

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

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Chief Judge of the Court of Appeals. As he bows to the inexorable judgment of time on December 31, 1959, his eye will still remain alert to explore new fields in which he can make a significant contribution. All lawyers in New York State are grateful for his tireless public service and wish for him many more years of work in the vineyard of the profession he has always served so faithfully.

C. ADDISON KEELER.\*

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The current "Who's Who in America," in its detailed record of Albert Conway, recites that he was born in Brooklyn on April 3, 1889, educated at St. John's College, Brooklyn, studied law at Fordham University, was admitted to the New York bar in 1910, and received his Bachelor of Laws degree *cum laude* from Fordham in 1911.

Albert Conway practiced law in Brooklyn, and his public career commenced with his brilliant service as Assistant District Attorney of Kings County (1913-1920). In charge of the homicide bureau, he prosecuted many celebrated murder cases.

Returning to private practice, he handled many important civil and criminal cases during the period from 1920 to 1929. In a case which involved the breach of a contract of employment for the term of plaintiff's natural life, he won the largest verdict ever rendered by a jury in Kings County up to that time (1923). The verdict, reached after a three weeks' trial, was \$200,000. It was affirmed through the Court of Appeals. *Rafter v. Richard K. Fox Publishing Co.*, 206 App. Div. 389, *aff'd*, 238 N.Y. 567 (1924).

Albert Conway's judicial career began in 1930 with his appointment by Governor Roosevelt as County Judge of Kings County, and he was elected to that office in the same year. Advancement thereafter followed rapidly. In 1931 he was elected Justice of the Supreme Court of the State of New

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\* President, New York State Bar Association.

York on the nomination of both major political parties. In 1937 he was assigned to the Appellate Term of the Supreme Court. In 1939 he held an Extraordinary Term of the Supreme Court for Erie County upon assignment by Governor Herbert H. Lehman in an investigation of the municipal affairs of the City of Buffalo.

In 1940 Governor Lehman appointed then Justice Conway as an Associate Judge of the Court of Appeals, and he was elected to that office in the same year on the nomination of both major political parties. His election as Chief Judge of the Court of Appeals followed in 1954, and his tenure as Chief Judge will terminate at the end of this year by virtue of the constitutional fiat fixing the judicial barrier at seventy years. Viewing the Chief Judge in good health and with undiminished vigor, and considering the actuarial tables showing generally increasing longevity, his case provides strong evidence for the extension of that barrier.

Chief Judge Conway is the fourth Chief Judge from Brooklyn under the constitutional amendment of 1869 and the 1894 Constitution. His respected Brooklyn predecessors in that office were Honorable Edgar M. Cullen in 1904, Honorable Willard Bartlett in 1913, Honorable Frederick E. Crane in 1934.

In the private practice of law and as Assistant District Attorney, Albert Conway was a perfectionist, insistent upon the most exacting preparation for the trial of cases. His passion for thorough preparation and faithful performance of his work has been evident in all of his public service, from the District Attorney's office through his outstanding record as Associate Judge and Chief Judge of the Court of Appeals.

When Chief Judge Conway reminisces, he is fond of talking about "his boys," those formerly associated with him in private practice. He will tell you that they have "made good." One story, with an O. Henry twist-ending, concerns his early associates, former Corporation Counsels Denis M. Hurley and John P. McGrath. In 1926, Hurley, as a young lawyer and principal assistant to partner Conway, broke in McGrath as a law clerk in the Brooklyn law firm of Richards, Smyth and Conway. Twenty-five years later, while Asso-

ciate Judge Conway looked on from the Court of Appeals in Albany, McGrath had the unique assignment of breaking in Hurley as his successor as Corporation Counsel of the City of New York. Judge Conway has estimated that the chances of one associate from the same law office succeeding another in such an important office as chief attorney for the City of New York are less than one million to one.

"A government of laws, not of men" are cogent words credited to John Adams. They embody a philosophy of government. The final test is the true and just interpretation of those laws by our courts, free and untrammelled. Thus a democracy is distinguished from a dictatorship. Consonant with this doctrine, Chief Judge Conway is a foremost leader in the sound construction of our laws. His greatest monument, of course, will rest in his opinions recorded forever in the law reports of the Court of Appeals. Some of the most recent of these, involving the public interest, are worthy of comment.

In *Lerner v. Casey*,<sup>1</sup> the Court held that a subway conductor, who refused to answer questions as to whether he was a Communist Party member because it might tend to incriminate him, was properly discharged as a security risk by the New York City Transit Authority pursuant to the State Security Risk Law. In the prevailing opinion, the Chief Judge, at page 373, observed that the argument of constitutional privilege "is untenable in a situation such as this where the employee uses the privilege to thwart his employer in ascertaining whether or not he is a member of a criminal conspiracy."

In *Castle Hill Beach Club, Inc. v. Arbury*,<sup>2</sup> the Court held that the State Commission Against Discrimination properly determined that petitioner, a membership corporation, operating a bathing and recreation park as a place of public accommodation, had discriminated against a woman because of her color, and was directed to desist from unlawful discriminatory practices.

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<sup>1</sup> 2 N.Y.2d 355, 141 N.E.2d 533, 161 N.Y.S.2d 7 (1957), *aff'd*, 357 U.S. 468 (1958).

<sup>2</sup> 2 N.Y.2d 596, 142 N.E.2d 186, 162 N.Y.S.2d 1 (1957).

In *Excelsior Pictures Corp. v. Regents*,<sup>3</sup> a divided Court held that the Board of Regents should not have denied a license to petitioner to exhibit a motion picture called "Garden of Eden" as "indecent." The Chief Judge forcefully concurred with a dissenting opinion, observing that each of the three branches of the government should recognize proper limitations on its own power, and—

It would be even more unfortunate were members of the Judiciary to disregard the will of the people—the author of their being—and to determine that the standards set up by the duly constituted representatives of the people, to protect the people, were not proper standards in their view and to use their power to declare statutes unconstitutional which have been passed by the Legislature and approved by the Executive because those members of the Judiciary would not pass or approve such statutes so desired by the people. The result could be a government by *one* of the branches of government in defiance of the people's will and by means of semantics.

In *Board of Educ. v. Allen*,<sup>4</sup> the Court held that the Commissioner of Education properly enjoined the Superintendent of Schools and Board of Higher Education of the City of New York from directing employees other than the school principal to identify other school personnel as past or present members of the Communist Party, and annulled the dismissal of an associate professor at Hunter College, requiring only that the professor be given an opportunity to answer questions relating to statistics involving Communist Party membership, and held that the commissioner's determination was not arbitrary or capricious and not inconsistent with the Feinberg Law.

Chief Judge Conway, as Chairman of the Judicial Conference of the State of New York since its organization in 1955, has made a major contribution toward the efficient administration of our courts. The recommendations of the Judicial Conference to the Legislature have resulted in many improvements in both substantive law and procedure.

After failure of the Tweed Commission to devise an acceptable plan for court reorganization, the Chief Judge

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<sup>3</sup> 3 N.Y.2d 237, 144 N.E.2d 31, 165 N.Y.S.2d 42 (1957).

<sup>4</sup> 6 N.Y.2d 127, 160 N.E.2d 60, 188 N.Y.S.2d 515 (1959).

agreed on behalf of the Judicial Conference to undertake the drafting of a revised plan. This was completed in November 1958, and the proposals of the Judicial Conference were incorporated in the court modernization bill passed by the legislature in 1959, a significant milestone in the history of our courts.

The Judicial Conference has shared the common concern as to court congestion, and the Chief Judge encouraged adoption of the readiness rule under which attorneys are required to signify their readiness for trial prior to placing cases on the court calendars. The Civil Practice Act and Rules of Civil Practice are being studied with a view to simplification. Uniformity in the rules of the courts is another project being advanced under leadership of the Chief Judge.

The Chief Judge has sponsored modern methods in the work of the Conference designed to furnish timely and accurate information on court business. IBM machines receive, code and tabulate data in a matter of days, and this system, an innovation in courts, has been studied and copied in other jurisdictions. Adequate manpower for the courts has been constantly urged by the Chief Judge, and legislation has followed providing for additional judges. The Conference has completed a personnel survey of the courts to eliminate existing inequities and anomalies; and a survey of the physical facilities of the courts toward providing better housing is in progress.

The Chief Judge is highly commended for his prompt action as Chairman of the Judicial Conference in appointing Presiding Justice Gerald Nolan of the Appellate Division, Second Department, and Justice Peter M. Daly of the Supreme Court, Queens County, to investigate, determine the facts and report back to the Judicial Conference with reference to the recent sensational murder case in which Peter Manceri, 15 years old, was acquitted after a trial before Kings County Judge Samuel S. Leibowitz and a jury, and the aftermath of bitter public accusations and recriminations between Judge Nathan R. Sobel and County Judge Leibowitz.

Our Chief Judge has delivered many scholarly addresses notable in the annals of the law. As Chairman of the Conference of Chief Justices of the several states, his address at

their recent annual meeting received favorable national comment and will be noted here as typical of his mind and thought. He stressed the united dedication of the Chief Justices to the concept of justice, reflecting the fundamental principles guiding this nation. "We proceed upon the theory that justice is a revealed everlasting truth of an omnipotent God," as opposed to the contention of our enemies that "justice is but a means to achieve an end." And again quoting, "For our part, we must insure against dilution or distortion of our own concept of justice. We must insure that justice remains the bulwark of freedom and does not become its jailer." The Chief Judge outlined a five-point program to strengthen the concept of justice, commending it to national implementation:

1. Modernize the court system. He cited the years of effort in this State culminating in legislation this year approving a modern integrated system to replace the more than a century old structure, with central administrative responsibility and prescribed standards for judicial and non-judicial personnel.

2. An administrative office. This is indispensable to insure efficient operation of the judicial system. The courts are no longer remote from the vast majority of the people and although their first interest is the human equation, they must adopt some business practices, periodic inventories, public accountings, means to appraise and estimate judicial potential.

3. Our law schools should include in their curricula a course in judicial administration to foster in their students, our future lawyers and leaders, an understanding of the courts. The Chief Judge noted a previous recommendation to such effect which he made to the Conference of Chief Justices in 1958, already followed by some of our state schools.

4. The courts, in cooperation with the American Bar Association and the state bar associations, should continuously study the respective legal systems of our states, with a view toward eliminating many of the substantial differences in procedure "which decry our

claim to a rule of law and breed fear and distrust of the law as a vehicle for the resolution of disputes.”

5. Finally, the Chief Judge recommended that the Conference of Chief Justices establish four regional conferences of Chief Justices to assemble in their respective areas at least once a year for the discussion of primarily regional matters and process them for consideration by the national conference at its annual meeting if warranted. Concluding, “The image of justice which we cherish, and which we ask others to accept as their own, requires constant care and vigilance to keep it a shining symbol.”

This October, 1959, marked the rededication of Court of Appeals Hall in Albany, presided over by Chief Judge Conway. The restoration and modernization of the old building, formerly the old State Hall erected in 1842, completed a project close to the hearts of the Chief Judge and his Associate Judges. With its Greek architectural design, its Vermont marble columns and exterior walls, its original courtroom intact and its interior modernization otherwise, it may well be that there is no more beautiful or impressive Hall of Justice in this or any other land. The concluding words of the Chief Judge at the formal ceremonies of rededication were inspirational:

In proclaiming anew our faith in law and justice, we give assurance to those to whom law and justice are denied. We serve notice that we will continue and nurture the concepts of law and justice until they are bywords for all men. Yes, my friends, we do more than a little today. We have helped an idea, an ideal, to grow to be strong and imperishable.

The Chief Judge, a member of his home Brooklyn Bar Association for nearly forty years and a former trustee, is also a member of the New York State and American Bar Associations. The Brooklyn Bar Association, at its annual dinner early in December, presented its Distinguished Service Award to the Chief Judge for outstanding achievement in the Science of Jurisprudence and Public Service.

A great jurist, a Doctor of Laws, learned in the law, its interpretation and administration, dedicated to the highest



standards of professional and judicial conduct—Chief Judge Conway has made a profound and lasting contribution to the advancement of law and justice in our time.

LYNN G. GOODNOUGH.\*

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More than three decades ago, a law school graduate, who had never spent a day in a law office, ventured into Court Street looking for a place to serve his clerkship. He there encountered a tall, spare, angular character, slightly reminiscent of a youngish Mr. Tutt and bearing the unmistakable earmarks of an active practicing lawyer. Then a vigorous thirty-seven years of age, Albert Conway had already won attention as an outstanding prosecutor on the District Attorney's staff and as a teacher in the Brooklyn Law School. He had left the District Attorney's office seven years earlier to found a law firm in partnership with a former judge turned banker, and a real estate lawyer and had since been busily engaged in an active general practice. Litigation occupied much of his time, for despite his youth he had already emerged as the chief contender among the younger men for the title of Brooklyn's top trial lawyer.

Surrounded by a half dozen youths, fresh from law school, he went about the business of preparing and trying cases. His field of action was diverse enough to cover stockholders' derivative suits, will contests, matrimonial actions and mechanics' liens. His specialty was as broad as his client's problem. In preparing to try his cases, night work was imperative for only then was it possible to capture without interruption the time necessary for careful study of law and facts.

Month followed crowded month as the young advocate went from case to case, ever widening the circle of professional admirers who noted approvingly the talent, the industry, the intelligence, and the stamina that characterized his work. He was thus occupied in the fateful year of 1928,

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\* President, Brooklyn Bar Association.