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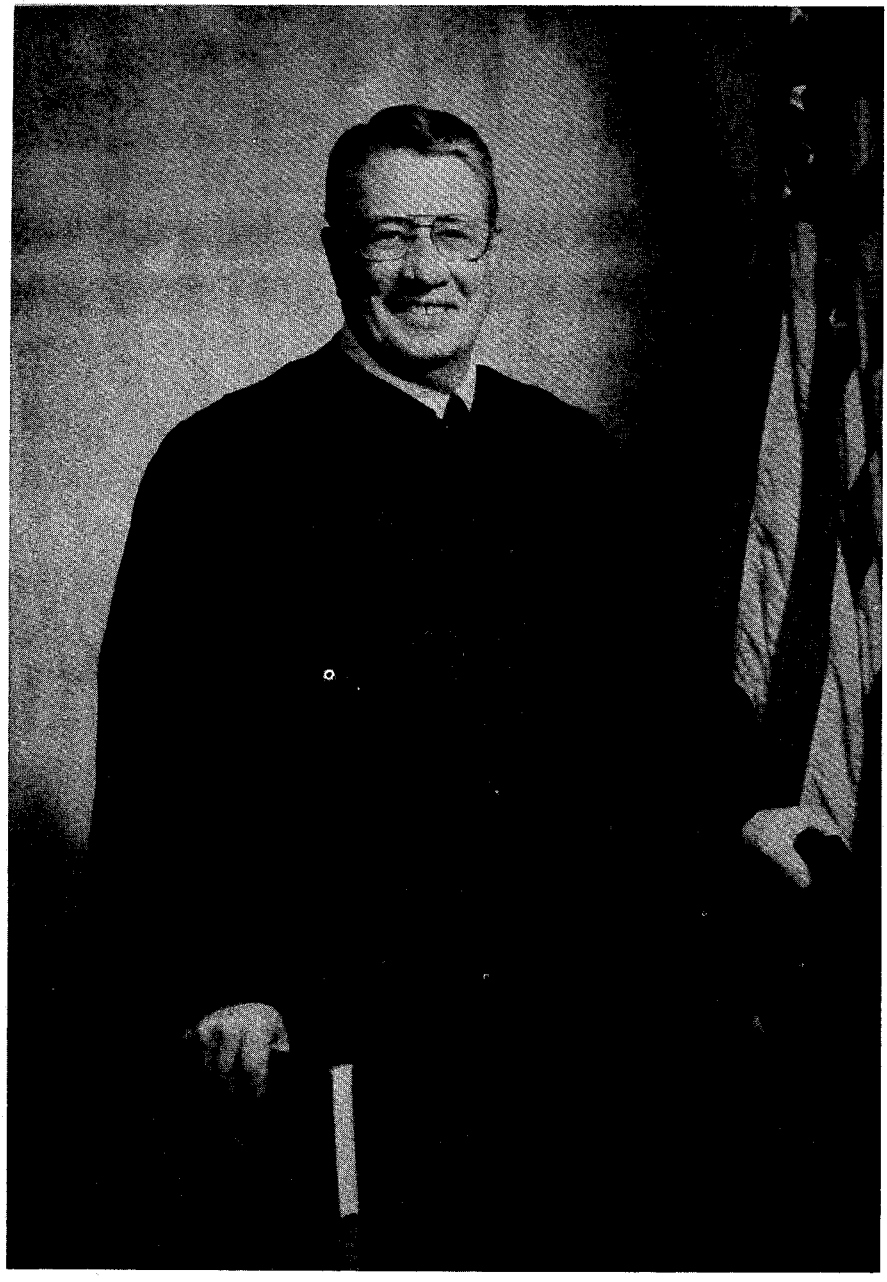
A Dedication to Chief Judge Lawrence H. Cooke

DEDICATION

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



A DEDICATION TO CHIEF JUDGE LAWRENCE H. COOKE

LAWRENCE H. COOKE: A TIRELESS JUDICIAL ADMINISTRATOR

*Warren Burger**

A good many years ago one of the great leaders in court improvements, Chief Justice Arthur Vanderbilt, said that improvement in the administration of justice is not a task for the "short-winded." Ever since Lawrence Cooke became the highest judicial officer in the State of New York, and indeed even before that, he demonstrated his concern for improved management of the resources of the judicial system of his state. Yet improvement means change and advocates of change inevitably meet resistance. But resistance and apathy did not discourage Lawrence Cooke from pressing constantly to make the courts work better for the people of his state.

Lawrence Cooke has recognized that the courts and their procedures, like the legal profession and the laws, are not ends in themselves but a means to an end—a tool—and the end is the proper administration of justice. Through the Conference of Chief Justices and the National Center for State Courts, his leadership extended beyond New York. He demonstrated that one firm, constant voice can exert a powerful impact on an institution and the *Fordham Law Review* does well to acknowledge his contributions.

AN OPEN LETTER TO MY COLLEAGUE AND FRIEND ON THE OCCASION OF HIS SEVENTIETH BIRTHDAY

*Judith S. Kaye***

Birthdays for some may signal advancing age and diminishing expectation, but you have magically stopped the clock. The passing years of course can be measured by your maturing family—nine grandchildren, the eldest perpetuating a family tradition as a freshman at Georgetown, the newest annouced as you presided in Court during April—and by the ceaseless growth of an already staggering record of writings and contributions of every variety to our justice system and society. But your youthful demeanor, twinkling humor, and unmatchable work schedule

* Chief Justice of the United States.

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and productivity betray no mark of time, nor does your limitless concern for those around you.

How are your in-laws? Wish Stephen a happy birthday. I am by now almost accustomed to receiving such messages as a New Year's card or a report on the condition of an ailing friend from Monticello from the Chief Judge of the State of New York, but the personal interest and attention they evidence are an abiding compliment and pleasure for all who receive them.

Your concern for people is neither casual nor contrived. When Sullivan County determined not long ago to express its pride in you pubicly, the guest list had to be cut off at 500. The tributes from those who knew you long before Albany as a friend, neighbor, volunteer fireman, local official, lawyer, county bar president and judge, in the acid-test intimacy of small-town dwelling, attest to the depth and constancy of your humanity, whatever the company and whatever the circumstances. I know this quality not only from the unanimous judgment of our common community but also from having sat with you for more than a year now, as the junior judge, through the wondrous, unplumbed process of morning conference of a collegial court, the delights of oral argument, and the nightly dinners of seven judges with divergent views who genuinely like and respect each other.

What can be the first quality of a judge if not value for the person singularly and people collectively? For more than thirty years, since your election as Sullivan County, Surrogate and Children's Court Judge, and up through the icier reaches of the appellate courts, the consistent thread that binds the vast body of your work, albeit analytical and scholarly, has been compassion for the individual. Your opinions for the Court of Appeals have established even higher state standards for the protection of individual rights than federal constitutional requirements, and have secured other protections going to the fabric of our society, such as a free press and a right to a public trial. You have been a fierce advocate for the advancement of women, equal opportunity, the end of invidious discrimination, and for reforms that would assure the public prompt access to the courts and their most effective utilization. Under your leadership, scores of legislative proposals have been introduced and enacted into law for the improvement of court administration and practice. You have somehow made time both for state and national activities devoted to such objectives and for informing the public, strong-voiced and proud, of the accomplishments of our state courts managing huge dockets in conditions less than ideal.

This is a birthday that can be neither celebrated nor ignored, for it brings with it a peculiar gift from the legislature. I did not long wonder what your views might be on the subject of mandatory retirement at age seventy. From your successful efforts to tap the resources of retired judges, your commitment to the principle of "waste not want not," your incredible vigor and the obvious joy you draw from what you do, anyone

would know that this cannot be your most-awaited birthday. It is indeed a bittersweet occasion for us all. Your schedule even this past year, with countless writings, talks and prodigious travel, confirms that your own demands upon yourself and your personal expectations for working toward the maintenance and improvement of the high quality of justice we enjoy are hardly diminished, and seem even to have escalated. There can be no doubt that, whatever your next title may be, society will long into the future continue as the beneficiary of your enormous talents, your love of public service and your inexhaustible capacity for work. But we will miss you.

TO CHIEF JUDGE COOKE: LEADER IN INNOVATIVE JUDICIAL ADMINISTRATION

*W. Ward Reynoldson**

Shortly after Lawrence H. Cooke became Chief Judge of the New York Court of Appeals in 1979, I came to know him through our mutual involvement in the Conference of Chief Justices. I soon discovered the Chief Judge's physical size was matched by the breadth of his intellect, wisdom and experience. These attributes, graced by a warm personality and a disarming, boyish grin, soon advanced him to a position of Conference leadership.

Chief Judge Cooke chaired the Conference's important state-federal relations committee, served on its executive committee, and ultimately advanced to the positions of chairman-elect and chairman. He was not inclined to permit the meetings to lapse into a debating society or social event. He was convinced the Conference should be a force in, and take strong positions on, national issues affecting the state courts. For example, 1981 brought strong efforts by certain members of Congress to strip the United States Supreme Court of substantive jurisdiction in several important areas. Approximately twenty bills were introduced to derail the court's jurisdiction in cases involving prayer in public schools and buildings, abortion, school desegration and busing, and sex discrimination in the armed services. Chief Judge Cooke, then chair of the Conference's state-federal relations committee, appointed five committee members to make a study of, and write a report on, this movement and its potential effect on state courts.

Those of us involved in the study became convinced these bills, if enacted, would establish a dangerous precedent. We were alarmed that the article III, section 2 exception contained in the United States Constitution ultimately could be expanded to swallow the basic delegation of judicial power to the Supreme Court under article III, section 1.

* Chief Justice, Iowa Supreme Court; Chairman, Nat'l Conf. of Chief Justices.

Constitutional rights could be controlled, willy-nilly, by federal legislation, and, without the Supreme Court's review jurisdiction, come to mean something different in each of the fifty states.

The subcommittee's study report was presented at the Midyear Meeting of the Conference of Chief Justices in January 1982. While avoiding the constitutional questions involved, it palpated other troublesome consequences of such legislation and concluded with this statement: "We question the wisdom of these bills and view them as a hazardous experiment on the vulnerable fabric of the nation's judicial systems."

Guided by Judge Cook's deft hand, a resolution was adopted by the Conference, without opposition, that captured the report's essence and directed that the resolution, together with the report, be forwarded to appropriate members of Congress. This unusual action attracted wide national attention. Chief Judge Cooke acquitted himself well in television and print media interviews. The resolution and report, drawing intense congressional interest, were utilized in congressional debates and were made a part of the February 2, 1982, Congressional Record by Congressman Peter W. Rodino, Jr., chairman of the House Judiciary Committee. The drive to adopt the dangerous legislation ultimately lost momentum and was abandoned.

While all this was taking place, many of us were following the fascinating developments in the administration of New York's judicial branch of government. One not knowing Lawrence Cooke might have thought the new chief judge, produced by the massive system, steeped in its encrusted protocol and hampered by its intractable problems, would have been content to serve out his remaining career in a caretaker capacity. To have followed such a course, however, would have been completely alien to the character of this determined and progressive judge.

The scope and daring of Chief Judge Cooke's first directive for an enormous reassignment of rural judges to attack the pinch-points of urban case congestion captured the imagination of other Conference members and fired our resolve to confront more firmly the defects in our own state systems. His efforts to establish systemization and uniformity in court hours and judicial vacations contributed, for example, to the Iowa Supreme Court's rule limiting vacation time for all judges. Overall, Chief Judge Cooke's New York example posted higher nationwide goals for state court admimistration in many areas, including case depositions, arbitration programs, community dispute resolution centers, jury selection and management, and utilization of retired judges.

Although there may be concern that New York's judicial department will falter upon the retirement of its dynamic chief judge, I suggest such fears are unfounded: He has succeeded in raising the reasonable expectations of lawyers, judges, administrators, court-watchers and people generally concerning the state's judicial system and its potential for service. I am reassured by discussions with several of the capable and professional administrators and managers he has selected, and who will re-

main. Chief Judge Cooke not only has left his mark on New York's judicial branch of government, but on the nation's approach to state judicial department administration.

SIX SHORT YEARS OF MERITORIOUS SERVICE AS CHIEF JUDGE

*Robert B. McKay**

When Lawrence Henry Cooke was appointed by Governor Hugh L. Carey as Chief Judge of the State of New York on January 2, 1979, Judge Cooke knew that he would have only six years in that office. Over the more than two-century history of the New York Court of Appeals, six years is not very long, particularly when the system has become so enormous, the bureaucracy so ponderous and the perceived needs for improved court management so discouragingly imposing. Some might be tempted to leave the task of judicial administration to others and concentrate on the traditional—and demanding—role of leading the seven-member Court to the development of a coherent body of judicial decisions. Chief Judge Cooke, however, was not content to do one or the other; he insisted on doing both. As an elected member of the Court of Appeals since 1974, he apparently felt comfortable with his judicial role, needing only to assume the central position as first among equals. As to judicial administration, on the other hand, Judge Cooke recognized that he alone could exercise the leadership role; and he immediately accepted—perhaps more accurately, seized—that responsibility.

Willingness to accept responsibility is not enough by itself. There must in addition be an understanding of the nature of the problems, a readiness to undertake bold measures, without regard to criticism, and an availability of resources, both human and economic.

Problems there were aplenty. The court system in New York State was (and to a great extent remains) cumbersome and creaking. Responsibility for court management had only recently been centralized and still needed further attention; courts at the trial level were divided among counties and within counties; some judges were elected and some appointed in no particularly rational way. Worst of all, perhaps as a result of the long-festering difficulties with the system as a whole, the courts, particularly in the eleven most populous counties that contributed most of the business and an even larger share of the delay, were overburdened and denied effective management and needed resources.

Chief Judge Cooke came to the task armed with two important advantages. A constitutional amendment had become effective on April 6,

* Professor of Law, New York Univ. School of Law; President, Ass'n of the Bar of the City of New York.

1978, authorizing the most sweeping court reorganization in New York in 130 years.[1] That amendment vested the authority for administrative supervision of the courts in the Chief Judge of the Court of Appeals, designated as the Chief Judge of the State of New York in his administrative role.[2] Second, Judge Cooke brought to the assignment his incredible energy and a refreshing enthusiasm for the challenge.

The New York State court system is one of the largest, most active and most expensive in the world. In 1983 for example, more than 2,300,000 actions, proceedings and indictments were initiated in the major trial courts; the approximately 2,400,000 dispositions exceeded by more than 500,000 the dispositions in 1979. These matters were handled by approximately 1,050 judges. In addition, the 2,350 town and village justices handle about 2,700,000 cases each year. In this enormous bureaucracy the management task is truly formidable.

By the end of his first year as Chief Judge, Lawrence Cooke reflected on his experience:

> The resolution was made early on that I would not be a weak Chief Judge . . . . When I pointed to protracted delays . . . and asked for solutions, I was told not to worry, that there was lots of goodwill extant . . . and that because of this spirit court problems would be solved. It was obvious that reliance should not be placed on such indefiniteness. It was decided instead that affirmative action was necessary. It was decided to exercise the constitutional and statutory powers and duties conferred on the Chief Judge.

Thus began the whirlwind. Judge Cooke's plan to reduce court congestion and delay, effective January 1, 1980, consisted of three parts: a transfer of judges from less congested to more congested courts; an expansion of arbitration programs; and an increase in judicial bench time. Although some of these efforts were controversial and resisted in part by other judges, court delay was materially reduced.

During the remaining years of his tenure, Judge Cooke worked with his two chief administrative judges of the Office of Court Administration, Judge Herbert B. Evans and Judge Robert J. Sise, to put in place other judicial administration reforms, including: merit screening of Criminal and Civil Court judges in New York City for temporary designation as Acting Supreme Court Justices; a felony backlog reduction program in New York City; reform of the sheriff's jury panel; utilization of retired judges; significant improvement and broadening of judicial education; and establishment of the nation's first state-court supervised mediation program, now operating in a majority of the counties. In addition, always mindful of the needs of judges and courts, Judge Cooke has worked tirelessly for judicial salary increases and for improved court facilities.

1. *See* N.Y. Const. art. VI, § 28.
2. *Id.*

Unfortunately, these agenda items, still unfulfilled, must be carried forward to the next administration.

Chief Judge Cooke is an outspoken opponent of discrimination based on sex, race, color, ethnic origin, religion or creed. In 1980 he promulgated a rule to prohibit reimbursement for expenses of business transacted in facilities that discriminate on any of the proscribed grounds. Subsequently, a statewide affirmative action program for court personnel was established with equal employment opportunity branch offices in Albany, Buffalo and New York City.

As his time in office inevitably wound down, there was no slackening of the pace. Within one ten-day period in May, for example, this dynamic Chief Judge announced two substantial new efforts. On May 22 he announced the formation of the Jury System Management Advisory Committee, and on May 31 he announced a statewide task force to examine the courts for gender bias and, if found, to make recommendations for its alleviation.

During his six years as head of the New York State courts and of judicial administration in the state, Chief Judge Cooke has been remarkably available to judicial organizations, bar associations and civic groups who wished his counsel or his keynoting of public occasions. He has uncomplainingly accommodated his schedule to inconvenient times and remote locations, always well prepared with carefully constructed speeches (he apparently writes his own) on a seemingly limitless variety of topics.

Lawrence Cooke is a gracious man with little apparent sense of self-importance—except in relentless perusal of his goals of court reform and judicial administration. In those arenas he has been fiercely insistent on achievement of the objectives he has set for himself and for his beloved judicial system.

Much has been done; much remains to be done, as Judge Cooke would readily acknowledge. The one thing that cannot be denied is that Chief Judge Cooke has compiled an admirable record, on which his successors can build with pride.

IN HONOR OF LAWRENCE H. COOKE

*Robert Abrams**

Were it not for the office I hold, this tribute to Lawrence H. Cooke would not see the light of day in such prestigious pages. My incumbency as Attorney General is the necessary, and sufficient, predicate for the invitation to express here my admiration of Chief Judge Cooke. That admiration, however, far precedes and transcends my current public

* Attorney General, State of New York.

charge; it is rooted in my personal affection and esteem for a man whose qualitites I have long known and whose contribution to the polity I regard simply as the most celebrated product of his intellectual and spiritual resources. In short, his stature as a jurist is essentially explainable by his stature as a man.

He is among the most caring, humble and unaffected of men, traits not always associated with the occupants of high office. His capacious mind is remarkable for its seemingly total recall of the slightest details about people, places and events. Far more than once, he has astounded me with his ability to cite shared occasions and, even more impressively, to remember in some personal way another's achievements or burdens and communicate thereby his own concern.

I first met Lawrence Cooke when, as a very green attorney, I was dispatched to the wilds of Sullivan County to defend a corporate client in a civil action. Inflicted with that inverse New York City parochialism which half expects civilization to break down just north of Yonkers, I feared the worst at the hands of the court. Instead, I found Judge Cooke, and I joined a throng of litigants and adovates who, win or lose, know that they have been exposed to judicature of the highest order.

My task here is to speak of Judge Cooke's contribution as a member and, later, Chief Judge of the Court of Appeals to the jurisprudence of our state. Such a topic demands far more space than this forum affords. Sometimes the medium cannot accomodate the message. One cannot do justice to the *Eroica* on an ocharina; one cannot do justice to the Cooke canon in a brief encomium. Highlights must suffice, along with the sure expectation that the scholars who follow will provide greater illumination. And what they will find is a body of law which, quite aside from the agreement or disagreement it may generate regarding the merits of individual cases, is in the finest tradition of scholarship, lucidity and intellectual honesty.

Perhaps the area of the law where Judge Cooke's voice speaks most distinctly and compellingly is that of the constitutional requirements in the criminal justice process.

On right to counsel, *People v. Rogers*[1] established a standard which, by proscribing interrogation in the absence of designated counsel and by allowing waiver of the right to counsel only in the presence of such counsel,[2] served the interests of accused and prosecutors alike by clearly defining boundaries in a murky and shifting terrain. As the author of *Rogers*, *People v. Settles*[3] and *People v. Skinner*,[4] Judge Cooke has enunciated a lucid and cogent approach to realizing in fact the constitutional right to assistance by counsel in criminal matters.

In this aspect of constitutional criminal law as well as that of search

1. 48 N.Y.2d 167, 397 N.E.2d 709, 422 N.Y.S.2d 18 (1979).
2. *Id.* at 173, 397 N.E.2d at 713, 422 N.Y.S.2d at 22.
3. 46 N.Y.2d 154, 385 N.E.2d 612, 412 N.Y.S.2d 874 (1978).
4. 52 N.Y.2d 24, 417 N.E.2d 501, 436 N.Y.S.2d 207 (1980).

and seizure, Judge Cooke has successfully posited the assertion that the New York Constitution provides broader safeguards than does the United States Constitution. The principles he carefully applied in *People v. Gokey*[5] and in his dissent (later sustained by the U.S. Supreme Court) in *People v. Payton*,[6] have served to insure that, whatever tack the U.S. Supreme Court takes on these volatile issues in the perod of change ahead, New Yorkers can rely on the protections afforded by their state law.

He has written equally valuably in many other areas. A staunch defender of freedom of the press, Judge Cooke authored the decision in *In re Richard Beach v. Shanley*,[7] shielding a reporter from criminal contempt for withholding confidential sources from grand jury inquiry.[8] He has also been vigorous in protecting the right of the press to cover court proceedings and has consistently come down in favor of that right, even where such conviction has found him in the dissenting (but often prophetic) minority.

His output abounds in riches. Other areas where he has forged important law include: the due process rights of consumers; sensitive issues of family law, including parental rights, custody and visitation; equal protection and anti-discrimination law; and property law, including two great landmarks decisions in finding an implied warranty of habitability in a lease of residential premises and establishing a single standard of safety to which a landowner must conform his or her property. To list all the topics on which he has contributed authoritatively to the growth of the law would be virtually to recapitulate the syllabus of our profession.

As a New Yorker, I salute Lawrence Cooke's elevation of the public life in our state. As Attorney General, I extol the acumen, diligence and integrity he has brought to the Court of Appeals. As his friend and admirer, I cherish his legacy and wish him the fullest measure of gratification as he reflects upon a career of enduring distinction.

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5. 60 N.Y.2d 309, 457 N.E.2d 723, 469 N.Y.S.2d 618 (1983).

6. 45 N.Y.2d 300, 319, 380 N.E.2d 224, 235, 408 N.Y.S.2d 395, 406 (1978) (Cooke, J., dissenting), *rev'd*, 445 U.S. 573 (1980).

7. 62 N.Y.2d 241, 465 N.E.2d 304, 476 N.Y.S.2d 765 (1984).

8. *Id.* at 252-54, 465 N.E.2d at 310-11, 476 N.Y.S.2d at 771-72.