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Strained Relationships Fade When Judges Break Bread

Whatever unpleasantness may have arisen during our time on the court has long ago faded and been overcome by the positive feelings we have maintained for this wonderful institution and the judges who gave it life.

By **David B. Saxe** | August 21, 2019



Appellate Division, First Department at 27 Madison Ave. (Photo by David Handschuh/NYLJ)

At the end of every work year—in June, the Appellate Division, First Department, holds an end-of-year luncheon at a restaurant near the courthouse. The luncheon coincides with the last conference of the year at the Appellate Division, First Department, at which time the judges sign off on many of the writings that may have divided them up to that point. Present and past members of the court are invited to this luncheon.

It is a tradition at these get-togethers to invite back all the former alumnae of the court who enjoy the opportunity to renew friendships with former colleagues and also to get to know many of the new members of the court.

The mood at the luncheon is usually festive and informal. For members of the current bench, there is the talk of summer plans—perhaps a family vacation, a course, a symposium to be taken or even merely an extended summer writing and research project to be started on a particularly complex case.

It is a reunion for the retired colleagues, who are genuinely happy to see one another. A reunion strengthens the bonds from past, common experiences. For those of us who have retired, it is a reminder of how we navigated our pathways through the judicial system and how we experienced that period of time when we served on the Appellate Division, First Department.

But despite the bonhomie of these get-togethers, my thoughts are sometimes momentarily drawn back to certain strained relationships that existed from time-to-time in the past. I see a former colleague and we chat cordially; yet, I remember years ago, after I wrote a dissent in a highly-contested divorce appeal and that judge didn't talk to me and the colleague who joined my writing, for over a year.

I am also reminded of shorter strained relationships that existed occasionally when we engaged in the serious back and forth of the work at the court, especially in view of the assortment of intellectually vibrant and strong-minded judges on the Appellate Division, First Department. We had strong views on many things—the law particularly—and it was not at all surprising that some sharp elbows appeared from time-to-time. At one time or other, I think it must have happened to all of us but as a rule, it was short-lived.

More than anything else, two elements determined that these episodic disruptions did not affect the over-all operation of the court. One was the involvement of the presiding justice and the other was the lunchroom at the Appellate Division. Eating lunch together has been a tradition at the Appellate Division, First Department, forever. It is the view of almost everyone that a meal together is a vital factor in overcoming hard feelings that emerged when discord arose over a highly contested writing. Of course, the watchful eye of the presiding judge was important too in this regard and while I obviously do not sit on the present court, I know that the present occupant of that post, Presiding Justice Rolando T. Acosta is very attuned to maintaining a collegial and productive environment at the court.

And so, it is not at all surprising that our annual meeting still involves a meal. Whatever unpleasantness may have arisen during our time on the court has long ago faded and been overcome by the positive feelings we have maintained for this wonderful institution and the judges who gave it life.

Some of the banter at the cocktail hour is often the same as it was in the past. Occasionally, one of the old-timers will note that in their day, they had six sittings in a term, while now the justices sit once a week. Indeed, when I first arrived at the court in ancient times (circa 1998), we often were assigned to sit on let's say a Tuesday and a Thursday or even worse a Wednesday and a Friday morning. There was not much time to prepare for the second sitting on that particular week although I distinctly remember seeing Joe Sullivan's thick blue-penciled notations on every court attorney's report of every case for which he was required to prepare. No matter how many times he sat in a week, he astonished all of us with his high level of preparation.

But even though the number of sittings has been reduced, the increased activity from the Commercial Division and the overall complexity of many of these matters make preparation for the present Justices much more time-intensive than previously. Additionally, the need to use four-person panels have spawned additional assigned writings.

Sometimes the conversation involves stories about Justices who occasionally sought a switch in assignments to accommodate some personal matter. For instance, these get-togethers are perfect opportunities for one former colleague to remind another of a long-ago past “double-header” that is, back-to-back sittings! But, if Jim Catterson is in earshot he will remind everyone that he holds the court record. On one occasion because of switches he needed to take, Jim sat three days in a row and acknowledges to this day that he was one bleary-eyed judge at the conclusion of the third sitting.

After the cocktail hour, the lunch begins. The former colleagues are sprinkled throughout the room. Introductions with a tone of levity were made by Presiding Justice Rolando T. Acosta, who first acknowledges the retired colleagues around the room. Each attendee was applauded. Justice Acosta had a friendly repartee with recently retired Justice Richard T. Andrias. As is obvious from this writing, each of them has the same initials and at the Appellate Division, First Department, everything is done by initials. When I arrived there I ceased to be David B. Saxe; instead, I was DBS. Since Justice Andrias preceded Justice Acosta at the Appellate Division, it was Andrias who got to use the initials RTA, while Acosta was relegated to merely RA. Of course, after RTA recently retired, Justice Acosta assumed the full three-letter initials and joked with Justice Andrias at the luncheon that he now was the real “RTA.” Only someone who sat on the Appellate Division, First Department, could appreciate this small bit of friendly repartee.

At the luncheon, there is usually the opportunity to honor a present colleague who is retiring. This year was no exception as Presiding Justice Acosta and the rest of the bench said farewell to Justice Marcy Kahn who is headed for some important public service work in the area of climate control after a long and distinguished judicial career.

Before the meal was over, many of the former colleagues who now work in private practice needed to rush back to their offices. For me and for them, it is a pleasant respite from the pressures involved in our new lives. But more importantly, it is a reminder, that we were once involved in work that was not only important but inspired us to administer justice as best we could.

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