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Alma Mater's Devoted Son

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Dean and Judge Bellacosa (hereinafter "Joe") has worn many hats with great distinction, but that is all well-documented in these pages and elsewhere. Therefore, I will simply recall, in anecdotal fashion, some of the contexts in which I have known Joe over these many years.

I first met Joe several decades ago when he was a very young graduate of St. John's Law School and I was a very young faculty member. He was a frequent and enthusiastic attendee at various alumni functions. During that early period, he worked as a law clerk to the distinguished jurist, Justice Marcus Christ. I recall today the admiration and respect Joe often expressed for his mentor, probably not imagining that he himself would serve one day as mentor for so many students and law clerks. In those early years, I was teaching many unrelated courses and consequently was always ready to pick someone's brain. Joe was very generous in sharing his knowledge of the law and of the judicial process with a grateful young professor.

In the seventies, Joe joined our faculty, serving as an Associate Dean and a Professor of Law. He set and adhered to high standards as a teacher, scholar, and administrator. He was very demanding with his students but still won their respect and, indeed, affection. As a testament to the latter, I can recall a "Law Revue" performance by some very talented students. Long before "The Macarena," they immortalized Joe in an endearing lilt and dance called "The Bellacosa."

During this time, Joe and I were Co-Advisors to the Moot Court, led one year by a group of very ambitious and enterprising students. They expanded the internal program and entered new competitions, winning many of them. I learned much from them, and from Joe I learned, *inter alia*, that a Moot Court argument scheduled for 8:00 p.m. could actually begin at

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8:00 p.m. More than once, a judge would arrive late for the pre-argument dinner at a nearby restaurant. The judge would likely tell us about a horrible subway delay or road trip from Manhattan. Joe would then politely suggest that the judge quickly order an entrée and forget about an appetizer or dessert, because they were taking the bench promptly at eight.

In this same time frame, two historical events coincided. Joe had accepted the position of Chief Clerk of the Court of Appeals, but it was not yet public and the students were not aware of it. At about that time, Joe and I were with the top Moot Court Board members at the Algonquin. They were scheduled to argue that evening in the prestigious City Bar Competition. That day, we learned that they had reinvented themselves, as it were. Historically, they had been Chief Clerk and Deputy Clerks. But, they had just changed their titles to Chief Justice and Associate Justice. After discussing it a bit, Joe quipped: "You know—sometimes the Chief Clerk is more important than the Chief Judge." The students, at that time, did not get the point, but I was quite amused.

Shortly after, Joe moved north, but he remained close to the school. The Court of Appeals had just begun videotaping arguments and Joe made them available to us for Moot Court and Legal Writing pedagogy. Joe was frequently present at the school in moot court and other programs. Several of us would receive slip decisions in our fields of interest.

Later, Joe received the much-deserved recognition of appointment to the Court of Appeals. During his tenure on the bench, Joe served as our first Jurist in Residence, taught a Saturday morning class in Appellate Advocacy, sat on Moot Courts, addressed the entering students in orientation programs, and attended numerous homecoming and other functions.

Joe played a very special part for me in my courses. It just so happened that I had included many of his opinions in my Supplementary Materials for Property and for my Trusts and Estates course. Several of them later appeared in leading national casebooks. The decisions included *Braschi*,[1] dealing with rent-regulated apartments and succession rights of a life partner; *Nestor*,[2] an analytical and jurisprudential tour de force

[1] Braschi v. Stahl Assoc. Co., 74 N.Y.2d 201, 543 N.E.2d 49, 544 N.Y.S.2d 784 (1989).

[2] Nestor v. McDowell, 81 N.Y.2d 410, 615 N.E.2d 991, 599 N.Y.S.2d 507 (1993).

extending a remedial statute beyond its literal text; *Douglaston Manor*,[3] reminding first semester property students that issues of wild animals and public rights of fishery are timeless; *Greiff*,[4] an innovative decision in the cutting edge area of enforceability of pre-nuptial agreements; and *Blackmon*,[5] involving the very challenging issue of reconciling *inter vivos* transactions with a contractually binding will. And there are more.

Braschi is especially rich pedagogically and eventually found its way into most of the pertinent casebooks. Judge Bellacosa concurred in that decision, thereby making a majority for reversal. That concurring opinion is in the best Cardozo tradition. Lines may (or may not) have to be drawn in the future, but in the meanwhile, we can abide some uncertainty. Apparently, Judge Bellacosa saw the implications of the holding for many other issues, e.g., elective share, same sex marriage, and opted for a narrow rationale tailored to the precise issue before the court. I say "apparently" purposefully. In analyzing his opinions in the classroom, I sometime playfully asked the students if we should go upstairs and ask Dean Bellacosa what motivated the Judge in a particular case. But, I have never asked him for an "inside" view of his, or the Court's, opinions. First, I believe an opinion speaks for itself. Second, I know he would say the same. And, there may be a third reason that I will call Professor Atkinson's dictum. As a law student, I was taught Wills by Professor Thomas Atkinson, an elegant gentleman of sartorial splendor with a wry sense of humor. When he moved around the rostrum, closer to us, we knew one of his witticisms was imminent. On one occasion, he was discussing Cardozo's opinion in *Rausch*.[6] That decision sustained, for the first time, a pour-over will, but it left unanswered several questions of analytical and practical importance. Rather clearly, Cardozo saw the decision as a transitional one, and his opinion was, characteristically in such a case, somewhat ambiguous. It produced academic debate as to whether Cardozo had relied upon the theory of "incorporation by reference" or, on the other

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[3] Douglaston Manor, Inc. v. Bahrakis, 89 N.Y.2d 472, 678 N.E.2d 201, 655 N.Y.S.2d 745 (1997).

[4] Estate of Greiff, 92 N.Y.2d 341, 703 N.E.2d 752, 680 N.Y.S.2d 894 (1998).

[5] Blackmon v. Battcock, 78 N.Y.2d 735, 578 N.E.2d 280, 579 N.Y.S.2d 642 (1991).

[6] *In re* Will of Rausch, 258 N.Y. 327, 179 N.E. 755 (1932).

hand, "independent act." Professor Atkinson told us that he thought it was the former. He then moved closer to us and informed us that his casebook co-author, Professor Mechem, believed the correct theory was "independent act." Atkinson then said, "And the reason Mechem thinks it is 'independent act' is because that's what Cardozo told him at a cocktail party. Well, I don't think people should be held responsible for what they say at cocktail parties."

When Joe was our Resident Jurist, he offered to visit my Property Class and discuss some of these cases. He did the same thing when he became our Dean. Obviously, his love of the classroom required that he find time in a very busy schedule to make these appearances. The students were most appreciative.

I happened to be a member of the Search Committee about five years ago when it seemed that we might have had a failed search. We then learned from the Chair of that Committee that Joe might be available and I was asked for my reaction. Of course, I knew that Joe would bring all of the talent and experience mentioned above, as well as his involvement with the ABA and the Education Section. But, I remember saying quickly that Joe would have "instant credibility" with the alumni. That has proved to be an understatement. Indeed, I believe from a very long-term perspective that student morale, as well as alumni morale, are uncommonly high right now. I believe that both are critical to a prospering law school.

By any measurement, the school has thrived during the last four years under Joe's leadership. This is well documented elsewhere in these pages—by Andy Simons, in our recent Self-Study, and in the consciousness of all who have had any association with the school in recent years. I concur in all those judgments.

What is the common thread running through these recollections of Joe over so many years? It is his persistent and enduring commitment and dedication to St. John's Law School, whether he was in an office down the hall or a different one many miles north of here. The institution has been well served by Joe. *Ave atque vale.*