served as Associate Judge of the Court of Appeals from 1994 to 2012. She now practices law and co-chairs Greenberg Traurig's appellate practice group, and also chairs Mayor Bill de Blasio's Advisory Committee on the Judiciary, which vets candidates for many judicial appointments.

"I had the best job in the world," said Judge Ciparick. "It does take time to adjust to private practice, however. I was lucky to find a job at a great firm that affords me the time to devote to working on the board of the New York State Office of Indigent Legal Services, as well as Chief Judge (Jonathan) Lippman's task force to expand access to civil legal services, which has worked to secure permanent state funding for civil legal services. I live in Manhattan, close to my daughter and her family, and I have many friends including former Court of Appeals colleagues; we get together often. I am now arguing appeals. I can tell you, it is different when they are shooting questions at you, rather than the other way around."



Judge Judith S. Kaye attended NYU Law School at night while working by day as a journalist. As an attorney, she worked at several white-shoe law firms and at IBM. She was appointed to the high court in 1983 – the first fe-

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male appointee — and served as chief judge from 1993 to her retirement in 2008. After retiring, she joined Skadden, Arps, Slate, Meagher & Flom, where she practices appellate litigation and arbitration.

“I wanted to stay on the court forever,” Judge Kaye said with a smile. “Those in the legal profession are blessed with careers we love and many years remaining, if we are lucky, to apply that passion. How do the ever-growing number of people in their 70s, 80s, and beyond continue to use their years effectively? That’s a major challenge of the day.”

Judge Kaye met the challenge by keeping heart. “I have lived in the same apartment for 45 years. My husband of 42 years died eight years ago, and life without him still is very difficult,” she said. “I am looking out my window at the floor at Proskauer Rose where he would have been working right now. The trick is to be perseverant and positive. Some days it’s tough. But I do have fantastic children and grandchildren.

“And Skadden Arps is a wonderful firm that allows me to devote time to my passion project, which is the permanent judicial commission for children. Our central mission is to work with the education system to keep kids in school and out of court, off the school-to-prison pipeline. My advice for attorneys retiring or making a major change is to maintain a positive attitude. And do something meaningful.”



Drawn to the intellectual and humanitarian side of the law early in his career, **Judge Howard Levine** found that serving on the Court of Appeals provided an “appealing combination” of both. His time on the bench was “a wonderful experience,” made even better by working with colleagues he respected and quickly

grew fond of. The transition from jurist back to advocate came naturally to Judge Levine, who has found a “compatible home” at the Albany-based firm of Whiteman Osterman & Hanna LLP, where he serves as a senior counsel.

His affinity for rigorous legal analysis lends itself well to his concentration in complex commercial and appellate litigation. He finds international arbitrations challenging and thought-provoking. Judge Levine endorses Justice Cardozo’s view of the lawyer as an “instrument or agency to advance the ends of justice,” and urges lawyers “to better live up to that standard.”

He urges attorneys to get involved in pro bono work, noting the great personal satisfaction to be had working on such cases. Judge Levine’s advice to retiring judges, which he has certainly taken to heart: “Life does not end when you leave the bench. Remain active and keep your mind stimulated!”



Judge Albert Rosenblatt served on the Court of Appeals for seven years, and would have “stayed on happily” but for reaching the mandatory retirement age of 70. He recalls with great fondness and enthusiasm the unique “friendship and society” shared by the judges and posits that

“[their] court might have been a little bit special or the “stars aligned.” It is the congeniality and affiliation with his colleagues that he misses most.

Judge Rosenblatt, now of counsel at the Poughkeepsie law firm of McCabe & Mack LLP, has embraced post-bench life with vigor. In addition to becoming involved in arbitrations, mediations, and global litigations, Judge Rosenblatt is a judicial fellow at the NYU School of Law. Teaching is a “continuation of the scholarly side” of his life, keeping him “in the books and in continual contact with bright young legal minds.”

When not exercising his mind, Judge Rosenblatt is exercising his body. Not only is he an avid squash player, but he is an associate certified ski instructor who, this January, participated in the Esterbrook Wyoming state skiing tournament. Judge Rosenblatt does not plan to slow down soon, finding this chapter “gratifying in every way.”



Judge Sol Wachtler grew up in the South, the son of a travelling auctioneer. He got married, served two years in the military, and opened a practice in Mineola. After fighting for a stop sign on his corner, he decided to run for councilman. He won, then went on to serve as supervisor for The Town of North Hempstead until 1968, when Gov. Nelson Rockefeller appointed him to the Su-

preme Court. In 1972, he won an election for a seat on the bench of the Court of Appeals at the age of 42. He served as Chief Judge from 1985 to 1992 and was expected to run for governor of New York State, perhaps vice president of the United States. After some legal troubles, Judge Wachtler became active in mediation, consultation, and arbitration work. He serves as a law professor at Touro Law School, where he teaches constitutional law and appellate advocacy.

“When I first told Governor Rockefeller that I wanted to be a judge, he tried to discourage me. He told me that I would become an alcoholic or die of boredom,” recalled Judge Wachtler. “He had gone through a tough divorce and disliked lawyers. But, of course, he was wrong. I

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Court of Appeals "After Life" (cont'd)

loved the law and loved being a judge. When I was no longer a judge and could no longer practice law, I had to build a new life.

"As they say, 'When one door closes, another opens.' But I can testify that it is hell in the hallway. It was difficult to

make a transition, but it is important to keep active. I have been working with mental health organizations and love teaching. Although I know I am old, I think about what Satchel Paige said: 'How old would you be if you didn't know how old you are?'"

Judge Simons, Going Strong at Age 88, Serves as Judge

By John A. Cirando

Judge Richard D. Simons drives to his office every day and does not look or act like he is 88 years old. He is still the humble individual he has always been. In 1983, he was appointed to the Court of Appeals by the late Governor Mario Cuomo. As Judge Simons proudly said, he was Cuomo's "first appointee to the Court of Appeals and a Republican to boot". He still remembers his interview in the Governor's Office with the late Tim Russert, "a young man from Buffalo". Prior to his appointment, the Judge served as an Associate Justice in the Appellate Division Third Department and also the Fourth Department.



Richard D. Simons

Upon retiring from the Court of Appeals, Judge Simons returned to the law office he had left in 1963 when he became a Supreme Court Justice. He never went back to argue a case before the Court of Appeals because he believed that would not have been fair to his former colleagues. While he worked on various appeals after he retired, he never wanted his name on the briefs.

He indicated that he has been "as active as he wanted to be in the practice of law". Also following his retirement, Judge Simons traveled to Paris and Australia to serve as an expert in New York law. Of course, the

other sides had hired other retired colleagues of Judge Simons' as experts in New York Law. Being on opposite sides of his former colleagues on the bench, in both matters, reminded him of the lively discussions on Eagle Street. The arbitration matter in Australia involving royalties had gone on for years and had involved numerous retired Court of Appeals Judges as experts. When he retired, Judge Simons was advised by the remaining members of the court "don't let them settle the case before I can get there".

Judge Simons opines that the 70-year age limit for Court of Appeals judges should be extended to at least 75. "It is a shame to take all that talent off the board." Although former Court of Appeals judges are allowed to return to the trial bench, Judge Simons believes that they should be allowed to go back to the Appellate Division, where they can use their experience and expertise. Unlike every other retired Court of Appeals Judge, Judge Simons is still a judge. He is the Chief Judge of the Oneida Indian Nation, a position he assumed in 1998, one year after he retired. He presides monthly over a full criminal and civil docket of matters arising on the Nation land. Indeed, he is well equipped to do so because he wrote the complete code of criminal and civil law and procedures for the Nation, along with the late Stewart F. Hancock, Jr., and two law professors from Long Island.

Judge Simons fondly remembers his first Court of Appeals alumni dinner in 1983, where he sat between former Chief Judges Fuld and Breitel, who regaled him with stories about District Attorney/Governor Thomas E. Dewey. In terms of the history of the Court of Appeals, Judge Simons thinks that the Court of Appeals had "good geographical balance" by having two members from "little Oneida County" at the same time—himself and the late Hugh R. Jones. He would give anything to go back to the Court of Appeals—"a wonderful place", full of "fine people", "stimulating" and "fine questions of law".