

End of Summer at the First Department

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Under Federal Rule of Civil Procedure 53, federal judges have the authority to appoint a special master, I have been retired from the Appellate Division, First Department, now for six months. Some days I feel like I never was there; on others, I have to be careful that I don't wind up taking transportation from home directly to 25th Street and Madison Ave. I retired in February 2017 after serving 19 years at the First Department and 35 years overall on the New York State Judiciary. Around the time of my retirement from judicial service, I had the opportunity to write in these pages about the feelings and apprehension I had about my impending departure from a place that I loved, from a law job that I considered the very best law job one could ever imagine. I had many concerns and apprehensions about leaving the cocoon of the court system and especially about leaving the magisterial First Department, one of the most prestigious courts in the United States.

But, slowly over these transitional six months, I have started to see that there is life after the bench. I have become part of a wonderful new law firm—the people are embracing and the work is interesting. I am their judge! I am sought out by lawyers at all levels to provide insight into litigation strategy and to bring an inside-eye to written court submissions. I still think like a judge though, not exactly like an advocate, and it will probably be awhile before that tendency subsides—or perhaps it never will. Or maybe the firm I work for doesn't actually want that "vice" to disappear because it gives them an insight that they did not have before. Almost everyone calls me Judge, although I have finally cajoled some of the senior attorneys to call me by my first name. There is still respect from outside lawyers who may have remembered me from my days on the bench. On the debit side, it is absolutely true that your telephone calls are not returned as promptly as they were in the past.

Nevertheless, despite the separation of time and space, these slower days of August prompt me to think about what must be going on at the Appellate Division courthouse as preparations for a new year begin. Nostalgia on my part accompanies this thought.

Summer is generally the quietest time at the Appellate Division. Although panel arguments ended in mid-June and are not held again until September (with the exception of election law appeals), there is an active under-the-radar system of email communication between chambers involving motions and unfinished appeals that are moving toward completion. But, it is also a time for the justices to get some much needed distance from the daily grind of reading briefs and records and also a time to repair some of the unavoidable friction with other colleagues that develops within the context of closely-decided appeals that tend to sharpen elbows. Friendship sometimes ebbs and flows.

But, sometime in August, the hush that fills the corridors of the courthouse begins to disappear and a hum takes its place. Court attorneys return from their vacations and begin to digest many of the pristine, white collection of briefs and records awaiting their analysis.

At some point toward the end of August, as the first batch of court attorney reports are prepared, the barren bookcase shelves in judge's chambers begin to be filled up with briefs and records for the first week of argument starting right after Labor Day.

It was always a time of great anticipation for me—when after a quiet summer, I began to scan the pages of the briefs sitting on my bookcase that opened up a universe of new, important and exciting legal issues for resolution. The First Department almost always gets appeals involving cutting edge issues in the law, and if that is what you wanted, there was a weekly dose of those appeals. That existence is no longer part of my life.

When I left, the court was lacking in a substantial number of judges, due to vacancies that had not been filled for a very long time. There was talk of regular four person panels—a pronounced deviation from the standard five-person bench that had been a staple of the First Department for years. I left with concerns about the future. But, I know now that the mission of the court is being carried out by highly capable hands. Just this past summer, the governor appointed four all-stars to the bench—Justices Cynthia Kern, Peter Moulton, Jeffrey Oing and Anil Singh. Additionally, the governor designated a new Presiding Justice, Rolando Acosta, who by all indications is working to restore the court to the luster it knew in the past. Along with the rest of the highly motivated and capable justices on the bench, it is as good a court as ever existed there in my judicial lifetime. It must be an exciting time there, one of significant transition, but one where there is an abundance of legal talent that needs to be harnessed to accomplish the collegial tasks ahead of them—a role that I am sure the new Presiding Justice will play admirably. I will watch optimistically from the sidelines. I will, of course, miss being part of it.

David B. Saxe served on the Appellate Division, First Department, for 19 years and is now a partner at Morrison Cohen.