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JUSTICE JAMES D. HOPKINS: JURIST, DEAN, SCHOLAR AND EXPERT ON NEW YORK LAW*

Jay C. Carlisle II** and Anthony DiPietro***

I. Introduction

It is an appropriate tribute to our late Dean James D. Hopkins¹ that this edition of Pace Law Review be dedicated to a man who many leaders of the bench, bar, and academia believe is one of the twentieth century's greatest common law appellate jurists.² Dean Hopkins, better known as Judge

* This article is dedicated to Pace Law Professors Ralph M. Stein, Gary A. Munneke, and Josephine Y. King in recognition of their contributions to Pace Law School, and the legal community.

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*** Anthony DiPietro is a third-year law student at Pace University School of Law. He was a student of Professor Carlisle's Advanced Civil Procedure Course (Spring 2012), which concentrated on the legal scholarship of former Pace Law Dean James D. Hopkins and former Pace Law School Professor and Chief Judge of New York Lawrence H. Cooke. Classmates Sean Convie, Keri Taylor, Matthew Herlihy, and Sam Suh made substantive contributions to this article, and the authors wish to thank them for all of their assistance.

1. Hopkins retired as a senior associate justice from the New York State Supreme Court, Appellate Division Second Department, on December 31, 1981. Prior to his appointment to the Appellate Division, Hopkins had served since 1958 as a county judge and Supreme Court Justice. He was appointed Dean of Pace Law School by the university's then president, Dr. Edward Mortola, and served for eighteen months before retiring. In 1982, Hopkins received an honorary doctorate degree from Pace University. Thereafter, he served on the Law School Board of Visitors, and was a trusted confidante and advisor to Deans Janet Johnson, Steve Goldberg, Barbara Black, and Richard L. Ottinger. Dean Hopkins died on January 5, 1996.

2. See generally Milton Mollen, Marcus G. Christ, Frank A. Gulotta, Frank S. McCullough, Wilfred Feinberg, Robert B. McKay, Maurice Rosenberg, Arthur O. Kimball, and Frances R. Schoenbach, *A Tribute to Justice James D. Hopkins*, 3 PACE L. REV. 437 (1983) [hereinafter *A Tribute to*

Hopkins, was Pace Law School's second Dean from 1982 to 1983, an associate justice of the Supreme Court of New York, and a justice of the Appellate Division for the Second Department from 1962 to 1981.³ He authored hundreds of significant majority, dissenting, and concurring judicial opinions on New York law,⁴ many of which continue to be relevant to the development of substantive and procedural law in the Empire State.⁵ Hopkins's opinions have been cited and relied on by courts throughout the nation.⁶ He is recognized and praised as a "compleat jurist,"⁷ a leading law reformer,⁸ and an outstanding scholar.⁹

Justice James D. Hopkins], available at <http://digitalcommons.pace.edu/plr/vol3/iss3/1> (cumulative dedication from friends and colleagues of Judge Hopkins in appreciation of his life, public service, legal scholarship, and judicial temperament).

3. John P. Cohalan Jr., *James D. Hopkins, An Appreciation*, 3 PACE L. REV. 479, 479 (1983).

4. See discussion *infra* Part III; see also *A Tribute to Justice James D. Hopkins*, *supra* note 2, at 450 ("He is a superb legal craftsman who has left the law richer in sound precedent for the opinions he has written during more than [twenty-three] years upon the bench"); Josephine Y. King, *Accountability for Tortious Conduct: Judge Hopkins Parses the Law*, 3 PACE L. REV. 549 (1983), available at <http://digitalcommons.pace.edu/plr/vol3/iss3/9> (observing Judge Hopkins's substantial contributions to tort law).

5. See discussion *infra* Parts VI-VIII (Hopkins made substantial contributions to New York law and his opinions on criminal law and procedure continue to be influential in the progression of the *Miranda* doctrine, free exercise of religion, and search and seizure law).

6. See generally William A. Grimes, *The Hopkins Opinions: Criminal Law and Procedure*, 3 PACE L. REV. 521 (1983), available at <http://digitalcommons.pace.edu/plr/vol3/iss3/7>; Robert A. Leflar, *Quality in Judicial Opinions*, 3 PACE L. REV. 579 (1983), available at <http://digitalcommons.pace.edu/plr/vol3/iss3/10>.

7. Robert MacCrate, *A Compleat Jurist*, 3 PACE L. REV. 593 (1983), available at <http://digitalcommons.pace.edu/plr/vol3/iss3/11>.

8. See generally *id.*; Arthur Karger, *Judge James D. Hopkins' Philosophy of Judicial Decision Making and His Contributions to Appellate Procedural Reform*, 3 PACE L. REV. 535 (1983), available at <http://digitalcommons.pace.edu/plr/vol3/iss3/8>.

9. See Karger, *supra* note 8, at 544; Josephine Y. King, *Justice James D. Hopkins, Jurist, Dean, Colleague, Teacher: The Man Behind the Hopkins Award*, WESTCHESTER CNTY. BAR ASS'N NEWSLETTER (WCBA, White Plains, N.Y.), Apr. 2008, at 7, 17. See generally Margaret Mary Fitzpatrick & John Sherlock, *Portrait of the Judge as an Artist (with Apologies to James Joyce)*, 3 PACE L. REV. 495 (1983), available at <http://digitalcommons.pace.edu/plr/vol3/iss3/4>.

Hopkins has been compared to the legendary Judge Benjamin Cardozo¹⁰ and many wonder why our Dean did not serve on the New York Court of Appeals or on the U. S. Supreme Court.¹¹ The Pace Law School faculty and other Pace University colleagues rate him as one of our best Deans and as a superb colleague whose contributions were monumental.¹² During Hopkins's eighteen month deanship, he strengthened the faculty, established a health law program, expanded the law school's environmental law centers, and engaged in several successful outreach activities. In 1982, Pace Law School awarded Hopkins an honorary doctorate for his accomplishments. The first faculty chair was established in his name and was inaugurated in 1989.¹³ Thus it is fitting that thirty years after Hopkins's retirement as Dean of Pace University School of Law and Senior Associate Justice of the world's busiest intermediate appellate court that his contributions to the development of New York law be the subject of this article, which will discuss his life and public service,¹⁴ his appellate jurisprudence,¹⁵ his legal scholarship,¹⁶ and his deanship at Pace University School of Law.¹⁷

10. Fitzpatrick & Sherlock, *supra* note 9, at 503 ("In presenting Judge Hopkins with a copy of the Pocket Constitutionalist, Professor Paul R. Baier inscribed, 'To Justice James Hopkins, whose judicial flame has always reminded me of Benjamin Cardozo.'"); *see also* Leflar, *supra* note 6, at 591-92.

11. John P. Cohalan, Jr., *James D. Hopkins, an Appreciation*, 3 PACE L. REV. 479, 479 (1983), available at <http://digitalcommons.pace.edu/plr/vol3/iss3/3> ("That he labored in the semi-obscurity of the appellate division rather than in the fierce white light of the court of appeals in Albany, or even in the august chamber of the United States Supreme Court remains something of a mystery").

12. King, *supra* note 9, at 17; Joseph M. Pastore, Jr., *Could Jimmy Hopkins Have Run Today?*, JOURNAL NEWS, Jul. 20, 1996; *see also* discussion *infra* Part IV (Interviews with Professors Nicholas A. Robinson, James Fishman, John Humbach, Merril Sobie, Gayl S. Westerman).

13. *See James D. Hopkins Professor of Law Memorial Lecture*, PACE UNIV. SCH. OF LAW, <http://law.pace.edu/hopkinslecture> (last visited Aug. 23, 2012).

14. *See* discussion *infra* Parts II-III.

15. *See* discussion *infra* Parts V-VIII.

16. *See* discussion *infra* Part V.

17. *See* discussion *infra* Part IV.

II. Background

Dean Hopkins was born on March 24, 1911, in the town of North Castle, Westchester County, New York. He enjoyed a rural and humble childhood.¹⁸ As a young boy, Hopkins had strong ties to his family, and would reminisce with friends about when he would travel with his father in the back of a horse-drawn cart from the hamlet of Armonk to the Village of White Plains to conduct the family's affairs.¹⁹ Despite his modest surroundings, Hopkins's upbringing did not impinge upon his educational development nor restrict his future professional opportunities. After attending a one-room school in Armonk and graduating from Pleasantville High School, Hopkins graduated from Columbia College with a Bachelor's degree in June of 1931.²⁰ Two years later, Hopkins received his law diploma from Columbia School of Law.²¹ The following year, he was admitted to practice law in New York.²² Hopkins entered private practice,²³ and later became a partner at the law firm of Bleakley,²⁴ Platt and Walker.²⁵

18. Interview with John A. Humbach, former Assoc. Dean, and current Professor of Law, Pace Univ. Sch. of Law, in White Plains, N.Y. (Mar. 21, 2012).

19. *Id.*

20. *A Tribute to Justice James D. Hopkins*, *supra* note 2, at 448.

21. *Id.*

22. *Id.*

23. *Id.* Hopkins also worked at the law firm of Strang and Taylor before becoming a partner at Bleakley, Platt and Walker (now known as Bleakley, Platt & Schmidt, LLP). *Id.*

24. Hopkins was a protégé of William Francis Bleakley, New York State Supreme Court Justice.

25. See *Firm History*, BLEAKLEY PLATT & SCHMIDT, LLP, <http://www.bpslaw.com/firm-history.aspx> (last visited Oct. 14, 2012).

Judge Bleakley served as a New York State Supreme Court Justice prior to running for Governor of New York in 1936. Livingston Platt, a successful attorney in private practice, also had extensive experience in local, state and national politics. Bleakley Platt had deep roots in White Plains, Westchester County and the Hudson Valley. Judge Bleakley drafted the first Westchester County Charter and then served as Westchester's first County Executive. Judge Bleakley was succeeded as County Executive by another member of the Firm, James D. Hopkins . . . [who] served as

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Aside from his private practice, Hopkins also served a long and distinguished public service career. From 1938 to 1943, he was Councilman of the Town of North Castle.²⁶ Hopkins was elected Supervisor of the Town of North Castle for five consecutive two-year terms.²⁷ From 1951 to 1953, Hopkins was Chairman of the Westchester County Board of Supervisors.²⁸ Shortly thereafter, Hopkins was elected and served as Westchester County Executive for the next four years.²⁹ In the fall of 1957, he was elected County Judge.³⁰ Hopkins became the first and only individual to have ever served the highest level in all three branches of government in Westchester County.³¹

In the wake of Hopkins's remarkable achievements in Westchester County, Governor Nelson Rockefeller appointed him to the Supreme Court for the Ninth Judicial District in September 1960.³² In 1962, Governor Rockefeller appointed Hopkins to the Appellate Division, Second Department.³³ Until his retirement on December 31, 1981, Hopkins served with distinction as a Supreme Court Justice on the Appellate

a Justice on the Appellate Division, Second Department of the State Supreme Court. Arthur B. Brennan and Frederick G. Schmidt also attained distinction in the Appellate Division. Three additional Firm alumni sat as State Supreme Court Justices. One of these Justices also served as Surrogate for Westchester County. In the late 1980's, two former Bleakley Platt partners simultaneously held federal chief judgeships: Honorable Charles L. Brieant, U.S.D.J., former Chief Judge of the United States District Court for the Southern District of New York, and Honorable Thomas L. Platt, U.S.D.J., former Chief Judge of the United States District Court for the Eastern District of New York.

Id.

26. *A Tribute to Justice James D. Hopkins*, *supra* note 2, at 448.

27. *Id.* In fact, Hopkins followed in the footsteps of his grandfather, his great grandfather, and his great-great grandfather when he served as Supervisor of the Town of North Castle. *See id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

Division.³⁴

Throughout his tenure on the bench, Hopkins's colleagues held him in the highest esteem.³⁵ One colleague, former St. John's Law School Dean and Associate Judge on the New York Court of Appeals, Joseph W. Bellacosa, referred to Hopkins as an adopted Associate Judge of the New York Court of Appeals.³⁶ Judge Bellacosa exclaimed, "[a]mongst members of his own court, past and present, he is regarded as being the epitome of wisdom, clarity of expression, eclecticism of interest, and correctness."³⁷

34. *Id.* at 449.

35. *Id.* The Presiding Justice of the Appellate Division, Second Department, Milton Mollen wrote, "in the history of the law and the search for true justice, it can be said with absolute assurance that Justice James D. Hopkins is such a man." *Id.* at 437. Presiding Justice Marcus G. Christ stated, "[h]e was successful in bringing others to his point of view by stating his points in a manner that permitted an adversary to come easily around without loss of face." *Id.* at 442. Presiding Justice Frank A. Gulotta stated, "[s]uffice it to say, however, that to ascertain the respect and the esteem in which his opinions are held, one need only note how time and again the [C]ourt of [A]ppeals has '[a]ffirmed on the opinion of Judge Hopkins, J.' His writings demonstrate a great clarity of thought, a depth of knowledge and a sharp analysis of problems." *Id.* at 445. Justice Frank S. McCullough stated, "[h]e is independent without being arrogant, decisive but impartial, patient and courteous, with a social consciousness honed by public service and a warm understanding heart." *Id.* at 449. United States Court of Appeals Judge Wilfred Feinberg stated, "[w]hat I do know is that all I ever heard about Jimmy Hopkins was undiluted praise, coming from the most unlikely sources - political opponents, rivals for various appointments, people who did not share his views on one matter or another." *Id.* at 451. New York University Law School Dean Robert B. McKay stated, "[i]t is indeed impressive to see Justice Hopkins adapt himself to each particular audience in his customary relaxed manner—informational but informal, helpful but authoritative." *Id.* at 453. Columbia Law School Professor Maurice Rosenberg stated, "[m]y friendship with Justice Hopkins over the years has convinced me that working with him must have been, for his colleagues on the court and for all the others who labored alongside him in each branch of state government, a source of pure gratification." *Id.* at 456. Arthur O. Kimball, Esq. stated, "[y]ou begin to see the fineness of his judgment, the clarity of his intelligence, the real depth of his character." *Id.* at 458.

36. Joseph W. Bellacosa, *The Adopted Judge of the New York State Court of Appeals: James D. Hopkins*, 3 PACE L. REV. 461, 463 (1983), available at <http://digitalcommons.pace.edu/plr/vol3/iss3/2>.

37. *Id.* Judge Bellacosa stated of Judge Hopkins, "[i]t is one of his greatest attributes that he did not allow his own lustre to diminish or darken the considerable qualities of the justices who served with him." *Id.*

III. Public Service

Hopkins authored hundreds of opinions as the voice of the majority of the Supreme Court Appellate Division, Second Department, of New York State, and he earned the respect of the New York legal community.³⁸ He published scholarly articles on a variety of legal issues including topics such as judicial discretion in sentencing,³⁹ judicial decision making,⁴⁰ and the role of intermediate appellate courts.⁴¹

Despite being a universally respected member of the busiest appellate court in the state,⁴² he retained a modest, unassuming, and respectful personality.⁴³ This respect reached beyond his colleagues, to include the entire judicial process, and, in particular, to the distinction of powers between the New York Legislature and the courts, as well as the different roles of the courts in appellate hierarchy.⁴⁴ Hopkins stressed

38. Cohalan, Jr., *supra* note 11, at 479. “Every step in his career appeared to point towards the ultimate goals of high achievement, the respect and esteem of his fellows, and a permanent position in the legal history of our state.” *Id.* at 492.

39. See James D. Hopkins, *Reviewing Sentencing Discretion: A Method of Swift Appellate Action*, 23 UCLA L. REV. 491 (1976) [hereinafter Hopkins, *Reviewing Sentencing Discretion*] (advocating against the arbitrary nature of sentencing procedures).

40. See James D. Hopkins, *Fictions and the Judicial Process: A Preliminary Theory of Decision*, 33 BROOK. L. REV. 1 (1966) [hereinafter Hopkins, *Fictions and the Judicial Process*] (discussing the theory of legal decision-making and application of law).

41. See James D. Hopkins, *The Role of an Intermediate Appellate Court*, 41 BROOK. L. REV. 459 (1975) [hereinafter Hopkins, *The Role of an Intermediate Appellate Court*] (discussing the role of the intermediate court, and the interplay that occurs between the judiciary and the legislative branch of government).

42. Bellacosa, *supra* note 36, at 462.

43. Cohalan, Jr., *supra* note 11, at 491-92 (“Never one to push himself forward, he was at all times ready and willing to help anyone in any problem presented, and would go out of his way to be of assistance.”).

44. See discussion *infra* Part V. An example of Hopkins’s directly appealing to the New York Legislature was illustrated in *Fillyow v. Cnty. Of Westchester*, where he stated,

Doubtless, the granting of the count’s [sic] motion seems an unnecessary hardship, stressing technicalities rather than the realities of the situation, since there is no claim that the county authorities did not receive the summons from the

that the duty of the intermediate court was to identify emerging trends in the law and to control the flow of cases that reached the highest court.⁴⁵ He observed that the intermediate court was better equipped to engage in fact development, and he believed it was the court's duty to present cases to the Court of Appeals in an effective and efficient manner.⁴⁶

Hopkins was particularly mindful of his responsibilities to the Court of Appeals. He was aware that deciding a case at the intermediate appellate level was subject to appeal, and believed that "much may be done in the determination of the case to put it into proper perspective for the highest court."⁴⁷ He advanced the idea that intermediate courts should achieve three goals when writing legal opinions.⁴⁸ First, the court must "make the determinations of fact necessary for the resolution of the appeal clearly and completely."⁴⁹ Second, it must write on the issues of law so varying positions are fully delineated, and third, make its disposition without leaving undecided any issue critical to the rights of the parties.⁵⁰ He explained that a court's

employee. . . . [While recognizing that this interpretation of the law may be unfair, such unfairness resulting from the law] is a matter of concern for the legislature, and not for the court, which must enforce the law as it reads.

225 N.Y.S.2d 848, 849-50 (Sup. Ct. 1961) (citations omitted). To effect change in the law, Hopkins believed that "[it is the role of intermediate courts] to stimulate revision in the law, either by the highest court through common law doctrine or by the legislature through the enactment of statutes." Hopkins, *The Role of an Intermediate Appellate Court*, *supra* note 41, at 464. The two ways an intermediate court could achieve this is to either "make a direct appeal to the legislature for a change in the law" or "make a direct statement to the highest court in support of a change in existing doctrine." *Id.* at 464-65.

45. Hopkins, *The Role of an Intermediate Appellate Court*, *supra* note 41, at 464 ("[T]he general flow of litigation realistically is controlled by the intermediate courts of appeal.").

46. *Id.* ("[S]ince the full flow of appeals is centered in the intermediate courts, it is those courts which are in a better position to determine in what areas of the law confusion is occurring and where reform or clarification is necessary.").

47. *Id.* at 469.

48. *Id.*

49. *Id.*

50. *Id.* ("When these three criteria are observed, the highest court is enabled to gauge the importance of the questions and to address itself to them without uncertainty as to the posture of the case before it.").

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opinion allow a higher court to understand, address, and efficiently dispose the case.⁵¹ Furthermore, Hopkins routinely acknowledged that intermediate courts could affect revisions in the law by certifying questions directly to the highest court.⁵² Hopkins acknowledged that certifications to the highest court should be used sparingly.⁵³

In addition to Hopkins's judicial duties, he was an active member within the legal community. He always wanted to share his knowledge and understanding of the law with his judicial colleagues, other lawyers, and the general public.⁵⁴ Thus, Hopkins served on the faculties of many judicial seminars,⁵⁵ sat on numerous committees,⁵⁶ and was a member of countless legal organizations.⁵⁷ In addition, he authored many law review articles⁵⁸ and traveled extensively to attend numerous judicial functions.⁵⁹ Moreover, he coauthored a book with former ABA President Robert MacCrate and Columbia Law Professor Maurice Rosenberg, entitled *Appellate Justice in New York*.⁶⁰ The authors studied appellate judges in New York and made several recommendations to improve the state court system.⁶¹

51. *Id.* (“[I]f the discussion of the law in the intermediate court has been thorough and conforms to the view of the highest court, the latter’s determination may be made by a simple affirmance without opinion or even by an affirmance on the opinion in the intermediate court.”).

52. *Id.* at 468.

53. *Id.* (“The question so certified may be premature or a duplication of a question already before the court.”).

54. *See A Tribute to Justice James D. Hopkins*, *supra* note 2, at 459.

55. Dean Hopkins served on the faculties of judicial seminars sponsored by the Institute of Judicial Administration of New York University, the Appellate Judges’ Conference, and the District Attorneys’ Association.

56. Dean Hopkins served as Chairman of the Judicial Section of the New York State Bar Association, Director of the National College of the State Judiciary, and Chairman of the Appellate Judges’ Conference of the American Bar Association.

57. Dean Hopkins was a member of the Federal-State Council of Judges, the Advisory Council for Appellate Judges, the Committee on Uniform Admission Practice, and the Temporary State Commission of Judicial Conduct.

58. *See infra* note 106.

59. Cohalan, Jr., *supra* note 11, at 492-93.

60. ROBERT MACCRATE, JAMES D. HOPKINS & MAURICE ROSENBERG, *APPELLATE JUSTICE IN NEW YORK* (1982).

61. *Id.*

Hopkins served the Columbia Law School Alumni Association for more than thirty years.⁶² He served as President of the Association between 1974 and 1976.⁶³ In recognition of his services, Columbia awarded him its Medal for Conspicuous Alumni Service.⁶⁴ Additionally, in 1986, Columbia Law School awarded him its Medal for Excellence.⁶⁵ This prestigious award is presented annually to Columbia Law School alumni or faculty who exemplify the qualities of character, intellect, and social and professional responsibility that the School seeks to instill in its students.⁶⁶

IV. Pace University School of Law

After two decades serving on the New York Supreme Court Appellate Division, Second Judicial Department, Justice Hopkins retired and agreed to accept the position of Interim Dean of Pace University School of Law.⁶⁷ Hopkins succeeded Dean Robert B. Fleming in January 1982, who retired after many years of service in legal education.⁶⁸ The law school faculty was divided on a number of issues regarding the School's long-term direction.⁶⁹ Hopkins was asked to unify the faculty and establish common long-term goals for the Law School.⁷⁰ He could have chosen an easier assignment, but he accepted the invitation.⁷¹ Wilfred Feinberg, United States Court of Appeals Judge for the Second Circuit and longtime Westchester resident, remarked that "anyone who [knew] Jimmy knows that he would never turn a deaf ear to a lawyer or law school (or anyone else, for that matter) in need."⁷²

62. *A Tribute to Justice James D. Hopkins*, *supra* note 2, at 455.

63. *Id.*

64. *Id.* at 449.

65. *Winter Luncheon*, COLUMBIA LAW SCH., <http://web.law.columbia.edu/alumni/events/winter-luncheon> (last visited Oct. 14, 2012)

66. *Id.*

67. Interview with John A. Humbach, *supra* note 18.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *A Tribute to Justice James D. Hopkins*, *supra* note 2, at 452. Clearly,

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Hopkins did not have any personal motives for accepting the position of Interim Dean at Pace Law School—except to serve those around him.⁷³ He was delighted that Westchester County was developing its own law school and wanted to be part of ensuring its future success.⁷⁴ His decision to become Dean at Pace Law School represented his commitment to the law and to legal education.⁷⁵

Within months after his appointment, Hopkins achieved significant results.⁷⁶ He “bridged, and largely eliminated the friction that existed throughout the School.”⁷⁷ Hopkins succeeded because he “listened” and he was “fair.”⁷⁸ Hopkins recognized that he was an academic novice and fully understood he needed to remain impartial and learn from the Law School faculty.⁷⁹ Hopkins was a listener who would frequently have lunch with the faculty in the cafeteria.⁸⁰ In the non-confrontational setting of the lunchroom, the faculty discussed their concerns.⁸¹ Hopkins was receptive and encouraged faculty input.⁸² He then generated solutions to faculty problems.⁸³

Hopkins treated all those that came before him with dignity and good will, even when they disagreed with him.⁸⁴ While presiding over faculty meetings, Hopkins always remained impartial, considered opposing arguments, and explained the underlying reasons for his final deposition of

Dean Hopkins did not turn a deaf ear to Pace Law School in its hour of need. As his colleagues at Pace Law School have suggested, Dean Hopkins loved to serve those around him, and he was not ready to retire from serving the legal community after working for nearly fifty years. Interview with John A. Humbach, *supra* note 18.

73. Interview with John A. Humbach, *supra* note 18.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

each matter set before him.⁸⁵ Importantly, he was not afraid to make a difficult and necessary decision when required.⁸⁶ Hopkins was successful in eliminating the friction within the Pace Law School faculty by adopting a “listening” and “fair” approach to his deanship.⁸⁷ Undoubtedly, Hopkins’s desire to treat everyone equally and his “approachable” demeanor also enhanced his sense of fairness.⁸⁸ Furthermore, his affable, friendly, and reserved nature made him more approachable to faculty and students.⁸⁹

Hopkins built confidence among the faculty by supporting collegial faculty governance, and not decanal (or presidential) dictation.⁹⁰ Moreover, his qualities set an example for the faculty to follow. As a former judge and well known public leader, he brought honor and distinction to the leadership of the dean’s office.⁹¹ He supported scholarship and good teaching, and knew that legal education is essential to the profession of law.⁹² Through him, the fledgling Pace Law School was given a strong endorsement within the legal profession in New York.⁹³

85. *Id.*

86. *Id.*

87. “His genius was bringing the faculty together and creating a non-confrontational productive atmosphere. It was greatly needed. He also encouraged individual faculty to be creative and was very supportive.” Interview with Merrill Sobie, Professor of Law, Pace Univ. Sch. of Law, in White Plains, N.Y. (Mar. 21, 2012).

88. E-mail from Nicholas A. Robinson, Professor of Law, Pace Univ. Sch. of Law, to Jay Carlisle, Professor of Law, Pace Univ. Sch. of Law (July 11, 2012) (on file with author).

89. Interview with Nicholas A. Robinson, Professor of Law, Pace Univ. Sch. of Law, in White Plains, N.Y. (July 11, 2012).

90. “His skills as the head of the County Board of Supervisors served him well in running the ‘business’ end of the law school. His political (in the best sense of the word) acumen—proven as the legislative leader he had been—led him to shape faculty discussions and build agreement among competing or disagreeing faculty factions.” *Id.*

91. *Id.*

92. *Id.* Dean Hopkins spent a lot of time focusing on the teaching of legal scholarship, and sought to maintain such focus amongst his colleagues at Pace University School of Law. His politeness, civility, and respect amongst the faculty created good relations and helped foster the progression of student affairs, academic curriculum, and school outreach. Interview with James J. Fishman, former Assoc. Dean and current Professor of Law, Pace Univ. Sch. of Law, in White Plains, N.Y. (July 19, 2012).

93. Interview with Nicholas A. Robinson, *supra* note 89.

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His presence alone gave Pace Law a “kosher seal of approval.”⁹⁴

Professor James Fishman served as Associate Dean during Hopkins’s tenure.⁹⁵ He remarked that Hopkins was “a regular guy,” whose role as a dean, teacher, and leader within the Law School was marked by extraordinary humility.⁹⁶ Remarkably, Hopkins labored without any pretensions or illusions about the powers he attained throughout his lifetime.⁹⁷ Many of his colleagues became Hopkins supporters because they were “amazed that such a successful and well known man could be so humble and fundamentally decent.”⁹⁸ Hopkins’s management style helped spark the progression and development of essential law school initiatives in the clinical, environmental, and health law programs. Aside from his legal ingenuity, Hopkins was a teller of humor, appreciative of poetry, a fan of baseball, a renaissance “guru,” and intrigued by all facets of historical and political occurrences.⁹⁹

Pace Law Professor Gayl S. Westerman was also impressed by Justice Hopkins’s legal and moral excellence. As a former student at Pace University School of Law, she was the first to intern for Hopkins at the appellate division.¹⁰⁰ Her time with then Justice Hopkins proved to be invaluable, as she left her judicial internship feeling “privilege[d] getting to know and to work with one of the most intelligent jurists of our time.”¹⁰¹ Although she was only a student at the time, Hopkins included Professor Westerman in every aspect of his legal work, and always shared “his approach to the law which was unfailingly efficient and fair.”¹⁰²

94. Interview with James J. Fishman, *supra* note 92.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. Interview with Gayl S. Westerman, Professor of Law, Pace Univ. Sch. of Law, in White Plains, N.Y. (July 30, 2012) (“During my third year at the law school, 1980-81, a competition was announced for an internship in the New York Supreme Court, Intermediate Appellate Division. It was the first of its kind created at Pace and I was honored to be chosen as the first Pace Judicial Intern.”).

101. *Id.* Professor Westerman recalled that Dean Hopkins wrote all of his judicial opinions in longhand on yellow legal pads. *Id.*

102. *Id.* Professor Westerman stated “certainly he and I both knew that

Today, a distinguished member of the Pace Law faculty holds the title of James D. Hopkins Professor of Law for a two-year term in recognition of their outstanding scholarship and teaching.¹⁰³ As Professor Nicholas A. Robinson, friend and colleague of Hopkins, stated “we must recall Hopkins, in the finest tradition of our learned profession. All of us who have held the Hopkins chair implicitly carry on his scholarly traditions and his devotion to public service.”¹⁰⁴

V. Judicial Excellence and Scholarship

A. Background

During his two decades on the appellate bench (1962-1981), Hopkins authored more than one hundred and forty majority opinions,¹⁰⁵ and countless concurring and dissenting opinions. Hopkins also wrote numerous scholarly articles during his time on the appellate bench.¹⁰⁶ Despite the changing

the experience would be the most valuable of my legal education. It was an especial honor then for me to come onto the faculty of Pace Law School just as Judge Hopkins was coming on as Dean.” *Id.*

103. *James D. Hopkins Professor of Law Memorial Lecture*, *supra* note 13. Since 1989, twelve faculty members have received the Hopkins professorship: Professor Linda C. Fentiman (2012), Professor John R. Nolon (2009), Professor Bennett L. Gershman (2007), Professor Michael B. Mushlin (2005), Professor Barbara Black (2003), Professor Donald Doernberg (2001), Professor Jeffrey G. Miller (1999), Professor James J. Fishman (1997), Professor M. Stuart Madden (1995), Professor John A. Humbach (1993), Professor Nicholas A. Robinson (1991), and Professor Maurice Rosenberg (1989). *Id.*

104. Interview with Nicholas A. Robinson, *supra* note 89.

105. The author produced a memorandum chronologically identifying those majority opinions that Hopkins authored during his tenure on the bench of the county court (seventeen opinions), the New York Supreme Court (forty-seven opinions), and the Appellate Division (144 opinions). Memorandum from Jay Carlisle, Professor of Law, Pace Univ. Sch. of Law (May 1, 2012) (on file with author).

106. *See, e.g.*, Hopkins, *Reviewing Sentencing Discretion*, *supra* note 39; Hopkins, *Fictions and the Judicial Process*, *supra* note 40; Hopkins, *The Role of an Intermediate Appellate Court*, *supra* note 41; James D. Hopkins, *The Development of Realism in Law and Literature During the Period 1883-1933: The Cultural Resemblance*, 4 PACE L. REV. 29 (1983) [hereinafter Hopkins, *The Development of Realism*]; James D. Hopkins, *The Winds of Change: New Styles in the Appellate Process*, 3 HOFSTRA L. REV. 649 (1975) [hereinafter Hopkins, *The Winds of Change*]; James D. Hopkins, *Small Sparks from a*

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dynamics of law and society during Hopkins's tenure on the appellate bench, his philosophy on the role of courts and judges within society was a single constant.¹⁰⁷ His philosophy on the role of courts within the community dictated that "fair" and "just" proceedings were to be a common theme woven throughout his judicial works.¹⁰⁸

Hopkins recognized that the law was experiencing a "revolution of ideas," with a significant number of settled rules and precedents being changed during his tenure on the bench.¹⁰⁹ He firmly believed that the "revolution of ideas" included fundamental developments in tort litigation,¹¹⁰

Low Fire: Some Reflections on the Appellate Process, 38 BROOK. L. REV. 551 (1972) [hereinafter Hopkins, *Small Sparks*]; James D. Hopkins, *Public Policy and the Formation of a Rule of Law*, 37 BROOK. L. REV. 323 (1971) [hereinafter Hopkins, *Public Policy*]; James D. Hopkins, *Federal Habeas Corpus: Easing the Tension Between State and Federal Courts*, 44 ST. JOHN'S L. REV. 660 (1970) [hereinafter Hopkins, *Federal Habeas Corpus*]; James D. Hopkins, *The Formation of Rules: A Preliminary Theory of Decision*, 35 BROOK. L. REV. 165 (1969) [hereinafter Hopkins, *The Formation of Rules*]; James D. Hopkins, Book Review, 77 COLUM. L. REV. 332 (1977) [hereinafter Hopkins, Book Review].

107. See King, *supra* note 4, at 577-78 ("He appreciated the separation of governmental powers and the need to maintain a delicate balance between legislatures and courts in modifying established rules of law.").

108. *Id.* at 578 ("Judge Hopkins seems to have been able always to draw the line, on legal grounds, on pragmatic grounds and on policy grounds. Doubtless, many have lauded Judge Hopkins as a judge's judge and a lawyer's lawyer; let it also be said, he is a scholar's delight.").

109. James D. Hopkins, *Judiciary Night 1970*, 18 NASSAU LAW. 55 (1970) [hereinafter Hopkins, *Judiciary Night*] (observing social, technological, and economic changes that had affected the judiciary during the 1970s). Hopkins identified numerous events that had influenced the progression of the law during this era. Namely, he observed the technological advancements affecting transportation, communication, and the tempo of daily activities. *Id.*

110. In 1972, there was a significant change in tort law, as the New York Court of Appeals reworked the past principles of liability amongst joint tortfeasors. See *Dole v. Dow Chem. Co.*, 30 N.Y.2d 143 (1972). Specifically, in *Dole*, the common law in New York was changed to allow a defendant to seek contribution from other tortfeasors. *Id.* at 147. Thus, liability could be apportioned amongst everyone responsible for the damages attained, based upon their equitable share of liability. *Id.* at 153. A named defendant was afforded the right to implead other parties or bring a separate action against them for contribution, even if they had not been named in the original action by the plaintiff. *Id.* at 148. Upon the Court's direction of *Dole*, a named defendant had expressive rights to apportionment, which would not hinge upon the "active" negligence of another, and even a claim of partial liability to another party would be sufficient for the defendant's invocation of an

malpractice,¹¹¹ legislative reapportionment,¹¹² and the requirement for *Miranda* warnings.¹¹³ Moreover, during Hopkins's time on the appellate bench, society was also experiencing significant change with increasing unrest and violence that impacted judicial fluency.¹¹⁴ Hopkins observed that the unrest and violence within society included bombings,¹¹⁵ the hijacking of airplanes,¹¹⁶ the taking of

impleader. *Id.* at 147. In 1974, the New York Legislature codified *Dole*, in Article 14 of the New York Civil Practice Law and Rules. N.Y. C.P.L.R. § 1401 (McKINNEY 2012) (“[T]wo or more persons who are subject to liability for damages for the same personal injury, injury to property or wrongful death, may claim contribution among them whether or not an action has been brought or a judgment has been rendered against the person from whom contribution is sought.”).

111. See, e.g., Glen O. Robinson, *The Medical Malpractice Crisis of the 1970's: A Retrospective*, 49 LAW & CONTEMP. PROBS. 2, 17 (1986), available at <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3836&context=lcp> (“Modern times—beginning roughly in the 1960's—witnessed liberalization of substantive standards and procedural rules governing medical malpractice cases. Substantively, the principal modifications involved negligence standards, particularly the elimination or relaxation of the locality rule, standards for informed consent, and the scope of the doctrine of respondent superior. Procedurally, the main alterations have been the elimination of charitable immunity, relaxation of the statute of limitations, . . . and the loosening of proof requirements”); Martin H. Redish, *Legislative Response to the Medical Malpractice Insurance Crisis: Constitutional Implications*, 55 TEX. L. REV. 759, 759-60 (1977). Between 1960-70, insurance rates for surgeons rose 949.2%; for non-surgical physicians, 540.8%; for hospitals, 262.7%. *Id.* In several states premiums rose 100% between 1974-75 alone. *Id.* at 760.

112. See, e.g., *Baker v. Carr*, 369 U.S. 186 (1962) (holding that the reapportionment of legislative districts was a justiciable question and not a political question, permitting federal courts to intervene and resolve reapportionment cases).

113. In its seminal decision, *Miranda v. Arizona*, the United States Supreme Court established “procedural safeguards effective to secure the privilege against self-incrimination.” 384 U.S. 436, 444 (1966). Hence, where a criminal defendant is subjected to a custodial interrogation, before any questioning, the defendant must be warned that he has “a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.” *Id.*; see also discussion *infra* Part VI.B.

114. See generally Hopkins, *Judiciary Night*, *supra* note 109.

115. See, e.g., Thomas Buckley, *Bomb in IND Car Kills Woman and Hurts 18 at 125th St. Stop*, N.Y. TIMES, Nov. 7, 1960 (The Sunday Bomber set off a series of bombs in New York City subways and ferries killing one woman and injuring 51 other commuters.); Martin Arnold, *F.B.I. Charges 4 With 8 Bombings Here Since July*, N.Y. TIMES, Nov. 14, 1969 (Three men and a woman were charged with being left-radical terrorists who had set off bombs

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hostages, and even the kidnapping of a judge in a courtroom.¹¹⁷ In response, Hopkins argued that courts must act as a balancing mechanism within the structure of an ever-changing society by deciding what is to be preserved, what is to be abandoned, and when changes are to be made in the law.¹¹⁸ Throughout his career, Hopkins continually recited his philosophy that the law is a function of our ever-changing culture.¹¹⁹

Hopkins also recognized the appropriate role of judges within society. In 1970, he recalled the insightful and discerning observations of Thornton Wilder in his book, *The Ides of March*, when describing the function of a judge within the community.¹²⁰ In his article *Judiciary Night*, Hopkins quotes Wilder: "I must arrive at my decisions as though they were not subject to the comment of other men, as though no one were watching."¹²¹ The importance of Wilder's words to Hopkins cannot be overstated. In fact, he was known to carry those very words in his wallet at all times.¹²² For Hopkins,

in eight major corporate and governmental structures in New York City.).

116. See, e.g., Evan Buxbaum, Carol Cratty & Elise Labott, *Suspect in 1968 Hijacking at JFK is Captured*, CNN.COM, (Oct. 12, 2009), <http://edition.cnn.com/2009/CRIME/10/12/fugitive.arrested.hijacking> (On November 24, 1968, four hijackers boarded a Pan Am flight out of New York's John F. Kennedy Airport on a scheduled route to Puerto Rico and diverted it to Havana, Cuba.).

117. See, e.g., Lawrence V. Cotj, *The Facts Behind the Angela Davis Case*, HUMAN EVENTS, June 17, 1972, available at <http://www.discoverthenetworks.org/Articles/Angela%20Davis%20and%20Larry%20Cott.pdf> (On August 7, 1970, Harold Joseph Haley, superior court judge in Marin County, California, was taken hostage along with several others during a trial in his courtroom. Unfortunately, he was killed during the attempted escape of his captors.).

118. Hopkins, *Judiciary Night*, *supra* note 109, at 59.

119. See, e.g., MacCrate, *supra* note 7 (outlining Judge Hopkins's philosophy on the law and how it influenced his judicial opinions); Hopkins, *Judiciary Night*, *supra* note 109, at 56.

120. Hopkins, *Judiciary Night*, *supra* note 109, at 55 (quoting THORNTON WILDER, *THE IDES OF MARCH* (1948)).

121. *Id.*

122. Fitzpatrick & Sherlock, *supra* note 9, at 505. This article was written by Judge Hopkins's legal secretary, John J. Sherlock, and a law intern in Judge Hopkins's Chambers, Margaret Fitzpatrick. The article examined Hopkins's methodical approach to judicial writing and identified five key stages. The five stages were assignment of the case, discussion, research, final analysis, and writing. In addition, the authors examined

“fairness” prevailed when he acted as a “balancing mechanism” and rendered decisions without the influence of external forces.¹²³ Significantly, Hopkins understood the importance of explaining to society the underlying reasons for his judicial decisions and the role of the court in doing so.¹²⁴

B. *Legal Scholarship*

Hopkins, arguably more than any other New York State judge, aside from Judge Benjamin Cardozo, published a significant body of jurisprudence.¹²⁵ Through scholarly writing, Hopkins expounded a new philosophical viewpoint on the practice of law and judicial decision-making.¹²⁶ He championed numerous scholarly articles that portended the development of criminal, tort, and commercial law.¹²⁷ His scholarly contributions were most significant when the law brought uncertainty amongst practitioners, judges, and the public at large.¹²⁸ Hopkins’s legal scholarship focused on the development of important legal principles designed to quell situations that frustrated and split the judiciary.¹²⁹

Similar to Judge Cardozo, the most illustrative pieces of Hopkins’s contributions to legal scholarship were best demonstrated by his articles relating to the court’s functioning power, role, and purpose.¹³⁰ For example, in *The Role of an Intermediate Appellate Court*, Hopkins examined the function of the appellate courts and proposed reform that would help

Hopkins’s decisions to demonstrate his talent for symbolism and for capturing the essence of a case in melodic passage.

123. Judge Hopkins never allowed external political forces to influence his approach to judicial decision-making. Interview with Margaret Mary Fitzpatrick, Law Intern, Judge Hopkins’s Chambers, White Plains, N.Y. (Mar. 28, 2012).

124. MacCrate, *supra* note 7, at 594 (“If we cannot explain the decision of a case based on a reason applicable to all similarly situated, we return to the caprice of the caliph who administers justice on the steps of the mosque.”).

125. *See, e.g.*, sources cited *supra* note 106.

126. *See id.*

127. *See id.*

128. *See id.*

129. *See, e.g.*, Hopkins, *Federal Habeas Corpus*, *supra* note 106.

130. *See generally* ANDREW L. KAUFMAN, CARDOZO (2000).

promote a better understanding of both adjective and substantive law amongst practitioners, legislatures, and members of the bench.¹³¹ Hopkins suggested that the understanding of the appellate court's functioning, and the relationship amongst the different levels of the court system, is critical to the progression of legal principles and to the adjudication of the cases that arise before the court.¹³² Hopkins explained that "a relationship must be established between the trial court and the appellate court, their roles to be defined in the process."¹³³

Hopkins also emphasized that the appellate courts should be known to serve a dual role: "to assist the highest court in its ultimate determination by rendering thorough expositions of the relative merits of alternative solutions to novel or controversial questions of law; [and] to function as the court of last resort for the great majority of cases."¹³⁴ Hopkins believed that intermediate courts should play an instrumental role in the system's functioning, and provide guidance on the development and decision-making "in accord with the existing law" set before it.¹³⁵ He argued that the intermediate courts possessed a great deal of power in the progression of legal principles, as they can singlehandedly "effect change"¹³⁶ to existing law, "make a direct appeal to the legislature for a change,"¹³⁷ or prepare the highest court for its opinion on the matter.¹³⁸

Hopkins also argued that practitioners and members of the judiciary must be conscious of the powers wielded by appellate courts.¹³⁹ Hopkins was sensitive to the fact that "the intermediate court may literally be the court of last resort"¹⁴⁰ Thus, he reckoned that "a heavy responsibility is borne by

131. Hopkins, *The Role of an Intermediate Appellate Court*, *supra* note 41.

132. *Id.*

133. *Id.* at 459-60.

134. *Id.* at 459.

135. *Id.* at 464.

136. *Id.* at 466.

137. *Id.* at 464.

138. *Id.* at 477.

139. *Id.* at 466-68.

140. *Id.* at 470.

the intermediate court,” the gravity of which can only be appreciated if it is first understood to exist by those litigants laboring under it.¹⁴¹ Hopkins advocated for institutional changes within the judiciary, noting that intermediate courts must be given the ability to afford litigants proper review, and the mechanics, time, and patience to do so.¹⁴² He directed that “the nature of this obligation . . . suggests that a periodic reexamination of its role should be instituted, particularly with respect to the kinds of cases which it should review, the need for additional judges, or the innovation of other means of reducing the case load for the courts.”¹⁴³

Hopkins authored other articles addressing the appellate courts abilities and the appropriate reforms that would allow it to properly adjudicate the high influx of cases that it routinely decided. Of significance, Hopkins routinely focused his reform suggestions to help alleviate the pressures associated with the immense caseload that had been increasingly set before the appellate division over the years. Hopkins pointed out, in his publication *Small Sparks from a Low Fire: Some Reflections on the Appellate Process*, that some evolutions of judicial posture have reworked the flux of caseloads that have come across the appellate bench.¹⁴⁴ Hopkins noted that “[t]he truth is that almost every ruling of a substantive character or even of a procedural step in a civil case is appealable as [a matter of right].”¹⁴⁵ Hopkins was critical of the amount of appeals that have been allowed by the court, noting that the history of the court had not warranted such a trend.¹⁴⁶ Hopkins observed that “the evolution of the right of appeal has followed a winding road.”¹⁴⁷ He stated, “[i]n our zeal to shield individuals from the absolutism of the past, we have moved, I think, too far in the direction of giving to the litigants an uncontrolled right of appeal.”¹⁴⁸

141. *Id.* at 472.

142. *Id.*

143. *Id.* at 478.

144. *See* Hopkins, *Small Sparks*, *supra* note 106, at 551.

145. *Id.* at 554.

146. *See generally id.* at 552-56.

147. *Id.* at 552.

148. *Id.* at 556.

Although Hopkins was troubled by the scope and breadth of appellate review, he remained firm to the belief “that a duty [always] rests on the court to do justice.”¹⁴⁹ As such, irrespective of historical traditions, Hopkins mandated that neither the courts approach nor its sensitivity to the interests laid before it should be hindered.¹⁵⁰ He suggested multiple procedural modifications that may help streamline appeals, while maintaining the degree of judicial consideration afforded to appellate review.¹⁵¹

Hopkins’s appreciation and concern of litigant rights, and the relationship between judiciaries was demonstrated by his legal scholarship relating to habeas corpus review.¹⁵² Hopkins’s publication, *Federal Habeas Corpus: Easing the Tensions Between State and Federal Courts*, illustrates the confrontations generally assailed by claims arising under habeas petitions, and the dual functioning of federal and state courts in the adjudication of such matters.¹⁵³ Hopkins observed the unsettling tension between the state and federal judiciary, explaining that “[a]ll of these grounds of tension are undoubtedly inherent in any setting which contemplates a coincidence of jurisdiction in separate court systems over the same subject matter.”¹⁵⁴ He argued that many of the state’s procedures to review habeas matters were inadequate, which frustrated the process and compelled unnecessary evidentiary proceedings in federal court.¹⁵⁵ Hopkins observed “[t]he truth is that federal intervention in state convictions has not led to a wholesale reversal of state convictions [b]ut the incorporation of federal constitutional protections into state criminal systems has unquestionably contributed . . . to the burden thrust upon the federal courts [more] than any other cause.”¹⁵⁶

149. *Id.* at 568.

150. *Id.*

151. *Id.* at 565-67.

152. Hopkins, *Federal Habeas Corpus*, *supra* note 106.

153. *Id.*

154. *Id.* at 665.

155. *Id.* at 666.

156. *Id.* at 666-67.

Although confrontation among state and federal courts may be inevitable, Hopkins promoted that, in the interest of the judiciary, both courts must recognize their shared duties and functions, and reflect upon the values in a constitutional scheme that “should[] not only be reconciled but also harmonized.”¹⁵⁷ He suggested, among other things, that the “tension between the two systems can be lessened by [simply] opening the channels of communication.”¹⁵⁸ In promoting communal progression, Hopkins stated that “[w]hile a period of adjustment is usually a period of tension, this is by no means inevitable. If the two systems are willing to recognize the appropriate function of each [other] and to make adjustments in response thereto, the underlying causes of frustration can be eliminated.”¹⁵⁹

In his publication, *Fictions and the Judicial Process: A Preliminary Theory of Decision*, Hopkins facilitated the progression of legal practice by providing practitioners with an in-depth view of the judicial decision making process.¹⁶⁰ Providing his insight from the bench, Hopkins explained that the court’s resolution of facts and law is not contingent upon a constant formula, and a continual flux of factors, including the techniques undertaken by the presiding judge, may alter a case’s outcome.¹⁶¹ He argued that all judicial decisions provide a gateway for the court to speak to those before it, the public at large, and to justify the court’s actions for further courts that may reflect upon it.¹⁶²

Hopkins also explained that all judicial opinions are influenced by prior events, and judges seek to rest their decisions upon “experience[s], expressed in common sayings, in doctrine, in precedent, or in statute[s].”¹⁶³ Hopkins observed that courts are using resemblances to convey to “litigants and the public that his decision is just, since it follows learning expounded in another case so similar that the case before him

157. *Id.* at 670.

158. *Id.* at 674.

159. *Id.* at 675.

160. Hopkins, *Fictions and the Judicial Process*, *supra* note 40.

161. *Id.* at 2.

162. *Id.* at 7.

163. *Id.*

must be determined in the same way.”¹⁶⁴ Hopkins stated that “[a]n opinion at least may divert the fire, or soothe the aroused litigant or public.”¹⁶⁵ He explained that a judicial decision embodies the invocation of many techniques, some of which are unconsciously engaged.¹⁶⁶ In this regard, the final resolution illuminates the judge’s reaction to the facts set before him, “a reaction which he translates into legal language.”¹⁶⁷

Hopkins’s legal scholarship has remained instructive to many members of the legal community. Josephine Y. King, Pace Law Professor, observed, “[h]is mark as a teacher leads me to the conclusion that while many have acclaimed Judge Hopkins as a judge’s judge and a lawyer’s lawyer, let it also be said, he is a scholar’s delight.”¹⁶⁸ His contributions remain to guide judges, practitioners, and the public on judicial decision making and fundamental principles of law: “[b]y conscious or subconscious influence, the presence of this restraining power, aloof in the background, but none the less always in reserve, tends to stabilize, [influence,] and rationalize the . . . judgment[s], to infuse it with the glow of principle, to hold the standard aloft and visible for those who must run the race and keep the faith.”¹⁶⁹

VI. Representative Opinions

A. *Criminal Law and Procedure*

Hopkins authored many instructive criminal law and procedure opinions. His lead from the bench when dealing with complex criminal law issues was especially remarkable, considering that he was never a prosecutor or a seasoned criminal defense attorney.¹⁷⁰ Hopkins handled few criminal law

164. *Id.*

165. *Id.* at 8.

166. *Id.* at 12.

167. *Id.* at 16.

168. King, *supra* note 9, at 17.

169. KAUFMAN, *supra* note 130, at 210.

170. Hopkins “had, however as a county judge, presided over many criminal trials. Some selected opinions serve to demonstrate that the lack of a broader criminal justice experience did not lessen his influence or

cases in private practice,¹⁷¹ but guided by his special sense and fairness to all parties, he authored significant judicial opinions relating to criminal proceedings, including the *Miranda* doctrine,¹⁷² an individual's interest in the free exercise of religion,¹⁷³ and the Fourth Amendment.¹⁷⁴

B. *The Miranda Doctrine*

Four years after Hopkins's appointment to New York's Appellate Division, Second Department, the United States Supreme Court rendered its seminal opinion in *Miranda v. Arizona*.¹⁷⁵ Hopkins was at the forefront of the development of *Miranda* jurisprudence. He demonstrated a keen sense of how the *Miranda* doctrine was to be applied, interpreted, and developed,¹⁷⁶ particularly in cases involving juvenile

contribution to that branch of the law." Bellacosa, *supra* note 36, at 475.

171. There are few cases traceable to where Hopkins served as legal counsel for criminal defendants. Nevertheless, his limited presence was still paramount with traces of success. For example, in *People v. McDermott*, 47 N.Y.S.2d 676, 676 (App. Div. 1944), the defendant was convicted of perjury in the first degree. Serving as the defendant's appellate counsel, Hopkins attained a modification of the conviction on appeal, reducing the conviction to the crime of perjury in second degree. *Id.*

172. *See, e.g.*, discussion *infra* Part VI.B-C; *People v. Parker*, 442 N.Y.S.2d 803 (App. Div. 1981); *People v. Servidio*, 433 N.Y.S.2d 169 (App. Div. 1980); *People v. Townsend*, 320 N.Y.S.2d 891 (App. Div. 1971) (Hopkins, J., dissenting); *People v. Swift*, 300 N.Y.S.2d 639 (App. Div. 1969); *In re William L.*, 287 N.Y.S.2d 218 (App. Div. 1968).

173. *See, e.g.*, discussion *infra* Part VI.D; *Gold v. McShane*, 426 N.Y.S.2d 504 (App. Div. 1980); *La Rocca v. Lane*, 366 N.Y.S.2d 456 (App. Div. 1975); *People v. Woodruff*, 272 N.Y.S.2d 786 (App. Div. 1966).

174. *See, e.g.*, discussion *infra* Part VI.E; *People v. David L.*, 439 N.Y.S.2d 152, 154 (App. Div. 1981) (Hopkins & Weinstein, JJ., dissenting); *Barber v. Ruben*, 424 N.Y.S.2d 453 (App. Div. 1980); *People v. Iucci*, 401 N.Y.S.2d 823 (App. Div. 1978); *People v. Correa*, 392 N.Y.S.2d 707, 708 (App. Div. 1977) (Hopkins, J., dissenting); *People v. Ward*, 178 N.Y.S.2d 708 (Co. Ct. 1958).

175. *Miranda v. Arizona*, 384 U.S. 436 (1966). *Miranda v. Arizona* was a landmark decision of the United States Supreme Court which held that statements made by a defendant in response to interrogation by police while in custody will only be admissible at trial if shown that the police informed the defendant of the right to consult with an attorney and of the right against self-incrimination prior to questioning, and that these rights were understood by the defendant so as to be voluntarily waived. *Id.*

176. Hopkins's progression of the *Miranda* doctrine in relation to juvenile defendants' has remained a continuum with the courts, and has been

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defendants.¹⁷⁷

Hopkins believed that a juvenile's privilege against self-incrimination required enhanced protections beyond the mandates of *Miranda*.¹⁷⁸ Hopkins was aware of the heightened prospect that juvenile suspects may relinquish their rights under police persuasion, and may likely be unaware of the significance of such a waiver. For example, in *In re William L.*, Hopkins excluded a juvenile's confession on due process grounds because of the youth's aptitude and immaturity.¹⁷⁹ Even though the defendant was advised of his rights pursuant to *Miranda*, Hopkins recognized that the juvenile's vulnerability needed to be protected by the presence of counsel, and only when in such presence of counsel could a fair interrogation proceed.¹⁸⁰ He stated, "[t]he age and immaturity of the juvenile, both emotionally and intellectually, create the need for advice of counsel and his presence at the questioning

implicitly followed by the United States Supreme Court on numerous occasions. *See, e.g.*, *Fare v. Michael C.*, 442 U.S. 707 (1979) (holding that the totality of the circumstances determines whether a juvenile voluntarily and knowingly waived *Miranda* rights, which includes the circumstances surrounding the interrogation, the juvenile's age, experience, education, background, intelligence, and whether they have the capacity to understand the nature of the warnings given); *see also infra* note 198 and accompanying text (discussing *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011) (holding that age is a relevant factor in determining whether a suspect is "in custody")).

177. *See, e.g.*, *People v. Townsend*, 320 N.Y.S.2d 891 (App. Div. 1971) (Hopkins, J., dissenting); *In re William L.*, 287 N.Y.S.2d 218 (App. Div. 1968).

178. *See Townsend*, 320 N.Y.S.2d at 892.

179. *In re William L.*, 287 N.Y.S.2d at 220. In this case, a fourteen-year-old boy was arrested for homicide following a gang fight. *Id.* The defendant had been awakened by police officers at 3:00 A.M. while at his residence. The juvenile was taken to the station, and questioned by four or five officers. *Id.* The juvenile's mother was told that it was not a serious matter when he was detained and that he would be returned home within hours. *Id.* At the station, the juvenile was advised of his rights pursuant to *Miranda*. *Id.* Subsequently, the juvenile confessed to the homicide and was charged. *Id.* Two hours later, his mother was informed of the charge. However, the juvenile's mother was never advised of her son's right to counsel or that he could have counsel appointed if she could not afford it. *Id.* at 221.

180. *Id.* at 221. Hopkins argued that it was "almost self-evident" that a fourteen-year-old boy awakened by police officers at 3:00 A.M., taken to a police station, and questioned by four or five officers, "would scarcely be in a frame of mind capable of appreciating the nature and effect of the constitutional warnings given him before the questioning begins." *Id.*

when charges of juvenile delinquency may ensue.”¹⁸¹

Similarly, in *People v. Townsend*,¹⁸² Hopkins argued, in dissent, to exclude the written confession of a juvenile defendant on due process grounds relating to *Miranda* violations by state officers. In *Townsend*, a seventeen-year-old high school student, who lived with his parents, was indicted for murder.¹⁸³ He voluntarily appeared at a police station.¹⁸⁴ As a result of continuous questioning between 9 P.M. and 2:30 A.M., the prosecution obtained three oral statements and one written statement from him.¹⁸⁵ Following a *Huntley* hearing, the trial court ruled that the three oral statements would be suppressed because they required *Miranda* warnings, which had not been given to the defendant by police.¹⁸⁶ Nevertheless, the lower court held that the written statement was still admissible.¹⁸⁷ On appeal, Hopkins was troubled by the circumstances under which the police had procured the defendant’s statements,¹⁸⁸ observing that the defendant’s mother had telephoned the precinct several times to inquire whether her son was there,¹⁸⁹ but on each occasion, the desk officer had informed her that her son was not at the precinct.¹⁹⁰ In dissent, Hopkins concluded that, “*the age of defendant*, the conceded invalidity of the first three statements, the action of the police in sealing off defendant from his parents, viewed [under a totality of circumstances] deprived defendant of the fundamental safeguards of due process.”¹⁹¹

181. *Id.*

182. *People v. Townsend*, 320 N.Y.S.2d 891 (App. Div. 1971) (Hopkins, J., dissenting).

183. *Id.* at 891.

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.* at 892. Similar to *In re William L.*, 287 N.Y.S.2d 218 (App. Div. 1968), Hopkins was critical of potential police misconduct and disapproved of their efforts to conceal the defendant’s presence at the station, to deceive the family, and to obstruct the parent’s access to their seventeen-year old boy.

189. *Id.*

190. *Id.*

191. *Id.* (emphasis added). Hopkins’s desire for fairness was also evident in his dissenting opinion. On this point he stated that “the essential point is that defendant is entitled to fair treatment.” *Id.* He emphasized that fairness

The Court of Appeals later reversed the Appellate Division and unanimously adopted the due process rationale of Hopkins's dissent against a no-opinion affirmance at the appellate division.¹⁹² Chief Judge Stanley H. Fuld explicitly relied on Hopkins's dissent which urged the reversal of defendant's conviction.¹⁹³ Chief Judge Fuld followed Hopkins's rationale and expressively adopted his view that the circumstances under which the police had procured the defendant's written statement, "viewed as a whole deprived [him] of the fundamental safeguards of due process . . ."¹⁹⁴ The rationale advanced by Hopkins in *Townsend* has continued to progress over time, making judicial consideration of the state's denial of access to a defendant by family or counsel a significant factor in the *Miranda* analysis.¹⁹⁵

Aside from the express adoption of Hopkins's *Miranda* rationale by the New York Court of Appeals in *Townsend*, it is noteworthy to mention that Hopkins's application of the *Miranda* doctrine was and continues to be followed by many other courts. For example, his opinion in *In re William L.*, in which Hopkins recognized that special problems may arise in the application of *Miranda* in the case of juveniles, was frequently cited in the evolution of the *Miranda* doctrine.¹⁹⁶ Courts relied on Hopkins's guidance, and reaffirmed the application of procedural safeguards initiated to protect the

was the initial and potentially the only issue to be addressed by stating, "We need go no further once unfair treatment is demonstrated." *Id.*

192. *People v. Townsend*, 300 N.E. 722, 724 (N.Y. 1973).

193. *Id.*

194. *Id.* The Court of Appeals precluded the use of the written statement obtained in violation of *Miranda* and reversed the defendant's conviction. *Id.*

195. *See, e.g. People v. Anderson*, 364 N.E.2d 1318, 1322 (N.Y. 1977) (citing *Townsend*, 300 N.E.2d 722) (holding that the incommunicado nature of the defendant's confinement is to be weighed in the scales).

196. *In re Carlos P.*, the court reaffirmed that

[I]f counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.

681 N.Y.S.2d 724, 727 (Bronx Co. 1998).

rights of juvenile defendants, echoing Hopkins's initial observation that "the emotional and intellectual immaturity of a juvenile creates an obvious need for the advice of a loyal guardian and counsel at an interrogation from which charges of juvenile delinquency may ensue."¹⁹⁷

Significantly, Hopkins's approach in the application of *Miranda* rights to juveniles in both *Townsend* and *In re William L.* has also been recently bolstered by the United States Supreme Court's decision in *J.D.B. v. North Carolina*, which held that juveniles enjoy expanded *Miranda* protection.¹⁹⁸ The Supreme Court held, in a rare expansion of *Miranda* rights,¹⁹⁹ that law enforcement must consider a suspect's age when deciding whether to provide a *Miranda* warning.²⁰⁰ The Court reasoned that "commonsense reality" is "that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave."²⁰¹ The Court, implicitly following Hopkins's

197. *Michelet P. v. Gold*, 419 N.Y.S.2d 704, 707 (App. Div. 1979) (involving a fifteen-year-old who made inculpatory statements during the course of police questioning in a murder investigation). The court reaffirmed that "the requirement to notify a party legally responsible for the juvenile is strict." *Id.* (citing *In re William L.*, 287 N.Y.S.2d 218, 221 (App. Div. 1968)); see also *In re Candy M.*, 538 N.Y.S.2d 143 (Ulster Co. Fam. Ct. 1989) (citing *In re William L.*, 287 N.Y.S.2d at 221).

198. *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011). In this case, a thirteen-year-old seventh grader was a suspect in several home break-ins. *Id.* at 2399. A police investigator took J.D.B. from his classroom and brought him to a school conference room for interrogation. *Id.* The officer did advise J.D.B. of his right to remain silent as instructed by the *Miranda* doctrine. *Id.* Thereafter, the investigator, accompanied by a school resource officer and two school administrators, questioned J.D.B. for thirty to forty-five minutes. *Id.* During the interrogation, they warned J.D.B. that he should "do the right thing," and if not, he faced the possibility of "juvenile detention." *Id.* at 2399-400. J.D.B. ultimately confessed that he and a friend had broken into the homes. *Id.* at 2400. North Carolina courts held that J.D.B. was not in custody during the interrogation, and therefore no *Miranda* warning was necessary. *Id.*

199. *Compare Yarborough v. Alvarado*, 541 U.S. 652, 663, 667 (2004) (defining "custody" and discussing the influence of youthfulness on whether a "reasonable person" would feel free to leave), with *Fare v. Michael C.*, 442 U.S. 707, 724-25 (1979) (validating an adult standard of knowing, intelligent, and voluntary under the totality of the circumstances to evaluate the legitimacy of a juvenile's waiver of *Miranda* rights).

200. *J.D.B.*, 131 S. Ct. at 2399.

201. *Id.* at 2398-99.

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lead in *In re William L.*, stated it is “self-evident to anyone who was a child once himself, including any police officer or judge” that a child is more likely to feel pressed by the demands of adult authority figures.²⁰² Thus, the early guidelines established by Hopkins’s application of the *Miranda* doctrine were ultimately upheld by the Supreme Court’s direction that a child’s age properly informs the *Miranda* custody analysis.²⁰³

C. Development of *Miranda*

Hopkins’s commitment to the *Miranda* doctrine was not limited only to juveniles.²⁰⁴ For example, in *People v. Parker*,²⁰⁵ Hopkins protected the need for “frank communication” in the parolee-parole officer relationship by mandating that a parole officer give *Miranda* warnings in certain situations.²⁰⁶ Writing for a unanimous Appellate Division, Hopkins held that a parole officer must give *Miranda* warnings to a parolee when the parolee’s statements are to be used against him in a criminal proceeding outside the structure of the parole system.²⁰⁷ Hopkins recognized the parolee’s dilemma and the sensitive issues at stake.²⁰⁸ He explained that on one hand, the parolee

202. *Id.* at 2403 (emphasis added).

203. *Id.* at 2399 (“Seeing no reason for police officers or courts to blind themselves to that commonsense reality, we hold that a child’s age properly informs the *Miranda* custody analysis.”).

204. *See, e.g.,* *People v. Parker*, 422 N.Y.S.2d 803 (App. Div. 1981); *People v. Servidio*, 433 N.Y.S.2d 169 (App. Div. 1980); *People v. Swift*, 300 N.Y.S.2d 639 (App. Div. 1969).

205. 442 N.Y.S.2d 803. In *Parker*, the defendant was arrested on charges of criminal possession of a weapon in the third degree, assault in the second degree, and attempted robbery in the first degree. *Id.* at 804. The defendant informed his parole officer that he had been arrested. *Id.* The parole officer asked the defendant about the circumstances of the arrest. *Id.* However, the parole officer did not inform the defendant of his rights under *Miranda*. *Id.* The grand jury failed to return an indictment and the defendant’s case was dismissed. *Id.* at 805. After the dismissal, the parole officer again asked the defendant about the circumstances of his arrest. *Id.* at 804. Again, no *Miranda* warnings were administered. *Id.* Subsequently, the parole officer notified the District Attorney of the defendant’s inculpatory statement and testified before the grand jury. *Id.* As a result, the grand jury indicted the defendant for criminal possession of a weapon in the third degree. *Id.*

206. *Id.* at 807.

207. *Id.*

208. *Id.* at 806.

must truthfully reveal the circumstances underlying his arrest or face the consequence of parole revocation.²⁰⁹ On the other hand, the parolee risks conviction because his statements could be used against him in a prosecution.²¹⁰ To reconcile this dilemma, Hopkins stressed the importance of “frank communication[s]” in the parolee-supervisor relationship,²¹¹ noting that the “relationship will be damaged beyond repair if the *indispensable pillar of candid exchange is undermined*.”²¹²

Although a string of Hopkins’s *Miranda* opinions implicitly stress the fostering of rights afforded to the accused in investigative settings,²¹³ he also, at times, recognized and appreciated the competing interests at stake for state actors.²¹⁴

209. *Id.*

210. *Id.*

211. *Id.* at 807.

212. *Id.* (emphasis added). Throughout, Hopkins’s tenure on the bench, he repeatedly used analogies to support, strengthen, and justify his position. *See, e.g.,* *Angelo v. Angelo*, 428 N.Y.S.2d 14, 17 (App. Div. 1980) (“Each case must be decided on its own facts, and the court should not be fettered in achieving an equitable apportionment of assets on the dissolution of a marriage by the iron clasp of a mechanical formula.”); *Siegel v. Kranis*, 288 N.Y.S.2d 831, 835 (App. Div. 1968) (“The author of the disaster should not be enabled to chart the strategy to avoid the liability for his own negligence.”); *People v. Woodruff*, 272 N.Y.S.2d 786, 790 (App. Div. 1966), (“[T]he fabric of society might be pierced and fatally rent by a religious belief sincerely held by an individual in action or in non-action damaging to the continuing existence of peace and order in the community.”); *see also* *Fitzpatrick & Sherlock*, *supra* note 9, at 502.

213. *See, e.g., In re William L.*, 287 N.Y.S.2d 218, 221 (App. Div. 1968) (Hopkins excluded a juvenile’s confession on due process grounds); *People v. Townsend*, 320 N.Y.S.2d 891, 892 (App. Div. 1971) (Hopkins, J., dissenting) (Hopkins excluded the written confession of a seventeen year-old juvenile on due process grounds); *People v. Parker*, 442 N.Y.S.2d 803, 807 (App. Div. 1981) (Hopkins protected the need for “frank communication” in the parolee-parole officer relationship by mandating that a parole officer give *Miranda* warnings in certain situations).

214. Hopkins always acknowledged the role of the court in balancing the defendant’s interest against the state’s interest in operating an effective police system to fight crime. *See, e.g., People v. Servidio*, 433 N.Y.S.2d 169, 173 (App. Div. 1980) (declining the opportunity to add a further inquiry to the *Miranda* warnings that would have required law enforcement to obtain information from the defendant as to the existence of other pending charges); *People v. Swift*, 300 N.Y.S.2d 639, 644 (App. Div. 1969) (speaking for a unanimous court, Hopkins held that law enforcement do not have to quote the exact words of the *Miranda* decision).

For example, in *People v. Servidio*,²¹⁵ Hopkins declined the opportunity to add a further inquiry to the *Miranda* warnings that would have required law enforcement to obtain information from the defendant as to the existence of other pending charges.²¹⁶ Hopkins held that statements made by a defendant in custody, in the absence of an attorney representing him on a pending unrelated charge, are admissible provided there was no showing that the police officers taking the statements knew that the defendant was represented by counsel on such unrelated charges.²¹⁷ The Court of Appeals has relied on *Servidio*, stating “the ‘strict liability’ rule for which defendant argued would tax law enforcement officials anywhere with knowledge of accusatory instruments on unrelated charges everywhere, and unnecessarily and unrealistically limit police interrogation procedures.”²¹⁸

In *Servidio*, Hopkins was clearly aware of the state’s interest and reasoned that there was no compelling purpose to impose a further burden on the police to investigate court records for pending cases within the jurisdiction.²¹⁹ He observed that the defendant is best fit to know of a pending case against him and can readily inform the police at the time of questioning.²²⁰ The Court of Appeals unanimously affirmed Hopkins’s decision.²²¹ Indeed, Justice Matthew Jasen expressly concurred with the majority’s opinion “for the reasons stated in the opinion by Justice JAMES D. HOPKINS at the Appellate Division.”²²² Remarkably, the Court of Appeals adoption of

215. 433 N.Y.S.2d 169. In *Servidio*, the defendant was indicted for burglary and grand larceny. *Id.* at 170. Following his apprehension, the defendant was read his *Miranda* rights and waived them. *Id.* Afterwards, he made a number of incriminating statements. *Id.* At the time of his arrest and questioning, an attorney was representing the defendant in an unrelated matter. *Id.* at 171. The defendant argued that his statements to the police should be suppressed because the attorney representing him on the pending unrelated charges was absent. *Id.*

216. *Id.* at 173.

217. *Id.* at 170.

218. *People v. Kazmarick*, 420 N.E.2d 45, 48-49 (N.Y. 1981) (citations omitted).

219. *See Servidio*, 433 N.Y.S.2d at 173.

220. *Id.*

221. *People v. Servidio*, 429 N.E.2d 821 (N.Y. 1981).

222. *Id.* at 823 (Jasen, J., concurring).

Hopkins's legal rationale, as demonstrated in *Servidio*, remained at a continuum amongst members of the New York Court of Appeals. As Judge Joseph W. Bellacosa once pronounced, "Judge Hopkins'[s] commendations were unique and exceptional in that adoption of his judicial products were more numerous and more consistent than for any other lower court judge."²²³

Similarly, in *People v. Swift*,²²⁴ Hopkins also applied a sensible, pragmatic, and rational approach in order to avoid placing a judicial saddle upon law enforcement officials. Writing for a unanimous court, Hopkins declared that law enforcement *does not* have to quote the exact words of the proposed *Miranda* warning when conducting an interrogation.²²⁵ However, he cautioned that the substance of the warnings must be "imparted in a manner which would be understandable by the ordinary person."²²⁶

Notably, Hopkins arrived at his decision in *Swift* only three years after *Miranda*, and as Chief Judge Grimes acknowledged,²²⁷ the United States Supreme Court reached a similar conclusion some twelve years later in *California v. Prysock*.²²⁸ In fact, the United States Supreme Court has on two further occasions, one as recent as 2010, implicitly reaffirmed Hopkins's innovative application of the *Miranda* doctrine.²²⁹

223. See Bellacosa, *supra* note 36, at 463.

224. 300 N.Y.S.2d 639 (App. Div. 1969).

225. *Id.* at 644.

226. *Id.*

227. See Grimes, *supra* note 6, at 522. Chief Justice of the New Hampshire Supreme Court, William Grimes, reviewed numerous opinions that Hopkins wrote in the area of criminal law and procedure. In conclusion, Chief Justice Grimes wrote, "[r]eading through his opinions has made me even more aware than I was before of the greatness of this man, who has given so much of his life to the cause of justice . . ." *Id.* at 534.

228. *California v. Prysock*, 453 U.S. 355, 359-60 (1981) (holding that no "talismanic incantation" is required for the *Miranda* warnings as long as rights are adequately conveyed, so that the reference to the right to appointed counsel is not "linked with some future point in time after the police interrogation").

229. See, e.g., *Duckworth v. Eagan*, 492 U.S. 195 (1989) (writing for the majority, Chief Justice Rehnquist reasoned that police officers do not have to use the specific language of the *Miranda* decision so long as they reasonably conveyed to suspects their constitutional rights); *Florida v. Powell*, 130 S. Ct.

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D. *Free Exercise of Religion*

Hopkins believed that judicial proceedings should be neutral, fair, and untainted by external forces, even if that required certain restrictions on an individual's right to free exercise of religion.²³⁰ Hopkins argued that “the amendments in the Bill of Rights are not all of equal value—some, like the [F]irst [Amendment], are preferred, but not always.”²³¹

Hopkins's opinion in *La Rocca v. Lane*²³² was a classic example of his unwavering efforts to maintain the integrity of the judicial process. Hopkins determined that an attorney, who was also a Catholic priest, had to remove his clerical garb when appearing before a jury during criminal proceedings on behalf of his client.²³³ Specifically, the attorney, who had represented the defendant in the underlying proceeding, had argued that his First Amendment rights had been violated when the lower court mandated removal of his religious garments.²³⁴ Rejecting this argument, Hopkins concluded that the State's interest in ensuring a fair trial outweighed the petitioner's right to free exercise of religion.²³⁵

In *La Rocca*, Hopkins underscored that one's right to a fair trial is of monumental significance to the backdrop of our jurisprudence, and explained that the court should take action to regulate the attire of an attorney when there is “a discernible nexus between dress of an attorney and the attainment of a fair trial.”²³⁶ Hopkins stressed that the judicial process must “envelop” all who appear in court and that society “must be aware of the court's interest in conducting a fair and impartial trial.”²³⁷

1195 (2010) (Justice Ginsburg stated that to determine whether police warnings are satisfactory, the inquiry is simply whether the warnings reasonably conveyed to a suspect his rights as required by *Miranda*).

230. See, e.g., *La Rocca v. Lane*, 366 N.Y.S.2d 456 (App. Div. 1975); *People v. Woodruff*, 272 N.Y.S.2d 786 (App. Div. 1966).

231. Hopkins, *Judiciary Night*, *supra* note 109, at 58.

232. 366 N.Y.S.2d 456.

233. *Id.* at 465.

234. *Id.* at 459.

235. *Id.* at 465.

236. *Id.*

237. *Id.*

Additionally, Hopkins stressed that an attorney's right to his or her exercise of religious beliefs was subject to reasonable regulation when advocating before the tribunal.²³⁸ Hopkins emphasized the broad discretionary powers of a judge in regulating the courtroom.²³⁹ Although granting such discretion, Hopkins cautioned that the court could not unreasonably exercise its discretionary power.²⁴⁰ He noted, "whether counsel preferred a bow-tie to a four-in-hand, or a gray suit to a blue, in common experience should have no influence on the conduct of a trial."²⁴¹ The New York State Court of Appeals later affirmed Hopkins's decision²⁴² in a six-to-one opinion.²⁴³

238. *Id.* at 461.

239. *See id.* at 462.

240. *See id.* at 465.

241. *Id.*

242. *La Rocca v. Lane*, 338 N.E.2d 606 (N.Y. 1975). Remarkably, despite the Appellate Division's holding and the Court of Appeals' strong affirmance, in *People v. Rodriguez*, 424 N.Y.S.2d 600 (Sup. Ct. 1979), a New York Supreme Court Judge rejected overwhelming precedent and held that prohibiting attorney/priest La Rocca from wearing his clerical garb in court violated his constitutional right to the free exercise of religion. The lower court reasoned that a properly conducted voir dire of a jury, to eliminate juror bias and ensure a fair trial, was a sufficient and viable alternative to the forced removal of the clerical garb. *See id.* at 604-08. Nonetheless, in *Gold v. McShane*, 426 N.Y.S.2d 504 (App. Div. 1980), the Appellate Division overturned *Rodriguez*, holding that the Court of Appeals' decision in *La Rocca* was dispositive of the issue, and publically reprimanded the Supreme Court Judge responsible for the decision. In a Memorandum in which Hopkins concurred, the Appellate Division stated that, "[i]t was inappropriate for Justice McShane to review the decision of another Judge of coordinate jurisdiction. Furthermore, we find no change in circumstances that should have led Justice McShane to hold contrary to LaRocca [sic] v. Lane. . . . The decision of the Court of Appeals in that case continues to be dispositive of this issue." *Id.* at 505.

243. *La Rocca*, 338 N.E.2d 606 (Chief Judge of the New York State Court of Appeals, Charles D. Breitel, writing for the majority, held that the interest in according a criminal defendant and the state a fair trial outweighed any limitation on the priest's freedom of religion).

Similarly, in *People v. Woodruff*,²⁴⁴ Hopkins balanced the petitioner's right to exercise religious beliefs against the State's interest in conducting criminal proceedings.²⁴⁵ Hopkins held that the individual's right to free exercise of religion must give way to the interest of the State in maintaining peace and order.²⁴⁶ Hopkins observed the responsibility owed by each member of society to testify before the grand jury, to assist with the investigation of a crime, and to ensure that the punishment of crimes is effectuated.²⁴⁷ Hopkins stated that "the fabric of society might be pierced and fatally rent by a religious belief sincerely held by an individual in action or in non-action damaging to the continuing existence of peace and order in the community."²⁴⁸

E. Search & Seizure

Hopkins's sense of fairness and his desire for justice in judicial proceedings was evident in his Fourth Amendment jurisprudence.²⁴⁹ In *Barber v. Rubin*, the petitioner had been indicted for second-degree murder.²⁵⁰ Significantly, the murdered victim's clenched fist contained a number of human hairs.²⁵¹ "The Supreme Court . . . [had] granted an order

244. 272 N.Y.S.2d 786 (App. Div. 1966). In *Woodruff*, the defendant appeared before the grand jury and refused, despite her immunity, to answer questions concerning the use and possession of narcotics by residents of the Castalia Foundation. *Id.* at 787. She based her refusal chiefly on her rights under the First Amendment of the Federal Constitution and the State Constitution. *Id.* She argued that answering the questions would violate the principles of her religious belief because her testimony would tend to bring harm to others. *Id.* at 787-88.

245. *Id.* at 789.

246. *Id.*

247. *See id.*

248. *Id.* at 790.

249. *See, e.g.,* *People v. David L.*, 439 N.Y.S.2d 152, 154 (App. Div. 1981) (Hopkins & Weinstein, JJ., dissenting); *Barber v. Rubin*, 424 N.Y.S.2d 453 (App. Div. 1980); *People v. Iucci*, 401 N.Y.S.2d 823 (App. Div. 1978); *People v. Correa*, 392 N.Y.S.2d 707, 708 (App. Div. 1977) (Hopkins, J., dissenting), *rev'd*, 391 N.E.2d 1363 (N.Y. 1979) (the Court of Appeals adopting Judge Hopkins's dissenting memorandum); *People v. Ward*, 178 N.Y.S.2d 708 (Co. Ct. 1958).

250. 424 N.Y.S.2d at 454.

251. *Id.*

permitting a physician to extract hairs, including roots, from the petitioner's head, for use as specimens to determine whether the hairs found in the victim's hand had come from the petitioner."²⁵² The petitioner sought to prohibit the enforcement of the Supreme Court's order.²⁵³ The Appellate Division remitted the application for an evidentiary hearing "probing the necessity of the procedure for the removal of the hair, the degree of the invasion into the petitioner's body, the degree of harm to which the petitioner might be exposed, and the probative value of the evidence sought."²⁵⁴ The principal issue was whether a physician should be permitted to extract hairs, including roots, from the petitioner's head, for use as specimens to determine whether the hairs found in the victim's hand had come from the petitioner.²⁵⁵ The petitioner contended that the removal of the hair would violate his constitutional right against unreasonable searches and seizures.²⁵⁶ Writing for the majority, Hopkins determined that the physician should be allowed to extract the petitioner's hair.²⁵⁷

Hopkins determined that sufficient facts demonstrating necessity and probable cause had been established to allow such extraction.²⁵⁸ He reasoned that "[t]he petitioner [would] not be subjected to either an unnecessary exposure of harm or an impermissible invasion of his person."²⁵⁹ *Barber* was significant because it illustrated Hopkins's willingness to accept novel, creative, and fair investigative techniques.

Several of Hopkins's dissenting opinions also demonstrated the significance of his Fourth Amendment jurisprudence, as such opinions were later adopted by the New York Court of Appeals and remain good law. For example, in *People v. Correa*, Hopkins contended that probable cause existed for the police to search the defendant's bag.²⁶⁰ In *Correa*, an anonymous

252. *Id.* at 454-55.

253. *Id.* at 455.

254. *Id.*

255. *See id.* at 456.

256. *Id.* at 455.

257. *Id.* at 458.

258. *Id.* at 457.

259. *Id.* at 455.

260. 392 N.Y.S.2d 707, 708 (App. Div. 1979) (Hopkins, J., dissenting).

telephone caller had informed the police that a man wearing a red shirt and blue dungarees was carrying a green bag that contained a shotgun.²⁶¹ In addition, the anonymous caller had given the individual's location.²⁶² Hopkins reasoned that the "combination" of the defendant's attire and his location was "unique."²⁶³ Hopkins found the officer's minimal intrusion into the privacy of the defendant to be justified.²⁶⁴ Accordingly, the officer was entitled to open the defendant's bag because he asked for permission to have the bag and, more significantly, had felt a hard object in the bag that resembled a rifle.²⁶⁵ The Court of Appeals unanimously reversed the Appellate Division for the "reasons stated in the dissenting memorandum by Mr. Justice James D. Hopkins at the Appellate Division."²⁶⁶

Similarly, in *People v. David L.*, Hopkins dissented from his colleagues, who held that police officers could not open the door of a motor vehicle during the course of an investigation following a legal stop of a vehicle.²⁶⁷ Hopkins concluded that the mere opening of the door was not an unreasonable search.²⁶⁸ He advanced that the opening of the door of the vehicle would reduce the risk that the officer would be killed or injured from the use of a gun by the passenger.²⁶⁹ Hopkins reasoned that "the expectations of privacy of a passenger of an automobile fall considerably below the expectations of privacy of an occupant of a dwelling."²⁷⁰ He also explained that defendant's privacy interest was diminished by the fact that he

261. *Id.*

262. *Id.*

263. *Id.*

264. *See id.*

265. *Id.*

266. *People v. Correa*, 391 N.E.2d 1363, 1363 (N.Y. 1979).

267. 439 N.Y.S.2d 152, 154 (App. Div. 1981) (Hopkins & Weinstein, JJ., dissenting).

268. *Id.*

269. *Id.* Judge Hopkins advanced his position as set forth by the Supreme Court in *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977). The Supreme Court recognized the inherent dangers imposed upon a police officer when approaching a person seated inside an automobile. *Id.* The Supreme Court pointed out that the statistics of police homicides indicate that, "a significant percentage of murders of police officers occurs when the officers are making traffic stops." *Id.*

270. *David L.*, 439 N.Y.S.2d at 154.

was not the owner or operator of the vehicle.²⁷¹ Hopkins relied upon United States Supreme Court precedent²⁷² and the Court of Appeals later “reversed for reasons stated in the dissenting memorandum by former Justice James D. Hopkins.”²⁷³

Hopkins’s Fourth Amendment jurisprudence also focused heavily upon protecting the state’s fundamental interest of investigating, prosecuting, and preventing crime.²⁷⁴ For example, in *People v. Abruzzi*, Hopkins argued that the exclusionary rule should only exclude evidence of past crimes.²⁷⁵ Hopkins observed that the exclusionary rule should not close “the eyes and mouth of a police officer who sees a crime committed in his presence, even though he is there illegally.”²⁷⁶ Hopkins acknowledged the role of the court in balancing the defendant’s interest in a fair trial against the State’s interest in operating an effective and efficient law enforcement system to fight crime.²⁷⁷ He advanced that “[e]ven though the acts of the defendant were observed by the police investigator in the course of an illegal search, the acts constituted, in themselves, an independent crime concerning

271. *Id.* at 155.

272. *See id.* (citing *Rakas v. Illinois*, 439 U.S. 128 (1978)). In *Rakas*, Justice William H. Rehnquist, writing for the majority, narrowed the “legitimately on the property” argument for challenging the legality of a police search. *Rakas*, 439 U.S. at 147-48. Justice Rehnquist held that a defendant must show a “legitimate” expectation of privacy in the place searched in order to be eligible to challenge the search. *Id.*

273. *People v. David L.*, 436 N.E.2d 1324, 1324 (N.Y. 1982).

274. *See, e.g., David L.*, 439 N.Y.S.2d at 154 (Hopkins determined that police officers could open the door of a motor vehicle during the course of an investigation following a legal stop of a vehicle); *Barber v. Rubin*, 424 N.Y.S.2d 453 (App. Div. 1980) (Hopkins determined that a physician should be allowed to extract a suspect’s hair for forensic analysis); *People v. Correa*, 392 N.Y.S.2d 707, 708 (App. Div. 1979) (Hopkins, J., dissenting) (Hopkins contended that probable cause existed for the police to search the defendant’s bag based on an anonymous tip).

275. 385 N.Y.S.2d 94, 100 (App. Div. 1976) (Hopkins, J. dissenting). In *Abruzzi*, women patients had complained of a doctor’s sexual misconduct during gynecological examinations. *Id.* at 95-96. A police officer, without a warrant, used a seven-foot ladder to see through a curtained window of the doctor’s examination room. *Id.* at 96. The officer witnessed the doctor performing acts of sexual misconduct. *Id.* The majority held that the evidence was inadmissible on Fourth Amendment grounds. *Id.* at 98.

276. *Id.* at 100.

277. *See id.* at 99.

which the observations of the officer were legal evidence.”²⁷⁸ Although *Abruzzi* was affirmed on appeal, Hopkins dissenting opinion did get an endorsement from some members of the New York Court of Appeals, including Judge Jasen, who proclaimed, “I also agree with so much of the dissenting opinion by Mr. Justice James D. Hopkins at the Appellate Division as states that the doctrine of the taint of the poisonous tree should not be extended to include evidence of the personal observation by a police officer of a crime committed in his presence.”²⁷⁹

*People v. Iucci*²⁸⁰ also illustrated Hopkins’s willingness to address both the prosecution’s and the defendant’s interests. Hopkins concurred with the defendant’s argument and a lower court’s determination that a twenty-nine day delay in sealing eavesdropping tapes rendered the evidence of eavesdropping tapes inadmissible against the defendants at trial.²⁸¹ In addition to challenging the admissibility of the tapes, the defendants had moved to suppress evidence obtained under a subsequent search warrant.²⁸² Hopkins determined that the subsequent search warrant, based on information obtained

278. *Id.* at 98.

279. *People v. Abruzzi*, 364 N.E.2d 1342, 1342 (N.Y. 1977).

280. 401 N.Y.S.2d 823 (App. Div. 1978). The New York Supreme Court authorized a wiretap on Irving Moss’s telephone. *Id.* at 825. During the period of the eavesdropping warrant, police officers overheard a number of conversations between Geritano and Paul Moss. *Id.* Apparently, the conversations revealed that Geritano and Paul Moss had installed an illegal wiretap on Ann Basciano’s telephone. *Id.* A police detective and a telephone company agent subsequently established that an unauthorized wire had been attached to Basciano’s telephone and that the wire ran to Iucci’s apartment. *Id.* at 825-26. Based on the detective’s affidavit, the Supreme Court issued a warrant to search Iucci’s apartment. *Id.* at 826. When the search warrant was executed, the illegal tap, electronic equipment, and a rifle were discovered. *Id.* at 826. However, the police did not seal the Moss eavesdropping tapes until twenty-nine days after the expiration of the eavesdropping warrant. *Id.* Criminal Term held that the twenty-nine day delay in sealing the tapes violated the statutory requirement that they be sealed immediately upon the expiration of the warrant. *Id.* As a result, Criminal Term concluded that all communications and evidence derived from the Moss wiretap had to be suppressed. *Id.* “Moreover, Criminal Term held that as the search warrant was based partially on the suppressed communications, and other independent information sufficient to represent probable cause did not exist, the evidence seized under the search warrant must likewise be suppressed as fruits of the tainted source.” *Id.*

281. *Id.* at 828.

282. *Id.* at 825.

under the eavesdropping warrant, and the evidence derived from the warrant, were not contaminated by the failure to seal the tapes promptly.²⁸³ Hopkins relied on the fact that the defendant's illegal wiretap was in plain sight on the telephone company's property and could easily have been discovered without the information obtained under the eavesdropping warrant.²⁸⁴ Furthermore, Hopkins reasoned that the presence of the illegal wiretap, once discovered, was sufficient grounds to justify the issuance of the warrant for the defendant's apartment.²⁸⁵

VII. CPLR: Statutory Interpretation

One year after Hopkins's appointment to the Supreme Court Appellate Division for the Second Department, the Civil Practice Laws and Rules ("CPLR") became effective.²⁸⁶ The new practice rules codified significant case law developments and set forth new procedures to be interpreted and applied by the New York Judiciary.²⁸⁷ The task of recasting civil liability in the context of liberalized adjective law was placed primarily upon the statewide appellate divisions.²⁸⁸ Hopkins was one of

283. *Id.* Hopkins showed a strong respect for stare decisis in reaching his conclusion that the search warrant and the evidence derived from the search were not "fatally infected" by the police's failure to seal the tapes. *See id.* at 828-29.

284. *Id.* at 829.

285. *Id.* Evidently, Hopkins did not alter his approach, even from when he served on the Westchester County Court. For example, in *People v. Ward*, 178 N.Y.S.2d 708 (Co. Ct. 1958), Hopkins concluded that the results of the defendant's blood alcohol content should not have been admitted into evidence at his trial. *Id.* at 709. Hopkins reasoned that proper protocol had not been followed when the defendant's arm had been swabbed with alcohol as an antiseptic prior to the extraction of the blood. *See id.* at 708-09. Consequently, it was "possible" that the alcohol used as an antiseptic might have entered the blood withdrawn from the defendant's arm and contaminated the result of the blood test. *Id.* at 709. In this regard, *Iucci* and *Ward* signify that in the interest of fairness Hopkins was willing to exclude evidence pivotal to the prosecution of the accused when law enforcement failed to follow standard operating procedures.

286. *See* DAVID D. SIEGEL, NEW YORK PRACTICE 2 (5th ed. 2011) (The CPLR became effective on September 1, 1963).

287. *Id.* at 3.

288. *Id.* at 6-7.

the preeminent justices entrusted with this task.²⁸⁹ He confronted new statutory law involving questions of joint tortfeasors, contribution, impleader, indemnity, comparative negligence, statutes of limitations, long arm jurisdiction, pleading, res judicata, and other challenges.²⁹⁰ Hopkins developed the “continuing legal representation doctrine,”²⁹¹ decided the accrual date for the statute of limitations in contribution and indemnity actions,²⁹² and rendered significant res judicata decisions.²⁹³ These and other decisions by Hopkins will be featured in the following section.

A. *Statute of Limitations*

In *Cubito v. Kreisberg*,²⁹⁴ Hopkins decided the accrual date on a plaintiff’s claim for negligent design against an architect.²⁹⁵ The architect moved to dismiss the plaintiff’s action on statute of limitations grounds because more than four years had passed from the date when the defendant had delivered the certificate of final inspection to the owner of the building.²⁹⁶

Rejecting this defense, Hopkins held that the statute of limitation runs from the date of the injury, not from the date of delivery of the certificate of final inspection.²⁹⁷ Hopkins explained that although the accrual date was not established by legislative expression, it would be absurd to extinguish a claim for an injury before the accident ever occurred in the first place.²⁹⁸ Hopkins recognized the implications that his decision

289. See discussion *supra* Part VII.A-C; see also King, *supra* note 4.

290. See King, *supra* note 4.

291. See discussion *infra* Part VII.A.

292. See discussion *infra* Part VII.A.

293. See King, *supra* note 4.

294. 419 N.Y.S.2d 578 (App. Div. 1979). On October 6, 1977, the plaintiff brought an action to recover damages for personal injuries based on the defendant architect’s negligent design of the laundry room, causing water to collect on the floor, which plaintiff claims caused the fall and resulting injuries. *Id.* at 579.

295. *Id.* at 583.

296. *Id.* at 579.

297. *Id.*

298. See *id.* at 583.

would have on the interplay between the judiciary and the State legislature, and expressly deferred to the legislature upon whether arbitrary time limits in statutes of repose should be enacted thereafter.²⁹⁹ In the meantime, Hopkins reasoned that since the legislature had not defined the term “accrual” he was free to do so in the most reasonable manner.³⁰⁰ Thus, he adopted a date of injury accrual, which has been followed by courts in New York State.³⁰¹

In *Musco v. Conte*,³⁰² Hopkins was confronted with the issue of when a cause of action for indemnity accrued.³⁰³ The defendant served a third party complaint nearly five years after the action was started against him, and the third party defendant argued the three year statute of limitations ran from the plaintiff's injury.³⁰⁴ If this argument were accepted, a defendant who failed to quickly implead other possible tortfeasors would lose his or her indemnification action. Hopkins was charged with the task of clarifying this new area of the law, which had not been statutorily resolved. Hopkins explained:

An action for indemnity need not take the form of third-party relief; it may be brought as an independent action subsequent to the rendition of judgment against a tortfeasor. The general

299. *See id.*

300. *See id.* at 581.

301. *IFD Constr. Corp. v. Corddry Carpenter Dietz & Zack*, 685 N.Y.S.2d 670 (App. Div. 1999).

[I]n the context of a personal injury action against a design professional by a party who did not retain the design professional, the cause of action accrues on the date of injury, the date when, as the Court of Appeals has noted, the claim becomes enforceable, i.e., when all elements of the tort can be truthfully alleged in a complaint.

Id. at 672 (citing *Snyder v. Town Insulation, Inc.*, 615 N.E.2d 999 (N.Y. 1993)); *Cubito v. Kreisberg*, 419 N.Y.S.2d 578 (App. Div. 1979), *aff'd*, 415 N.E.2d 979 (N.Y. 1980)).

302. 254 N.Y.S.2d 589 (App. Div. 1964).

303. *Id.* at 592.

304. *See id.*

rule is established that the action accrues not at the time of the commission of the tort for which indemnity is sought, but at the time of the payment of the judgment; and its rule applies as well to third-party complaints.³⁰⁵

The “Hopkins Impleader Accrual Rule” is applicable for indemnification and contribution claims and the statutory time period for both claims is six years.³⁰⁶ *Musco* has been followed by courts throughout New York and remains good law.³⁰⁷

In *Siegel v. Kranis*, three members of a family were injured in an automobile accident.³⁰⁸ The attorney hired by the plaintiffs filed an untimely claim and was sued for malpractice.³⁰⁹ Defendant moved to dismiss the claim on the grounds that his failure to file the claim occurred more than six years prior to the malpractice claim.³¹⁰ Hopkins, in an issue of first impression, reasoned that the continuous treatment exception formulated by the New York Court of Appeals in *Borgia v. City of New York*³¹¹ appeared equally applicable in the context of litigation by attorneys.³¹² Hopkins stated:

305. *Id.* at 595 (citations omitted).

306. *See id.*

307. *See, e.g.,* Tokio Marine & Nichido Fire Ins. Co. v. Canter, No. 07 Civ. 5599(PKL), 2009 WL 2461048, at *6 (S.D.N.Y. Aug. 11, 2009) (quoting *Musco*, 254 N.Y.S.2d at 595) (“[A]n action for indemnity may be brought as an independent action subsequent to imposition of judgment against a tortfeasor since the cause of action ‘accrues not at the time of the commission of the tort for which indemnity is sought, but at the time of the payment of the judgment.’”); *Salonia v. Samsol Homes, Inc.*, 507 N.Y.S.2d 186, 189-90 (App. Div. 1986) (citing *Musco*, 254 N.Y.S.2d at 593) (“Of particular relevance, the Judicial Conference report noted at page 214 that CPLR 1401 was to be applied not only to ‘joint tortfeasors’ but also to ‘successive and independent tortfeasor[s].’”); *Mesta v. Fed. Realty Ltd. P’ship*, No. 16748/04, 2011 WL 2571037, at *8 (N.Y. Sup. Ct. June 10, 2011) (citing *Musco*, 254 N.Y.S.2d 589) (“The entry of a default judgment in a third-party action is not required prior to the determination of liability in the main action and before the cause of action for indemnity has accrued.”).

308. 288 N.Y.S.2d 831, 833 (App. Div. 1968).

309. *Id.*

310. *See id.*

311. 187 N.E.2d 777 (N.Y. 1962).

312. *See Siegel*, 288 N.Y.S.2d at 834.

[A] contrary rule . . . might well lead to procrastination by the attorney to postpone the inevitable event of defeat. The author of the disaster should not be enabled to chart the strategy to avoid the liability for his own negligence. Otherwise, negligence could be disguised by the device of delay, and an attorney rewarded by immunity from the consequence of his negligence.³¹³

Hopkins's "*Siegel* Continuing Representation" theory has been followed by courts throughout New York and remains good law.³¹⁴

313. *Id.* at 835.

314. *See, e.g.,* DeStaso v. Condon Resnick, LLP, 936 N.Y.S.2d 51, 54 (App. Div. 2011) ("Causes of action alleging legal malpractice which would otherwise be time-barred are timely if the doctrine of continuous representation applies. In the legal malpractice context, the continuous representation doctrine tolls the statute of limitations where there is a mutual understanding of the need for further representation on the specific subject matter underlying the malpractice claim.") (citations omitted); Riley v. Segan, Nemerov, & Singer, P.C., No. 303097/08, 2009 WL 5299224, at *3 (N.Y. Sup. Ct. Dec. 14, 2009) ("[T]he rule recognizes that a person seeking professional assistance has a right to repose confidence in the professional's ability and good faith, and realistically cannot be expected to question and assess the techniques employed or the manner in which the services are rendered. Neither is a person expected to jeopardize his pending case or his relationship with the attorney handling that case during the period that the attorney continues to represent the person. Since it is impossible to envision a situation where commencing a malpractice suit would not affect the professional relationship, the rule of continuous representation tolls the running of the Statute of Limitations on the malpractice claim until the ongoing representation is completed.") (citations omitted). *See generally* Jay C. Carlisle II, *Recent Statute of Limitations Developments in the New York Court of Appeals*, 30 PACE L. REV. 1158, 1169-73 (2010).

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B. *In Rem Jurisdiction*

In *Carr v. Carr*,³¹⁵ Hopkins reinstated a claim seeking a declaratory judgment that recognized the plaintiff's past marital relation with the defendant's husband.³¹⁶ In the lower court, the defendant successfully moved to dismiss the complaint on the grounds that, although New York courts had discretion to exercise subject matter jurisdiction, it lacked both personal and in rem jurisdiction over the defendant.³¹⁷ Hopkins observed that the subject matter, regarding interrelated matrimonial actions, was inherently within the court's powers to adjudicate.³¹⁸ He further stated that New York was a proper venue for the plaintiff's action, as the plaintiff had established that sufficient contacts existed between the parties and New York State.³¹⁹ In reaching his decision, Hopkins explained that New York maintained a continuing interest in the determination of domiciliary rights that involved a controversy over survivor benefits with outsiders.³²⁰ Although the Court of Appeals later reversed Hopkins's findings, both Chief Judge Charles D. Breitel and Judge Sol Wachtler of the New York Court of Appeals chose to side with the rationale advanced by Hopkins.³²¹

315. 400 N.Y.S.2d 105, 107 (App. Div. 1977). "The action is brought for a declaratory judgment adjudging that the plaintiff is the lawful surviving spouse of Paul Bennett Carr, deceased, and that a divorce from the plaintiff allegedly obtained in Honduras by Carr during his lifetime is invalid. The defendant, Carr's wife by a marriage subsequent to the divorce, moved to dismiss the complaint for lack of jurisdiction, both of the person and of subject matter." *Id.* at 106.

316. *See id.* at 106-07.

317. *See id.* at 107.

318. *See id.* at 107-08.

319. *See id.* at 108-09.

320. *Id.* at 109.

321. *Carr v. Carr*, 385 N.E.2d 1234, 1237 (N.Y. 1978) (Breitel, C.J., & Wachtler, J., dissenting) ("We dissent and vote to affirm on the opinion of Mr. Justice James D. Hopkins at the Appellate Division in which the concededly difficult problem in this case is elaborated with a keen sense for the legal and policy reasons for the result. We indorse the analysis and it would be supererogation to substitute an elaboration for that of Mr. Justice Hopkins.").

C. *Public Policy*

*Ellish v. Airport Parking Co.*³²² is illustrative of Hopkins's ability to address the evolution of law and related public policy matters. In *Ellish*, an action for damages had been brought against an airport company operating at Kennedy Airport, alleging that the company was liable for the loss of the plaintiff's car, which disappeared while parked in an enclosed parking lot.³²³ Affirming the dismissal of the plaintiff's action, Hopkins decided that the parking of the car within the enclosed lot could not have constituted a bailment given the manner in which the defendant's parking lot functioned—alleviating their duty to preserve, protect, and oversee the vehicles stationed therein.³²⁴ Hopkins appreciated the sensitive circumstances

322. 345 N.Y.S.2d 650 (App. Div. 1973); *see also In re Glenford S.*, 435 N.Y.S.2d 292 (App. Div. 1981). In *Glenford S.*, the Appellate Division held that the pertinent statutory provisions require that Grand Jury minutes should be included within the "pleadings and proceedings" within the Family Court. *Id.* at 294. Reading subdivision 8 of section 725.05 of the Criminal Procedure Law ("CPL") and subdivision 3 of section 731 of the Family Court Act together, the court concluded that the clear legislative expressions manifest the intent that the Grand Jury minutes in a case transferred to the Family Court shall form part of the petition in a delinquent offender proceeding. *Id.* at 295, *rev'd on other grounds sub nom.*, *Larry W. v. Corp. Counsel of N.Y.C.*, 433 N.E.2d 517 (N.Y. 1982).

323. *See Ellish*, 345 N.Y.S.2d at 651.

324. *Id.* at 653-55. The most relevant and applicable factors that Hopkins used in arriving at his decision were written as follows:

The service provided by the defendant was impersonal. The plaintiff was aware that the defendant had no employees either to deliver the ticket for the automobile or to park the automobile. She accepted the ticket from an automatic dispensing device and she parked the car herself, choosing her own space, not at the direction of the defendant.

. . . The plaintiff retained as much control as possible over the automobile. . . .

. . .

. . . [S]he read the other warnings which it contained to the effect that the lot was not attended and that the parking of her car was at her own risk. Thus, any expectation that the defendant would take special precautions to protect her car while she was away could not reasonably have been in her mind.

. . . The actual operation of an airport parking lot must have been apparent to her. . . . The plaintiff . . . should have

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presented by the plaintiff's case, but stressed that changing times warranted changes in the law.³²⁵ On behalf of the court, Hopkins held:

We are of the opinion that liability should not be determined by ancient labels and characteristics not connected with present-day practices. It is one thing for the owner of a livery stable to have to explain the disappearance of a horse . . . to the owner, but it is not at all the same for the operator of a parking lot at a busy airport to have to explain the disappearance from the lot of one of the thousands of cars parked there daily.³²⁶

Another example of Hopkins's public policy expertise is shown in *New York v. Local 1115 Joint Board, Nursing Home & Hospital Employees' Division*, where a labor dispute had led to a possible strike by nursing home employees.³²⁷ Hopkins had to decide whether or not the lower court had the authority to grant a preliminary injunction to stop the nursing home employees from going on strike.³²⁸ The lower court had granted a preliminary injunction against the nursing home's labor union prohibiting a strike.³²⁹

realized the gigantic task which an individual check-out of each automobile would require—a task which she was aware the defendant did not undertake, since the ticket which she received did not identify her automobile.

Id. at 653-54.

325. *See id.* at 655. Hopkins focused on the fact that the “use of air transportation is a major interest in our social and economic life, [and that] it is important that a fair rule, easy to apply, should govern.” *Id.* at 653.

326. *Id.* at 655.

327. 392 N.Y.S.2d 884 (App. Div. 1977).

328. *See id.* at 855.

329. *Id.*

While recognizing federal preemption in the field of labor law,³³⁰ Hopkins found that both state and federal courts have jurisdiction over actions arising out of the breach of labor contracts.³³¹ In the interest of public policy, Hopkins argued that the state legislature should be able to protect and promote the public health,³³² have the authority to discontinue any activity that endangers public wellbeing,³³³ and be allowed to regulate nursing home facilities.³³⁴ Hopkins was compelled by the fact that the patients were unable to care for themselves, the lack of suitable alternative facilities, the imminence of the

330. *Id.* at 887; *see also* San Diego Bldg. Trades Council, Millmen's Union, Local 2020 v. Garmon, 359 U.S. 236, 246 (1959) (holding that California's state court had no jurisdiction to enter an award for damages based on the tortiousness of picketing under California law because of the preemption by the federal National Labor Relations Act); Lodge 76, Int'l Ass'n of Machinists & Aerospace Workers v. Wis. Emp't Relations Comm'n, 427 U.S. 132 (1976). In *Lodge 76*, an employer filed an unfair labor practice complaint with the Wisconsin Employment Relations Commission, which entered a cease and desist order against a union refusing to work overtime during renegotiation of a collective bargaining agreement. *Id.* at 135. The United States Supreme Court held that the refusal to work overtime should be preempted by the federal labor laws, and should not be frustrated by the state. *Id.* at 155; *see also* Manfredonia v. Am. Airlines, Inc., 416 N.Y.S.2d 286 (App Div. 1979). Passengers, husband and wife, sued airline for damages for injury sustained when wife was assaulted by an intoxicated airline passenger. *Id.* at 286-87. Hopkins held that the New York Dram Shop Act was inapplicable because federal law preempts it. *Id.* at 290.

331. *See Local 1115 Joint Bd.*, 392 N.Y.S.2d at 888-89.

332. *See id.* at 889.

The State Constitution (art. XVII, s. 3) provides that "[t]he protection and promotion of the health of the inhabitants of the state are matters of public concern and provision therefor shall be made by the state and by such of its subdivisions and in such manner, and by such means as the legislature shall from time to time determine."

Id. (quoting the N.Y. CONST. art. XVII, § 3).

333. *See id.* at 889 (quoting N.Y. PUB. HEALTH LAW § 12(5) (McKinney 2012)) ("Specifically, it is the duty of the Attorney-General, on request of the State Commissioner, 'to bring an action for an injunction against any person who violates, disobeys or disregards . . . any lawful notice, order or regulation.'").

334. *See id.* ("In short, the State Commissioner was empowered by legislative enactment to supervise and regulate fully and comprehensively the operation and management of nursing homes, to the end that the health of the patients might be completely promoted and protected.").

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strike, and the failure of defendants to seek alternative methods for resolving the dispute before commencing the strike.³³⁵ This led to his conclusion that there existed a danger to public health, and therefore, he directed that the injunction to stop the strike was proper.³³⁶

VIII. Gender Bias

During Hopkins judicial service, “the courts [were] viewed by a substantial group of [the] citizenry as a male-dominated institution disposed to discriminate against persons who [were] not part of its traditional constituency.”³³⁷ Women endured a workplace environment plagued with condescension, indifference, and hostility from their male peers.³³⁸ Such problems were perpetuated by ignorant male attorneys and judges, who often carried a belief that mere complaints by women were “contrivances of overwrought imaginations and hypersensitivities.”³³⁹

335. *See id.* at 890.

336. *Id.* (“In summary, we believe that the Attorney-General, acting under proper instruction from the State Commissioner, may, in a case which it is demonstrated that the state interests in promoting and protecting the health of its inhabitants are seriously threatened by a strike, seek an injunction and that, on such a showing, the Supreme Court may grant an injunction against the strike.”).

337. TASK FORCE ON WOMEN IN THE COURTS, OFFICE OF COURT ADMIN., N.Y. UNIFIED COURT SYS., SUMMARY REPORT 3 (1986), *available at* <http://www.courts.state.ny.us/ip/womeninthecourts/ny-task-force-on-women-in-the-courts-summary.pdf>. Women began to enter the legal profession in greater numbers from the 1960s into the 1980s, and increasingly represented all facets of the New York's legal system, government, private practice, the judiciary, and professional organizations. *See id.* at 2-3 at 29. Although there was some recognition of women rights at this time, and social improvements, males continued to dominate in employment and professional relations over women, who were mostly limited to the domestication of the family life. *See id.*

338. *See id.* at 29-30. Despite the enactment of the Equitable Distribution Law, sexual discrimination was rampant and implementation of change proved difficult. *See id.* at 17-19.

339. *Id.* at 3. At the time, Chief Judge of the New York Court of Appeals, Lawrence H. Cooke, defined “gender bias” as “embracing ‘decisions . . . made or actions taken because of weight given to preconceived notions of sexual roles rather than upon a fair and unswayed appraisal of merit as to each person or situation.’” *Id.* at 1-2.

Devoted to a career of equality and fairness, Hopkins remained respectful and professional, regardless of gender. He devotedly worked to overcome gender stereotypes both within and outside the court. Hopkins always ensured litigants, attorneys, and his staff that only the facts and law would be influential forces within his courtroom.³⁴⁰ Frances Schoenbach, a former law assistant of Hopkins, praised him for his devotion to fairness and noted that many women who entered the legal profession during that time appreciated Hopkins's presence and the impact he made on "women attorneys accustomed at best to tolerant condescension."³⁴¹

A. *Maternity Leave*

Hopkins's jurisprudence on "gender fairness" was best illustrated in cases involving employment policies regulating maternity leave. For example, in *Board of Education of Union Free School District No. 2, Nassau County v. New York State Division of Human Rights*,³⁴² Hopkins voided a school district's policy of unpaid maternity leave and requirement that women leave no later than five months prior to the anticipated birth of

340. For example, Frances Schoenbach, a law assistant during Hopkins's service, stated

Women law assistants had particular cause for grateful surprise for [Judge Hopkins] always treated us as competent attorneys. When, at times, application of a familiar rule of law apparently led to an unjust result, thereby evoking from the law assistant a rebellious "It's unfair," he did not terminate discussion with the comment that the law assistant's feelings did her credit. To the contrary, he quietly responded "That's not a legal argument."

A Tribute to Justice James D. Hopkins, *supra* note 2, at 460

341. *Id.*

342. 345 N.Y.S.2d 93 (App. Div. 1973). Two separate proceedings were brought on appeal from an order of the Human Rights Appeal Board. *Id.* at 95. The policy of the school required unpaid maternity leave and the requirement of a leave not later than five months prior to the anticipated birth of the child, despite the physical condition of the woman to continue working. *See id.* at 96. Hopkins affirmed the orders claiming the policy was discriminatory against pregnant teachers. *Id.* at 98. Additionally, he required the schools to alter their policy. *Id.* at 99.

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the child.

Specifically, Hopkins rejected the arbitrary leave requirement imposed upon women at the end of the fourth month of pregnancy, noting that such requirements did not achieve any feasible goals in the interest of the school or public.³⁴³ He stated that “[t]he biological phenomenon of conception and pregnancy is not limited to any particular period in the school year.”³⁴⁴ Hopkins found that the policy directly singled out pregnant women by requiring special treatment in determining the teacher’s leave.³⁴⁵ In comparison to other medical conditions, a leave of absence was not required until medically necessary.³⁴⁶ As a result, he concluded that the policy should be voided, as “the female teacher [was] placed under a restriction dependent on sex alone by the terms of the [school’s] policy.”³⁴⁷

In *Union Free School District No. 6, Nassau County v. New York State Division of Human Rights*,³⁴⁸ Hopkins also rejected restrictive rules on maternity leave. Hopkins found that certain provisions³⁴⁹ contained within the employment contracts between a New York school district and the Teachers’

343. *See id.* at 98.

344. *Id.* Hopkins aimed to eliminate this gender discrimination by ruling that, upon the desire to continue working, a pregnant teacher could submit at the fourth month of pregnancy a physician’s certificate declaring capability of continuing work. *Id.* at 99.

345. *Id.* at 98.

346. *Id.*

347. *Id.* This case was considered under the statutory standard of the Human Rights Law, which served not only as a function of equal protection, but also provided a “more direct and positive focus.” *Id.* at 99. The Human Rights Law was narrower and concerned the protection of individuals from disparate treatment in regard to abilities, capacities, and qualifications. *Id.*

348. 349 N.Y.S.2d 757 (App. Div. 1973). This proceeding reviewed an order of the State Human Rights Appeal Board, which affirmed the order of Division of Human Rights, which found sex discrimination was practiced against teachers who requested maternity leave from the petitioner school district. *Id.* at 760. The complaints against the Superintendent of the schools were dismissed. *Id.* The provisions of the contract between a teachers’ association and the school district, insofar as terms of the maternity leaves, were deemed unreasonable and discriminatory. *See id.*

349. *Id.* at 759. The terms of the contract required the women to discontinue working upon the third month of pregnancy, to accept their leave without pay, and to remain unemployed by the school district until the September following the birth of the child. *Id.*

Association was discriminatory because “they treated pregnancy as a condition less liberally than all other physical conditions to which human beings are subject.”³⁵⁰

B. *Marital Disputes*

Hopkins wrote a number of leading opinions dealing with marital disputes that were also illustrative of his sensitivity towards gender fairness.³⁵¹ For example, in *Phillips v. Phillips*, Hopkins stated that:

A marriage, composed as it is of the delicate interrelationship of attitudes and temperaments, expressing the emotional and physical characteristics of two people changing over the years, must be placed in the balance by an objective and careful appraisal of the judge with the effect of the conduct of the parties upon that interrelationship and the increased burden which the law itself imposes on the parties . . .

.³⁵²

350. *Id.* at 760.

351. *See, e.g.*, *Phillips v. Phillips*, 419 N.Y.S.2d 573 (App. Div. 1979). The rationale used by Hopkins in deciding divorce actions was continually relied upon in cases that arose after his retirement from the bench. *See, e.g.*, *S.K. v. I.K.*, No. 203247-2008, 2010 WL 1371943, at *9 (N.Y. Sup. Ct. Mar. 29, 2010) (citing *Phillips*, 419 N.Y.S.2d 573) (“It has been held that the failure to prove that the abandonment lasted at least one year is a jurisdictional defect requiring the dismissal of said cause of action.”); *C.W. v. G.W.*, No. 01112/05, 2006 WL 6448614, at *4 (N.Y. Sup. Ct. May 8, 2006) (citing *Phillips*, 419 N.Y.S.2d 573) (stating that “the abandonment must have ‘continued for at least one year.’”); *McNeal v. McNeal*, No. W2009-00160-COA-R3-CV, 2009 WL 3270217, at *4 (Tenn. Ct. App. Oct. 13, 2009) (citing *Phillips*, 419 N.Y.S.2d 573) (reaffirming that “[w]here funds are on deposit in a joint account with right of survivorship, . . . during the lifetime of the joint tenants a rebuttable presumption arises that the parties own the money on deposit equally.”).

352. *Phillips*, 419 N.Y.S.2d at 576. In *Phillips*, the wife had left the marital home and commenced an action for divorce on the ground of cruel and inhuman treatment. *Id.* at 575. She contended that she was a half owner of a joint bank account. *Id.* In response, defendant husband denied the allegations of cruelty and claimed that the plaintiff had abandoned him without justification. *Id.* On the eve of the trial, the defendant moved to amend his answer to allege a counterclaim for divorce on the ground of

Hopkins's intuitive approach in marital disputes was illustrated in his handling of abandonment claims,³⁵³ where he set forth the requirement that the moving party must show evidence of "hardening of resolve."³⁵⁴ Hopkins's decision in *John W. S. v. Jeanne F. S.*³⁵⁵ was also influential to the progression of matrimonial law, requiring that alimony be denied when evidence of equal misconduct is shown by both spouses.³⁵⁶

abandonment by the plaintiff for more than one year. *See id.* Speaking through Hopkins, the Appellate Division reversed the decision of the trial court granting the defendant a divorce on the ground of abandonment, requiring proof of a "hardening of resolve" by one spouse not to live with the other. *Id.* at 577.

353. Hopkins established that

To grant a divorce on the ground of abandonment requires that one spouse not fulfill the basic obligations of the marriage relationship for a period of one year or more and that said conduct be unjustified and without the consent of the abandoned spouse. . . . [As a result,] a "hardening of resolve" by one spouse not to live with the other [has occurred].

Hage v. Hage, 492 N.Y.S.2d 172, 175 (App. Div. 1985) (citing *Phillips*, 419 N.Y.S.2d at 577). *Phillips* held that it was improper for the trial court to grant a divorce on the ground of abandonment since the evidence showed that the plaintiff's departure was due to what she mistakenly believed to be the misconduct of the defendant and did not show a hardening of resolve and an irrevocable decision by the plaintiff not to live with the defendant. *See Phillips*, 419 N.Y.S.2d at 577.

354. *See Hage*, 492 N.Y.S.2d at 175 (citing *Phillips*, 419 N.Y.S.2d at 577) ("The evidence must show a 'hardening of resolve' by one spouse not to live with the other."); *Wallin v. Wallin*, 650 N.Y.S.2d 326 (App. Div. 1996) (quoting *Hage*, 492 N.Y.S.2d at 175).

355. 367 N.Y.S.2d 814 (App. Div. 1975).

356. *See id.* at 818-19. Subsequent cases relied on Hopkins's reasoning in *John W. S. See, e.g., Silver v. Silver*, 392 N.Y.S.2d 1017, 1017 (App. Div. 1997) (citing *John W. S.*, 367 N.Y.S.2d at 818-19) ("While the plaintiff may also be entitled to a divorce based upon the defendant's adulterous activity, the fact remains that she must be denied temporary alimony because of her own undisputed misconduct."); *Belandres v. Belandres*, 395 N.Y.S.2d 458, 460 (App. Div. 1977) (quoting *Farnella v. Farnella*, 386 N.Y.S.2d 161 (App. Div. 1976)) (citing *John W. S.*, 367 N.Y.S.2d at 814) ("It is well settled that a wife who is guilty of conduct constituting grounds for divorce is not entitled to alimony . . . even in dual divorce cases"); *Fomenko v. Fomenko*, 374 N.Y.S.2d 882, 884 (App. Div. 1975) (quoting *Math v. Math*, 331 N.Y.S.2d 964, 965 (App. Div. 1972), *aff'd*, 289 N.E.2d 549 (N.Y. 1972)) (citing *John W. S.*, 367 N.Y.S.2d at 814) ("The court properly construed section 236 of the Domestic

Related to these significant contributions, Hopkins authored other instructional decisions in the realm of martial law dealing with the division of marital property. For example, in *Angelo v. Angelo*, Hopkins ruled that the apportionment of an income tax refund from a joint return should not be subject to a test based on gift or property law, but rather by a more relaxed circumstantial examination of the financial arrangement of the household.³⁵⁷ He stated that courts should not be “fettered in achieving an equitable apportionment of assets on the dissolution of a marriage by the iron clasp of a mechanical formula.”³⁵⁸ Hopkins explained that the financial conditions between a husband and wife are “intensely personal,” as what may suit one household might not work for another.³⁵⁹ Notably, the approach implemented by Hopkins in *Angelo v. Angelo* was influential in the resolution of such marital disputes by the courts throughout the nation.³⁶⁰

Relations Law as requiring denial of alimony to plaintiff, since her conduct was found, upon sufficient evidence, to ‘constitute grounds for separation or divorce.’”).

357. 428 N.Y.S.2d 14, 18 (App. Div. 1980).

358. *Id.* at 17.

359. *Id.*

360. *See, e.g.,* Nill v. Nill, 584 N.E.2d 602, 605-06 (Ind. Ct. App. 1992) (“The precise issue concerning the allocation of a tax refund from a jointly filed income tax return has not yet been addressed in Indiana. To our knowledge, the only case in which this specific issue was decided is *Angelo v. Angelo*. . . . Rather than relying on the rigid application of a mechanical formula to determine the allocation of an income tax refund, the court in *Angelo* reviewed the circumstances of the general financial background of the marriage. . . . We find this analysis persuasive, and applicable to this case.”) (citations omitted); Schwartz v. Schwartz, 561 S.E.2d 96, 100-01 (Ga. 2002) (Benham, Hunstein, & Hines, JJ., dissenting):

I agree with the *Angelo* court that: [t]he financial arrangements between husband and wife are intensely personal; what suits one household would throw another in disarray. Sometimes the spouses join in discharging the financial responsibilities of the family; sometimes one spouse defers to the other in managing their affairs. Sometimes they agree to keep their individual earnings and property separately; sometimes they agree to merge them. Sometimes their agreement is formal; in most instances it is not. All of these circumstances must be weighed by the court when the marriage is no longer sustainable and the distribution of the family assets is the issue. The filing of a joint income tax return must therefore be viewed in the

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IX. Conclusion

Dean James D. Hopkins's many contributions to Pace University, the Law School, and the legal profession are accurately summarized by former New York Appellate Division Presiding Justice Milton Mollen, who stated:

Experience teaches us that every once in a while in the course of the history of a given field of endeavor, a person comes along who is truly a giant of his era. Such a person not only exerts a powerful influence upon his own times but leaves a permanent heritage for those who come afterwards. In the field of jurisprudence, in the history of the law and he search for true justice, it can be said with absolute assurance that Justice James D. Hopkins is such a man.³⁶¹

Hopkins was simply not inclined to stand by idly and passively, waiting for justice. "Fairness" and "Justice" were essential concepts in Hopkins's approach in adjudicating the cases that arose before him.³⁶² He recognized that the fundamental aspect of justice occurs when judges operate fairly without the influence of external forces:

He believe[d] in a divinity that brings order to the universe. He believe[d] in the freedom and protection of the person as more recently defined by the words "human rights." He believe[d] that among the human rights is the right to own and possess property. He believe[d] that it is the duty of government to protect the person and the property with its full authority and power.³⁶³

circumstances of the general financial background of the marriage.

Id. at 101. (quoting *Angelo*, 428 N.Y.S.2d at 17).

361. *A Tribute to Justice James D. Hopkins*, *supra* note 2, at 437.

362. *See id.* at 444.

363. *Id.* at 443.

Hopkins's judicial works when dealing with criminal law and procedure were influential on the development of these areas of the law. In this regard, it is proper to reemphasize that the adoptions of Hopkins's opinions by the highest court of New York "were more numerous and more consistent than . . . any other lower court judge."³⁶⁴ As Court of Appeals Associate Judge, and former St. John's Law School Dean, Judge Joseph W. Bellacosa observed that losing counsel must have taken some comfort from the fact that Hopkins dissented at the appellate division, because "[t]he expectation level for ultimate vindication must have run very high."³⁶⁵ Further evidence of the Court of Appeals deference to Judge Hopkins is found in a statistical analysis of the cases he adjudicated. While Hopkins authored forty-one majority opinions between December 12, 1978, and December 18, 1981, only one noteworthy decision was reversed³⁶⁶ and one judgment modified.³⁶⁷

Upon his unfortunate passing on January 5, 1996, it was clear that the citizens of Westchester, the New York State Judiciary, and his students and colleagues at Pace University School of Law were blessed to be amidst greatness.³⁶⁸ No words

364. Bellacosa, *supra* note 36, at 463.

365. *Id.* at 476.

366. *See Carr v. Carr*, 400 N.Y.S.2d 105 (App. Div. 1977), *rev'd*, 385 N.E.2d 1234 (N.Y. 1978).

367. *Auerbach v Bennett*, 408 N.Y.S.2d 83 (App. Div. 1978), *modified*, 393 N.E. 994 (N.Y. 1979). In an opinion by Hopkins, the appellate division held that the business judgment doctrine should not be interpreted to stifle a stockholder's legitimate scrutiny of management decisions that required investigation by outside directors and which presented apparent situations of conflict of interest. *Id.* at 107. Further, the court held that the special committee's report should not be immune from scrutiny by an interpretation of the business judgment doctrine that compelled the acceptance of the findings of the report. *Id.* The court determined that the plaintiff's complaint should not be summarily dismissed on the ground that a committee of allegedly disinterested directors had decided that the corporate interests would not be promoted by a derivative action. *See id.* at 108. The court reasoned that the plaintiff had not yet been afforded the opportunity of pretrial discovery and examination before trial. *See id.* at 107-8. However, the court did caution that summary judgment might be the appropriate vehicle to terminate the action, after the usual discovery and deposition stages of the action were completed, when the record showed that the disinterest of the directors was not refuted, the underlying facts were thoroughly investigated and cogent reasons existed in support of the committee's decision. *Id.* at 108.

368. *Obituary, James Hopkins, 84, Appeals Court Judge*, N.Y. TIMES, Jan, 7, 1996, available at

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could express the breadth of Hopkins's legacy or the impact he had on those around him. To those that he served, knew, and touched—he will forever be remembered. For eighty-four years, the people of New York were blessed by Hopkins's presence. The Pace Law School, former students, alumni, faculty, deans, and staff remember Dean Hopkins with fondness, respect, and affection. The legacy of James D. Hopkins, the Justice, the Dean, will endure forever.

Hopkins was an accomplished attorney, judge, and human being. We will remember Hopkins for his many scholarly accomplishments and open-handedness to the legal community. We will remember Hopkins as a leader in all aspects of life, a man of commitment, passion, and unfettered integrity. We will remember Hopkins as a man of moral excellence, who stood in a class by himself.

Dean James D. Hopkins, we salute you and we will continue to miss your wisdom and leadership.

<http://www.nytimes.com/1996/01/07/nyregion/james-hopkins-84-appeals-court-judge.html>. While the legal profession was saddened by his passing on January 5, 1996, we are still exalted by the legacy the judicial, moral, and personable memories for which he left behind. At the time of his passing, Judge Hopkins was survived by his wife of fifty-eight years, Bertha Bower Hopkins; his son, David, of Mohegan Lake, N.Y.; his daughter, Cynthia Smith of Toms River, N.J.; his sister, Marguerite Lewis of Armonk, and two grandchildren. *Id.*