

Remarks  
of  
JUDITH S. KAYE  
Chief Judge, State of New York  
at  
CEREMONY MARKING RETIREMENT OF  
ASSOCIATE JUDGE STEWART F. HANCOCK, JR.

Held in Conference Room  
of  
Court of Appeals Hall  
December 15, 1993

This moment gives me no pleasure, as we gather to bid an official farewell to Judge Hancock, who completes 23 years of distinguished judicial service—eight of them as a Judge of the Court of Appeals—and returns to teaching and private law practice.

In difficult times around the Court's conference table, I have often looked to Judge Hancock's wisdom, as I do now.

It was Judge Hancock some years ago, in a talk to the State Law Department, who marveled at what he called the law's "continuity in change." He described the law as a continuous tapestry, strong and resilient, reaching back to the very beginnings of civilization, yet ever changing as contemporary lawyers and Judges grapple with new social needs and problems. I watched Judge Hancock deliver those remarks, and I have read them many times since, recalling always his expression of wonder and delight both in the continuity and in the change.

Much the same can be said of the Court of Appeals. From this Court's first reported decision in September 1847 to our last of December 1993—some 146 years and 390 volumes later—this institution has continued as a stable and resilient body, "extending back in time [to use Judge Hancock's words] in an unbroken stripe." Judge Hancock himself is the 98th Judge of the Court of Appeals, having taken his oath of office on January 9, 1986. Often in our courtroom I am struck by the

powerful message of the silent parade of portraits that decorate our walls, testament to Judge Hancock's 97 predecessors and the remarkable continuity of this institution through sometimes terrible events.

But equally remarkable, equally strengthening is the change, the imprint each Judge individually leaves on the Court. And for those of us who know and love Judge Hancock, there can be no doubt that the imprint of *The Cazenovia Jurist* will be lasting, distinctive and unique—a touch of plaid in that unbroken stripe extending back into history.

It seems proper, on an occasion such as this, to speak first of Judge Hancock's judicial contributions. I think he did a superb job of describing himself recently when he listed the qualities of a good Judge: to be able to deal with abstract thought, complex problems and questions that require sophisticated analysis and reasoning; to have humility, not to think you know it all, or know more than the lawyers; to be willing to change your mind where change is indicated; to take the job, but never yourself too seriously; to have sense of humor—as he said, “a pompous, self-important person is bad enough, but a judge who is pompous and self-important is worse”; to be able to weep, or feel like weeping occasionally; to apply the law but not be insensitive to the impact of that application on the people involved.

Those brave souls who have the stamina to read the entirety of Judge Hancock's Court of Appeals writings—including each and every one of his footnotes—know how fully he lives out his ideal. His writings are clear, comprehensive and comprehensible, never showy or self-aggrandizing, above all reflective of his intelligence, his diligence, his study, his struggle to reach a solution that is both correct on the law and fair to the people involved.

I can't resist twitting him a bit about one decision that I know has particular significance for him—*Mercury Bay v San Diego*, the America's Cup case—where those of us in the majority felt that on the merits he was definitely at sea, with Judge Titone as his First Mate. But even that dissent exemplifies Judge Hancock's judicial writing—whether on constitutional subjects, seacraft or any other: careful and scholarly, exhaustive in its legal analysis, yet always concerned for the fundamental fairness of the result. Those who have watched him question counsel during oral argument—prefaced by his gentle inquiry “Might I ask you just a question or two?”—know how consummately prepared and engaged he is, and how great his respect is both for lawyers before him and for the law.

Of course I've saved the best for last, and that is to speak of his personal qualities.

Judge Hancock is a graduate of the United States Naval Academy and the Cornell Law School. He served in the Navy between 1945 and 1947, and again during the Korean War years. After a stint in private practice, he became the first full-time Corporation Counsel of the City of Syracuse—where he once decreed Christmas trees a vegetable in order to permit their sale on the Sunday before the holiday. In 1964 he was elected County Chairman for the Republican Party, and two years later ran unsuccessfully for Congress. Thankfully, his political career failed abysmally. On his 48th birthday—February 2, 1971, he was appointed a Justice of the Supreme Court by Governor Rockefeller, and he has been a Judge ever since, moving to the Appellate Division, Fourth Department, in 1977. All told, an extraordinary record of public service, even for his family.

Whether standing on his head or on his feet—and he regularly does both—Judge Hancock is a delightful colleague and friend to everyone in this building. Physically and mentally he is trim and vigorous. He is a sports enthusiast—a golfer, sailor, surfer, runner, soft-shoe dancer, and goodness knows what else; and an irrepressible hummer and singer, with church choirs, barbershop quartets and anyone who will have him. Ruthie and the kids—starting with six of them, and oodles of grandchildren thereafter—are always a good subject for spirited discussion with Judge Hancock; so are interesting new words; so are Court of Appeals cases and wonderful law issues. Conversation on these subjects—or any other—can earn you the Judge's excited utterance: "You're a genius!"

While the day is a sad one for us, it is some solace—and no surprise—that Judge Hancock himself is actually looking forward to his new life of teaching and practicing law, even to getting beat up by Judges when he argues appeals. Indeed, he has analogized this event to his Commencement. In keeping with the spirit of a Commencement, the Court of Appeals family extends to its newest "alum"—the Honorable Professor Stewart F. Hancock, Jr., Esquire—heartfelt good wishes for health and happiness as he embarks on life's new ventures.

Judge HANCOCK, JR.

On December 31st of this year at the last stroke of midnight I shall experience whatever metamorphosis takes place when a Judge turns into an ex-Judge. My 23 years as a Judge in the New York State judicial system will be over. What are my thoughts as I approach the end of what has been for me an

enormously challenging, absorbing, and personally satisfying experience?

First, I am thankful, thankful to those who gave me the privilege of serving the people of our great State in a judicial career. Second, returning to a theme you have heard me sound before, you cannot spend 23 years in the State judiciary, applying our laws through the judicial process, without acquiring an unbounded respect, almost an awe, for the court system, for the process and for the law itself.

Somehow—no one knows exactly how—this infinitely complex mechanism functions and functions surprisingly well. If you stand in the courtroom of the Court of Appeals and look at the paintings on the wall you get a sense of the history and majesty of the law and the legal process. You see paintings of our much loved former colleagues, Fritz Alexander and Bernard Meyer, of Chief Judge Lewis, my immediate predecessor on the Court from Onondaga County, and Chief Judge Cardozo, and Judges Andrews, Pound, Lehman and others; and behind the Bench, the portrait of John Jay, our first Chief Judge, the author of the State Constitution and the first Chief Justice of the United States. When John Jay was writing the New York Constitution in 1777 he could look back down the path of the law to the English Bill of Rights of 1688, the Declaration of Rights of 1640, the Magna Carta of 1215 and beyond to the earliest roots of the Common Law in ancient Germanic tribal law and custom. One can't help but be proud and also a bit overwhelmed at the thought that he or she has added some pieces—no matter how miniscule—to this vast tapestry of the law and to hope that these pieces have in some way served society well.

But third, contemplating these 23 years, I see the law and the judicial process in another light: not as some kind of abstract, mysterious, impersonal essence which transcends us all, as indeed, the law does, but as something very personal, real and practical. For law, as it really is—as it is felt by people—is what individual lawyers and Judges do in thousands of transactions in courtrooms, conference rooms like this one, in lawyers' offices, in phone conversations, fax transmissions and in Judges' chambers and clerks' offices every day of the year.

Thus, my most vivid mental images are of *people*—of the hundreds of lawyers with their varied styles, techniques and abilities who have appeared before me; and of the courthouse staffs without which the process could not function, including colorful court attendants like my old friend, the late Irwin

Booth of Oswego, who could never get my name straight and who would announce me when court began, "Hear Ye, Hear Ye, the Honorable Seward Francis Babcock presiding, please be seated". He would rap his gavel, sit down and, in 30 seconds, be fast asleep.

And, of course, my fondest thoughts are of my colleagues, the Judges with whom it has been my privilege to serve, especially my colleagues, past and present, on this great Court of Appeals. They know, from our dinner last night, how much affection and admiration I have for them and how I shall miss their association which has been such a joy for me. To be sure, as Justice Holmes has told us, the law is not handed down by some "brooding omnipresence in the sky". It is the product of human reason and human reason is not infallible. Thus, one can forgive an occasional lapse such as the inability of some of my colleagues to comprehend the difference between a monohull and a catamaran or the significance of the formula for computing the hull speed of a monohull sailboat from the length of the load waterline—concepts with which, I note, somewhat ironically, that my successor on this Court has no difficulty.

But my equally bright memories of these eight years on this Court will be of the Court staff, of you who are part of this very professional organization without which the Court of Appeals could not perform its important mission as the highest Court in the State. One has to see it from the inside to understand how intricate and multifaceted is the process of handling the vast work load of the Court. And so I salute and thank Donald Sheraw, Stuart Cohen, who, with the assistance of Martin Strnad, Suzanne Aiardo, Laurie Tacy, Terry Ward, and Terri Buel make the wheels turn; and Andy Klein and John Asiello and their assistant Pat Kehn for their incredible expertise and for enabling me to get through these eight years with hardly a reference to Cohen and Karger; and, before his retirement, Jack Mathews, the dean of consultation clerks; and our highly proficient and professional central staff attorneys under Marge McCoy, Paul McGrath and Alex Jurkat for their immeasurable contribution to the work of this Court; and the Court attendants, Fred Carroll, Bill Fitzpatrick, Bar-yon Roland and, of course, Cedric Faulkner whom we are so happy to have back; and I cannot forget my very favorite Librarian Frances Murray and her assistant Jan Groff; or the constant careful and meticulous work of John Decotis and his assistant Brian Emigh and the staff in maintaining, cleaning and polishing this beautiful courthouse; or the Court guards Phil, Paul, John, Chris, Warren and Joe and especially my

very good friend George Connair who brings breakfast and lunch, and always with a smile; and a thank you to Ted Shufelt who makes the long trip to Manlius and back to pick up the boxes; and also to Dick Zander and, of course, to Fred Muller and the Court Reporter's staff for their meticulous professional work; and to the congenial and competent staffs in the chambers of my colleagues; and the many others who have provided me and my chambers with invaluable assistance; to *all of you*, my heartfelt thanks.

And finally, to those who have endured the rigors of working in the Hancock chambers; I pay a special tribute to each of you not only for your excellent professional assistance and for your patience and fortitude but for the humor, charm, and spirit you have provided. I refer to my excellent law clerks David Boyle and Loretta Smith and to my able, resourceful, imaginative, and ever cheerful assistant MaryJo Santoro. But, of course, I refer also to my exceptional clerks of recent years Hope Engel Greenberg, Vincent Bonventre, Harris Lindenfeld, Kathleen Lynn, Bob Kirchner, John Mulligan, Douglas Hollowell and Troy Oeschner; and also to Carmel Loffredo who gave me such outstanding help for so many years. We have developed close friendships which I shall always cherish.

But what of the future? I am not retiring from this noble profession. I will be teaching law at Syracuse University and returning to my former firm, Hancock & Estabrook in Syracuse. I'm excited about both of these prospects. People tell me that the law practice isn't the same and that I may not like it. Of course, it won't be the same, but I'm confident that I'll enjoy the practice as well as the teaching.

Two other missions will keep me busy and will permit me to make partial repayment to the profession and the judicial system for the privilege and opportunity to serve that they have given to me.

First—I have agreed to serve as a Director of our Onondaga County Bar Association. Second—I will be serving on a new and important committee which has just been formed by Chief Judge Kaye called the Committee on the Profession and Courts. This Committee is to address the problems of public dissatisfaction with the legal system and disturbing loss of trust and confidence in the reliability and integrity of lawyers. Last week at the annual dinner of the New York County Lawyers' Association, the Chief Judge spoke of these problems and in forceful and eloquent terms outlined what she thinks can and should be done. Here is how she concluded her remarks:

"Above all, we cannot remain indifferent [to these criticisms] because public trust and confidence are not luxuries for us \* \* \* The very core, the essence of this noble profession is client service, public service—its tradition of vision and leadership in the progress of society. Surely we can apply that same marvelous spirit to progress of the profession in a changing world".

I am honored to serve on the Chief Judge's Committee and will help in whatever way I can. I quoted some of her words last Friday in speaking to the Onondaga County Bar Association and urged its full support for this important effort. I am confident that that support will be forthcoming.

What of the future of this Court? In the few months that she has had the responsibility, Chief Judge Kaye has demonstrated that she will be a great Chief Judge. And I am confident that the "Kaye Court" will occupy a position of prestige and respect at the very pinnacle of State courts in the country. As I told my colleagues last night I shall be watching and I *know* I shall be proud!

Thank you all. I will not say good-bye because I shall stay in touch. Meanwhile, Happy Holidays!

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