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

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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.*

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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.

in the morning. His facility in picking the facts out of the evidence was demonstrated clearly as the trial progressed. The issues in that lawsuit are now most obscure, but the personality of the presiding Justice made a lasting impression on a country boy on a short but disastrous visit to Richmond County.

Today I can observe no change in the regal bearing of His Honor nor in his unusual ability to sort out the facts. To me, then, the imminency of his retirement is completely unbelievable.

As in the case of all great judges, much will be written from time to time in an attempt to classify his pattern of judicial thought and approach. It is interesting to speculate on the characterizations which will be made by the student who will undertake an exhaustive survey of his opinions. More important might be an appraisal of the practicing attorney who argues a few cases in the Court of Appeals and from time to time reads an opinion of Judge Conway to apply to a point in his brief. Such an attorney—and his counterparts run into the thousands—will note that he retains a passion for exploring and marshalling accurately all of the minute details which will help him determine that a certain fact exists. It is only after he has done this with reference to all of the facts of the case, that he makes an application to the law. It is then that he draws upon his profound understanding of legal philosophy gained from a lifetime of legal study.

His opinions reflect the painstaking fact analysis coupled with its precise application to relevant legal principles and philosophy. Over his twenty-year tenure on the Court of Appeals, Judge Conway respected precedent and the earlier opinions of his Court and other courts. But he uniformly resisted blind subservience to a legal principle which he felt was rendered obsolete by the passage of time or changed customs and conditions. Frequently an opinion of his read like a brief in which he would eloquently plead the case for the party he was convinced was in the right.

There is, I believe, a definitive Conway style. He built an opinion. Frequently it was long, but never verbose. All of the words in his sentences are necessary to interpret the

complete meaning of his thought. At the same time, he was able to draw vivid mental pictures by appropriate phrasing and thus save many words. Witness a sentence from his opinion in *Cifolo v. General Elec. Co.*¹ This case involved a common-law claim for damages against an employer, arising out of a disability due to silicosis. In a vigorous dissent from a Court dismissal of the action, Judge Conway cited a theory which had been advanced to the effect that a worker was without remedy until diseases had run their course and total disability ensued. Then he painted a picture with these words: "The mere statement of the thought is its refutation, for it would be monstrous to say that such sufferers were to be economic derelicts and without aid from any source as they coughed their way to total disablement."

What lawyer could read those words without visualizing the pictures in the books of Dickens showing huddled half-starved consumptives in a noisome work house in old England?

We hail him primarily as an impartial, fair and learned Judge. We recognize him during his term as Chief Judge as a competent executive and administrator gifted with the ability to lead his Court in effective service without submerging the individual philosophies of his able associates.

More especially, however, members of the organized bar will remember him as a judge who never forgot that he was, and is, a lawyer. The door to his Judicial Conference was always open, and the welcome was gracious for representatives of bar associations who were interested in improving the administration of Justice. Every summer for years, our Chief Judge brought in person to the State Bar Association a detailed report of the work of his Court and the Judicial Conference. He shared his problems with the lawyers, welcomed their suggestions, and urged them to hold high the standards of the profession of which he was a proud member.

Since his admission to the bar he has worked with distinction in six different major law-related areas. He has been Professor, District Attorney, Superintendent of Insurance, County Judge, Supreme Court Justice and Associate and

¹ 305 N.Y. 209, 112 N.E.2d 878 (1953).

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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