

Albert Conway--Chief Judge of the Court of Appeals: A Tribute

Charles W. Froessel

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

Recommended Citation

Froessel, Charles W. (1959) "Albert Conway--Chief Judge of the Court of Appeals: A Tribute," *St. John's Law Review*: Vol. 34 : No. 1 , Article 2.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol34/iss1/2>

This Article 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.

everyday judicial work has suffered the usual fate of judicial decisions.

The work of a Court of Appeals Judge in the most populous state is heavy at best, but its Chief Judge, besides doing his full share of the reporting and conferring and deciding and opinion-writing, runs the administrative side of the Court, acts as Chairman of the Judicial Conference and has many contacts with the bar and with the public and with other branches of government. It is a tribute to Chief Judge Conway that this heaping of burdens has left him serene, healthy and happy.

In our Court, accustomed as we are to the demands of the retirement provision, there is no keening and no sorrowful partings or sad farewells when one of our brother judges leaves us. We share his pride of service and accomplishment; we rejoice that he is young enough and well enough to enjoy "the rest of life for which the first was made." We give him a tangible parting gift but the most real and valued thing that he takes with him and yet leaves behind, is the friendship which is the permanent tradition of our Court. In that spirit we bid adieu to our Chief, Albert Conway. He knows that he has our real affection.

CHARLES S. DESMOND.*

* * *

I have known Albert Conway for at least forty years, and have watched him ascending the ladder of achievement, rung after rung, with keen interest. He was admitted to the bar of this State almost fifty years ago, at the age of twenty-one, and immediately commenced the practice of the law, later teaching equity jurisprudence at Brooklyn Law School.

He first came to my notice as a young Assistant District Attorney of Kings County, where he served for about seven years under former District Attorneys James C. Cropsey and Harry Lewis, both of whom later became Justices of the

* Chief Judge Elect of the Court of Appeals of the State of New York.

Supreme Court. One of the most sensational and fascinating cases in which Assistant District Attorney Conway participated was *People v. Hamby*.¹ Hamby was a dangerous criminal, wanted in some seven states for murder. New York State had indicted him for first degree murder, charging him with premeditatedly killing the paying teller of the East Brooklyn Savings Bank on Friday, December 13, 1918. Hamby is said to have stated that he would rather be hanged than burned, and thus eluded New York State. Assistant District Attorney Conway was assigned the duty of bringing him from Tacoma, Washington, to Kings County, and later participated in his trial. Hamby was promptly convicted, and the judgment of conviction was unanimously affirmed.

A rare compliment was paid to this young prosecutor in an opinion by Chief Judge Willard Bartlett of our Court—in which the remainder of the Court unanimously concurred—for his fair attitude in taking a statement from another defendant charged with first degree murder.²

Later, when I was an Assistant District Attorney in Queens County and Judge Conway was practicing law, we had cases together—on opposite sides, of course. It was then that I first really began to know him as a lawyer who was always thoroughly prepared on his facts as well as on the law, a vigorous but generously fair opponent, and a gentleman in every respect.

He continued the practice of the law until 1929, when Governor Franklin Roosevelt appointed him as Superintendent of Insurance. This was a most critical period in the history of that department, for, shortly after his appointment, Superintendent Conway was faced with the devastating economic depression of 1929, with its heavy impact upon the investments of all insurance companies doing business in this state. His conduct of that office during that difficult period reflected great credit upon him.

In 1930 Governor Roosevelt appointed him as County Judge of Kings County, and in the succeeding November he was elected to that office for a full term. His rich experience

¹ 227 N.Y. 639, 126 N.E. 918 (1919).

² *People v. Kane*, 213 N.Y. 260, 264-67, 107 N.E. 655, 656 (1915).

as an Assistant District Attorney, and as a lawyer who championed the causes of defendants charged with crime, rapidly marked him as an outstanding County Judge with a bright future.

Indeed, in the following year, 1931, he was elected as Justice of the Supreme Court of the Second Judicial Department, with the prior nominations of both major political parties. In 1937 he was assigned to the Appellate Term of the Supreme Court. In 1939 Governor Lehman designated him to hold an extraordinary special and trial term of the Supreme Court of Erie County involving the municipal affairs of Buffalo. Early in 1940, Governor Lehman appointed Judge Conway as an Associate Judge of the Court of Appeals, to which office he was elected at the ensuing general election, again with the nominations of both major political parties. In 1954 he was elected Chief Judge of the Court of Appeals to succeed retiring Chief Judge Edmund H. Lewis, again with a bi-partisan endorsement.

His service on the bench has been outstanding. He has been blessed with good health, inherited from a noble parentage. He is possessed of a calm judicial temperament, with a wealth of experience at the trial bar; a sound judgment, arriving at conclusions with care, deliberation and common sense, only after a thorough grasp of the applicable law and the facts; a keen, sympathetic and tolerant understanding of people and the patterns of human behavior in all walks of life. He is soundly liberal in his views, without arbitrarily cutting loose from stable traditional landmarks.

He has written 440 opinions in our Court from 1940 to 1959, and the total number before his retirement will probably approach the 500 mark. They reflect learning, a sound mind, a keen respect for the landmarks of the law, a strong character, a devotion to the highest standards of public service and a sympathetic understanding of human values. Space does not permit an appropriate review of them here, but an interesting article by Thomas Grimes entitled "The Contribution of Judge Albert Conway to the Jurisprudence of New York" may be found in the 1955 *Fordham Law Review*.³

³ 24 *FORDHAM L. REV.* 1 (1955).

Chief Judge Conway's service to the bench, the bar and the State have been unique. He was the first Chairman of the new Judicial Conference, largely assisting in its organization in 1955 and giving leadership to its work since then. He lent great aid to the Court Reorganization Plan adopted by our Legislature in 1959, after years of unsuccessful efforts in that direction. Under his administration as Chief Judge, the rules of the Court of Appeals were revised, and for the first time an integrated bar examination was provided for; a new series of Court of Appeals, Appellate Division and Miscellaneous Reports was inaugurated, with many improvements over the former series. Likewise, under his administration, Court of Appeals Hall, 117 years old and in dangerous condition, was restored to its original architectural beauty and modernized so that the work of the Court might proceed with dignity, efficiency and dispatch.

Meanwhile, in addition to his many other duties, he was selected as Chairman of the United States Conference of Chief Justices of the States. In the administration of the work of the Court, he has been most painstaking and considerate of his associates and of the Court's entire staff. He has been more than helpful to young men who have been associated with him, both in the Court and while practicing law, and many of them now occupy important posts in the life of our city, state and nation.

He has, with the cooperation of his colleagues, continued the practice of keeping our calendars up to date. At the close of our session before the summer recess this year, there were but 30 records on file in the Clerk's office, in cases in which no briefs had been filed and hence counsel were not ready to argue. When we adjourned in July, every appeal that was ready for argument in May had been finally disposed of excepting three cases involving exceedingly long records and a fourth case which required reargument.

Throughout his life, Judge Conway has recognized that a judge remains a member of the community and may properly take his part in its manifold character-building activities. Thus he has served as a trustee of the National Probation and Parole Association, of St. John's University, of the Brooklyn Law Library, of the Brooklyn Institute of

Arts and Sciences, and of the Grant Monument Association; as President of Brooklyn Council, Boy Scouts of America; as member of the Regional Executive Committee, Boy Scouts of America, Region Two (embracing New York, New Jersey, Puerto Rico and the Virgin Islands), in which work we were closely associated; and as Vice President of the Bill of Rights Commemorative Society. He is a member of the American, New York State and Brooklyn Bar Associations, the Association of the Bar of the City of New York, the American Law Institute and Delta Theta Phi. He has received honorary degrees from Fordham University, St. John's University, Syracuse University, Manhattan College, New York Law School and Union College (Schenectady).

Chief Judge Conway has a charming and devoted wife, the former Alice O'Neil of Brooklyn, and four fine children—three daughters and a son. He is deeply attached to his family, is devoutly religious and loyal to the faith of his acceptance.

Chief Judge Conway has truly dedicated his life to the service of others. As a lawyer he gave his client his very best; as a citizen he gave much of his life in civic, patriotic and character-building efforts; as a judge he dealt earnestly, sincerely, courteously and fairly with all litigants in his passion to administer justice; and as a Judge and Chief Judge of the Court of Appeals he has earned the heartwarming love and affection of all his colleagues.

At a dinner of a group of state judges held in Albany a short time ago, Governor Nelson Rockefeller aptly summarized Chief Judge Conway's life in the following message:

It is a great privilege to tender you the thanks of the People of New York for the devoted and highly capable services you have rendered them for more than thirty years.

As Assistant District Attorney, as Superintendent of Insurance, as County Judge, as Justice of the Supreme Court and, finally, as Associate Judge and Chief Judge of the Court of Appeals, your career has been one of unqualified integrity and high distinction. Besides all that, you command our respect and appreciation for having found time for numerous warmhearted activities for the common good, among them the Boy Scouts of America.

The opinions you have handed down as the first judicial officer of the Empire State constitute a permanent record not only of scholarship and fairness but also of capacious humanitarianism.

You will be sorely missed in Albany. May you have many years of the best of health in which to enjoy your richly earned leisure.

To me, he has been a warm, personal and devoted friend, in joy and in sorrow, and I earnestly hope to enjoy that rare and precious friendship so long as God gives us life.

CHARLES W. FROESSEL.*

* * *

The Presidency of the New York State Bar Association carries with it many pleasant privileges. High on the list of those privileges is the opportunity given me in this Law Review to comment briefly upon the career of Chief Judge Albert Conway. My first observation springs from incredulity. It is extremely difficult for any lawyer to accept as a fact, the rumor that our Chief Judicial Officer has achieved three score years and ten. That fact having been established by a fair preponderance of the evidence, however, the conclusion of law is inescapable that he must relinquish his seat on the Court of Appeals at the end of his 20th year on that bench. From this determination there is, unfortunately, no appeal.

A quarter of a century has passed since this writer had his first contact with Judge Conway. The meeting occurred in a lawsuit tried before him on Staten Island. Our complaint was dismissed by the then Justice Conway. It was dismissed with courtesy, kindness and, we thought hopefully, with some tinge of regret. The decision was not to my liking, but it was perfectly clear to me that it was reached only after careful and capable consideration and had validity enough to eliminate any possibility of appeal. Vivid in my recollection is the sight of the tall and erect figure of the Judge as he strode purposefully to the bench to open Court

* Associate Judge of the Court of Appeals of the State of New York.