

## St. John's Law Review

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Volume 78  
Number 3 *Volume 78, Summer 2004, Number 3*

Article 3

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February 2012

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#### Recommended Citation

Castel, Honorable P. Kevin (2004) "Servant and Teacher: Joseph, The Great," *St. John's Law Review*. Vol. 78 : No. 3 , Article 3.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol78/iss3/3>

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# SERVANT AND TEACHER: JOSEPH, THE GREAT

HONORABLE P. KEVIN CASTEL<sup>†</sup>

On a spring day in 1972, I entered the building at 96 Schermerhorn Street for my first and last time. I was there for an admissions interview and found my way to “The Office,” where I met a distinguished gentleman, lanky with dark brown hair and a polite and friendly demeanor. He was old but not ancient. I judged him to be in his mid-30s. The interview seemed to go well. He was more reassuring than intimidating.

I was next to see this man at the podium in an amphitheater classroom on the first floor of the spanking new law school building on the Hillcrest campus. Assistant Dean Bellacosa presided over our orientation and introduced us to names like Hand, Cardozo, Fuld, and Prosser. I had a vague recognition of the name Cardozo but not of any of the others. He explained that this was not a mere graduate program but the antechamber of a great and noble profession. We learned that we would be undertaking professional responsibilities transcending the dictates of the marketplace.

A few years back, on a beautiful August day, I visited the law school and noticed a large red and white banner hanging from Belson Hall—“Welcome Back Students!” In the 1970s, law faculties did not go out of their way to display a nurturing attitude toward students, and St. John’s was no exception. An Assistant Dean was supposed to be the “hatchet guy”—the administrator in charge of saying “no.” In this regard, Assistant Dean Bellacosa failed miserably in conveying a cold, heartless image. He was considered tough but approachable. Where he was unyielding, he could at least empathize—most of the time.<sup>1</sup>

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<sup>†</sup> United States District Judge, Southern District of New York. B.S., J.D., LL.D. (Hon.), St. John’s University. Judge Castel served as Articles Editor of *St. John’s Law Review* during the 1974-1975 school year.

<sup>1</sup> He served as Assistant Dean for Academics and Administration and was succeeded in office by a newly-hired faculty member, Andrew Simons.

In my second year, our Section—Section A, which included my classmate Professor Vincent C. Alexander—studied Professional Responsibility under Professor Bellacosa. Professor Bellacosa expected his students to be well-prepared and ready to respond. He was not a spoon-feeder and made you think about ethical issues from the perspectives of clients, adversaries, judges, and society-at-large.<sup>2</sup>

As if he did not have enough other things on his plate, Professor Bellacosa was faculty co-advisor with Professor "Bullet" Bob Parella to the 1975 champion Moot Court team featuring Mary Ann D'Amato, Anton Borovina, Dave Bryan, Mike Linz, Susan Moreinis and Claude Castro (D'Amato, Borovina, and Linz represented St. John's in the National Moot Court Competition, winning Best Brief in the New York Region and Second Best Overall—they went on to the final round where their team brief was ranked fourth nationally). Members of the Moot Court Board were called "Clerks of the Moot Court," and the head of the Board was known as the "Chief Clerk." The members reported to Professors Bellacosa and Parella that they thought the term "Clerk" carried insufficient prestige and that henceforth they wanted to be addressed as "Associate Justices" and "Chief Justice" of the Moot Court. What they did not know at the time was that Professor Bellacosa was preparing to enter government service as Chief Clerk of the New York Court of Appeals. While he acceded to the members' request, he reminded them that, on some issues, the Clerk could wield more power than the Judge.

The entire St. John's community took great pride as Mr. Bellacosa gained a statewide reputation while serving as Clerk of the New York Court of Appeals from 1975 to 1983. He was the first Clerk also to hold the position of Counsel to the Court and to sit in on the Court's conferences in which the merits of cases were discussed. In Albany, he supervised three highly

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<sup>2</sup> My wife, Patricia McLernon, was a student of Professor Bellacosa and received the American Jurisprudence Award, more commonly known as "the book," for the highest grade in Introduction to Civil Procedure. Though it has been met with considerable dubiety, I also claim to have received the highest grade in a course taught by Professor Bellacosa. I reach this conclusion—and it is a reach—by reason of a 119-way tie among those who passed Professional Responsibility, a pass-fail course. During my twelve years as a member of the Departmental Disciplinary Committee for the First Department, I often relied upon bedrock principles taught to me by Professor Bellacosa.

significant changes: (1) the transition from an elected Court to an appointed Court;<sup>3</sup> (2) the transition to a Court in which most civil appeals are heard through a certiorari process;<sup>4</sup> and (3) the creation of a process through which questions could be certified to the Court by a federal appellate court.<sup>5</sup> Few would question that these were among the most significant procedural changes in the entire life of the Court.

Mr. Bellacosa's success at the Court of Appeals led to his appointment first as Chair of the Sentencing Guidelines Commission in 1983 and then in 1985 as Chief Administrative Judge and head of New York's Office of Court Administration ("OCA"). At OCA, Chief Administrative Judge Bellacosa worked closely with various constituencies who supported or opposed the transformation of our trial courts from tribunals in which a case could pass through the hands of several judges as successive motions were made to a system in which a single judge supervised a case from commencement to conclusion. Judge Bellacosa had a major hand in planning and implementing the Individual Assignment System, which was roughly comparable to orchestrating Sweden's 1967 transition from driving automobiles on the left-hand side of the road to the right-hand side. Only a lawyer who practiced in the days of the Part I Motion Calendar in Supreme Court, New York County, with more than 300 motions on the calendar for a single day, can appreciate the significance of the change.

In 1987, Judge Bellacosa was appointed by Governor Mario Cuomo to the New York Court of Appeals.<sup>6</sup> It was not long before Judge Bellacosa became recognized as a solid and smart judge with excellent common sense. A tangible mark of the esteem in which he continues to be held is the frequent citation to him by name as the author of an opinion, a stratagem long employed by lawyers and judges who seek to bolster the

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<sup>3</sup> See N.Y. CONST. art. 6, § 2. For a comprehensive overview of the Court's transition from one of elected judges to appointed judges, see George Bundy Smith, *Essays on the Court of Appeals: Choosing Judges for a State's Highest Court*, 48 SYRACUSE L. REV. 1493 (1998).

<sup>4</sup> See Ch. 300, § 2, 1985 N.Y. Laws (McKinney) (codified as amended at N.Y. C.P.L.R. § 5602 (McKinney 1995)); see also Joseph W. Bellacosa, *A Quarter Century in Albany: A Period of Constructive Progress*, N.Y. ST. B.J., Oct. 2000, at 8.

<sup>5</sup> See N.Y.C.R.R. tit. 22, ch. I, § 500.17 (2001).

<sup>6</sup> See Elizabeth Kolbert, *Bellacosa is Appointed to State Court*, N.Y. TIMES, Jan. 6, 1987, at B3.

persuasiveness of a line of reasoning by emphasizing the identity of its author. His writings on and off the bench have been cited in more than 400 articles in journals and law reviews around the country.<sup>7</sup> Courts in other jurisdictions have cited and then followed his dissenting opinions, particularly in the arena of criminal law and procedure.<sup>8</sup> Warm words of praise are wonderful, but having one's dissenting opinion adopted by another court is the highest and most sincere praise an appellate judge can receive.

As if all of this were not enough, Judge Bellacosa continued as a leader in the field of legal education. From 1994 to 1995, he served as Chair of the 6,500-member Section on Legal Education and Admission to the Bar (the "Section"), the accrediting arm of the American Bar Association ("ABA"). The Section has been in continued existence since 1893 and traces its roots to the founding of the ABA. Legal giants such as Roscoe Pound, Elihu Root, and Samuel Williston have held the position of Chair of this Section.<sup>9</sup>

Ever the teacher, Judge Bellacosa has reminded us of our professional obligation to provide legal assistance to those among us who are in need. He chided some of the positions expressed in the on-going debate over mandatory pro bono as obsessing over formalisms. Instead, he chose to appeal to the best in all of us:

If we were able to search our psyches for our earliest murmurings of the primary motivation for becoming lawyers, we would probably discover that it was service to others in need. So lawyers should revisit those root

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<sup>7</sup> Westlaw search, July 21, 2004, Journals & Law Reviews, search term "Bellacosa." Based upon my search, I estimate that approximately 175 articles cite or discuss one of his dissenting opinions.

<sup>8</sup> See, e.g., *State v. Wilkins*, 692 A.2d 1233, 1244–45 (Conn. 1997); *State v. Arredondo*, 944 P.2d 276, 282 (N.M. Ct. App. 1997). Both of those cases followed Judge Bellacosa's dissent in *People v. Torres*, 74 N.Y.2d 224, 543 N.E.2d 61, 544 N.Y.S.2d 796 (1989), a landmark decision in which the Court of Appeals limited police officers' ability to search a vehicle after a permissible *Terry* stop. The other courts agreed with Judge Bellacosa's assessment—typical of his sensitivity to the real-world effects of judicial rulings—that "[t]he dangers [of a suspect harboring a weapon in a vehicle] may be 'far-fetched' to Judges in the protected enclave of the courthouse, but not to cops on the beat." *Arredondo*, 944 P.2d at 282 (quoting *Torres*, 74 N.Y.2d at 232, 543 N.E.2d at 66, 544 N.Y.S.2d at 801 (Bellacosa, J., dissenting)).

<sup>9</sup> See American Bar Association, *Former Chairpersons and Consultants of the Section of Legal Education and Admissions to the Bar*, at [http://www.abanet.org/legaled/consultant/former\\_chairpersons\\_and\\_consulta.html](http://www.abanet.org/legaled/consultant/former_chairpersons_and_consulta.html) (last visited July 24, 2004).

stirrings, and be grateful for the opportunity and corresponding obligation to bring them to fruition.<sup>10</sup>

Eight years later, he expressed his feelings about his own "adventure" in public service in similar terms:

No one could ask for—or be entitled to—more than these privileged perches and participatory professional adventures that have been given to me: 25 years of public work providing me with sparkling enlightenment and professional fulfillment.<sup>11</sup>

By all accounts, Joe and Mary Bellacosa and their family enjoyed a wonderful life during his public service in Albany. He did not seek the deanship of our Law School and, indeed, early efforts to entice him to leave the bench to assume this leadership role were not successful. Eventually, and through the entreaties of his fellow University Trustees, he answered this special call to service. Under his guiding hand, we have soared. Applications, GPAs and LSAT scores of admittees, bar passage rates, *U.S. News & World Report* rankings, alumni participation, and contributions are all up. The dream of first-rate clinical programs is coming to fruition. He would be the first to remind us that these successes are not his exclusive doing, but he has set us on the right trajectory.

Dean Bellacosa once quoted from a private letter from Holmes to Cardozo: "[D]efining the measure of success [is] not the place, the power, the prominence or the prestige one attains, but rather the trembling hope of striving for one's ideals day-by-day."<sup>12</sup> I submit that we have within our midst a man who is both successful and great. He has never wavered in his commitment to the service of others and to the highest virtues and aspirations of our profession. He is never cynical and always the gentle but firm teacher.

Because he is humble and draws attention away from himself and directs it towards others, it is easy to lose sight of those facts. Ask yourself: Had I been a colleague of Chief Judge Cardozo, would I have made the most of my precious time with

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<sup>10</sup> Joseph W. Bellacosa, *Obligatory Pro Bono Publico Legal Services: Mandatory or Voluntary? Distinction Without a Difference?*, 19 HOFSTRA L. REV. 745, 753–54 (1991).

<sup>11</sup> Bellacosa, *supra* note 4, at 10.

<sup>12</sup> Bellacosa, *supra* note 10, at 754 (citing B.N. CARDOZO, *Mr. Justice Holmes, in SELECTED WRITINGS OF BENJAMIN NATHAN CARDOZO, THE CHOICE OF TYCHO BRAHE* 86 (M. Hall ed., 1947)).

him or would I have squandered it complaining of *my* docket congestion and *my* courtroom conditions? Would I recount for my grandchildren what I learned from Cardozo, or would I tell them of my own eloquence in laying at his feet my special needs? For our own sakes, we should savor our association with Joseph, The Great, and learn from his example.<sup>13</sup>

The best part of the story of our friend and mentor, Professor-Dean-Chair-Judge Bellacosa, is that so much of it is left to be written. For now, his beloved and delightful Mary and their family are entitled to his undivided attention. But in time, I fully expect that our profession will see new accomplishments from this great man who has dwelt among us.

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<sup>13</sup> I respectfully submit for the reader's consideration that, just as Fordham's former Dean John D. Feerick is appropriately known as "John, The Good," so too, our Dean Bellacosa is entitled the above-mentioned appellation.