



COURTESY PHOTO

Retired Appellate Division, Second Department Presiding Justice **Alan Scheinkman**, circa 1976.

## Retired Justice Recounts a ‘Magical’ Manhattan Dinner With Judicial Luminaries of 1970s New York

BY ALAN D. SCHEINKMAN

A recent article by retired Court of Appeals Judge Joseph Bellacosa, a mentor and dear friend, recounting the Court of Appeals’ decision in *Flushing National Bank* prompted my recollection of a most memorable experience in my professional life.

In August 1975, having recently graduated from St. John’s University School of Law, I reported to work in the Buffalo chambers of Matthew J. Jasen, the senior associate Judge of the Court of Appeals. One late September day, the judge called me into his office and said that the court was going to hear argument on Friday, Sept. 26, 1975, on a single case at the New York City Bar Association on 44<sup>th</sup> Street in Manhattan. Although the junior clerk, as I was from the New York City area, the Judge offered me the opportunity to assist him and, as a side benefit, have a weekend at home. I eagerly accepted.

The case was *Sgaglione v. Levitt*, 37 N.Y.2d 507 (1975), a challenge by civil service employee organizations to legislation mandating that the state comptroller, as trustee of employee retirement system funds, purchase \$125 million in Municipal Assistance Corporation bonds. The purchase was directed in order to stave off default by the city on its financial obligations in the face of weakening investor confidence. The unions, asserting that the statute was an unconstitutional impairment of the comptroller’s investment discretion, took a direct appeal from the *nisi prius* determination that the statute was constitutional, bypassing the Appellate Division.

As I was reflecting on the importance of the matter and making my travel arrangements, the Judge called me into his office again. He told me that, because of the urgency of the appeal, the Judges had decided that, rather than having their law clerks each separately review all issues for their sole benefit of their Judge, the law clerks

would be pooled, given discrete assignments, and share their work product with the entire bench. I was directed to report the next morning to the Trinity Place chambers of Chief Judge Charles D. Breitel who would give me my assignment.

So, there I was, barely out of law school, standing before the august chief judge, together with a few of my colleagues, who was giving us detailed instructions on what each of us was to do. We tramped off *en masse* to the City Bar and its mag-

Very early in his legal career, a retired judge received a rare dinner invitation that he would never forget—and one that provides a high vantage point to look back through the generations.

nificent library and began pouring through cases and materials (no internet then).

Prior to argument, the law clerks were invited into one of the ground floor meeting rooms to report on their research to the entire court. I vividly recall standing in front of the bench, yellow pad in hand, attempting to hide my nervousness and deliver a cogent report and respond to probing questions.

The session, held in the City Bar’s grand meeting room, was opened by Bellacosa, at the time a clerk who, for all his legal acumen and talent, could not match the stentorian tones enunciated by the court’s official “crier”, Barney Tansey. After argument, the court went into conference; the law clerks waited outside lest we be needed. After a while, Bellacosa came out and advised us to stay through the end of the conference, though he didn’t say why.

As the conference ended, judges began to depart, one by one. We learned that Breitel had arranged for a Judges dinner at the nearby Century Association. Since some Judges had decided to head for

home, several law clerks, me included, were invited to fill the table.

We dined in a small book-lined room on an upper floor. Breitel, Associate Judge Hugh R. Jones, and Bellacosa were the among the seven diners. What an honor to join this distinguished group! The chief judge directed that all of us take turns describing our family histories. I was fascinated by the chief judge’s recounting of his family’s origins in Germany, but I was totally floored by Jones’ description of his grandparents’ experiences on a westbound wagon train. Having just studied criminal law and professional responsibility with then-professor Bellacosa, I was totally enthralled with his recitation of his family’s origins in Bari, Italy. My own suburban

upbringing paled in comparison. At dinner’s end, my feet didn’t touch the ground as I walked to Grand Central Terminal to take the train to New Rochelle.

The case was decided the following Monday, September 29, with the court ruling 6-1 that the statute was an unconstitutional infringement upon the Comptroller’s investment discretion. Over the ensuing months, whenever the Court of Appeals met in Albany and I passed Jones in the hallway, he would greet me by remarking on what an amazing dinner we had had in New York. I was not the only one who thought the experience magical.

Alas, this was a one-time event. Not again during my two-year tenure as a law clerk did the judges invite law clerks to their private dinners or meet outside Albany. But it was then, and remains for me now, the experience of a lifetime.

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