

LEAVEWORTHY



The Newsletter of the NYSBA Committee
on Courts of Appellate Jurisdiction

Vol.IV No. 2
Spring 2015

Chair:

Alan J. Pierce

Editorial Staff:

Cynthia F. Feathers, Editor-in-Chief
William B. Stock, Editor Emeritus
John A. Cirando
Mark Diamond
Warren S. Hecht
Timothy P. Murphy
Sharyn M. Rootenberg

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

Continued on page 2

Judge Graffeo's Reflections (cont'd)

or positions on management committees. There is a movement to have more flexible maternity policies so that women can take time off for family reasons and return and maintain a successful career, though we still have a ways to go. When I entered the profession, potential employers asked me if I was engaged, married, or planning to start a family. Fortunately, that has changed.

Q. Were different qualities and perspectives needed for each of your judicial positions?

A. As trial judge, helping to settle cases after the parties had been in many years of litigation brought a real sense of accomplishment. It was very rewarding. I missed that kind of interaction on the appellate bench. But the appellate role provided the opportunity to be involved in public policy issues. That is especially true in the Third Department, given

the government and administrative appeals it handles. While there are different procedures, processes, and caseloads in the Appellate Division and the Court of Appeals, both courts rely on similar analyses and collective decision-making.

Q. Did your 10 years' service in the legislature influence your views about judicial deference in statutory interpretation?

A. Yes. The legislature is where people go for solutions to problems. The minority leader that I worked for received a million letters a year from constituents seeking help and from statewide groups seeking change. When certain problems were prevalent, it was clear that a legislative response was needed. The laws were a reflection of societal needs and sought to balance various interests. In the legislature, I saw bills adopted into law, but not the end result—what the judiciary was left with to interpret.

Q. During your 14 years on the Court of Appeals, did your approach to cases change?

A. I learned the importance of deciding the issue presented. There's a reason for slow progress in certain areas of law. As a newbie on the court, I was once advised by a judge that we are not writing a treatise, but instead we answer the question raised in a particular case—though you also realize that the decision may have broad ramifications.

Q. You have written in *People v. Grice* (100 NY2d 318) and *Debra H. v. Janice R.* (14 NY3d 576) about the need for bright-line rules for litigants. Can you explain your philosophy?

A. In my writings, I tried to provide clear, workable standards that people can understand and follow. For example, New York law is often applied in international contract disputes. New York is the center of commerce and we need to preserve the prominence of our state's law and establish clear contract standards. In the criminal area, many cases address major issues—like *People v. Hall* [10 NY3d 303] on the standards for body cavity searches—and we must articulate standards that protect citizens' rights. Bright-line rules can't always be achieved—a good example is seen in Labor Law § 240 cases.

Q. Did the quality of advocacy in the Court of Appeals change during your tenure?

A. Attorneys are consistently well prepared. We have a mix of young attorneys, especially in the criminal area, and more experienced attorneys. Over the years, we started seeing more diversity. In the beginning of my term, I remember an instance at oral argument when all four attorneys were women, and Judge Kaye passed me a note that said, "Can you believe it?" Now, that is not unusual. CLE programs have helped the bar realize that they should avoid cumbersome legalisms and the use of string cites. The court does not appreciate verbosity, and attorneys have tightened their brief-writing style. They generally realize that oral argument is important in the Court of Appeals. Often a given case could go either way, and argument can solidify points.

Q. Your *Holmes v. Winter* [22 NY3d 300] opinion has been hailed as a landmark free press case. Do any other cases stand out for you?

A. One fascinating case was *Capitol Records v. Naxos* [4 NY3d 540]. We looked at the origins of the law in 15th-century England to decide the scope of state common-law copyright as to certain sound recordings. We had to dig deep into the history. It was very interesting, and fun for my clerk. Common law research is great if you love history. In *Balbuena v. IDR Realty* [6 NY3d 338], we had to address a pristine area of the law and consider the rights of undocumented immigrants under the Labor Law as to lost wages. One decision that is cited fre-



Victoria A. Graffeo

Continued on page 3

quently—which I didn’t expect—is *Toure v. Avis Rent A Car* [98 NY2d 345], regarding the objective medical evidence needed to prove that a soft tissue injury qualifies as a “serious injury” under the No-Fault Law.

Q. What is the value of dissenting decisions?

A. I was not prolific in writing dissents. I enjoyed the collaborative process and preferred working with the majority, if possible, to achieve a consensus. But sometimes you are committed to a point of view and must write a dissent. Dissents can also signal to the representative branch that there is a need for legislation. For example, in *People v. Kent* [19 NY3d 290] [in concurring in the result only], I discussed why viewing child pornography on the Internet should be criminalized. Within days of the decision, a bill was introduced and signed into law.

Q. Could you describe your new role at Harris Beach?

A. I’m a partner and co-leader of our appellate practice group and leader of a new practice group focusing on alternative dispute resolution. The firm provides me with a great platform for practice in New York since we have 11 offices blanketing the state. ADR is a growing and important method of resolving cases, and doing mediations and arbitrations flows naturally from my experience as a trial judge. I’m also involved with the commercial litigation and government compliance groups. Since leaving the court, I’ve continued to do a fair amount of public speaking and CLE programs.

Q. What do you miss most about the Court of Appeals?

A. I miss the people, my colleagues, and my chamber staff. In chambers, you are a family. The judge, three law clerks, and a secretary work as a unit, day and night. The work product at the court is collaborative. We may disagree, but there was always collegiality. I still enjoy close friendships with the other judges, but I cannot see them as often.

Judge Ciparick Celebrates Judge Graffeo

It gives me such great pleasure to honor the very Honorable Victoria Graffeo. Judge Graffeo entered public service over 30 years ago when she accepted a position with the New York State Division of Alcoholism and Alcohol Abuse working in Counsel’s office to help eradicate the scourge of alcohol abuse in our communities. This was followed by 10 very successful years in various counsel positions with the New York State Assembly Minority, culminating in the position of Chief Counsel to the then Assembly Minority Leader Clarence Rappleyea, Jr. This work in the Assembly provided Judge Graffeo with intimate knowledge of the legislative process and the workings of government generally. So much so that she was tapped by newly elected Attorney General, Dennis C. Vacco, to be his Solicitor General.

It was in this capacity that I first met the newly minted Solicitor General when she made an appearance at the Court of Appeals. This was a young, vibrant, smart, dedicated, and caring woman. One who truly cared about the positions she advanced on behalf of the People of the State of New York. Her hard work did not go unnoticed. Governor George Pataki appointed her to fill an unexpired Supreme Court vacancy in September 1996, and she set out, in a hotly contested race, to win election to that seat. Victoria Graffeo was intent on continuing to serve New Yorkers and as a Judge of the Supreme Court, Appellate Division and ultimately the Court of Appeals. She has done so with insight, grace and integrity, and a deep commitment to the betterment of the lives of others.

In addition to her work as a jurist, Judge Graffeo has been generous with her time and activities, serving on various bar associations and civic organizations. At the Court of Appeals, she served as the Court’s liaison to the State Board of Law Examiners, and what a godsend that was to the other members of the Court to have “Vicki” serve in that capacity—to have her work on bar admission rules and procedures and review all waiver applications before they came to the full Court for its determination.

Chief Judge Lippman, recognizing her continuing interest in improving the profession, appointed Judge Graffeo to serve as Chair of the New York State/Federal Judicial Council and co-chair of the Advisory Committee on the New York Pro Bono Admission Requirements for Law Students. In that capacity she worked with law school deans around the country to satisfy the new pro bono requirement in New York, demonstrating not only a dedication to the improvement of the profession, but also to the delivery of much needed legal services to the poor.

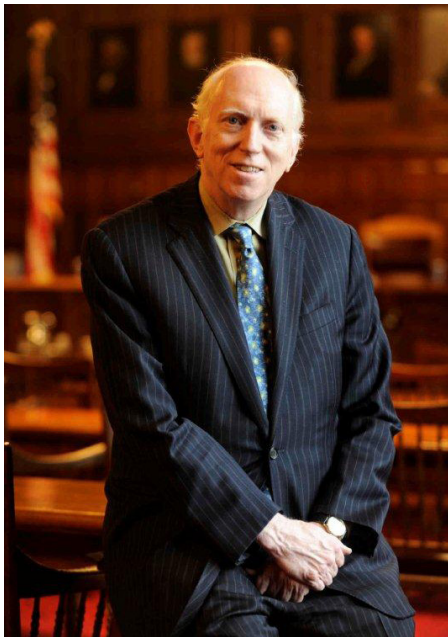
As a colleague, Vicki was the best! A strong jurist, a good listener, a clear writer, always striving to seek the right result. Somehow, she always finds time to remember birthdays, to care for elderly and infirm parents, to be a great aunt to her wonderful nieces, and to be a good friend, not only in good times, but also in times of sadness and sorrow. Vicki, the courts will not be the same without you. It is a great and profound loss. However, I wish you well in your new career. Yes, Victoria, there is life after the Bench, and we expect you will live it to its fullest.

Judge Smith Explores Influences on Career

By Timothy P. Murphy

Q. Is there an attorney or judge you can point to that had the biggest influence on your career?

A. There were so many great attorneys at the firm I worked at, Paul, Weiss, Rifkind, Wharton & Garrison. Judge Rifkind of course was a wonderful man and brilliant attorney. As far as judges who were role models for me, Judges Learned Hand and Benjamin Cardozo come to mind. I believe they were the best prose writers that ever served. Cardozo was brilliant and was a literary master. I also admired the independence and originality of Justice Robert Jackson. Not to compare myself to them, but Justice Holmes and Judge Hand are two judges I tried to pattern myself after.



Robert S. Smith

Q. You grew up being taught by your parents that the liberal icon, FDR, was the greatest, and yet you were appointed by a Republican governor. How did this political evolution come about, and was there a time when your views began to change?

A. The one event that likely impacted my transformation from left to right politically was the month-long trip I took with my mother in 1961

to the Soviet Union. Having been raised in left-wing ideals, I had expected a wonderful place, but what I saw was appalling in terms of living conditions and lack of freedoms. It was not immediate, but this event influenced my evolution to being a conservative Republican as I grew older.

Q. You took the bench on the state's highest court, as did Chief Judge Kaye, without having any prior judicial experience. What are the attributes of this?

A. There are six other judges on the Court of Appeals. Why would it be so terrible to have one person who could remember what it was like to be on the other side of the bench? I believe that my litigation experience was helpful.

Q. You spent a great deal of time in commercial litigation. How did you end up doing death penalty work?

A. It was by sheer luck that the death penalty cases I handled became so important. I guess I have trouble saying no is how I ended up being involved in these matters. My philosophy on the death penalty became more in doubt from my work on the *Penry* [492 US 302] and *O'Dell* [521 US 151] cases. The psychiatric issues were fascinating. There was of course a tremendous amount at stake, that being a man's life. Issues of what is guilt and how much fault would be attributed because of mental disability and a horrible childhood were stimulating and fascinating to me. Like any case you handle, you of course become committed to your case. I am sure that I am more anti-death penalty than most Republicans, and less so than most lawyers who defend death penalty cases. It was an issue I addressed during my confirmation process in becoming a judge.

Q. How did your deep involvement in mental disability issues in the *Penry* case impact your approach on other cases that came before the Court?

A. The knowledge I gained from doing the *Penry* case certainly helped in my approach on other cases. Surprisingly, though *Penry* was known for the mental disability issue, the defendant's terrible childhood was emphasized just as much at the trial level. (Aside from the appellate litigation, I helped try both the second trial in 1990 and the third trial in 2002.) The idea of addressing a capital defendant's childhood also came up in the *Mateo* [93 NY2d 327] decision which was argued before our Court, but the outcome there was determined by the *Hynes* [92 NY2d 613] decision.

Q. You were consistently regarded by appellate practitioners as a tough (but fair) questioner during oral argument. What do you say to the school of thought that oral argument is not important?

A. I had the same skepticism as everyone else about oral argument when I first took the bench, but I became less skeptical as I became experienced as a judge. I might put it somewhere between 10 and 15 percent of the cases which were impacted by oral argument, to the extent that my mind was changed. I tried to keep track at one point. I took notes on where I was leaning before oral argument and would check to see if my mind was changed afterwards. I would hear colleagues say from time to time that their positions were changed by oral argument.

Q. What was your favorite area of law as a judge?

A. Probably the criminal cases having dramatic and interesting facts were my favorite. They were often horrifying, yet riveting. The *LaValle* [3 NY3d 88] case is an example, with the victim be-

Continued on page 5

ing stabbed over 60 times. But any case is interesting once you get into it and understand what is important about it.

Q. Now for your post-court years. What's on the horizon in your practice?

A. It would be unrealistic to expect my practice to look exactly as it did before I took the bench. One thing that has been fascinating and I have enjoyed is being called as an expert witness on choice of law contract issues in foreign (meaning out of the country) courts. I have been hired now in three cases to perform this service. I have thoroughly enjoyed this.

Q. How about a real retirement?

A. While I do not see myself practicing at age 90, I am not eager to stop working altogether. I enjoy at this time being fully engaged in the practice of law. And I have always been good at making time for family.

Q. Trials versus appeals: any preference as a practitioner?

A. I believe that I conducted 50 trials and 51 appeals before tak-

ing the bench. These were significant trials, and the number is high for a partner in a large firm such as Paul Weiss. I certainly love doing appellate work, but I also really love being a trial attorney. (If any of the readers of this newsletter are interested in my trial services, I would be willing to discuss cutting my hourly rate for them!)

Q. What things would you change about the practice of law?

A. I would like all my clients to listen to me and all of my adversaries to shut up—but those dreams are not likely to be fulfilled. As far as reforms, litigation is too wasteful and expensive, and takes too long. But there are a lot of smart people addressing this, and I don't know if I could do better on the topic.

Q. What about an age limit for judges?

A. I'm in favor of it, but not 70. Of course I may not be completely unbiased on the topic. I worry about the federal system and the advanced ages of some of its judges, but Judge Weinstein (of the Eastern District) is certainly doing fine. Naturally, judges can't go on forever.

Judge Pigott Captures Colleague's Essence

Judge Smith has, in understated fashion, described at least some of his experiences as a lawyer coming straight to the Court of Appeals. I'd like to add some context to his comments.

Picture, if you will, a person who has committed to memory all of Shakespeare's sonnets while at the same time is able to give you the entire line-up, name, number, and position of the 1955 World Champion Brooklyn Dodgers. That's Judge Robert Smith.

I don't know how I came across this information, but I challenged Bob one day with respect to his memory of Shakespeare's sonnets. "Fourteen" I declared; to which Judge Smith replied "Not from the stars do I my judgment pluck..." and rambled on for another 13 lines that sounded pretty good. From this I concluded one of two things is true: either 1) he has indeed memorized all of Shakespeare's sonnets or 2) he's one hell of a poet himself if he just made that up!

When I came to the Court in 2006 I was prepared to find little common-ground between Judge Smith — a big firm, downstate, Ivy league-trained lawyer with no judicial experience before coming to the Court, and me, an upstate, small firm, public law school lawyer who had been a judge for 10 years including eight as Presiding Justice of the Appellate Division, Fourth Department. The incongruity was clearly evident.

Instead, for the following eight years our decisions seemed remarkably "in synch" and I think [his] interview [with Tim Murphy] explains why.

Judge Smith has the ability to sort through the facts of a case, discarding the irrelevant and highlighting those which will form the basis of the court's opinion or his dissent.

Having reduced the case to its essentials, he then had the ability to apply the appropriate precedent to those facts reaching, in his view, the correct result.

As his record demonstrates, the Court did not always agree with the conclusion he reached. But I don't think anyone seriously challenged his reasoning in getting there. I shared many opinions with Judge Smith and even a few dissents. But where we disagreed, there always seemed to be a bit of "flair" either to the case itself or in Judge Smith's reasoning.

As most of the members of the Committee [on Courts of Appellate Jurisdiction] know, videos of oral argument before the Court are on file and can be found on our website.

I would recommend to your members the case of *Matter of 677 New Loudon Corp. v N.Y. Tax Appeals Trib.* (19 NY3d 1058 [2012]). The case involved the owner of a night club known as "Nite Moves". He was attempting to avoid paying sales tax on the ground that, because the pole dancers and lap dancers in his establishment were "artists" and their dances "art", he should be exempt from sales taxes.

Continued on page 6

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.

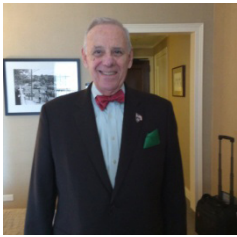
I'm truly sorry that those who appear before us now have been deprived of Judge Smith's talents. At the end of his interview

[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?



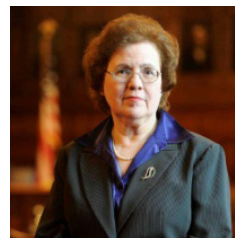
Judge Joseph W. Bellacosa was born in Bed Stuy, the son of immigrants. His dad was an iceman and baggage handler at Idlewild Airport, his mom a seamstress and homemaker. He started as staff attorney at New York Life Insurance Company; served as assistant dean and assistant professor

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-

Continued on page 7

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 Supreme 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

Continued on page 8

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”.