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Chief Judge Charles D. Breitel

Joseph M. McLaughlin

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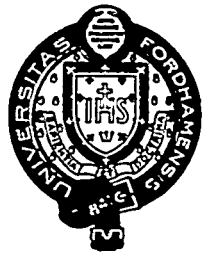

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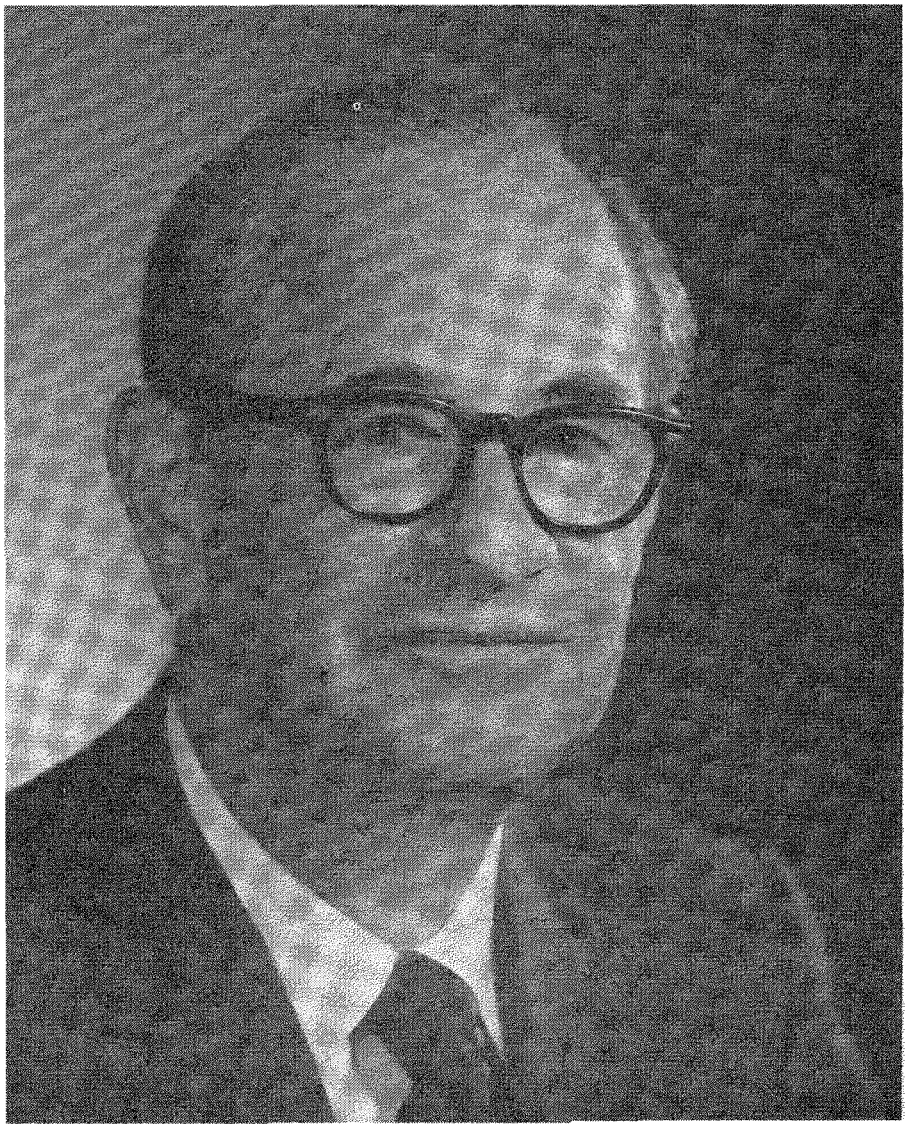
DEDICATION

The Editors of the *Fordham Law Review* respectfully dedicate this issue to the Honorable Charles D. Breitel on the occasion of his retirement from the New York Court of Appeals.



Charles D. Breitel

CHIEF JUDGE CHARLES D. BREITEL

When Chief Judge Charles D. Breitel retires at the end of this year, the New York Court of Appeals will lose one of the ablest leaders and foremost jurists in its proud history. His name comes as quickly to mind as Cardozo, Crane, Loughran, Desmond and Fuld—all great Chief Judges of the most important common-law court in the world. Looking back over Judge Breitel's distinguished public career—his five years as Chief Judge and eleven years on the high court, his three decades on the New York bench and more than four decades in public service—the People of New York will count themselves fortunate to have had for so long the services of one in whom wisdom, courage, versatility, and energetic devotion to office were so well combined.

The scholarship, clarity, and craftsmanship of Judge Breitel's opinions, as well as the profound insights into human nature and the ways of the world, are nationally renowned. As elaborated upon in the Article which follows, Judge Breitel remains to this day a peerless paragon of what Karl Llewellyn termed the "grand style" of appellate decisionmaking. In his opinions Judge Breitel emerges as a Renaissance man among judges, bringing to bear on legal problems a "situation-sense" grounded not only in a knowledge of philosophy (a discipline for which he had been schooled and which, but for the Depression, might have reaped his contributions), but also of economics, sociology, political science, and history as well.

It is always a distortion to seize upon one opinion of a judge in order to illustrate a philosophy. Aware of that risk, nonetheless, I point to Judge Breitel's concurrence in *Simpson v. Loehmann*,* to demonstrate the judicial statesmanship that marked his tenure on the court.

In *Seider v. Roth*** the court of appeals had decided—erroneously in the view of many—that a liability insurance policy was an attachable asset of the insured in a quasi in rem action against the insured. This was in 1966. Two years later, the court in *Simpson* had an opportunity to reconsider the whole question. In that two years, the composition of the court had changed, most notably with the appointment of Judge Breitel. Although persuaded that *Seider* was wrong, Judge Breitel could not bring himself to overrule it. The opening paragraph of his concurring opinion in *Simpson* is a study in judicial self-restraint:

> I concur but only on constraint of *Seider v. Roth* . . . so recently decided by this court. Only a major reappraisal by the court, rather than the accident of a change in its composition, would justify the overruling of that precedent. Yet the theoretical unsoundness of the *Seider* case and the undesirable practical consequences of its rule require some comment if only, perhaps, to hasten the day of its overruling or its annulment by legislation.

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* 21 N.Y.2d 305, 234 N.E.2d 669, 287 N.Y.S.2d 633 (1967).

** 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

. . . .
Accordingly, I concur to affirm but only because the institutional stability of a court is more important than any single tolerable error which I may believe it has committed.***

For his excellence as a jurist, Judge Breitel has not escaped recognition. Llewellyn and others have acclaimed him one of the leading common-law jurists of our era. Especially praised for his incisive and visionary opinions in the area of criminal justice (for which he undoubtedly drew upon his experience from 1938 to 1941 as prosecutor in the Thomas Dewey Special Rackets Investigations), Judge Breitel was appointed by President Johnson to the President's Commission on Law Enforcement and the Administration of Justice, and was a valued member of the American Law Institute Committee on the Model Penal Code. From 1958 to 1966 he was also a member of the Federal Commission on International Rules of Judicial Procedure, by successive appointments of Presidents Eisenhower and Kennedy.

An Adjunct Professor of Law at Columbia University from 1963 to 1969, Judge Breitel recently received an honorary doctorate from that illustrious university. Judge Breitel was especially honored when he was selected to deliver the Benjamin N. Cardozo Lecture at the Association of the Bar of the City of New York in 1965. Meanwhile, he steadily advanced to the pinnacle of the state judiciary, being appointed by Governor Rockefeller in 1966, and being elected the following year, an Associate Judge of the New York Court of Appeals.

In 1973, Judge Breitel attained the office of Chief Judge, resolving to lead the New York judicial system up the tortuous road of modernization and reform. This was a formidable task, fraught with strains and conflicts, from which a man of lesser mettle might have shrunk. For Charles Breitel, there would be no hesitation in pursuing long cherished objectives and fulfilling promises he had made to the electorate. The genuine unification of the courts into a single system, centralization of judicial administration, reform in the selection of judges, and a judiciary properly independent of its sister branches of government, are goals for which he labored incessantly over the past five years, and which, except for court unification, have been largely achieved.

To the court of appeals itself, Chief Judge Breitel brought new internal management techniques to streamline the appellate process and improve the quality of review. Here he had the benefit of administrative expertise and creativity developed during his innovative tenure from 1943 to 1950 as counsel to the late Governor Thomas F. Dewey, his mentor and friend. Judge Breitel also galvanized the court's decisionmaking process by introducing the "hot bench" (where judges

*** 21 N.Y.2d at 314, 316, 234 N.E.2d at 674-75, 287 N.Y.S.2d at 640, 642 (Breitel, J., concurring).

read briefs *before* hearing oral arguments), a concept which he had pioneered in the Appellate Division, First Department, and which has subsequently spread throughout the state.

I am honored to join the *Fordham Law Review*'s tribute to Charles D. Breitel—jurist and scholar, administrator and statesman—who, through a lifetime of tireless effort, has bequeathed so great a legacy to the People of New York, and to American jurisprudence.

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Dean
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