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DECIDED IN THE

# COURT OF APPEALS

OF THE

## STATE OF NEW YORK

OPINIONS FROM AND INCLUDING OCTOBER 8, 1985, TO AND  
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Remarks  
of  
SOL WACHTLER  
Chief Judge, New York Court of Appeals

at

CEREMONY MARKING RETIREMENT OF  
SENIOR ASSOCIATE JUDGE MATTHEW J. JASEN

Held in the Conference Room  
of the Court of Appeals Hall  
December 17, 1985

According to our court's long-standing tradition, we gather today to bid farewell to our colleague, MATTHEW J. JASEN, the Senior Associate Judge of our court, on the eve of his mandatory retirement. After 18 years of service on our court, your absence will surely be felt, but your more than 800 opinions, which serve as models of clarity, scholarship, and independence of thought, will remain as guideposts for those of us who carry on.

Since your admission to the Bar of this State in 1940, you served as Military Government Court Judge, were engaged in the private practice of law, returned to public life as a Justice of the Supreme Court, and, 10 years later, you were elected to our court. A list of your professional achievements would not be complete without mention of the recognition you have received from your peers. Among others, your awards include the law day award of the New York State Trial Lawyers' Association, the distinguished alumnus award of the Suny Law School Alumni Association, and the Edwin J. Jaeckle distinguished alumnus award conferred by the faculty of law and jurisprudence and the law alumni association of the State University of New York at Buffalo. In addition to your active participation in community affairs, and your authorship of numerous articles on legal and court administration topics, you have served with

## REMARKS ON RETIREMENT OF JUDGE JASEN

distinction as president of the Lawyers Club of Buffalo, Suny School of Law Alumni Association and the Professional and Businessmen's Association of Western New York.

And as your peers have honored you, so too have you been the subject of their praise. As one of Buffalo's leading practitioner's described you: "After family and church, the law has been the consuming passion of his life, as a student, lawyer, and Judge. He has managed to avoid the pitfalls of intellectual arrogance, and has substituted open minded inquiry. He has preferred even-tempered reasonableness to remote and austere technocracy, and thus has achieved a knowledge of men as well as laws that has served the ends of justice well."

But most telling to me of your qualities as both a Judge and a person is the extraordinary devotion and loyalty of your personal staff, Florence Wojtanik, your secretary during the entire length of your tenure here, and a succession of talented clerks, rotated, according to your policy, every two years. Their accolades, based on intimate knowledge and voiced with genuine sincerity, both to me and to the public, speak far more eloquently than I ever could.

Today's ceremony is inappropriately called a retirement. I am confident that today will not bring an end to your 45 years of service to the Bar and the people of this great State, and that this milestone will mark not an end, but a beginning. You will, I am certain, continue your long and distinguished career by returning to private practice, and all of us, your colleagues, wish you the success that I know you will achieve.

Judge JASEN.

Thank you, Sol, for your kind words.

Once again we meet in this beautiful courthouse to follow a long tradition of conducting a ceremony marking the retirement of a Judge of this court. This is the fifteenth such ceremony in which I have participated, and I know that I share the common feelings of regret expressed by all my predecessors that time would not stand still so that we could continue for just a while longer. Once it seemed so far off, and now the thought of it, just a few weeks away, generates great emotions.

When I left law school during the great depression, the thought of someday becoming a Judge, let alone a Judge of the New York State Court of Appeals, never passed my mind. But circumstances and time changed all that. At the end of

World War II, my appointment as a Judge in the newly established United States Military Government Court at Heidelberg, Germany, had a profound effect on my life—particularly, to realize the grave importance of the rule of law and not man.

My tenure in Germany exposed me to a tragedy of universal implication—the horror of the Holocaust. 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 shall never forget this dark period in human history and it is my fervent wish and hope that such a tragedy and miscarriage of justice may never again befall any group, race or religion.

With this black period in human history evermost in my thoughts, I began my career as a Judge. It was a challenge to do justice to offenders of American law in that foreign land whose conception of “justice” was the ultimate result of a long evolution of doctrines raising inhumanity to the level of a principle. In carrying out the mission to restore to the German people the rule of justice and equality before the law, it was necessary to impress upon those people that, unlike the Nazi government in their treatment of people in conquered lands, even though we came as conquerors, we were not oppressors.

This American view of justice was not immediately understood as the Nazi leaders, during their reign, had posited their theory of justice not according to defined and generally accepted authoritative precepts, but according to their individual conceptions of “justice”, without respect for any human values. The rule of law, as we know it, was replaced by a new order of rule by edict to carry out their master plan of conquest and oppression. 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 insure that our judiciary remained 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.

How fortunate we were and are to be living in a country that has recognized for more than 200 years "equal justice under law", administered by an independent judiciary. Indeed, our court in this old and hallowed place has been a leader in preserving and perpetuating that kind of justice. So you can understand that it has been my great pride and satisfaction, as well as privilege, in being a part of this distinguished institution, where I was afforded the opportunity to discharge my constitutional oath and voice my opinion when convinced that the fundamental law of our Constitution required a given result.

Freedom of expression is one of the great and cherished freedoms, as well as obligations, that I have enjoyed by virtue of the fortunate accident of my American birth and service upon this court. We are a free and vital people because we do not only allow, but encourage, debate. Indeed, we may remind ourselves, consistent unanimity in the law is possible only in totalitarian countries.

Without question, I will miss the everyday challenge and stimulation of being a Judge on this court. I have greatly enjoyed the close and warm association with my colleagues and members of the court staff and I shall feel the absence of that association. I take away with me, however, the rich reward of friendship which each of you present here, and others who preceded you, have given me. I take away the memory of your cooperation, understanding and patience.

There are so many people to whom I am grateful—my parents, my beloved late wife Nettie and my dear wife Grace, my children and family, my devoted and loyal secretary Florence Wojtanik, my law clerks Vincent Bonventre and John Halloran and their predecessors, and members of our court staff, headed by Don Sheraw, as well as many others.

Of course, I am not retiring, despite the constitutional mandate which obliges me to leave the court at the end of this month. For the foreseeable future, I intend to return from where I came before I became a Judge—the private practice of law.

I salute Judge Hancock, as our newly selected Judge, and I know he will serve with great distinction. If his experience will be anything like mine, and I believe it will be, he will find it to be a most challenging and rewarding one.

I take my bow and wish each of you life's richest blessings.