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The Honorable Frank X. Altimari: The Judge And The Man

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THE HONORABLE FRANK X. ALTIMARI: THE JUDGE AND THE MAN

Honorable Arthur D. Spatt ***

With humility and great respect, I write to share my thoughts and recollections about Judge Frank Altimari, my mentor and best friend.

I first met Frank Altimari in 1974 when, as a trial lawyer, I was assigned to his part in the Supreme Court in Nassau County, to try a complicated products liability case. He and his then law secretary, now an outstanding U.S. Magistrate Judge Michael L. Orenstein, were newly arrived from the criminal law world of the County Court, had never tried a products liability case, and they told me so. Judge Altimari quickly picked up on the law of "strict products liability" and did an excellent job. I say that with some objectivity because I won the case.

When I was elected to the Supreme Court in 1978,[1] we became close, personal friends. That friendship continued and flourished to the date of his death. Among other things, we shared a love for professional football, although he was a rabid Giants fan and my team is the Jets. Every Sunday during the season we called each other to offer, alternatively, congratulations or "better luck next time." Once I arrived in the Supreme Court, Frank introduced me to his circle of friends. We had lunch together at a different chambers each day. On Fridays, we went out to lunch, generally at the McGinnis Restaurant then on Jericho Turnpike. We had a wonderful time together, sharing experiences and resolving each other's problems. During that period we were struggling to put our children through school and shared those

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* Judge, United States District Court, Eastern District of New York. The writer acknowledges the able assistance of Linda Johnston, Esq., former law clerk to the Honorable Frank X. Altimari.

** Portions taken from remarks made at a Memorial Service for the Honorable Frank X. Altimari held at the Supreme Court, Nassau County on November 6, 1998.

[1] Supreme Court, Nassau County, State of New York.

experiences as well. Our luncheon group was a galaxy of judicial stars: Beatrice Burstein, Dave Gibbons, John Lockman, Jim Niehoff, Barney Pantano, Doug Young and Ray Wilkes. With that diverse group we also had some lively political discussions. When Frank was appointed to the Federal bench we continued to meet every Friday for lunch. We picked him up in Uniondale and ate in a local diner. We had some great times together.

When I joined Frank in the Federal judiciary, we continued in the same congenial vein. Every morning at 8:30, all the judicial officers at Uniondale had coffee together and we enjoyed a brown bag lunch each day at 12:30. That group comprised Circuit Judges Altimari and Pratt, District Judges Platt, Mishler, Seybert and Spatt, and Magistrate Judges Orenstein, Pohorelsky and Boyle.

As I said when I was privileged to speak of him at a Bar Association function in March, 1998, there were, in my view, five main dimensions in Frank Altimari's life.

First and foremost were his wonderful family: His beloved, beautiful wife Angela - they were early sweethearts and were married for 46 happy years - a kind, generous and supportive woman. He was so proud of his three sons, Anthony, an outstanding trial lawyer and Councilman of the Town of Oyster Bay; Nicholas, a highly regarded Assistant United States Attorney in Richmond, Virginia; and his youngest, Dr. Michael, a distinguished professor and scientist. Frank delighted in the accomplishments of his bright, lovely and dedicated daughter Vera, a teacher and administrator in special education. He was close to his two loving daughters-in-law and to his son-in-law, and he adored his eleven grandchildren. On Saturdays, when he would come into chambers, he usually brought one of his grandchildren with him and I saw how much they enjoyed being with him. Frank was also blessed with his sister Virginia, his brother Carmine and their families, and many good and caring relatives, and extended family, colleagues and friends.

The second party of his life was devoted to his religion. He was a devout, daily church-going, observant Catholic. Frank loved and lived his religion and respected and admired other faiths.

The third phase of his life lasted more than 32 years, his tenure as a Judge and a leader of Judges. Frank Altimari is a judicial legend in this country. The election of 1964 for Nassau County District Court Judge resulted in a tie election for the first time in history. Frank and his opponent ended up with the exact same vote and his opponent was chosen. However, the next year, at the age of 38, Frank was elected to his first judicial position, as Judge of the District Court of Nassau County. Then he was elected as a County Court Judge of Nassau County and Justice of the Supreme Court of the State of New York. In 1982 he was appointed a United States District Judge for the Eastern District of New York and then in 1985, he went to the summit, a member of the United States Court of Appeals for the Second Circuit, the court just below the United States Supreme Court.

Frank Altimari was the only graduate of Brooklyn Law School ever to be appointed as a Judge of the United States Court of Appeals in the Second Circuit and, I believe, to *any* Circuit Court. This was an incredible distinction, which he achieved by hard work, dedication, sheer ability and extraordinary compassion.

Equally superb as a court administrator while in the State Courts, he was successively appointed Administrative Judge of the Nassau County Court, Supervising Judge of the Criminal Courts in Nassau County and Administrative Judge of all the courts in Nassau County. Among the many honors conferred on Judge Altimari was the highest award of the Nassau County Bar Association, the Distinguished Service Medallion, shared by, among others, President Eisenhower, and Governors Rockefeller and Cuomo.

As a writer, Frank Altimari had a masterful touch, writing straight from the heart and placing on paper feelings difficult for many of us to express. I quote from his eulogy for the late Circuit Judge J. Daniel Mahoney: "He understood . . . the long accepted concept that justice is God's idea and man's ideal. He believed that a lawsuit is neither a game nor a matter of prideful chance. It is a search for the truth with some degree of adherence to accepted trial procedure. It is said that God gives us memory so that we can have roses in December. My memories

of Dan Mahoney are so full of joy and wonderful days that my Winters will be resplendent with his roses."

Judge Altimari was a voice of reason, moderation, and practical wisdom in the Second Circuit. He wrote in a crisp, clear, and readable style. His decisions offered constructive guidance and assistance to trial judges and to the Bar. He was a prototype trial judge's appellate judge.

Among many outstanding definitive opinions written by Judge Altimari on the Second Circuit, which have significantly contributed to the cause of justice, are his opinions: upholding a ban on begging in the subways;[2] upholding the fifth amendment right of a witness with regard to personal papers;[3] affirming the conviction of a major organized crime figure, John Gotti, including a clarification of the right of counsel of choice;[4] and enunciating the fundamental right to privacy with respect to a person's HIV-positive status.[5]

More recently, he rendered opinions in some precedent-setting and interesting cases. In *Luciano v. The Olsten Corp.*,[6] one of the first "glass ceiling" cases, Judge Altimari wrote an opinion upholding a jury verdict that one of Long Island's largest companies had discriminated against a female executive because of her gender and affirmed a substantial award in compensatory and punitive damages. In a companion case, *Luciano v. The Olsten Corp.*,[7] a case closely watched in employment law circles, Judge Altimari declined to upset as unreasonable a $225-an-hour rate for a Manhattan lawyer who had sought a $320 hourly rate in this gender-bias trial on Long Island. He held that the fee reflects the proper "prevailing community" - the district in which the case was tried.

In *Matimak Trading Co. v. Khalily*,[8] a split panel of the U.S. Court of Appeals for the Second Circuit found that because the

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[2] Young v. New York City Transit Authority, 902 F.2d 146 (2d Cir. 1990).

[3] *In re* Grand Jury Subpoena, F.3d 87 (2d Cir. 1993).

[4] United States v. Locascio & Gotti, 6 F.3d 924 (2d Cir. 1993).

[5] Doe v. City of New York, 15 F.2d 264 (2d Cir. 1994).

[6] 110 F.3d 210 (2d Cir. 1997).

[7] 109 F.3d 111 (2d Cir. 1997).

[8] 118 F.3d 76 (2d Cir. 1997).

United States government does not regard Hong Kong as an "independent sovereign entity," its citizens or companies cannot invoke diversity jurisdiction to bring civil cases in federal court. In his dissent, Judge Frank X. Altimari declared that the majority's ruling was "a death knell for Hong Kong corporations seeking access to our federal courts under alienage jurisdiction."[9] Hong Kong "is a unique and critical component in the scheme of international policies and economic expansion,"[10] he wrote.

In *Torres v. United States*,[11] Judge Altimari ruled that an individual who had been convicted for the 1977 bombing of the Mobil Oil Building in Manhattan, who two decades later claimed her constitutional rights were violated, had no basis to undo her trial. He stated that:

> [u]nder the circumstances, we cannot say that Torres' trial tactics – which included leading courtroom demonstrations of political supporters in the gallery – meant that she was truly the subject of a non-adversarial trial in which she presented no defense. . . . In sum, the district court acted properly by not questioning Torres' reasons for choosing to proceed pro se. Her fully informed, politically motivated choice was an appropriate exercise of her constitutional rights.[12]

There is a book published about federal judges called the Almanac of the Federal Judiciary. It is a sort of judicial gossip book not really recognized by the judiciary. Lawyers who appear before the judges are interviewed and encouraged to give their confidential comments as to each judge. These remarks are anonymous, and therefore, appear to be candid and truthful. Presumably, this is the time the lawyers tell the truth about judges without any risk of retaliation. Here are some of these candid, anonymous printed remarks about Judge Altimari:

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[9] *Id.* at 88 (Altimari, J., dissenting).
[10] *Id.* at 92 (Altimari, J., dissenting).
[11] 140 F.3d 392 (2d Cir. 1998).
[12] Id. at 402, 403.

> "His legal ability is excellent and he's very, very bright. He does a great job." . . . "He is not one to get hung up on procedure or technicalities, but he's very solid." . . . "He's very polite and very courteous." "His judicial demeanor is great." . . . "It's a pleasure to be before him." "He's very personable and pleasant."
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> "He asks practical questions in cases." "If there is something on his mind he's certainly going to find about it." "He's not going to pepper you with questions that are really rough." "He's not going to try to pin you to the wall like some judges." . . . "Everybody loves him. He's so nice to lawyers."

For the last several years Judge Altimari was an Adjunct Professor at Touro Law School teaching a course on trial practice. He instructed his students in a courtroom in the Federal Courthouse in Uniondale. His students learned the practical aspects of trial practice right at the scene, where it happens. I am told by Dean Glickstein[13] and others that his students thoroughly enjoyed this practical invaluable course and adored him as a lecturer.

The fourth and most recent part of his life is his work as a sculptor. Several years ago, without any training, or even a lesson, Judge Altimari started to sculpt in marble. He was a naturally gifted sculptor. Within the past few years he imaged in marble, among other projects, his grandchildren and a number of religious works. In addition, he started a marble presentation of "Lady Justice" which, even in its unfinished state, will be a showpiece in the new, massive and beautiful Federal Courthouse in Central Islip.

In November, 1997, Judge Altimari was honored by Touro Law School for his work in marble, a piece of sculpture showing a small boy who was a victim of the Nazis in the Warsaw Ghetto, transposed and portrayed against the Western Wall, entitled "Zachor - Remember," for persons of all religious beliefs to

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[13] Howard A. Glickstein, Dean, Touro Law School.

cherish for all time. This magnificent piece was created with his bare hands using hammer and chisel in marble. A copy of this piece of sculpture is now located in St. Brigid's, Frank's Church in Westbury, and another copy occupies a prominent place in my chambers.

There is another dimension to Judge Altimari – a unique gift. He was one of the rare human beings who went out of his way to help his fellow person. He did so unselfishly, without any expectation of personal gain or advantage. It was the Altimari Merit System. He was bold and aggressive in his support of meritorious causes and good people. His vision was apolitical. Without fanfare, Frank Altimari helped many people in the most important matters in their lives. No one has helped and encouraged me more, personally and professionally, than Frank Altimari.

The judiciary, the lawyers in practice, his law students and the public have all benefited by the Altimari legacy. His decisions, his sculptures, and the results of his remarkable generosity will be felt for generations to come. His was a magnificent and fulfilling life and he will continue to live in the memories of his family, his friends, and the legal community he so well served.