

Introductory Remarks: The Language of Judging

Lawrence Joseph

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

Joseph, Lawrence (1996) "Introductory Remarks: The Language of Judging," *St. John's Law Review*: Vol. 70 : No. 1 , Article 1.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol70/iss1/1>

This Symposium is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

ST. JOHN'S LAW REVIEW

VOLUME 70

WINTER 1996

NUMBER 1

INTRODUCTORY REMARKS THE LANGUAGE OF JUDGING

LAWRENCE JOSEPH*

I.

"The Language of Judging" was the opening event, on September 30, 1994, of the Rededication of St. John's University School of Law. The Rededication coincided with the year of the one hundred twenty-fifth anniversary of St. John's University, and the dedication of a magnificent new addition to the Law School. St. John's, a Catholic university founded by the order of St. Vincent de Paul, the Vincentians, is the largest Catholic university in the United States. Since its inception it has served the New York City metropolitan area, and the Nation as well, in a unique capacity. The Vincentians are an order committed to serving those without means; it has always served those in the New York City area who are from emigre and lower economic class backgrounds, no matter one's religious beliefs. The force of the Vincentian commitment at St. John's is to provide the most excellent education possible to those who otherwise would not have access to one. Its successes are substantial. The School of Law numbers among its graduates some of the finest lawyers and public servants in the Nation. Leonard Boudin, one of the greatest civil liberties lawyers in the history of the United States, and Mario Cuomo, one of the most important, intelligent

* Professor of Law, St. John's University School of Law. B.A., 1970, University of Michigan; B.A., 1972, Cambridge University; J.D., 1975, University of Michigan; M.A., 1976, Cambridge University.

and morally committed public servants in the history of the State of New York, for example, typify the caliber of an extraordinarily large number of the School of Law's alumnae and alumni. The Rededication of the School of Law was, in essence, a rededication on the part of St. John's students, faculty, and alumni and alumnae, to the objectives of Vincentian excellence—a recommitment to serve, into the twenty-first century, the highest ideals of the mind, the body politic, and the ever-complex ideal of justice and all that it involves.

The idea behind "The Language of Judging" was to put together a small group of the finest legal minds of our time to present and exchange their thoughts on a subject that goes to the core of our legal system. I asked Thomas Grey of Stanford Law School, Judge John T. Noonan, Jr. of the United States Court of Appeals, Ninth Circuit, Robin West of Georgetown Law Center, Martha Nussbaum, now of the University of Chicago, Chief Judge Richard T. Posner of the United States Court of Appeals, Seventh Circuit, and James Boyd White of the University of Michigan Law School, to be our guests. Happily, they all accepted. I told them that they did not have to submit papers beforehand, that I wanted each of them to speak for twenty minutes or so on whatever perspective each wished to bring to the subject. They could then ask questions of one another, and, after that, take questions from the audience. Judge Posner, unfortunately, was, at the last moment, unable to attend because of a rescheduling of a Seventh Circuit judicial conference; he graciously sent his warmest wishes and regards to the other participants, as well as to the St. John's community. The symposium, held on the morning of a beautiful early autumn day in one of the School of Law's new lecture spaces turned out to be—not surprisingly—exceptional. Allowing each speaker to pursue her or his own sense of the language of judging worked wonderfully: what occurs is a wide-ranging exchange of perceptions and outlooks that ends up taking into account much of the most profound thinking being done today on language and judging. For those fortunate enough to have been present, "The Language of Judging" remains an intensely memorable experience, which, now, we can share with you.

II.

My sense of the language of judging began in law school, in

particular in my second year, in a course on Water Law taught by Joseph Sax. One of Professor Sax's constant inquiries—as he took us through an opinion—was, “What is the court *doing*?” This, of course, echoed what Holmes, almost a hundred years ago, said law is—“prophecies of what the courts will do in fact, and nothing more pretentious.”¹ Sax's questions made me insistently aware of the complex relationship between what was being said and what was being done in a judicial opinion. I began to realize that I'd never seen, or experienced, a language quite like it. I found myself intrigued by the various dimensions of a judicial opinion, which appeared to me endless. After law school, my first job was a two year clerkship with then Justice, later Chief Justice, G. Mennen Williams of the Michigan Supreme Court.² Although the Court held oral argument in Lansing, the State's capital, Justice Williams had an office, as did three other justices, in Detroit, where I then lived. Williams had been Governor of Michigan for twelve years, until 1960 when he became Assistant Secretary of State for African Affairs in the Kennedy administration. In the late thirties, Williams worked for Frank Murphy—whom he always acknowledged as his mentor—in the Department of Justice. (Prior to becoming Attorney General of the United States and, then, a Justice of the United States Supreme Court, Murphy had been a criminal court judge in Detroit, Mayor of Detroit, and Governor of Michigan). Justices of the Michigan Supreme Court are elected (and must claim affiliation with a political party). Williams, like Murphy, was a highly successful politician; his experience as an Executive had given him substantial insight into the ways in which political power expressed itself in the courts. Like many judges, Justice Williams usually had his law clerks write the first drafts of his opinions. He treated his clerks as associates, listening to what we said and how we said it. Drafting opinions for Justice Williams—I was going to say that it greatly added to my understanding of the language of judging, but that would be an understatement. The tension, the pressure, the problematic space between what judges say and what judges are in fact doing, deepened in me considerably.

¹ Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 461 (1897).

² I have written a memoir of my clerkship with Justice Williams. See *Justice G. Mennen Williams: A Memoir*, 66 U. DET. L. REV. 339 (1989).

I could articulate this tension in jurisprudential terms, but this is not the place for that.³ I will say this, though: since completing my clerkship in 1978, legal thinkers—law professors, judges, practicing lawyers—have delved into issues of judicial language with a depth and intensity that startles language thinkers in other disciplines. Let me put it another way: at the end of a century of astonishing change in the profession and the practice of law, we are, as lawyers, more and more aware of language, especially the language of judging. Every theory of law (and every lawyer carries within her or him a spectra of theories) propounds issues of language. Every judge, and every lawyer who imagines what a judge might do (which is to say, every lawyer), employs theories of how to interpret legal meaning—what words mean. How opinions are or should be written, why they are written as they are, what the language in an opinion is saying and doing, are, clearly, among our most practical legal issues. My objective in “The Language of Judging” was, simply, to allow five of our most astute legal thinkers the opportunity to probe freely new ways of talking and thinking about one of our most vital languages—the language of those among us whose practice is judging. As you will see, what I hoped for was more than fulfilled.

³ I have explored certain dimensions of law and language in several essays. See, e.g., *Reflections on Law and Literature (Imaginary Interview)*, 59 SASK. L. REV. (forthcoming Fall 1996); *Theories of Poetry, Theories of Law*, 46 VAND. L. REV. 1227 (1993).