

Supplementing the Record: The Life and Career of Judge Edmund L. Palmieri

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Introduction

For approximately ninety years, lower federal court judges have hired law clerks to process the work of the courts. While the law clerks typically go onto successful careers as attorneys, law professors, government officials, and judges, it is rare that the former apprentices become so famous that their mentors are lost in their oversized shadows. This is the case, however, for former federal district court judge Edmund L. Palmieri. A highly respected jurist who sat in the Southern District of New York for over three decades, Palmieri has seemingly become the answer to the following trivial pursuit question: “What federal judge hired a young Ruth Bader Ginsburg as his law clerk?”

While Palmieri should be lauded for offering Ginsburg a position in his chambers, and credited for launching Ginsburg’s groundbreaking career, it is unfair to reduce him to an historical footnote in the story of the “Notorious RBG.” First of all, Ginsburg was neither the

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first nor the last female law clerk Palmieri hired; during a time when women struggled to find equality of opportunity in the legal profession, almost one-third of the Judge's law clerks were women. And the first three female law clerks hired by Palmieri were Jewish. These progressive hiring practices alone warrant a closer look at the Judge.

Additionally, Palmieri provides a model of what a modern clerkship should be – an invaluable educational opportunity in which a judge serves as role model, teacher, and mentor to newly-minted lawyers. Finally, Palmieri was a loving family man and dedicated public servant who applied his keen intellect to skillfully handle a wide variety of unique cases and novel legal issues which passed through his courtroom. A cultured man who spoke three languages, Palmieri was equally comfortable walking the streets of Brooklyn as he was the sidewalks of the Champs-Élysées. For these reasons, this essay will endeavor to extract Judge Edmund L. Palmieri from the long shadow of his favorite law clerk and return him to his proper place in the history of the federal judiciary.

A Brief Biographical Sketch of Edmund L. Palmieri

Palmieri's family history could be described as a quintessential story of the American dream. His parents, John and Assunta, were born in Italy and emigrated to America as very young children.² The Palmieri family was proud of the fact that John was the nephew of Luigi Palmieri, a prominent Italian physicist and astronomer. John earned a law degree from New York University before embarking on a diverse career as a lawyer, judge, politician, real estate broker, and author.³ Early in his career, John represented Italian immigrants entering the United States

² *John Palmieri, 64, A Former Justice*, N.Y. TIMES, Nov. 6, 1937, at 17.

³ *Id.*

and was also a criminal defense lawyer⁴ who was pleased to note that no client was ever sentenced to death. Assunta Palmieri had worked as a seamstress and went to court to see a young Italian lawyer named John Palmieri, who she heard was making a name for himself in the New York legal community.

It was a civil case, however, that made the news early in John's career. In May of 1903, the *New York Sun* reported that a fight had broken out in John's office, located on the sixth floor of the elegant Pulitzer Building. Geraldo Damato, a local barkeep, and his attorney came to John's legal office to settle a real estate dispute. Apparently the amount of controversy had not been agreed upon, and negotiations took a violent turn. Alarmed by the shouts coming from the office, a neighbor summoned a local police officer. "When he reached the room the furniture looked as if it had been struck by a cyclone," the *Sun* reported. While John claimed assault and Damato alleged that John brandished a pistol, there is no record that the case ever went to trial.⁵



John and Assunta Palmieri. Photograph courtesy of the Palmieri family.

⁴ During the course of writing this article, the authors had extensive written correspondence with Marie-Claude Palmieri Wrenn. We will simply refer to these letters and emails as "Palmieri-Wrenn correspondence."

⁵ *Fight in Lawyer's Office: Palmieri's Visitor Arrested for Assault and Discharged*, THE SUN N.Y., May 6, 1903.

The unexpected death of City Court Justice John M. Fitzsimmons in 1904 led New York Republican Governor Benjamin Odell to nominate John to finish out the deceased jurist's term.⁶ The nomination thrilled the New York Italian community. "Italian-Americans gave Mr. Palmieri many testimonial dinners in celebration of his appointment as a justice, since it was reported that he was the first Italian-born American to serve on the bench."⁷ Others expressed their joy through letters. "How the Italians are forging to the front!" wrote Augustus F. Sherman, an Ellis Island immigration official. "Soon you will be driving the Irish back to the Emerald Isle and usurping their places as our political bosses. Another instance of the survival of the unfittest [sic]!"⁸ Sherman's happiness at his friend's success shines through the clumsy effort at humor. John remained involved in local and state politics, including running in 1912 as the Bull Moose Party's candidate for state attorney general.⁹ To his disappointment, he lost the election.

John and Assunta Palmieri were married on June 12, 1901, and they had five children in quick succession: Edgar (1904), Edna (1906), Edmund (1907), Assunta (1909), and Adria (1911). Both Edgar and Edmund followed their father into the law. They also shared their father's interest in politics, although they held different political allegiances – a fact that greatly amused the press.¹⁰ One local newspaper columnist, in pointing out that the brothers were working on opposing political campaigns one year, noted, "Judge Palmieri, it seems has two sons named Ed. One is Edgar the Democrat, who pulls down levers under the Star. The other is Edmund, who votes the Republican Eagle. Isn't that a plot for a political movie?"¹¹

⁶ *Palmieri for City Bench*, N.Y. TIMES, JULY 19, 1904.

⁷ *Supra* note 2.

⁸ Letter from John Sherman to John Palmieri (July 19, 1904).

⁹ E.T. O'Loughlin, *Straus and Palmieri in Bull Moose Days*, BROOKLYN DAILY EAGLE, Dec. 1, 1946.

¹⁰ E.T. O'Loughlin, *Palmieri Brothers, Both Named Ed, Are Working Hard in Opposing Political Camps*, TIMES UNION BROOKLYN, Nov. 4, 1932.

¹¹ *Id.*

The Palmieris' oldest daughter, Edna, died in early childhood during a family trip abroad. Adria and Assunta Palmieri both attended Adelphi College, and Assunta subsequently enrolled at the Woman's Medical College of Pennsylvania and became a physician.¹² Edmund Palmieri's daughter, Marie-Claude Wrenn, believes that his sister's educational and professional achievements shaped her father's enlightened views on gender equality and his subsequent progressive hiring practices. "My father would talk about how brave his sister had been in going to medical school at that time when there weren't many women," recalled Marie-Claude. "Aunt Sunty [Assunta] had the full support and encouragement of her own father. Only my grandmother was a little hesitant, not deeming it entirely proper that a young woman be exposed to naked male bodies." Assunta's battles against discrimination did not cease once she was accepted to medical school. "I remember her telling me that she had a terrible time finding an internship, getting letters from hospitals saying they couldn't take her because they had no bathrooms for women doctors," added Marie-Claude.

Palmieri himself would be equally supportive decades later when his daughter Michelle attended Cornell Medical School. "Even thirty years after Aunt Sunty's experience, my sister was only one of six women in her class," stated Marie-Claude. "My father was aware on a continuing basis of women's professional hurdles. Her Cornell medical school dormitory was not far from where we lived. On the way home, he drove under her window and tooted his horn." Marie-Claude herself attended the University of Utah College of Law after a successful career as a journalist and author.¹³

¹² Palmieri-Wrenn correspondence; *See also A. Roxanne Palmieri Physician's Fiancée*, N.Y. TIMES, Mar. 3, 1940, at 51.

¹³ Marie-Claude later worked as a Brooklyn assistant district attorney. She is also the author of *You're the Only One Here Who Doesn't Look Like a Doctor: Portrait of a Woman Surgeon* (Thomas Y. Crowell Company, 1977). [MARIE-CLAUDE WRENN, *YOU'RE THE ONLY ONE HERE WHO DOESN'T LOOK LIKE A DOCTOR: PORTRAIT OF A WOMAN SURGEON* (1977).]

Palmieri was born on May 14, 1907 and was raised in Brooklyn in his parents' large home at 150 Ocean Parkway. His family valued education, and Palmieri was fluent in Italian—thanks in part to a tutor who came to the home every Saturday. Piano lessons were also scheduled each weekend.¹⁴



A young Edmund L. Palmieri. Photograph courtesy of the Palmieri family.

Throughout his early life, Palmieri excelled academically. An honors student at Brooklyn's Boys High School, he enjoyed further success at Columbia College.¹⁵ Palmieri majored in French, History, and Psychology, spent his summers studying at the University of Grenoble and the University of Rome, and toyed with the idea of becoming a teacher.¹⁶ The Dean of Columbia College described Edmund as “. . . one of the best students of Italian parentage that we have ever had in the University.”¹⁷ The comment, while complimentary, is undercut by reference to Edmund's ethnicity.

¹⁴ Palmieri-Wrenn correspondence.

¹⁵ Letter from H.E. Hawkes to John Palmieri (Dec. 14, 1923).

¹⁶ Lawrence Van Gelder, *Unruffled Judge in the Biaggi Case*, N.Y. TIMES, Apr. 27, 1973.

¹⁷ Letter from H.E. Hawkes to John Palmieri (Dec. 14, 1923).

Palmieri graduated from Columbia College in 1926 at the relatively young age of 19, *Phi Beta Kappa* key in hand. He promptly matriculated at Columbia Law School, the same school his older brother Edgar attended. He later told a reporter that he chose the law school “partly because of his affection for his father and partly because – still undecided about a career – he knew an education in law would offer flexibility in his ultimate choice of a career.”



Edmund Palmieri (back row, left) with members of the *Columbia Law Review*.

Palmieri’s academic success continued, and he was selected to serve on the law review’s editorial board – an appointment which affirmed Palmieri’s decision to becoming a lawyer.

“When I got on the Review I felt that perhaps I had some talents that lay in that direction.”¹⁸

Palmieri was still living at home while attending law school. In the early morning hours of February 25, 1927, the Palmieri family’s quiet home life was literally shattered when a hastily planted bomb blew off the front porch of their home.¹⁹ Luckily none of the family members were injured in the blast, which broke the windows of nearby homes and terrified the neighborhood.

¹⁸ See Van Gelder, *Supra* note 16.

¹⁹ *Ex-Justice Palmieri’s Home is Bombed; He Blames Blackmailers Who Asked \$50,000*, N.Y. TIMES, Feb. 25, 1927, at 1.

The bombing was preceded by a series of letters that demanded money and threatened violence. The letters were written in both Italian and English (*The New York Times* referred to the letters as “the work of an illiterate”) and decorated with hand-drawn pictures of a smoking gun and a knife embedded in a heart. The “Black Hand,” a predecessor to the American mafia, was suspected of the bombing.²⁰



Judge John Palmieri. This painting hung in Edmund Palmieri’s chambers. Photograph courtesy of the Palmieri family.

At the time of the bombing, John was a successful landlord who owned at least one hundred buildings; his own home, his rental properties, and his thousands of tenants were immediately placed under police guard.²¹ When it was reported that John had paid off the anonymous bombers, the former Judge issued a furious denial. “I would be a cowardly cur if I

²⁰ *Bomb and Threats Lead Former Judge to Move*, THE BALTIMORE SUN, Feb. 27, 1927.

²¹ *Police Guard 4,000 Families as Protection Against Black Hand Threat to Blow Up 142 Tenements*, THE IOLA DAILY REGISTER, Mar. 2, 1927.

did anything like that...I am 100 percent American and such actions would be traitorous to American ideals. I intend to fight this thing to the end if it takes the rest of my life.”²²

Rumors also swirled that John had gone into hiding, prompting Edmund Palmieri to issue a rebuttal. “My father had some very important work he wished to do over the weekend and decided that in order to do it he would have to go to the country over the weekend to get away from the reporters and photographers who have been calling to see him or telephoning him,” stated Palmieri. “He went away alone, leaving all the rest of the family here. We do not anticipate any trouble whatsoever. The house is still being guarded by the police, and probably will be for some time to come.”²³

His mother also spoke to the press, adding that “My will is made, my children are provided for and my conscience is clear.” She addressed the rumors that disgruntled tenants had planted the bomb. “I and the members of my family have always tried to do good. The report that some of the tenants in houses we own might have been responsible for this is absurd. We have never pressed them for payment of rent when they were behind.”²⁴ Whether due to the police protection or John’s refusal to pay off the blackmailers, no further bombings occurred, and no arrests were made.

Just as the news of the bombing was fading, the Palmieri family found themselves unwillingly thrust back in the public spotlight when the police arrested Nicholas Manicone, otherwise known as “Nick the Barber.” Manicone was claiming to be “Assistant District Attorney Palmieri,” the son of John Palmieri, and promising members of the Italian community that he could get their family members released from prison. Manicone was charging up to

²² *Palmieri Denies Giving Bombers 50,000 Dollars*, DAILY NEWS N.Y., Mar. 4, 1927.

²³ *Palmieri Buys Gun and Leaves the City*, N.Y. TIMES, Feb. 27, 1927, at 4.

²⁴ *Id.*

\$2,000 for his services, and police established that he had collected approximately \$40,000 from deceived clients.²⁵ Manicone's deceptions would result in seven years at the notorious Sing Sing prison.²⁶ There is no record of the Palmieri family speaking publicly about Manicone's fraudulent behavior. As for Nick the Barber, he achieved a moment of celebrity when popular actor Edgar G. Robinson played him in the 1934 movie "Smart Money."²⁷

Edmund Palmieri graduated from Columbia Law School in early 1929. Like his future female and Jewish law clerks, Palmieri faced discrimination from potential employers who did not want to hire an Italian-American. Palmieri later explained to a law clerk that he envied his Jewish classmates because, despite facing antisemitism, they still could find work at Jewish law firms.²⁸

Palmieri had a break of good fortune when he was hired by former associate Supreme Court justice, New York Governor, and Secretary of State (and future chief justice) Charles Evans Hughes.²⁹ Now working as a judge at the International Court of Justice at the Hague, Hughes tapped Palmieri to be his legal assistant. The interview which earned Palmieri the position almost didn't happen. "He [Palmieri] was taking an exam; a student called him outside. He was annoyed, told the student to wait. After the exam, he went out, found that Charles Evans Hughes had sent for him, to be interviewed about a job: 'I was so darn excited...I rushed out and got a printer to print me up ONE calling card quick. I presented that card at Mr. Hughes'

²⁵ *Arrest 'Nick the Barber.'*, N.Y. TIMES, May 18, 1927, at 25; *'Nick the Barber' Extorted \$40,000 as Palmieri's 'Son.'*, THE TIMES UNION BROOKLYN, May 18, 1927.

²⁶ *'Nick the Barber' Gets 7 ½ Years*, THE TIMES UNION BROOKLYN, May 19, 1927.

²⁷ *Robinson as 'Nick the Barber.'*, DAILY NEWS N.Y., Mar. 4, 1931.

²⁸ Interview with Alvin Hellerstein (March 3, 2020) (hereinafter "Hellerstein interview").

²⁹ *Palmieri Named Aid to Hughes*, THE BROOKLYN DAILY EAGLE, Apr. 25, 1929.

office...”³⁰ He interviewed with Hughes for 45 minutes. Hughes later explained that he selected Palmieri as much for his knowledge of languages and Europe as for his legal acumen.³¹



Secretary of State Charles Evans Hughes (right) with Secretary of Commerce Herbert Hoover (left) in 1924. Photograph courtesy of the Library of Congress

Palmieri worked for Hughes as a “law clerk and secretary” for less than a year, performing “general legal work”³² and preparing Hughes to hear cases. On May 1, 1929, Palmieri and Hughes boarded the luxury liner *Mauretania* (sister ship of the ill-fated *Lusitania*) and sailed for Europe to attend sessions of the Permanent Court of International Justice at the Hague.³³ While we do not know how Palmieri felt about embarking on his voyage, it must have been a heady moment for the 22-year-old lawyer to cross the Atlantic with a former Supreme Court Justice. Marie-Claude Palmieri points out an historical irony – when her father travelled to

³⁰ Candide, “Only Human.” *Daily Mirror*, November 3, 1928.

³¹ In his 1943 recommendation letter, Hughes wrote: “I chose him to serve in that capacity [as secretary] because of his knowledge of Europe –he had studied in Rome and Grenoble and had traveled widely – and because he spoke French and Italian fluently.” (hereinafter “Hughes’s recommendation letter”).

³² Letter from Charles Evans Hughes to Committee on Character and Fitness (Apr. 9, 1930).

³³ *Brooklyn Youth*, 22, *Accompanies Hughes on Peace Mission*, THE STANDARD UNION, May 2, 1929.

France at age 15, his passport bore the signature of Charles Evans Hughes – then the Secretary of State.

While at the Hague, Palmieri and the Hughes family stayed at the same hotel and dined together. Palmieri got to know the entire family, and his social activities included horseback riding with one of Hughes’ daughters. Palmieri clearly impressed Hughes as both a legal assistant and an individual. Years later, Hughes would describe Palmieri as “a man of exceptional cultural attainments and high character.”³⁴ As for Palmieri’s work, Hughes wrote that “[h]e proved to be admirably suited to the position and invariably showed tact and excellent judgment in his important contacts in connection with the work of Court.”³⁵ Concluded Hughes: “He rendered excellent service.”³⁶

Hughes’ affection and respect was evident in a 1941 letter that he wrote Palmieri. Now chief justice, Hughes appears to be responding to a letter from Palmieri about his recent appointment as a city magistrate. Writes the Chief Justice:

It gives me the greatest pleasure to receive your letter. It brings back vividly the days when we were together at the Hague and I shall always remember your able and faithful service during that interesting time. What a change has come over that beautiful and thrifty country that we loved so well!³⁷

Marie-Claude recounted that her father greatly enjoyed his time working for Hughes. “That was a happy time for my father.” Palmieri admired Hughes, and, when Palmieri became a federal judge, he hung Hughes’s portrait in his chambers. An oil painting of Palmieri’s father also graced the chamber.³⁸

³⁴ Letter from Hughes to Committee on Character and Fitness (Apr. 9, 1930).

³⁵ Hughes’s recommendation letter (1943).

³⁶ Letter from Hughes to Committee on Character and Fitness (Apr. 9, 1930).

³⁷ Letter from Charles Evans Hughes to Edmund Palmieri (June 23, 1941).

³⁸ Interview with Jeanne Frankl (Jan. 6, 2020) (hereinafter “Frankl interview”) (Jeanne Frankl recalled that Palmieri gave her the transcript of a murder trial that John Palmieri had tried. “I read it with great interest,” Frankl said. “He was very proud and tender about his father. Obviously revered him.”).

Palmieri's time with Hughes opened new professional doors. After leaving Hughes's employ in the fall of 1929, Palmieri secured a job in Hughes's law firm of Hughes, Schurman, and Dwight. Palmieri described his position at the prestigious firm as being "the bottle washers' bottle washer."³⁹



Judge Palmieri (left) with his grandson Matthew Warren, standing in front of the Hughes painting that hung in his chambers. Photograph courtesy of the Palmieri family.

In 1931, Palmieri joined newly appointed United States Attorney George Z. Medalie's legal staff. Like Palmieri, Medalie was a *Phi Beta Kappa* graduate of Columbia College and Columbia Law School. Appointed by President Herbert Hoover to be the chief lawyer for the Southern District of New York, Medalie had an eye for talent – he also selected young attorney Thomas Dewey for his staff.⁴⁰

Palmieri worked for three years in the United States Attorney's Office before he was tapped by Paul Windels, the new head of the New York Corporation Counsel's office, to serve as

³⁹ *Supra* note 16.

⁴⁰ *Edmund L. Palmieri on Medalie's Staff*, THE TIMES UNION BROOKLYN, Apr. 1, 1931.

an assistant counsel. The *Times Union* lauded the appointment, writing that Windels had ignored political pressure and created a legal staff “who had received the endorsement of outstanding figures in the legal profession.”⁴¹ Windels himself had been selected by incoming mayor Fiorella LaGuardia, who would prove to be a powerful political patron for Palmieri (who had worked as a volunteer on the LaGuardia campaign).

While Palmieri’s star was rising, his father was facing public scrutiny. While once worth over two million dollars, a declining real estate market prevented him from paying back large loans. Saddled with \$800,000 in debt, John filed for bankruptcy during the depression. Even more distressing for the Palmieri family were newspaper reports that creditors were accusing John of hiding assets and fabricating debts.⁴² John never fully recovered from his financial reversals and would be dead within two years. His obituary in the *Brooklyn Citizen* fondly referred to him as a “well-known Brooklyn lawyer and leader of the Italian-American colony” and made no mention of his financial straits. LaGuardia was among the mourners who attended John Palmieri’s funeral mass at the Church of the Immaculate Heart of Mary in Brooklyn.⁴³

Palmieri impressed LaGuardia and within a few years he was handpicked to work as the mayor’s legal advisor.⁴⁴ When he approached Palmieri about serving as legal advisor, Palmieri recalled that the mayor half-jokingly said, “I’m no Charles Evans Hughes, but I could use you at City Hall.”⁴⁵ Palmieri quickly learned that the mayor expected hard work from his staff. Marie-

⁴¹ *Windels Places 2 Boro Lawyers on Office Staff*, THE TIMES UNION BROOKLYN, Dec. 31, 1933.

⁴² *Palmieri Deals Will be Probed*, THE BROOKLYN DAILY EAGLE, Aug. 6, 1935; *Palmieri asks Further Time to Pay Debts*, DAILY NEWS N.Y., Aug. 1, 1935.

⁴³ *John Palmieri: Rites for Former Justice*, THE DAILY NEWS N.Y., Nov. 10, 1937. The Palmieri family has lovingly preserved some of the letters that Judge Palmieri wrote his father during his final hospitalization. They are a wonderful testament to Palmieri’s steadfast devotion to his father.

⁴⁴ *Mayor Names E.L. Palmieri Legal Advisor*, THE BROOKLYN DAILY EAGLE, Sept. 10, 1937.

⁴⁵ *Supra* note 16.

Claude remarked that her father “was convinced that when LaGuardia went out of town that the doorman at City Hall would report on who came on time and who was late.”



Mayor Fiorella LaGuardia with Italian ambassador to the United States Fulvio Suvich in 1938. Photograph courtesy of the Library of Congress.

LaGuardia would later describe Palmieri as a lawyer of “unusual abilities” who had “splendid training.”⁴⁶ Pleased with Palmieri’s work, and perhaps as a consolation prize after Palmieri lost an election to be a Brooklyn City Court judge despite having the full backing of the local Republican party, LaGuardia appointed Palmieri to multiple thirty-day terms as a Domestic Relations Court judge⁴⁷ before selecting him to be a city magistrate – the same position once held by Palmieri’s father.⁴⁸

⁴⁶ “High Praise.” The Mail Box. *The Brooklyn Citizen*, October 18, 1938.

⁴⁷ *Palmieri Sworn in For Second Bench Period*, *THE BROOKLYN DAILY EAGLE*, Aug. 3, 1940; *Palmieri Returns to Post with Mayor*, *THE BROOKLYN DAILY EAGLE*, Nov. 8, 1940.

⁴⁸ *Palmieri Sworn In*, *THE DAILY NEWS N.Y.*, Nov. 21, 1940; *Palmieri a Magistrate: LaGuardia Names Law Secretary to Succeed Malbin*, *N.Y. TIMES*, Nov. 21, 1940.

<p>Mayor Names E. L. Palmieri Legal Adviser</p>	<p>PROMOTED</p>  <p>Edmund L. Palmieri</p> <p>States Attorney in Manhattan, and then an Assistant Corporation</p>
<p>Boro Man, Once Secretary to Justice Hughes, Succeeds J. G. Molloy</p>	
<p>Assistant Corporation Counsel Edmund L. Palmieri, 31, of 114 Clinton St., today was appointed legal adviser to the Mayor to succeed J. G. Louis Molloy, who resigned to become a candidate for the City Council.</p>	
<p>Mayor LaGuardia announced he was relieving Mr. Molloy at his own request, and at the same time announced his successor.</p>	
<p>Mr. Palmieri is a graduate of Boys High School, Columbia University and Columbia Law School, and has studied at the University of Grenoble, France, and the University of Rome, Italy.</p>	

As he continued to forge ahead in a successful professional career, Palmieri got married and started a family. Palmieri's love of language led to his marriage to French native Cécile Claude ("Claude") Verron. When he was fifteen years old, Palmieri told his parents that he wanted to learn French. John reached out to Eugène Verron, a family friend, and Verron invited Palmieri to spend the summer with his family in Provence. The family included eight-year-old Claude. Palmieri later described her as a little girl in pigtailed; Claude recalled that Palmieri always had his "nose in a book." And there was a communication barrier, since Palmieri was just learning French and Claude did not speak English. Marie-Claude writes that Palmieri's first visit to France was "the beginning of my father's love for the French language and culture and Paris – a city which has cast its magic over so many Americans."

After Palmieri returned to America, he started corresponding with Eugène Verron. Although Marie-Claude does not know whether her father also wrote to her mother, they somehow kept in touch. As a young adult, Claude worked at Callot Sœurs, a fashion house

located on the Avenue Montaigne in Paris. During a trip to Venice, Palmieri proposed to her. In February of 1937, they got married at the Church of Notre Dame in New York.⁴⁹ Palmieri's brother, Edgar, stood at his side as best man, while his sister Assunta was maid of honor. A short honeymoon to Quebec followed.



Edmund and Claude Palmieri. Photographs courtesy of the Palmieri family.

On October 14, 1938, the *New York Times* reported that LaGuardia's "official family" had grown with the birth of Marie-Claude, the Palmieri's first child.⁵⁰ The mayor himself celebrated the birth by presenting the proud parents with a silver loving cup. Two more children followed. The Palmieri's shared love of France carried over to the family that they raised. "We always speak French at home," said Palmieri. "I've found it to be a very relaxing and restful exercise to leave my work behind with all its language."⁵¹ Both of their daughters – Michelle and Marie-Claude – first spoke French. "I learned English only when I entered first grade," explained Marie-Claude.⁵²

⁴⁹ *Palmieri-Verron*, THE BROOKLYN DAILY EAGLE, Feb. 19, 1937.

⁵⁰ *Daughter to E. L. Palmieris*, N.Y. TIMES, Oct. 14, 1938.

⁵¹ See *supra* note 16.

⁵² Interview with Florence Hutner (January 6, 2020) (hereinafter "Hutner interview") (Although French was a language reserved for Palmieri's personal life, former law clerk Florence Hutner, herself fluent, recalls occasions in

Palmieri worked as a city magistrate judge from November of 1940 until he enlisted in the United States Army in 1943. He earned the princely sum of ten thousand dollars a year.⁵³ During his time on the bench, Palmieri wielded the same gavel used by his father during his short judicial career.⁵⁴ Palmieri dealt with relatively minor – and occasionally – amusing cases involving petty crime.



The Palmieri family watches as Chief Magistrate Henry Curran hands Palmieri the gavel used by the late John Palmieri. *Daily News* (New York), December 3, 1940.

Palmieri heard his first case on Monday, December 2, 1940, when a street peddler named Sam Cohen appeared in the Essex Market courtroom. Cohen was charged with selling merchandise without the appropriate license, and a newspaper reporter suggested that the peddler benefited from the warm glow of publicity surrounding Palmieri's appointment. "He [Cohen] was Magistrate Edmund L. Palmieri's first case on the latter's first day on the bench, and so many nice things had been said about the new judge that he suspended the sentence on Sam."⁵⁵

Stories about the cases and defendants in Palmieri's courtroom appeared regularly in the local newspapers. They included tales about pickpockets,⁵⁶ nurses who called in false fire alarms

chambers when she and Palmieri spoke in French. At the time of the interview, Hutner was serving as general counsel in the New York City Office of the Chief Medical Examiner.).

⁵³ *Palmieri a Magistrate*, N.Y. TIMES, Nov. 21, 1940.

⁵⁴ *Palmieri Given Gavel Father Used as Jurist*, THE BROOKLYN DAILY EAGLE, Dec. 3, 1940.

⁵⁵ *Propitious*, CUMBERLAND EVENING TIMES, Dec. 3, 1940.

⁵⁶ *Dip Gets Sentence Cut to See Daughter Wed*, THE DAILY NEWS N.Y., May 31, 1941.

reports,⁵⁷ air raid wardens who triggered false air raid reports,⁵⁸ motorists engaging in “unnecessary horn tooting,”⁵⁹ proprietors of unlicensed basement bars,⁶⁰ subway vagrants,⁶¹ workers who smoked in defense plants,⁶² candy store owners running illegal lotteries,⁶³ threats against a local district attorney,⁶⁴ and gasoline thieves.⁶⁵ After Palmieri ruled that summonses for traffic offenses could be signed by any of the forty-five magistrates rather than the chief magistrate who supervised them, the chief magistrate himself – Henry H. Curran – circulated a copy of Palmieri’s decision with the following cover memo:

Here is a transcendent opinion by Judge Palmieri. It saves me signing my name 2,000 times a day every day in the year. He is a wise judge. He is a wonderful judge. He is an incomparable, celestial judge.⁶⁶

While Palmieri was a hard-working jurist who brooked no nonsense in his court, he did entertain novel legal arguments made by the citizens hauled before him. When faced with the allegations that he was selling vegetables (specifically, tomatoes) on a Sunday, defendant George Ronca pulled out his dictionary and read the following definition of tomato: “a plant of the night shade family cultivated for its fleshy fruit.” Concluded Ronca: “I can’t be guilty of selling vegetables.” Referring to Ronca’s defense as “very novel and refreshing,” Palmieri dismissed the charge.⁶⁷

⁵⁷ *False Alarm Gets Nurse Ten Days*, THE DAILY NEWS N.Y., May 31, 1941.

⁵⁸ *Kindergarten Advised for Air Raid Warden*, MORNING NEWS WILMINGTON, Feb. 10, 1942.

⁵⁹ *Court Writes Decalogue for Tooting Autoists*, N.Y. TIMES, Jan. 22, 1941.

⁶⁰ *Theft in Black Maria Dismays Court, Cops*, DAILY NEWS N.Y., Mar. 3, 1941.

⁶¹ *Relative Helps Stranded Girl*, DEMOCRAT & CHRONICLE ROCHESTER, Sept. 30, 1941.

⁶² *Warns of Jail for Defense Smokers*, DAILY NEWS N.Y., Feb. 28, 1942.

⁶³ *Girl Bites into Winner: And So Bronx Storekeeper Pleads Guilty in Candy Lottery*, N.Y. TIMES, May 9, 1942.

⁶⁴ *Cleared in Hurwitz Case*, N.Y. TIMES, June 18, 1943.

⁶⁵ *Nab Schoolboy, 16, in Gasoline Theft*, DAILY NEWS, Sept. 2, 1941.

⁶⁶ *Currant Writes, and Having Writ*, N.Y. TIMES, Apr. 4, 1942.

⁶⁷ *Tomato is Not Vegetable; It is Fruit Type*, VALLEY MORNING STAR, Apr. 29, 1942.

Palmieri was not quite as open to novel forms of dress. When seventeen-year-old Harry Aguado appeared in his court on a reckless driving charge, Palmieri was astounded by his “zoot suit” – which he referred to as “oversized diapers” and “a badge of irresponsibility.”⁶⁸ The encounter between Palmieri and the irresponsibly-dressed teenager appeared in newspapers around the country. Now nicknamed “Zoot Suit Harry,” it was subsequently reported that Harry returned to court wearing white gloves. “Smarting under the magistrate’s criticism, Harry tried to join the navy, only to be told he must first cure himself of the ‘nervous and unbecoming’ habit of biting his nails. Hence the gloves – which the navy advised him to wear for five days.”⁶⁹ After hearing of Harry’s plans, Palmieri imposed a five dollar fine and sent the lad along his way. Approximately six weeks later, Harry joined the navy.⁷⁰

Maybe Palmieri’s occasional stuffiness encouraged reporters to run stories about his misadventures. In June of 1941, the *Daily News* reported that Palmieri had been temporarily trapped in his own chambers. “While taking a rest from the heat yesterday noon, Magistrate Edmund L. Palmieri was locked in his chamber,” the *Daily News* informed its readers.” “A Court attaché locked the door, thinking Palmieri was still on the bench.” And how did Palmieri escape his chambers? “Twenty minutes later, Edward Horan, a court clerk, heard the Magistrate pounding on the door and released him.”⁷¹ One can’t help but wonder what fire codes allowed doors which locked jurists into their own offices.

⁶⁸ *Zoot Suit Called Oversized Diapers*, SAN FRANCISCO EXAMINER, Dec. 13, 1942.

⁶⁹ *Zoot Suit Harry Adds Cotton Gloves*, JOURNAL GAZETTE, Oct. 28, 1942.

⁷⁰ United States WWII Navy Muster Records. Ancestry.com. Unfortunately, military service did not set Harry on a better path; in 1947, he was convicted of car theft and sentenced to serve a term of incarceration at San Quentin prison.

⁷¹ *Het-Up Judge Locked In*, DAILY NEWS N.Y., June 29, 1941.

Six months later, Palmieri made the news again, this time for fining himself for a parking violation. While a judge serving as his own jury and executioner was unique, what caught the attention of newspaper editors was why Palmieri got a ticket.

He told reporters later that the parking ticket was placed on his car when he stopped at a Fifth Avenue department store to learn for his children when Santa Claus would be there. The magistrate said that he got caught in a crowd in the store and had to wait for an elevator. As a result, he was in the store for ten minutes.⁷²

One hopes that Palmieri's act of contrition kept him off Santa's naughty list.

Palmieri's time on the bench was short-lived, as he enlisted in the United States Army in August of 1943. According to his daughter, Palmieri was recruited for military service because of his language skills. "He told me that the United States knew it would be invading Italy and they were looking for lawyers who spoke Italian," explained Marie-Claude. "A lot of people presented themselves [for the position] and it turned out they didn't speak Italian, but they spoke a dialect...but my father was fluent in both written and spoken Italian." Palmieri was commissioned at the rank of major.⁷³

For the duration of the war, Palmieri worked as a legal officer for the Allied Commission – a joint American-British organization designed to administer occupied Italy. During the latter portion of his military service, Palmieri worked on establishing a new judiciary system as well as restoring property and civil rights for Jewish Italians. Palmieri's work during the war earned him a Legion of Merit for "exceptional meritorious conduct in the performance of outstanding services in the Mediterranean Theater of Operation."⁷⁴

⁷² *Judge Fines Himself: Magistrate Palmieri Got Ticket for Parking Offense*, THE N.Y. TIMES, Dec. 2, 1941.

⁷³ *Palmieri in Army*, DAILY NEWS N.Y., Aug. 21, 1943.

⁷⁴ Legion Citation; *Army Honors Palmieri*, THE N.Y. TIMES Sept. 26, 1945. Palmieri served in North Africa, Sicily, Sardinia, and France and was awarded a European Theater ribbon with two battle stars. Marie-Claude proudly adds that her father also won the Commander of Crown of Italy medal, which gave him the privilege to ride a horse in the presence of the Italian king.



Major Edmund L. Palmieri receiving his Legion of Merit award during a ceremony in Rome, 1945. Photograph courtesy of the Palmieri family.

While Palmieri did not see combat, he was injured during his tour of duty. His daughter explained:

He was in a jeep on a road where heavy equipment had passed over the road and the road partially collapsed. His jeep tumbled down a hill. He broke his arm and he couldn't get anyone to take him to a field hospital because the next three trucks passing on part of a road that still existed—they had orders to go to the front. They couldn't disobey their orders. He finally got one truck driver to take him to a field hospital. The story that he tells there was that he was visited by an Irish Catholic chaplain who brought him a bottle of whiskey telling him, "It's medicine my boy." He couldn't believe it. He talked about that for the rest of his life.⁷⁵

Palmieri would eventually rise to the rank of lieutenant-colonel. Marie-Claude points out that the war was difficult for her mother Claude as well; not only was she a single mother to three small children, but throughout the war Claude was unable to communicate with her extended family in occupied France.

⁷⁵ Palmieri-Wrenn Correspondence.

After his discharge from service, Palmieri returned home to New York. Marie-Claude remembered her reaction to seeing her father. “I remember when he came home in uniform. I was so proud of him. I thought his uniform was grand. I didn’t want him to take it off. I would hold his hand on the streets. I wanted everybody to know he was my father.” Anxious to see his former legal secretary back on the judicial bench, Mayor LaGuardia had appointed Palmieri to a domestic relations court judge before he had even returned from Europe.⁷⁶ Palmieri subsequently resigned the position after only a month on the bench.⁷⁷ “My father hated the position,” explained Marie-Claude. LaGuardia lamented the resignation, telling the *New York Times* that Palmieri’s departure was “a distinct loss” to the bench [but] a great gain for the bar.”⁷⁸

From 1946 to 1954, Palmieri had a thriving solo practice and an office on Madison Avenue. Marie-Claude stated that her father “did everything,” from drafting wills to defending clients in court. He was a member of the New York City bar and active on its international law committee. Palmieri’s diverse list of clients included millionaire Clendenin J. Ryan and Pietro Barilla, who helped run an international food company.

In 1954, Palmieri ran for a position on New York’s Supreme Court, which is the state’s general trial court.⁷⁹ The New York Bar resolved that Judge Palmieri was “qualified to hold the office of Justice of the Supreme Court” based on his “education and experience.”⁸⁰ Nevertheless, he lost the election.⁸¹ “He was active in Republican politics in New York City,” Marie-Claude recalled. “Party leaders asked him to run again for the Supreme Court. He knew he

⁷⁶ *LaGuardia Defends Stand in Barring Real Estate Deals*, THE BROOKLYN DAILY EAGLE, Nov. 20, 1944.

⁷⁷ *Palmieri Resigns Post as Justice*, DAILY NEWS N.Y., Dec. 23, 1945.

⁷⁸ *Palmieri Resigns as Court Justice*, THE N.Y. TIMES, Dec. 23, 1945.

⁷⁹ The Association of the Bar of the City of New York 1953.

⁸⁰ *Id.*

⁸¹ Interview with Marie-Claude Palmieri Wrenn (hereinafter “Palmieri-Wrenn interview”).

would never get it and it wasn't something he had his heart set on either. But in order to please the party he ran for office.”

In April of 1954, President Dwight Eisenhower nominated Palmieri to be a federal district court judge for the Southern District of New York.⁸² “My appointment was a fluke,” Palmieri later told the *Daily News*. “I belonged to no political club...was an inactive Republican. I think my Italian name had a lot to do with it. In 1954 there were no Italians on the federal bench in New York City.”⁸³ In fact, Marie-Claude points out that he was the first Italian-American appointed to the Southern District of New York. Nominations to the lower federal courts were less a source of political rancor in that era, and on May 11, 1954, Palmieri was quickly approved by the Senate Judiciary Committee and sworn in on June 16, 1954.⁸⁴

Despite his considerable talents and legal training, Palmieri must have been nervous about joining one of the most widely respected courts in the country. “Lawyers call the Southern District the ‘Mother Court’ not only because it is generally acknowledged to be the best in the justice business, but also because of the excellence of its judges, the quality of the lawyers who appear before it, and its fierce traditions of prosecutorial and judicial independence, and because it’s the oldest court in the country, antedating even the Supreme Court,” explains former United States Attorney for the Southern District of New York Robert M. Morgenthau.⁸⁵ Already on the bench were what author and attorney James Zirin describes as a “Pleiades star cluster of judicial luminaries,”⁸⁶ including Edward Weinfeld, Thomas Murphy, Irving Kaufman, Edward Dimock, and the recently confirmed Lawrence Walsh. And in the same courthouse at 40 Foley Square

⁸² THE N.Y. TIMES, May 11, 1954.

⁸³ *The Biaggi Case in Veteran Hands*, DAILY NEWS N.Y., Apr. 27, 1973. Marie-Claude points out that her father was correct about no Italians serving on the bench in the Southern District, but that an Italian judge may have been appointed to the Eastern District by Franklin Roosevelt prior to her father’s nomination.

⁸⁴ 2nd Circuit Redbook

⁸⁵ JAMES D. ZIRIN, *The Mother Court: Tales of Cases that Mattered in America’s Greatest Trial Court*, ix (2014).

⁸⁶ *See id.* at xiv.

were legendary appeals court judges Learned and Augustus Hand as well as future Supreme Court justice John Harlan Marshall II.

Any trepidation felt by Palmieri was likely also triggered by the enormity of the task before him. This was not a docket which would allow the new jurist to ease into the position. The *New York Times* reported that the new federal judges appointed by President Eisenhower to the Southern District of New York faced “a backlog of thousands of civil cases.”⁸⁷ His first task? To quickly assemble a support staff.

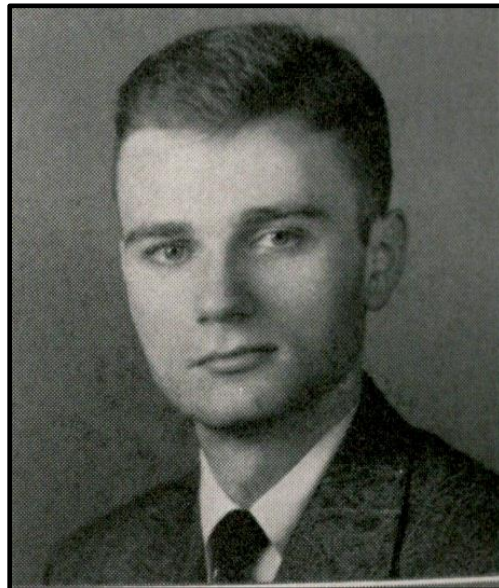
The Selection and Utilization of Law Clerks

The key to the smooth function of any judicial chambers is a competent administrative assistant, and Palmieri immediately tapped his former law firm secretary Alma A. Wester to fill that role. In later years, she would be succeeded by Agnes Kennedy. Marie-Claude recalled that Kennedy used to say that she wouldn’t retire until Palmieri did, but eventually gave up waiting for that day. “He [Palmieri] is going to die with his boots on,” she told one of the clerks.

For bailiff, Palmieri picked Frank Salerno. “Frank was a soft-mannered and gentle man who at one time...had been a barber,” explained Marie-Claude. “I remember that he spoke with a God-awful Bronx accent. He was devoted to my father.” Former law clerks fondly remembered having lunch with Salerno; less fondly remembered were the foul-smelling cigars that he smoked in chambers. While some of Palmieri’s fellow judges eventually used the bailiff position to hire a second law clerk, Palmieri maintained his traditional hiring practices through his tenure on the bench.

⁸⁷ *Four New Federal Judges*, THE N.Y. TIMES, Apr. 8, 1954.

With a secretary and bailiff in place, Palmieri turned to Columbia Law School Professor Walter Gellhorn to help find a law clerk. Gellhorn suggested Benjamin Shieber, a 1953 Columbia Law School graduate who was working on the American Law Institute Tax Project. Almost a half-century later, Shieber still recalls being excited by the recommendation. “I did not do Moot Court while I was at the law school. I felt that clerking for a district judge would give me a feel for law practice in addition to the law theory I’d gotten in the classes.”⁸⁸ An interview with Palmieri and a job offer quickly followed.



Palmieri’s first law clerk, Columbia Law School graduate Benjamin Shieber (Class of 1953).
Columbia Law School Yearbook.

From the start, Palmieri relied on recommendations from trusted colleagues, assistant United States attorneys, and law professors during the clerkship selection process; over time, the recommendations also came from the former clerks themselves. While the majority of Palmieri law clerks were plucked from the ranks of Columbia Law School graduates, several Rutgers law students were hired by Palmieri - in large part by letters of recommendation written by then-

⁸⁸ Interview with Benjamin M. Shieber (December 12, 2019) (hereinafter “Shieber interview”) (A graduate of both Columbia University and Columbia Law School, Shieber joined the law faculty at Louisiana State University in 1964. After his retirement from teaching, Shieber worked as a nationally-recognized mediator.).

Rutgers Law School professor Ruth Bader Ginsburg. The pattern continued when Ginsburg joined the faculty at Columbia Law School. “A letter of recommendation from Ruth? The clerkship was assured,” writes Marie-Claude. “When she suggested a clerk – a given that my father would accept her recommendation.”⁸⁹

Former law clerk Lynn Hecht Schafran herself witnessed the impact of a Ginsburg’s recommendation letters. One of Ginsburg’s first students at Columbia Law School, Schafran was also Jewish, married, and the mother of a young child. Although Schafran was told by the career placement office that her grades were not strong enough for a federal clerkship, Ginsburg urged Schafran to apply to Palmieri and supplied the critical letter of recommendation. An invitation to interview immediately followed. Decades later, Schafran keenly recalls her interview with Palmieri:

Here was an interview with a man who hired Professor Ginsburg...[s]o I assumed that the Judge was very welcoming of women law clerks. And the first thing that the Judge said to me: “How old is your baby?” I was really taken aback – should I tell the Judge that he can’t ask me this question under Title VII? I learned later that Judge Palmieri was such a devoted family man. He didn’t want me to miss out on having time with my young baby (son who was five years old).⁹⁰

Schafran received a job offer from Palmieri and subsequently had another child between the time of the offer and the start date of her clerkship. “I don’t want him to know I have this new baby because I think that he might take the job away from me,” Schafran explained. “I receive in the mail the most wonderful letter from Judge Palmieri – he really was a beautiful, beautiful writer –

⁸⁹ Ginsburg’s recommendations held so much weight that Palmieri hired Evelyn Finkelstein as a short-term clerk despite the fact that she had not yet graduated from law school. Finkelstein had worked for Ginsburg at the ACLU Women’s Rights Project, who wrote her a glowing letter of recommendation, but had not formally matriculated from Columbia Law School when she clerked for Palmieri. Finkelstein interview.

⁹⁰ Interview with Lynn Hecht Schafran (July 20, 2020). (hereinafter “Schafran interview”) (Since 1981, Schafran has served as director of the National Judicial Education Program to Promote Equality for Women and Men in the Courts.).

congratulating me on the birth of this child and I am horrified” [that she would lose the clerkship].”⁹¹ She did not.

Shortly after she started her clerkship, Schafran faced another potential crisis – she discovered that a case on Palmieri’s docket involved a real estate development for whom her husband worked. Schafran called the vacationing Palmieri and asked if the conflict played her clerkship in jeopardy. “And he said, ‘No, it’s harder to get a good law clerk than a good case and I’ll have someone else take it on.’ So that was my second escape.” Schafran characterized the rest of her clerkship as “wonderful.”⁹²

While Palmieri relied on trusted colleagues for recommendations, he personally interviewed candidates as well. Given the considerable passage of time, most of the clerks we spoke to did not recall what they discussed in their interviews. An exception is former clerk Deborah Yeoh. At one point in her interview, Yeoh noticed a picture of Michelle Warren on Palmieri’s desk. Warren, of course, was Palmieri’s daughter, but she was also Yeoh’s personal physician. Flabbergasted, Yeoh explained this coincidence to Palmieri. She recounted that Palmieri digressed for a moment and proudly spoke of his daughters, telling Yeoh that “how important it was that women have opportunities equal to men.”⁹³

Marie-Claude recalled that her father asked prospective clerks about articles they had written, recounting one instance when a candidate fudged his resume “I can remember...[when] he interviewed a candidate who said he had written something for a law journal. My father asked to see a copy and he couldn’t produce it,” she explained. “My father was furious because he felt this candidate had misrepresented his credentials.”

⁹¹ Oral History of Lynn Hecht Schafran. ABA Senior Lawyers Division Women Trailblazers in the Law.

⁹² *Id.*

⁹³ Email from Deborah Yeoh to Marie-Claude (Oct. 6, 2019) (A former Assistant United States Attorney, at the time of their correspondence Yeoh was vice president and general counsel for Rockefeller University.).

In the 1950's and 1960's, talented law school graduates struggled to find employment because of racial, gender and religious discrimination. Women and minorities found the doors to many law schools to be closed, and top law firms in America's largest cities refused to hire Jewish attorneys. Alvin Hellerstein, Judge Palmieri's third law clerk, was a member of the *Columbia Law Review* and graduated sixth in his class. He was forced to look at judicial clerkships because none of the non-Jewish law firms in New York would hire him.⁹⁴ "I thought that I was in pretty good shape. But I found that the gentile law firms were totally uninterested."⁹⁵

Being Jewish and female made the odds of finding a legal position astronomically high. Gender discrimination existed in the federal courts as well. Suzanne Palmieri Keevers, Palmieri's niece, recalled that Learned Hand teased Palmieri about hiring law clerks. She concluded that Hand believed that clerkship positions should be used to hire male graduates and help them take the first steps in becoming prominent lawyers.⁹⁶

The existing gender and religious discrimination in the legal system is what made Palmieri's hiring practices so extraordinary – in his first ten years on the bench, three of his law clerks were Jewish women (Jeanne Ritchie Silver, Ruth Bader Ginsburg, and Malvina Haberstam) and four were Jewish men (Benjamin Sheiber, Alvin Hellerstein, Alvin Schulman, and Gordon I. Gordon). These law clerks were all exceptionally strong students who had attended either Columbia or Yale Law School.

⁹⁴ Hellerstein interview (After a long career in private practice, Hellerstein was nominated to the federal district court bench (Southern District of New York) in 1998.).

⁹⁵ *Id.*

⁹⁶ Emails between Suzanne Keevers and Marie-Claude Palmieri (Mar. 3, 2020) (Keevers herself is also an attorney.).

The first group of law clerks all faced gender and religious discrimination when they searched for post-graduation employment. Palmieri's first female law clerk was Jeanne Ritchie Silver Frankl, who graduated from Yale Law School in 1955. Frankl was one of seven women in her graduating class. During her third year of law school, Frankl found that elite New York law firms had no interest in hiring a woman. "I was more conscious of the issue of being a woman than being Jewish," explained Frankl. "I was brought up not to think about being Jewish – my parents taught me that you had to try harder than everyone else because you were Jewish. [But I knew] that being a woman was not helpful." Looking for options, Frankl turned to federal and state court clerkships. Frankl had interned in the United States Attorney's office while in law school, and one of the assistant United States attorneys – a future federal judge named Leonard Sand – recommended Frankl for the Palmieri clerkship.



1955 Yale Law School Yearbook.

While Frankl could not remember any details of her interview with Palmieri, she clearly remembered another clerkship interview with federal district court judge Irving Kauffman of the Southern District of New York. Frankl explained that she was "stunned" when Kauffman asked

her if she cried when she got upset. “I didn’t know what to say,” Frankl added.⁹⁷ “What made him think of someone crying?”

The story of Ruth Bader Ginsburg’s struggles to find post-graduation employment are well known, although Judge Palmieri’s decision to hire Ginsburg contains an oft-repeated error. Like Frankl, Ginsburg was rejected by major law firms as well as prominent federal judges because of her gender. The judges included Supreme Court Justice Felix Frankfurter and Judge Learned Hand of the Second Circuit Court of Appeals. Despite her outstanding credentials, Frankfurter would not seriously consider Ginsburg for a clerkship position. While Frankfurter’s refusal to hire Ginsburg was based on her gender it is unclear exactly what about hiring a woman deterred the Justice. Some have argued that Frankfurter did not want to be the first justice to hire a female clerk, but this can’t be correct since Justice William O. Douglas hired Lucile Lomen as his law clerk during WWII. Others have suggested that Frankfurter fretted that a female law clerk would wear pants to work (the Justice did not approve of women in pants⁹⁸) or be upset by Frankfurter’s blue language.

Former Frankfurter law clerk Paul Bender recalls talking with the Justice about the prospect of hiring a female law clerk.

One day during the term Justice Frankfurter comes into our office and announces “guess who Al Sacks wants to send me as a law clerk next year – Ruth Bader Ginsburg.” My co-clerk and I told him that it was a wonderful idea, but Justice Frankfurter replied that “she has a couple of kids [Ginsburg only had one child at this time], and her husband has been ill, and you know that I work you guys very hard, and I do curse sometimes” as reasons why it wouldn’t be a good idea. Well, that wasn’t the case. We had the softest job of all the law clerks at the court – we didn’t work nights or weekends – and the Justice did not use four letter words. I concluded that the Justice wasn’t comfortable with a female law clerk. This was odd since the

⁹⁷ Frankl interview. (After her clerkship, Frankl accepted a legal position with the Port Authority of New York before going into private practice.).

⁹⁸ David Margolick, *Trial by Adversity Shapes Jurist’s Outlook*, THE NEW YORK TIMES, June 25, 1993.

Justice had strong intellectual relationships with a number of women, including the wives of some of his law clerks.⁹⁹

Frankfurter was not the only judge to hide behind concerns of etiquette. Judge Learned Hand cited the same reason for not hiring Ginsburg. While clerking for Palmieri, Ginsburg had an opportunity to challenge Hand. Palmieri lived across the street from Hand and often drove him to work. “My father found it a great honor to drive Judge Hand on his trips to the courthouse,” explained Marie-Claude. “I can remember my father hurrying through his morning coffee so as not to be late.” During one of those commutes, Ginsburg joined Palmieri and Hand. In keeping with their relative status, Hand was in the front passenger seat and Ginsburg in the back. When Hand blurted out some blue language, Ginsburg quickly asked why the Judge was no longer worried about swearing in front of a woman. His response: ““Young lady...here I am not looking you in the face.””¹⁰⁰

Like other woman of her generation, Ginsburg was not shocked by Frankfurter’s refusal to hire a woman.

I was disappointed but not surprised. There were no antidiscrimination laws on the books when I graduated from law school and men of a certain age were not accustomed to dealing with women in a work setting (except for secretaries). And being a mother of a four-year-old diminished my chances.¹⁰¹

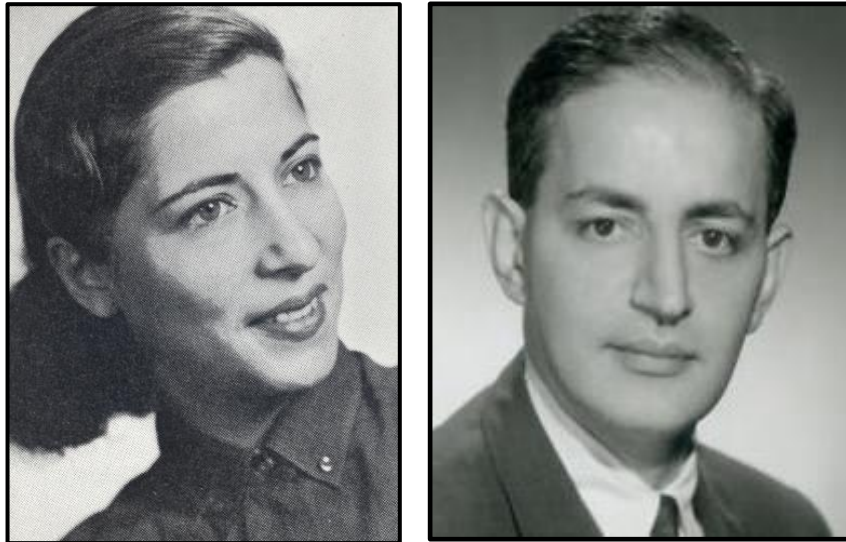
Enter Columbia Law School Professor Gerald Gunther. A relatively new professor at the law school, and a former Learned Hand law clerk, Gunther reached out to Palmieri and suggested that he interview Ginsburg. Decades later, Ginsburg referred to herself as Gunther’s

⁹⁹ Interview with Paul Bender.

¹⁰⁰ See Margolick *supra* note 98. (In correspondence with Marie-Claude Palmieri, Ginsburg wrote that she also interviewed with Second Circuit Court of Appeals Judge Leonard P. Moore but did not receive an offer of employment.)

¹⁰¹ Letter from Ruth Bader Ginsburg to Todd C. Peppers (Oct. 13, 2016) (Ginsburg was not the only female Columbia Law School graduate to be offered the opportunity to be recommended for a clerkship with Felix Frankfurter. Professor Gunther himself had clerked for Frankfurter, and he offered to recommend Malvina Halberstam for a clerkship position. Having heard of Ginsburg’s experience, Halberstam declined.)

“most challenging case” because of her gender and her status as a mother. “In those now ancient days, a mother was more than legal employers would bargain for,” explained Justice Ginsburg.¹⁰²



Ruth Bader Ginsburg in 1959 (left) Columbia Law School Yearbook; undated photograph of law professor Gerald Gunther (right). Ginsburg and Gunther became life-long colleagues and friends.

Undoubtedly, Gunther’s recommendation was instrumental in getting Palmieri to consider Ginsburg. What is less clear, however, is what Gunther said about Ginsburg’s status as a woman and a mother. The popular narrative is that Gunther threatened that he would never send another law student to clerk for Palmieri if he did not hire Ginsburg, adding that he would send a male law clerk to Palmieri if Ginsburg was not up to the task. When Ginsburg herself wrote Gunther in 1996 and asked about the circumstances surrounding her hiring, Gunther claimed that Palmieri’s reticence was triggered by social conventions of the day.

“My recollections of ELP are quite vivid – I spoke to him about you before he even met you; I am not surprised that, when he agreed to interview you, he was enthused about you. But my recollections are entirely about his reluctance to interview you, before your meeting. As I have written in the past, he took some persuading to consider a female clerk...his concern, in light of his wife and 3 daughters, is that he worked late in the office in the evenings from time to time,

¹⁰² Ruth Bader Ginsburg, *Memories of Gerald Gunther*, 55 STAN. L. REV. 639 (Dec. 2002).

and he worried about the impression he'd convey if he was there alone with a young woman.¹⁰³

This story has been repeated by a number of sources, including Palmieri's third female law clerk

– former Cardozo Law School Professor Malvina Halberstam. She writes:

Years later, I learned from Professor Gunther that even though Judge Palmieri was impressed by Ruth Bader Ginsburg's record, he was very reluctant to appoint her as his clerk, and did so only after a great deal of urging by Gunther, who knew him personally, and after receiving a male student's written promise that if the appointment of Ginsburg did not work out he would leave his law firm to take over the clerkship.¹⁰⁴

After author and legal commentator Jeffrey Toobin wrote that Gunther “essentially extorted”¹⁰⁵ Palmieri to hire Ginsburg, former Palmieri law clerk Alvin Schulman felt compelled to weigh in on the historical record. In a letter to *The New Yorker*, Shulman writes:

I was Palmieri's law clerk in 1959, when he offered the clerkship position to Ginsburg. He told me that he had just interviewed a remarkable young woman and that he thought he was fortunate to be able to offer the position to such a well-qualified student. If he was “extorted,” it was not only unnecessary but inappropriate and unfair to future Columbia Law students for the professor to threaten not to refer clerks to him in the future if he did not hire Ginsburg. Palmieri was a strong advocate for professional women, and one among few judges who appointed women as law clerks in the nineteen-fifties.¹⁰⁶

Marie-Claude also questions the authenticity of the “Gunther extortion” story. Something has been lost in translation,” she observed, “and the only person who can set the record straight is dead.” Marie-Claude and Michelle persuasively argue that it is unbelievable that a young law school professor would have the power to threaten or extort a widely-respected and established

¹⁰³ Letter from Gerald Gunther to Ruth Bader Ginsburg (May 30, 2001) Gunther Papers, Stanford University, Box 2, Folder 7.

¹⁰⁴ Malvina Halberstam, *Ruth Bader Ginsburg: The First Jewish Woman on the United States Supreme Court*, 19 CARDOZO L. REV. 1441, 1443 (Mar. 1998).

¹⁰⁵ Jeffrey Toobin, *Heavyweight: How Ruth Bader Ginsburg Has Moved the Supreme Court*, THE NEW YORKER, Mar. 11, 2013.

¹⁰⁶ Alvin H. Schulman, THE NEW YORKER, Mar. 18, 2013.

federal district court judge. Additionally, Gunther's claim about Palmieri's reluctance to hire a female law clerk are not credible because he had already done so several years earlier when he selected Jeanne Silver to work in his chambers. "I don't think that Professor Gunther had a clue that my father had already hired his first women clerk."

Marie-Claude carefully points out that any concerns her father had about hiring Ginsburg were related to motherhood, not gender. "My father had the right mind set. If you distinguished yourself academically and demonstrated writing skills, it did not really matter if you were a woman or a man."¹⁰⁷ She added, however, that Ginsburg's "status as a mother would have given my father pause. My father would have been solicitous. He would have wanted to assure himself that everyone was happy and everything [in the Ginsburg household] was under control." Marie-Claude adds that her father was "deeply impressed" with Ginsburg's candor during the interview in discussing her husband's bout with cancer and the fact that it was in remission. The interview touched upon more light-hearted topics as well, such as their joint love of opera and elegant French restaurants.

Ginsburg herself pointed out that Palmieri's reluctance was not because she was a woman.

Judge Palmieri was indeed a family man. He so loved his children, son Alain, daughters Marie-Claude and Michelle. I believe his hopes and expectations for them account in large measure for his willingness to entertain my application. In the 1950s, few judges would even interview women for law clerk positions. (Judge Palmieri's most excellent and cherished friend, Judge Learned Hand, for example, wanted no woman as a law clerk in his chambers and did not hesitate to say so.) In my case, there was some hesitation on Judge Palmieri's part. I was a woman, and that was not a problem for him. But I was also the mother of a four-year-old child. To my great good fortune, upon the urging of one of my teachers at Columbia Law School, Judge Palmieri decided to take a chance on

¹⁰⁷ Palmieri-Wrenn correspondence.

me. He thereafter engaged other mothers, content that they could do the job.¹⁰⁸

Finally, the “extortion story” is further undercut by Palmieri’s own reaction to hiring Ginsburg. Frankl recalls that Palmieri was pleased by the selection of Ginsburg: “He was excited about her background and her career and how smart she was.”



Marie-Claude visiting with Justice Ginsburg in her Supreme Court chambers in December of 2011.

Marie-Claude recalls the first time that she met Ruth Bader Ginsburg:

She was pretty and small, quiet and serious. Because she was small, she looked younger than her age. When I walked into the law clerk’s office in chambers and was introduced, I was stunned by her youthfulness. Who is this kid that my father hired? She was swallowed up behind a big mahogany desk. I remember that Ginsburg rose when I walked in; later it would be me who would stand when she entered a room. At the time of our first meeting, it did not strike me that she was female and my father never remarked

¹⁰⁸ Ruth Bader Ginsburg. “Remembrance of Judge Edmund L. Palmieri.” *Of Courtiers and Princes: Stories of Lower Court Clerks and Their Judges* (Todd C. Peppers, ed.). University of Virginia Press (2020): 125-126. In a February 1, 1987, letter to Michelle Palmieri Warren, Ginsburg made a similar observation: “Your father was always so proud of you – worried, sometimes, that you were working too hard, or not always treated as your ability warranted. Many times I have thought that his hopes and love for you and Marie-Claude account for his willingness to take a chance on me.” Palmieri’s hopes for his daughters and their professional success were realized, with Marie-Claude becoming a journalist and lawyer and Michelle a doctor.

on her gender. I don't think that she said anything. Little did I know at the time that it was a moment in history.¹⁰⁹

During his time as a federal district court judge, Palmieri hired thirty-six law clerks. Over one-third of his clerks were women, an astonishing percentage given the aforementioned barriers facing female lawyers in the 1950s and 1960s. His former law clerks believed that his hiring practices reflected the pride that he felt about his older sister and his daughters. "He was very keen on having women succeed," explained Paul Galvani. "That was probably an outgrowth of his two daughters. But he was very, very proud of the fact that his sister was a doctor." A reporter who once interviewed the former clerks about Palmieri's progressive hiring practices wrote that "some of the former clerks had some ideas, all of which centered around the judge and his daughters." The law clerks interviewed included Ruth Bader Ginsburg, now a federal judge. "[E]ven in those days, fathers of daughters were more sensitive to equal opportunity," she observed. She added, however, that all clerkship selections were "strictly on the basis of merit."¹¹⁰ Ginsburg's comments were seconded by former law clerk Alvin H. Schulman: [Judge Palmieri] "always realized professional ability had nothing to do with sex."¹¹¹

Another law clerk interviewed for the article believed that Ginsburg herself paved the way for additional female hires. "Judge Ginsburg was one of his very favorite clerks," stated Paul. H. Wilson, Jr. "[H]e had such a favorable experience with her that that may have something to do with it." Wilson carefully pointed out, however, that Palmieri was "not the kind of fellow anyway who would discriminate on the basis of whether you are a man or a

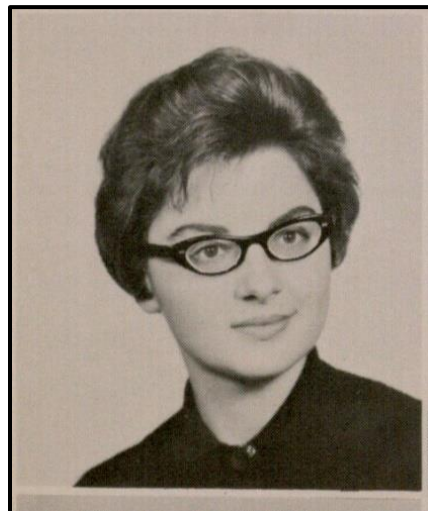
¹⁰⁹ Palmieri-Wrenn Correspondence.

¹¹⁰ *The Former Law Clerks to Judge Palmieri*, N. Y. L. JOURNAL, June 13, 1983.

¹¹¹ *Id.*

woman.”¹¹² Palmieri wrote Ginsburg a letter about the newspaper article, telling her that he found his former clerks’ conclusion about his hiring motivations “most gratifying.”¹¹³

Former law clerk Malvina Halberstam never discussed Palmieri’s hiring practices with him, but she pointed out that Palmieri benefited from the gender discrimination of the day; women who would have qualified for more prestigious clerkships on the Supreme Court or federal court of appeals but for discriminatory hiring practices ended up working for the Judge.¹¹⁴ Former law clerk Leah Bishop made a similar observation about the benefits of hiring female law clerks. “[A client] once said to me if I wanted the best in anything I will always try to find a person of color or a woman because if that person had gotten to that place in his or her career, the person had to be at least twice as good as anybody else. Even though Judge Palmieri never expressed that, I think there is a good chance that he believed that...what he wanted was the highest caliber clerk he could find. And often that means a female.”¹¹⁵



Judge Palmieri’s third female law clerk,
Columbia Law School graduate Malvina Halberstam.

¹¹² *Id.*

¹¹³ Letter from Edmund L. Palmieri to Ruth Bader Ginsburg (June 20, 1983).

¹¹⁴ Interview with Malvina Halberstam (Mar. 10, 2022) (hereinafter “Halberstam interview”) (After her clerkship, Halberstam worked at the American Law Institute and at the State Department before becoming a law professor.).

¹¹⁵ Interview with Leah Bishop (Mar. 10, 2010) interview with Leah Bishop (hereinafter “Bishop interview”) (Bishop does estate and probate work at the law firm of Loeb & Loeb.).

It is important to note that there were a handful of federal district court judges in the Southern District of New York who shared Palmieri's gender-blind hiring practices. In 1953, Judge Edward Dimock hired Columbia Law School graduate Miriam Goldman Cedarbaum to clerk in his chambers. Cedarbaum herself would become a federal district court judge in 1986. During his short tenure as a federal district court judge (1954 to 1957), Lawrence Walsh hired two female law clerks – Nancy H. Goldring, a Harvard Law School graduate who was killed in a car accident during her clerkship,¹¹⁶ and Myra Schubin, who was the wife of Judge Irving Kaufman's law clerk.

In the late 1950's, Kaufman himself hired his first female law clerk – a New York University Law School graduate named Judith T. Younger. A married mother who attended the same law school as her husband, Younger also faced gender discrimination when looking for post-graduation employment. "I remember that when I first approached the dean of the law school to talk about the possibility of a clerkship, he told me that I ought to stop competing with my husband and support him in his career," Younger recalled. "In tears, I told him [her husband] what the dean had said. He didn't console me; he sent me back to the dean to 'demand' my rights." The law school dean changed his mind, and he wrote a short, one sentence letter to Kaufman that read: "Eddie, this year I am sending you Judith T. Younger, who is as brilliant as she is beautiful." Younger was "insulted" by the letter but added that it "got me the interview and that was far more important."

Unfortunately, Younger continued to face gender discrimination in her clerkship.

I was the first female law clerk my judge had ever hired, and he persisted in lending me out to others and showing me off. Early in the clerkship, there was a telephone call from someone who didn't give his name but who did leave a message: "Tell Eddie I want to see that 'broad' he hired." I didn't realize that the caller was

¹¹⁶ *Car Crash Fatal to Woman*, THE N.Y. TIMES, Nov. 18, 1956.

referring to me. When I told the judge he laughed and said, “That was Learned Hand, he wants to meet you.” I had to go to Judge Hand’s chambers though I was absolutely terrified. Once there, his secretary ushered me into what seemed to be an empty room. Suddenly, Judge Hand appeared from behind a huge desk. He began to sing “Greensleeves.” He followed that with Portia’s speech about the quality of mercy from Shakespeare’s “The Merchant of Venice.” Then came a shower of profanity. Finally he shouted “Go!” laughing gleefully at my confusion. When I got back to chambers, my Judge was amused. He said, “You had to meet him. He’s a legend after all.” At the time, I was happy to have escaped. In retrospect, I realized that neither my Judge nor Judge Hand was malicious but the experience was demeaning and I was hurt by it.¹¹⁷

Clearly Learned Hand, one of the twentieth century’s greatest trial court judges had difficulty accepting the equality of women.

Marie-Claude herself recalls the following encounter with Hand.

I remember Judge Hand as something of a misogynist, a brilliant man who dominated the conversation with his intelligence and erudition. My father wanted very much for his daughters to meet this great man and invited Judge Hand and his wife for tea. Surrounded by women, Judge Hand dominated the conversation by quoting by heart all of Shakespeare’s criticisms of women. Judge Hand’s wife sat quietly through this as did we.

Added Marie-Claude: “He made no bones about the fact that he would never hire a woman.”

Looking back on the visit, Marie-Claude now wonders if Hand was waiting for the Palmieri daughters to challenge him.¹¹⁸

Undoubtedly because of their gender, Palmieri’s male law clerks had more positive encounters with Hand. “At the end of the day sometimes he [Hand] would come down [to chambers] and wait for Palmieri [to drive him home], recounted Hellerstein. “He was a very earthy

¹¹⁷ Judith T. Younger, *Professor Judith T. Younger, First Woman*, MS. JD BLOG (Mar. 13, 2007), <https://ms-jd.org/blog/article/professor-judith-t-younger-first-woman>.

¹¹⁸ Marie-Claude further notes that Learned Hand gave her sister Michelle a copy of his book, *The Spirit of Liberty: Papers and Addresses of Learned Hand*. He inscribed the book as follows: “Suivez votre père” (“follow your father”). “She [Michelle Palmieri] feels this mitigates the harsh criticism of Hand,” says Marie-Claude. “There was a glimmer that he could be reformed on his attitudes toward women!”

man...and used to schmooze with me.” There was even an occasion when Hand got excited about a draft opinion that Hellerstein was preparing and helped the young law clerk find the appropriate citations.

As noted above, Palmieri’s hiring practices also ignored the religious bigotry of the day. Of all the former law clerks interviewed for this article, only Malvina Halberstam recalled discussing her religion with Palmieri. During her interview, Halberstam told the Judge that she was an Orthodox Jew and wouldn’t be able to work on Friday evening or Saturday. She stated that Judge Palmieri was “gracious” and said that, if the need arose, he would also come in on a Sunday and work with her.

Typically, Palmieri’s law clerks worked a year before starting their legal careers. Three law clerks, however, stayed a second year – Alvin Shulman, Ruth Bader Ginsburg, and Paul Galvani. Shulman and Ginsburg never publicly stated why they stayed for an additional year, although Ginsburg told Marie-Claude Palmieri that she worked a second year “because that’s what your father wanted.” Ginsburg later told Marie-Claude that, when she became a federal appeals court judge, her clerkship helped her understanding the operation of the lower federal courts.¹¹⁹

Galvani explains that his longer tenure was the result of a bad experience that Palmieri had with an earlier clerk.

The clerk that preceded me did not work out at all. He had problems. I don’t know whether he left of his own accord or the judge urged him out the door. But he was gone in the spring of 1964. So the judge didn’t have a clerk until I arrived in August. That experience—he hired that fellow out of Columbia—interviewed him and so on—thought he had hired a good one and he kind of lost his confidence in his ability to interview law students. To pick out who would be a good one or not. So he thought I was doing okay and I enjoyed it so he asked me—said to me—words to that effect – “I don’t have much

¹¹⁹ Wrenn-Palmieri correspondence with Ruth Bader Ginsburg.

confidence in my ability to interview for a law clerk and it would be great if you'd be willing to stay on.”¹²⁰

Another benefit of Galvani's staying for a second year – Palmieri did not have to train a new law clerk. “We got along well,” Galvani explained. “I was a hard worker and took my job seriously...if I had been a clunker he wouldn't have asked me to stay on the second year no matter how bad he was at interviewing.” Despite being asked to spend another year in chambers, Galvani did not get a swelled head. “The Judge used to say to me – I can't tell you how often he said this – ‘you know, Ruth was the best law clerk I ever had.’ I'd say, ‘Thanks a lot, Judge. What about me?’ He didn't mean to be cruel or anything.” When Galvani told Ginsburg about Palmieri's remarks, he got a surprising response. “Ironically, I once said that to Ruth and she said, ‘he used to tell me you were his best clerk.’”¹²¹

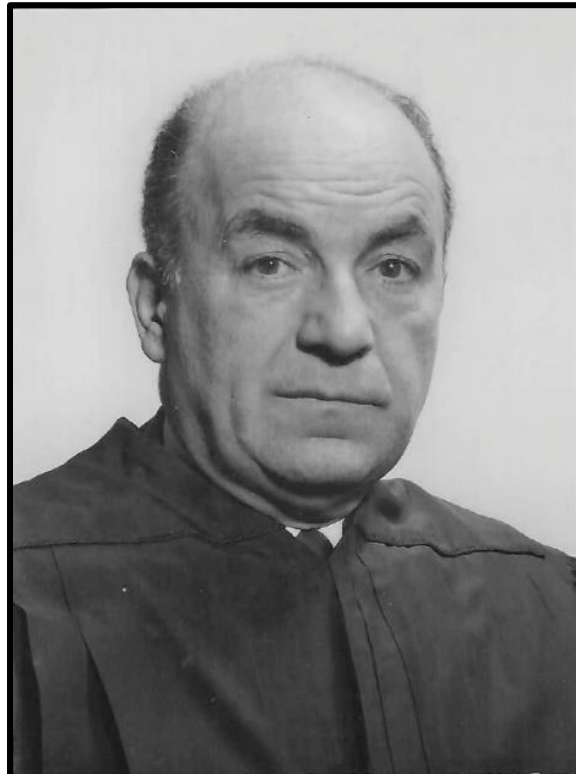
Working for Judge Palmieri

The law clerks worked in Palmieri's chambers on the twentieth floor of the Foley Square courthouse in Manhattan. “It looked like a judge's chambers out of central casting,” remarked Florence Hutner. Marie-Claude described the chambers as “spacious, and wood paneled, and elegant” with separate rooms for Palmieri's secretary and law clerk. Palmieri's personal office had a private bathroom and was large enough to accommodate a grand desk as well as a conference table where he could meet with groups of attorneys. When the table was not being used for meetings, case files were carefully arranged across its polished surface. The wood-paneled walls of the chambers were decorated with paintings and photographs, including oil paintings of Judge John Palmieri and Charles Evans Hughes and autographed pictures of Thomas Dewey, Learned

¹²⁰ Interview with Paul Galvani (June 21, 2020) (hereinafter “Galvani interview”) (After his clerkship, Galvani worked in the United States Attorney's Office for the Southern District of New York under Robert Morgenthau before joining the law firm of Ropes & Gray.).

¹²¹ Galvani interview.

Hand, and Dwight Eisenhower. Palmieri and his fellow judges travelled from their chambers to the robing rooms in a private elevator.



Undated photograph of Judge Edmund L. Palmieri. Photograph Provided by the clerk's office, Southern District of New York.

In the first two decades of Palmieri's tenure on the federal bench, judges were not assigned cases until trial. This meant that judges would spend certain days on the bench hearing pending motions, and the law clerks were involved in doing legal research and assisting in the preparation of written orders. The clerks were also routinely involved in the drafting of dispositive motions and opinions. Prior to drafting orders and opinions, the clerks received detailed instructions by Palmieri. They seldom drafted bench memos (memoranda on points of law) for Palmieri.

When it came to writing court opinions, former law clerk Leah Bishop explained that Palmieri was "a very practical judge."¹²² To illustrate this point, she recounted working on a case

¹²² Bishop interview.

involving an investor seeking a waterbed patent. The case intrigued Bishop, and she worked diligently on the draft opinion. After reading the draft, Palmieri walked into Bishop's office. "Do you understand that there is nothing innovative about a plastic bag filled with water," he asked his clerk. Chastened, Bishop rewrote the opinion.

Bishop recalled another occasion when she "screwed up on a jury instruction," prompting a rare public rebuke in open court from Palmieri. "I deserved it and tried not to cry," she said. "But in all fairness, considering his age and position...when I think back to the responsibility he gave me and what he had to put up with in terms of my lack of knowledge and lack of world experience, it's pretty incredible."¹²³

After Palmieri reviewed a draft opinion prepared by a clerk, Palmieri and the clerk would sit in the Judge's large office and carefully walk through the opinion. "He cared about the craft of writing," explained former clerk Kent Yalowitz. "Not everybody does. He cared about the elegance of expression."¹²⁴ Palmieri also cared about readability and brevity, cautioning his clerks against overloading his opinions with endless citations. "I'm not here to write law review articles," was a common warning.

Cases did not linger in Palmieri's chambers. "Judge Palmieri told me during the clerkship—whenever we had a nonjury trial—that he wanted to decide the case within minutes after the case finished," explained Hellerstein. "He said that if you keep the case on your desk and it gets stale you forget about it and it's a very great burden. So he had me work on the findings in the case—and discuss it with him each evening until we came to the end. Then he dictated the decision from the bench." Now himself a federal judge, Hellerstein follows the same practice.

¹²³ Bishop interview.

¹²⁴ Interview with Kent Yalowitz (Dec. 27, 2019) (hereinafter "Yalowitz interview").

When asked if law clerks influenced the disposition of cases in the Palmieri chambers, Hellerstein had a quick retort. “He was a very intelligent man. He took a great deal of pride in his work...[and] he knew what he wanted to do with the cases. He didn’t need my recommendations.” Hellerstein added, however, that Palmieri was open to a robust discussion of how the case should be decided.

Defendants and their families frequently reached out to Palmieri about their cases and sentences. The law clerks were responsible for drafting replies after consulting with Palmieri. In a letter to the father of a convicted felon, Ginsburg drafted the following response.

Judge Palmieri has asked me to acknowledge receipt of your letter...and to assure you of his continuing interest in your son’s rehabilitation. Because the sentence was a long one, and the facts which gave rise to it unusual, it is Judge Palmieri’s earnest hope that your son will make every effort to persuade the responsible authorities of his entitlement to early parole. In this connection, it is of great importance that he manifest an understanding of the efforts that may be made for his benefit and, particularly, by an exemplary prison record, his ability to accept discipline and to profit by it.¹²⁵

It has been said that young law clerks, like young people, are often wrong but seldom in doubt. Even Ginsburg as law clerk learned that with age and experience comes wisdom.

Judge Palmieri had mastered the lawyer’s craft, and he had uncommonly good sense, judicial instincts and insights...I recall only one case in which I seriously questioned Judge Palmieri’s judgment. The issue, in an estate tax controversy, was whether the life tenant, a single woman in her forties at the time of the donor’s death, was then capable of having children (in legal terms, whether the possibility of issue was so remote as to be negligible). Impossible for her to have a first child at that overripe age I insisted. More experienced in the world than his twenty-six year old law clerk, Judge Palmieri firmly but kindly disagreed and ruled for the Commissioner. He said I would come to understand. He was right.¹²⁶

¹²⁵ Letter from Ruth Bader Ginsburg to Mr. A.D. Jerkins (June 7, 1961). The defendant in question received an eight-year prison sentence for participating in a counterfeit money operation.

¹²⁶ Fed Supp memorial cite.

While the Palmieri law clerks never forgot that the Judge was in charge, they also appreciated that they could inadvertently impact the resolution of a case. Explained Schafran:

I remember getting a phone call from one of these very, very, very senior people and he was talking to me as if I were the most important person in the whole world. Now, I don't know if this was just his manner and this was the way he always spoke to people, or whether he thought that I was this lovely young law clerk that he could get something from, and I can remember standing there with my hand over the receiver so he wouldn't hear me laughing because he's going on and on in this unctuous voice about whatever he wanted, and I'm telling him nothing, barely the time of day and then going in and saying to Judge Palmieri, "Well, here's an example of how things can go awry because it would be really easy to fall for this kind of flattery if you didn't know better."¹²⁷

While the law clerks did not exert substantive influence over Palmieri's decision making, occasionally the clerks wielded a more benign influence over the Judge's behavior. For example, former clerk Schafran was responsible for Palmieri's decision to have a case formally published. During her time with Palmieri, the Judge heard a case involving two defendants who robbed two different banks located in a shopping mall on the same morning. After the bench trial, Palmieri dictated a "wonderfully written opinion that opened with a reference to *A Tale of Two Cities* – this was a tale of two banks."¹²⁸ In an email to Marie-Claude, Schafran explained that "[a]t that point in his life your father rarely sent cases to the *Federal Reporter*, but I pleaded with him to send this, even though it set no precedent."¹²⁹ And why did Schafran want the opinion published? "I said that one night a weary associate would stumble across this and have a moment of pleasure in the midst of some dreary research assignment."

¹²⁷ Oral History of Lynn Hecht Schafran. ABA Senior Lawyers Division Women Trailblazers in the Law."

¹²⁸ *United States v. Contino*, 394 F. Supp. 607 (S.D.N.Y. 1975).

¹²⁹ Email from Lynn Hecht Schafran to Marie-Claude Palmieri (Oct. 19, 2013).

Judge Palmieri remained a stickler for appropriate courtroom attire. One law clerk shared that while sitting in New Mexico,¹³⁰ the Judge expressed frustration with attorneys whom he considered to be “disrespectful” because they did not wear ties in the courtroom.¹³¹ She pointed out that “bolo ties were considered ties;”¹³² the Judge was unmoved. Perhaps if the young clerk had known about Palmieri’s dim view of zoot suits in the courtroom, she would have anticipated his position on bolo ties.

Whether we interviewed Palmieri’s first law clerks or his last, their description of their former employer are remarkably similar. The description “courtly” is used repeatedly. Warm. Dignified. Kind. Charming. Eloquent. Humorous. Intelligent. Dedicated. “In the year that I was with him, I don’t think I ever heard a curse word or a harsh word from him to me or to anybody else,” said Sheiber. “If it was criticism it would be presented in a very constructive way.” Frankl spoke of how Palmieri treated “everyone” with respect. Halberstam recalled Palmieri’s old-world manners. “The Judge and I couldn’t decide whether or not he should hold the door for me or I for him. We agreed to a compromise – if he wasn’t wearing his judicial robes, he could hold the door!”

To Kent Yalowitz, Palmieri was a “big-hearted human being” who “cared about me” and “was kind to me.” To illustrate Palmieri’s kindness, Yalowitz recounted a story involving his practice of jogging in the morning. One morning during the winter, Palmieri expressed his confusion and dissatisfaction about Yalowitz’s practice of not arriving in chambers until the rather late hour of 9:00 a.m. When, however, Palmieri learned that Yalowitz was waiting for the

¹³⁰ Judge Palmieri was likely sitting by designation on the 9th Circuit at the time of this encounter. According to former clerk Lynn Hecht Schafran, Judge Palmieri “took senior status as soon as he was able-not because he wanted a reduced docket, but because he liked sitting in different parts of the country” Schafran interview. Palmieri would also sit by designation on a 9th Circuit panel with future Supreme Court Justice Anthony Kennedy.

¹³¹ Schafran interview.

¹³² Schafran interview.

morning sun to appear so he could jog before coming to work, Palmieri's objection to his late arrival melted away.

Former law clerks also reference Palmieri's patrician air and elegant clothes, and how the Judge worked to keep up appearances even when faced with the normal incidences of life.

"During the second day of my clerkship, I went in to see him in his office," recounted former law clerk Evelyn Finkelstein said. "He was in his robes and said: 'Oh I don't really walk around like this but I had spilled something on my clothes.' He was a little embarrassed by it."

Perhaps the clerks' feelings toward Palmieri are best summed up in a goodbye letter written by outgoing clerk Janice Handler (a clerk herself recommended by Ginsburg):

Just a little note to express what a privilege and honor it has been to serve as your law clerk this year. The many rewards of conferring with you on cases and observing you on the bench cannot be enumerated. Most of all, however, I enjoyed the opportunity to know you as a warm and loving family man and as a humane individual. These glimpses of your private self which you allowed me to share on our rides together were certainly the highlight of this wonderful year. I am saddened by the close of this chapter in my life but would be far sadder if I did not anticipate further contact with you – as a member of the bar, as a friend, and as an ever faithful member of your judicial family, upon whom you may always call for any favor within my ability.¹³³

Non-Legal Experiences While Clerking

Prestige notwithstanding, Palmieri found the life of a federal judge to be isolating. According to his daughter, he found "that being a judge was a very lonely job."¹³⁴ Many of the judges in the Foley Square courthouse took their lunch in the Judges' dining room, and

¹³³ Letter from Janice Handler to Edmund Palmieri.

¹³⁴ Peppers interview with Marie-Claude.

occasionally Palmieri joined them.¹³⁵ Former law clerk Paul Galvani recalled that Palmieri generally avoided the judge's dining room, however, for a very principled reason:

He didn't go up to the judge's lunchroom because he didn't believe in that. It was a mixture of district court and appellate judges. He said it really bothered him to see district judges lobbying the appeals court judges to affirm their cases. So he would not go up there. He ate Jello or cottage cheese or something in his chambers.¹³⁶

There were, however, exceptions to this isolation. As noted earlier, Palmieri drove to and from the courthouse with Judge Learned Hand, and occasionally he invited judges to dine with him in his chambers. One judge with whom Palmieri enjoyed a warm relationship was Inzer Bass Wyatt, a transplanted southerner who also sat in the Southern District. "He was a southern judge with a southern drawl but loved France," Marie-Claude explained. "Once he came to a cocktail party my parents gave. I said, 'I hear you are a Francophile.' He said, 'No, I'm an Edmundophile.'¹³⁷ Marie-Claude also recalled that her father dined in his chambers with Judge Constance Motley.

His law clerks also provided social stimulation. In his early decades on the bench, Palmieri and his law clerks would take late afternoon breaks and walk across the Brooklyn Bridge. During these walks, Palmieri would relax and talk about non-legal matters. "He was a great storyteller," recalled Hellerstein.¹³⁸ "Judge Palmieri loved beautiful sights, sounds, and tastes," added Ginsburg. "On our late afternoon walks across the bridge to Brooklyn and back, he spoke of opera, art, and theatre, or of great books, architecture, scenic places, fine food and wine."¹³⁹

¹³⁵ Shieber interview. According to some of his law clerks and his daughter, during some years Judge Palmieri ate lunch at his desk, as he preferred to avoid the Judges' dining room - the other judges wanted to talk shop and he left the dining room in a state of confusion.

¹³⁶ Galvani interview.

¹³⁷ Palmieri-Wrenn correspondence.

¹³⁸ Hellerstein interview.

¹³⁹ Ginsburg, "Remembrances" at 124.



Undated photograph of Judge and Mrs. Palmieri. Photograph courtesy of the Palmieri family.

The first Palmieri law clerks also remember attending dinners at Palmieri’s home. This tradition appears to have died away once the family of Palmieri clerks grew too large. Frankl recalled attending one such dinner during her clerkship, which she described as “charming.” And Frankl learned some “dinner serving tricks” from Mrs. Palmieri. “For instance, I always insist that my guests start immediately without waiting because she did that at her table so the food would not get cold. And I thought ‘if this grand French madame could do that, so could I.’”¹⁴⁰

Post-Clerkship Relations with Palmieri

During Palmieri’s first two decades on the bench, regular law clerk reunions were held at the Palmieri residence. One of the first law clerks, Al Schulman, recalled that Marty Ginsburg was “the life of the party” and always came bearing a homemade cake, adding that Ruth Ginsburg was more quiet and reserved. When the retired law clerk corps grew too large for the Palmieri’s apartment, the reunions were moved to The Sign of the Dove, a restaurant adjacent to the Palmieri residence. Palmieri would reserve a private upstairs dining room that the

¹⁴⁰ Frankel interview.

restaurant had nicknamed the “Salum Sanctorum,” where former law clerks and their spouses would join the Judge and his wife for dinner. The current clerk would also attend. Galvani recalls the reunion held during his time with Palmieri, which included Ruth and Marty Ginsburg. “It was a delightful evening,” said Galvani. “When he [Palmieri] came in the next morning, he said, ‘I’m going to have to take out a second mortgage to pay for that dinner.’”¹⁴¹ While the Palmieri’s enjoyed the restaurant’s convenient location and good food, Marie-Claude explained that the loud music from the restaurant irritated her mother. The restaurant’s owner placated Mrs. Palmieri by sending her large bouquets of flowers.

If there is one thing about which all the Palmieri law clerks agree, it is that Palmieri and Ginsburg developed a special bond which lasted until his death in 1989. “My father always spoke about Ruth in laudatory terms, impressed with her intelligence and abilities from day one, remarked Marie-Claude. “I think that he felt very lucky to have her.” And Ginsburg herself referred to Palmieri as “my judge.”

Ginsburg herself explained:

Soon after my appointment to the D.C. Circuit, Judge Palmieri wrote of his pride and pleasure. “One day,” he said, “I hope to slip into your courtroom quietly to enjoy your presence on the bench.” My colleagues arranged, instead, for Judge Palmieri’s service to our court as a visiting judge. He graced our bench in 1982, 1984, and again in 1988, and he regularly aided other circuits as well, including the Ninth and the Fifth. Judge Palmieri enjoyed being in D.C. in the cherry blossom season and on each visit, he and his beloved wife, Cecile Claude Verron Palmieri, planned something special—an afternoon touring Hillwood or attending a National Gallery exhibition. After his spring 1988 week with us, he wrote: “I hear from my friends in Paris that the Gaugin exhibition is now in full sway there, requiring at least two hours wait before admission. How fortunate we were to have been able to see it in Washington, D.C., in quiet, comfortable circumstances.”¹⁴²

¹⁴¹ Galvani interview.

¹⁴² Ginsburg, “Remembrances” at 124.

Of a former law clerk sitting with her former employer, Ginsburg remarked: ““I don’t know if that ever happened before,”” Ginsburg told a reporter. “[B]ut it was a great pleasure and a pleasant experience for us both.””¹⁴³ Ginsburg and Palmieri ultimately heard seventeen cases together, with Ginsburg writing a dissenting opinion in only one appeal.¹⁴⁴ Ginsburg later told Marie-Claude that writing the dissent brought her great discomfort and made her wish that she was still Palmieri’s law clerk rather than colleague.¹⁴⁵



Professor Ruth Bader Ginsburg (left) at a party celebrating Judge Palmieri’s (right) 65th birthday. Catering was provided by Ginsburg’s husband, Marty, including a large fish (right). Photographs courtesy of the Palmieri family.

Palmieri also celebrated the successes of Ginsburg’s children. When her daughter, Jane, joined the Columbia law school faculty, he wrote: “I am happy to hear good things about the new member of the Columbia Law School faculty. You must be very proud of Jane. So am I.”¹⁴⁶ Writing in response to Palmieri’s letter, Ginsburg shared news of her son’s graduation from the University of Chicago and assured Palmieri that she was proud of both her daughter and “the best behaved, most beautiful grandson I know.” Ginsburg shared with Palmieri that she would be

¹⁴³ *Supra* note 110.

¹⁴⁴ *Sweatt v. United States Navy*, 683 F.2d 420 (D.C. Cir. 1982).

¹⁴⁵ Palmieri-Wrenn correspondence.

¹⁴⁶ Letter from Edmund L. Palmieri to Ruth Bader Ginsburg (Apr. 7, 1987).

receiving an honorary degree from the Brooklyn Law School and invited Palmieri and his wife to a celebratory dinner, adding that [it] would mean something special to me.” The letter concludes: “with love to you.”¹⁴⁷

The Judge and His Work

Over his thirty-five years on the bench, the world passed through Palmieri’s Foley Square courtroom. The attorneys who appeared before the court included such “greats” as long-time United States Attorney Robert Morgenthau, prominent attorneys Louis Nizer and Edward Bennett Williams, and notorious lawyer and “fixer” Roy Cohn. After his rise to fame as one of the federal prosecutors in the espionage case against Ethel and Julius Rosenberg, followed by a stint as Senator Joseph McCarthy’s aide during the Red Scare, Cohn became a sought-after New York lawyer who practiced in the Southern District of New York. It is unclear how often Cohn appeared in Palmieri’s courtroom, although the two men – both graduates of Columbia Law School - must have crossed paths in the 1950’s and 1960’s.

Cohn drew Palmieri’s ire in a lawsuit involving the mishandling of an escrow account. Cohn represented companies accused of defrauding investors by illegally failing to disclose its underwriters and in withholding shares in stock offerings.¹⁴⁸ The corporations’ assets were ordered to be held in trust to repay defrauded investors. Cohn instead used the money to pay his own legal fees.

When Palmieri learned of Cohn’s actions, the Judge ordered him to repay the \$219,000 (plus interest) to the escrow fund or face a competent of court hearing. Regarding Cohn’s defense – that he was unaware of a court order requiring that corporate assets be held in escrow –

¹⁴⁷ Letter from Ginsburg to Palmieri (Apr. 13, 1987).

¹⁴⁸ *SEC v. Pied Piper Yacht* (1974) and *In re Ramtek Sec. Lit.* (1974). These cases were the start of Cohn’s trouble in federal court, leading to contempt charges and disbarment.

Palmieri wrote that it was “with surprise bordering on stupefaction that this court is now confronted by sworn statements from Mr. Cohn denying any knowledge of the terms and requirements of the escrow order.”¹⁴⁹ The law clerk working on the case was less circumspect, recalling that Cohn “oozed slime.”¹⁵⁰



Attorney Roy Cohn in 1964. Library of Congress.

Many defendants themselves were memorable, if not also infamous. They included Benjamin “Benny the Bug” Ross, a union organizer charged with tax evasion and perjury whom Palmieri denounced in court as a “menace to society,”¹⁵¹ convicted spy Morton Sobell (a confederate of Julius and Ethel Rosenberg), disgraced financier Louis Wolfson, Stanley Younger, whom Palmieri labeled “a successful wholesaler in larceny” for his fraudulent stock scheme,¹⁵² purported mobsters John “Johnny Dio” Dioguardi and Joseph “Joe Bananas” Bonanno, former United States Treasury Secretary Robert Anderson, stock manipulator extraordinaire Lowell McAfee Birrell, and Barbara Ann McIvar, a pregnant mother-turned-bank

¹⁴⁹ *Roy Cohn Ordered to Return \$219,000 Missing in Fund*, THE BUFFALO NEWS, Feb. 27, 1976.

¹⁵⁰ Schafran interview.

¹⁵¹ Dennis Sneigr, *Ross Draws 15-Year Term, \$90,000 Fine in New York*, FORT LAUDERDALE NEWS, Dec. 12, 1972.

¹⁵² Alfred Meile, *Gets 3 ½ Yrs. for Larceny by Wholesale*, DAILY NEWS, Dec. 30, 1960.

robber (Palmieri expressed his dismay at sending a pregnant woman to prison and arranged for her to give birth in a regular hospital).¹⁵³ Even comedian Lenny Bruce made a brief appearance in Palmieri's chambers, knocking at the door and seeking judicial relief from state obscenity charges.¹⁵⁴

Not all the parties were ne'er-do-wells and scoundrels. One of Palmieri's early cases involved Edwin Howard Armstrong, a World War I veteran, Columbia University professor, and a brilliant scientist whose inventions included "frequency modulation" or FM radio. While eclipsed by more flamboyant inventors like Thomas Edison and Nikola Tesla, "historians point out that in imaginative scope and technical finesse he exceeds [Thomas] Edison" and is considered by many to be America's "foremost inventor."¹⁵⁵ Like Tesla, however, Armstrong's story has a dark ending.

Starting in the late 1930's, Armstrong filed a slew of patent infringement cases against national radio companies and manufacturers (such as RCA). While some defendants tendered large settlement offers, Armstrong remained steadfast in demanding that he be publicly recognized for his inventions. Some of these lawsuits took years to resolve, and they left Armstrong "deeply embittered" and financially devastated as he lost his nine million dollar fortune to pay for a team of fourteen lawyers.¹⁵⁶

Only weeks after his lawsuit against the Emerson Radio & Phonograph Company was filed in the Southern District of New York, Armstrong succumbed to the pressuring of the grinding litigation. After writing a farewell note to his wife, Marion, a letter "in which he

¹⁵³ *Mom Pregnant, Wins Bank Stickup Mercy*, DAILY NEWS, Aug. 1, 1959.

¹⁵⁴ Paul Galvani was the law clerk who greeted Lenny Bruce when he knocked on the door of Palmieri's chambers. He described Bruce as "the most timid person I think I've ever encountered in my life." Galvani interview.

¹⁵⁵ Hans Fatnel, *The Name is Forgotten, But the Legacy is Enduring*, THE N.Y. TIMES, Dec.16, 1990.

¹⁵⁶ Malcolm W. Browne, *Papers Tell Tragic Tale of Man Who Invented FM*, THE N.Y. TIMES, May 21, 1978.

acknowledged the unhappiness that his obsession had brought her and himself,”¹⁵⁷ Armstrong donned his gloves, scarf, hat, and coat and jumped out the window of his New York penthouse apartment.



Undated photograph of Edwin Howard Armstrong.

Marion Armstrong, who had begged her husband to settle his lawsuits, now resolutely continued the pending legal actions – including the case against Emerson Radio. Six years later, Palmieri – now assigned to the case – ruled in favor of the late inventor, finding that Armstrong’s patents were valid and Emerson Radio had infringed several of them. Palmieri’s ruling was methodically laid out in a highly-technical and lengthy opinion.¹⁵⁸ While Palmieri’s holding had the potential of making Armstrong’s widow a multi-millionaire, she later settled the case for \$750,000.¹⁵⁹ Ultimately, she would prevail in all the lawsuits originally filed by her husband.¹⁶⁰

After the patent dispute was resolved, Marion Armstrong wrote Palmieri and thanked him for vindicating her late husband’s faith in the rule of law:

Throughout my dear husband’s life he never faltered in his Faith in God and his faith in the justice of our great country. His

¹⁵⁷ Waldemar Kaempffert, *Stubborn Genius*, THE N.Y. TIMES Dec. 9, 1956.

¹⁵⁸ *Armstrong v. Emerson Radio & Phonograph*, 179 F. Supp. 95 (1959); Edward Ranzal, *Armstrong Suit on Radio Upheld*, THE N.Y. TIMES, Sept. 16, 1959.

¹⁵⁹ *Suit Over FM Settled*, THE N.Y. TIMES, Jan. 30, 1960.

¹⁶⁰ See Browne *supra* note 156.

disappointments were many but he went forward with strength and courage in his efforts, thinking always of the rights of man and especially inventors whose paths of progress were impeded by obstacles beyond their control. Your learned decision which I know is the result of exhaustive study, is to my soul a complete vindication of Howard's belief that "Truth shall prevail."¹⁶¹

In honor of her late husband, Marion Armstrong, family friends, and long-time colleagues founded the Armstrong Memorial Research Foundation.¹⁶²

The attorneys and litigants who passed through Palmieri's courtroom faced a thoroughly prepared jurist. "He ran a very professional courtroom. A very tight ship," explained former law clerk Randy Segal. "He thought through everything he said [and] took a long time preparing for trial."

As a young assistant United States attorney, Louis Freeh regularly appeared before Palmieri. "He had a very powerful courtroom presence," explained Freeh. "He was very elegant and well-respected because of his stature, reputation, and the history that he brought to the bench. It was a special feeling you had when you walked into his courtroom."¹⁶³ Former clerk Paul Galvani stated that Palmieri was "meticulous" and "totally conscientious" when it came to running trials. As an example, Galvani recalled how the trilingual judge would "drive interpreters nuts in his courtroom."

He [Palmieri] had a Frenchman who was testifying once. The question would be asked, and the interpreter would turn to the witness and say, "He wants to know where you were born." The Judge would say, "No, no, no. That's not what he said. Please

¹⁶¹ Letter from Marion Armstrong to Edmund Palmieri (Sept. 21, 1959) Marie-Claude reports that Marion Armstrong maintained a "cordial" correspondence with Palmieri, even sending him a copy of a book about her late husband.

¹⁶² *Esther Armstrong, 81, the Wife of Inventor of FM Radio System*, THE N.Y. TIMES, Aug. 10, 1979; *Fund Honors Inventor: Armstrong Foundation Will Subsidize Research*, THE N.Y. TIMES, June 29, 1956.

¹⁶³ Interview with Louis Freeh (Mar. 10, 2023) (hereinafter "Freeh Interview").

translate the question. The question was ‘where were you born,’ not ‘he wants to know where you were born.’”¹⁶⁴

Concluded Galvani: “Not a lot of giggles in the courtroom...he was very serious.”

Palmieri’s preparedness was combined with an unwavering focus on the proceedings before him. “[The Judge] would have to pay careful attention to what was being said,” said Galvani. “There are some judges that slack off a little bit. If there is any objection, they ask the court reporter to read back the question because they didn’t hear it – they weren’t paying attention. Judge Palmieri wasn’t like that. He paid careful attention. At the end of the day, he would be as tired as the lawyers [trying the case].” As evidence of Palmieri’s dedication, Galvani recalled a book that Palmieri gave him as a gift. Inside the front cover, Palmieri had inscribed: “To Paul Galvani, patient witness to the anguish that must sometimes be endured by a district judge.”

What struck former law clerk Frankl was that Palmieri extended “equal attention and civility” to everyone in his courtroom. As a young assistant United States attorney, Pierre Leval often appeared in Palmieri’s courtroom. He described Palmieri as a “very gracious and courtly man” who was “kindly towards young lawyers learning how to practice law in front of him.”¹⁶⁵ And the kindnesses and courtesy sometimes extended to the criminal defendants themselves. Leval described a hearing where a French-Canadian defendant named Michelle Duclos took the witness stand. “Michelle is testifying...and she starts to cry. Judge Palmieri got up, walked to the witness box, and offered her his beautiful, long handkerchief.” Concluded Leval: “Things in the courtroom were done in a lot less formal matter.”¹⁶⁶ Palmieri was not reticent, however, in

¹⁶⁴ Galvani interview. Nephew John Gibbons remembered a case in which a defense attorney, unfamiliar with Palmieri’s language skills, falsely claimed that a wiretap transcript translated from French into English was riddled with errors. After a careful review of the transcript, Palmieri held the lawyer in contempt of court.

¹⁶⁵ Interview with Pierre Leval (July 18, 2020) (hereinafter “Leval interview”).

¹⁶⁶ *Id.*

publicly sharing his opinion as to the depravity of some defendants' behavior. When sentencing two pharmacists for illegally distributing barbiturates, Palmieri remarked that the defendants had "built a small fortune on the shattered bodies of the people they dealt with."¹⁶⁷

Former law clerk Florence Hutner explained that she felt "enormously privileged" to watch Palmieri at work in the courtroom – a sentiment echoed by other law clerks. "I would sit at the bench where clerks often sit and have the opportunity to watch what was going on, seeing how he handled things, pass him notes as needed and try to contribute—tried to get a sense of what worked and what didn't...[s]eeing that was great." For former clerk Paul Galvani, time spent in the courtroom was invaluable training for his subsequent work as a federal prosecutor.

There were some important criminal cases that he [Palmieri] had. I would go down and listen to those and try to pick up the evidence. Somebody would ask a question and the other lawyer would say objection—sustained. And I'd say what the hell was wrong with that? I'd lose the next five or ten minutes of the trial as I was trying to figure out why the judge had sustained the objection. But eventually I kind of got the hang of it.¹⁶⁸

Of these opportunities to watch and learn from great attorneys sparring in court, Galvani pungently observed: "I was like a pig in manure."

As noted earlier, during Palmieri's tenure the Southern District of New York was blessed with an abundance of talented and dedicated jurists. When asked where Palmieri ranked amongst his contemporaries, former assistant United States attorney Louis Freeh praised the late judge. "I would put Palmieri in the upper echelon [of judges] in terms of legal scholarship, courtroom management, and legal temperament." Freeh added that he "noted and admired"

¹⁶⁷ *Warning to Druggists*, WORLD TELEGRAM, Nov.18, 1957. The *World Telegram* added: "The jail sentences are reported to be the first imposed in such cases in the Southern District of New York. Let them be a lesson to any other pharmacists whose greed exceeds their respect for ethics, morals – and the law."

¹⁶⁸ Galvani interview.

Palmieri's humility. "He would talk about his work [in post-war Italy], but he would act like he was a small cog in the machinery."¹⁶⁹

During his time on the federal bench, Palmieri addressed a staggering array of legal questions involving constitutional, federal, and state law. It would be impossible to summarize all the knotty legal issues presented to Palmieri. We will, however, discuss some of the more important and interesting cases.

The Duty to Divulge Exculpatory Evidence

Thomas "Tommy the Greek" Kapatos was a "muscular" former construction worker "whose explosive temper seemed to have been fermenting longer than his 49 years."¹⁷⁰ As a young man, he was convicted of second-degree murder in 1937 and sentenced to twenty-two years in prison. Paroled in 1954, Kapatos located a witness who had told the original prosecutors that Kapatos was not one of the two men that he had observed committing the murder. Shortly after his discovery, Kapatos was returned to prison for violating his parole. It was during his second incarceration that Kapatos filed a petition for a writ of habeas corpus, arguing that his first conviction was unlawful because exculpatory evidence was withheld by United States Attorney Thomas Dewey's office.¹⁷¹

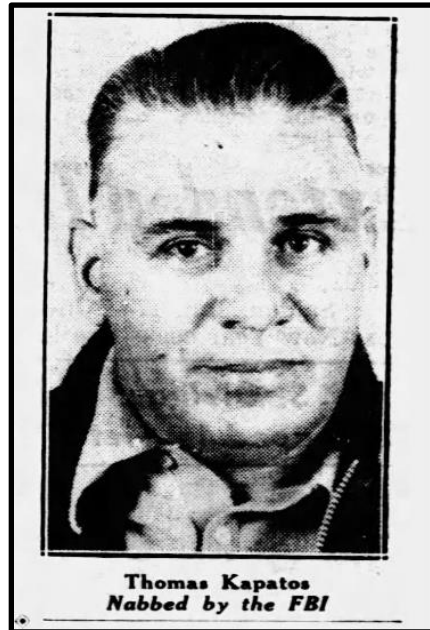
The petition was assigned to Palmieri. In July of 1962, the Judge granted the writ of habeas corpus and ordered the release of Kapatos. While Palmieri conceded that sufficient evidence existed to make Kapatos a prime suspect, he believed that the testimony of an unbiased and disinterested witness who saw other men at the murder scene could have raised reasonable doubt in the minds of jurors. Accordingly, Palmieri ordered the defendant

¹⁶⁹ Freeh interview.

¹⁷⁰ *Honor Among Thieves*, DAILY NEWS, June 11, 1989.

¹⁷¹ Neal Patterson, *Convict Free After 22 Years; DA Hid Slaying Witness*, DAILY NEWS, July 10, 1962.

released.¹¹ Interestingly, Palmieri issued his order a year before the Supreme Court's decision in *Brady v. Maryland*, which required federal prosecutors to disclose material exculpatory evidence in their possession.¹⁷²



New York Daily News, January 18, 1966.

In Palmieri's personal papers is a letter that Kapatos himself sent the Judge:

I wish to extend to you my heartfelt thanks for the very thorough job you did with the facts of the case. As you know this is the very first time since this case was called to the attention of the New York State Courts that anyone has taken the trouble to read the very lengthy record and to render a fair decision and I want you to know how much I appreciate what you have done for me. It was a time consuming job, I know, and needless to say I shall be forever grateful to you for the fairness that you have shown.¹⁷³

Ironically, Kapatos' freedom was short lived. In 1966, he was arrested on a separate charge – he participated in a failed attempt to rob three million dollars in jewelry from a delivery vehicle.¹⁷⁴

Kapatos was subsequently sentenced to another ten years in prison.

¹⁷² *Brady v. Maryland*, 373 U.S. 83 (1963).

¹⁷³ Letter from Thomas Kapatos to Edmund Palmieri (July 12, 1962). The letter is written in such a precise hand that the clerk at the time, Malvina Halberstam, wondered if Kapatos had dictated it.

¹⁷⁴ *Gem Suspect Freed on Bail; Threat Cited*, DAILY NEWS, Jan. 19, 1966.

The First Amendment

In 1957, Palmieri presided over a case involving the struggle between protected free speech and obscenity. And the man at the center of the case was Alfred C. Kinsey, a prominent scientist and Indiana University professor who founded the Kinsey Institute for Research in Sex, Gender, and Reproduction in 1947. During the early years of the Institute, Kinsey ordered erotic drawings, photographs, and written texts from overseas suppliers. These materials arguably violated a 1930 tariff law which banned the importation of obscene materials. Kinsey, however, had reached an informal agreement with local United States Customs Bureau inspector Alden H. Baker, who allowed the Institute to import erotic drawings, photographs and written texts as long as they were used for research and not shared with the general public.¹⁷⁵

Eventually, Baker's superiors learned of the agreement and were dismayed that Kinsey was receiving "grossly obscene" materials.¹⁷⁶ The disagreement between Kinsey and the Customs Bureau caught the attention of the press, whose stories about Kinsey and his pictures of "moral degenerates in degenerate poses" caused a public uproar.¹⁷⁷ When Kinsey's attorneys failed to convince the Customs Bureau to make an exception to the obscenity ban, they advised Kinsey to deliberately set up a confrontation with the federal government. "Their proposed test case called for patently obscene materials to be sent to the institute through the New York customs office, where the deputy collector of customs agreed to seize the packages and the district attorney promised prompt federal proceedings."¹⁷⁸

¹⁷⁵ Kenneth R. Stevens, *United States v. 31 Photographs: Dr. Alfred C. Kinsey and Obscenity Law*, INDIANA MAGAZINE OF HISTORY, Vol. 71, No. 4 at 299—318 (Dec.1975).

¹⁷⁶ *Id.* at 301.

¹⁷⁷ *Id.* at 305 (quoting the *Aniston Star*).

¹⁷⁸ *Id.* at 302.

Although the federal government seized photographs, a collection of Chinese erotic paintings, statues, and books in 1951 and 1952, the test case remained in limbo as Institute lawyers tried to reach a compromise with the Customs Bureau. Finally, two key developments took place in the summer of 1956 – On August 1, the government filed a libel action to have the seized erotic materials destroyed; three weeks later, Kinsey succumbed to heart problems that his friends and family believed were exacerbated by the stress of his struggles against governmental censorship.

Ten months after Kinsey’s death, the case was finally argued before Palmieri in an unusual night hearing.¹⁷⁹ Palmieri subsequently found in favor of the Institute. In doing so, he rendered an important decision about obscenity. Palmieri rested his decision on the idea of “variable obscenity,” which looked to the audience to determine if the materials were obscene.¹⁹ In the instant case, Palmieri determined that the photographs were not obscene because their intended audience were research scientists (who did not have a prurient interest in the materials) and not the general public. “[W]hat is obscenity to one person is but a subject of scientific inquiry to another,” Palmieri concluded.¹⁸⁰ This unique standard of “variable obscenity” was not embraced by other courts and was eventually eclipsed by a new obscenity test fashioned by the Supreme Court.¹⁸¹

Almost twenty years later, Palmieri was faced with another novel First Amendment issue. This time, Palmieri was sitting by designation on the United States Court of Appeals for the District of Columbia when he heard the case of *Clark v. Library of Congress*.¹⁸² The petitioner

¹⁷⁹ *U.S. Seeks to Destroy Sex Data Album*, STOCKTON EVENING AND SUNDAY RECORD, July 17, 1957.

¹⁸⁰ *United States v. 31 Photographs*, 156 F. Supp. 350 (1957); See also Anthony Lewis, ‘Who Sees It’ Held Test of Obscenity, THE N.Y. TIMES, Jan. 3, 1958.

¹⁸¹ Stevens, “United States v. 31 Photographs,” 317.

¹⁸² *Clark v. Library of Congress*, 750 F.2d 89 (DC 1984).

was Henry Kenneth Clark, a civilian employee who worked as a book reshelver in a non-secure position at the Library of Congress. After the Library of Congress requested that the FBI investigate his participation in the Young Socialist Alliance, Clark sued. He alleged that the investigation was a violation of his First Amendment rights to freedom of speech and association.¹⁸³ Clark also made a claim of employment discrimination.¹⁸⁴ After a nonjury trial, the district court dismissed Clark's claims and an appeal was filed.

In an opinion written by Palmieri, the three-judge panel unanimously found that Clark's political beliefs and non-violent political activities were protected by the First Amendment and directed the lower federal court use a heightened standard of review when reconsidering Clark's allegations of constitutional violation. The Court also remanded the case to the trial court to consider the employee's claim of employment discrimination.¹⁸⁵

Thomas Vinje was Palmieri's law clerk at the time of the *Clark* decision. He recalled that Kenneth Starr, then a judge on the D.C. Circuit, circulated a "rather extreme memo" responding to Palmieri's draft decision. According to Vinje, Starr "essentially claimed it would mark the end of the national security of the U.S." Starr's response apparently "shocked" Palmieri, who told his clerk that he "always thought the Democrats were crazy but now I see the Republicans have gone nuts too."¹⁸⁶ Suffice it to say, Palmieri's opinion did not bring the United States to its knees.

The Living Theatre

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ Nat Hentoff, *A New Burden for the Loyalty Sleuths, Sweet Land of Liberty*, THE WASHINGTON POST, Feb. 14, 1985.

¹⁸⁶ Email from Thomas Vinje to Marie-Claude Wrenn Myers (Nov. 10, 2020).

Of all the defendants who appeared before Palmieri, arguably the most memorable were a pair of actors accused of impeding a tax investigation. “It was a case much talked about by my father,” explained Marie-Claude. “He never forgot the Beck trial.” A charismatic couple who cut a large swath through the New York theater scene, Julian and Judith (Malina) Beck founded the Living Theater in the late 1940’s. A newspaper reporter once described Julian Beck as an “artist who has always flouted convention. A thin, high-domed man with a few strands of blondish hair, Mr. Beck has the air of a Yul Brunner turned ascetic philosopher.”¹⁸⁷ His wife, the actress Judith, was a “diminutive woman (journalists noted that she weighed less than 100 pounds) [who]...was tireless and passionate in advancing the idea that theater can be, and should be, a blunt force for cultural change.”¹⁸⁸

While the Living Theater rose to prominence by the late 1950’s, its artistic success did not translate to ticket sales, and it fell behind on paying taxes. By the fall of 1963, the Becks owed \$28,000 in back taxes and were drowning in debt. The Internal Revenue Service responded by seizing the theater and scheduled an auction of its assets.

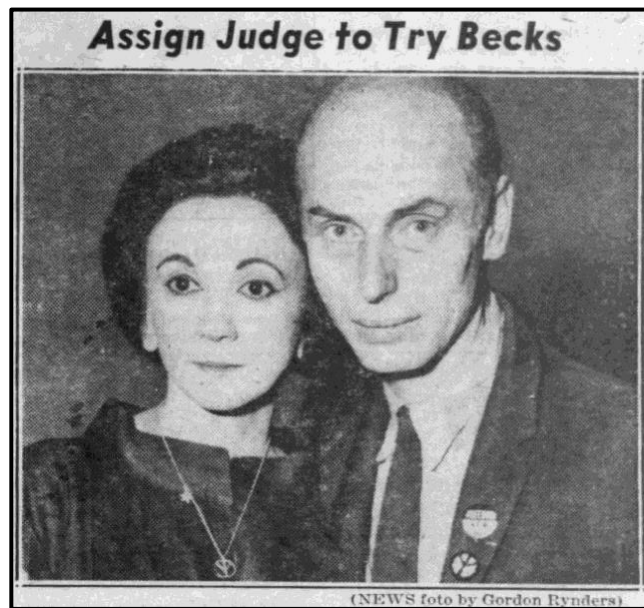
The Becks, however, were undeterred by the padlocks that the federal agents affixed to the theater doors. They broke into the shuttered theater, set up ladders for patrons to climb into the upper floor windows, and staged a performance of the play “The Brig.” When federal marshals arrived to shut down the production, mayhem ensued, and twenty-five members of the troupe were arrested as a large crowd gathered outside the theater chanted “art before taxes.” The government would eventually auction off the theater’s possessions, netting a princely sum of 250 dollars.¹⁸⁹

¹⁸⁷ *Off Broadway, Off Beat: Julian Beck*, THE N.Y. TIMES, Oct. 21, 1963.

¹⁸⁸ Bruce Weber, *Judith Malina, Founder of the Living Theater, Dies at 88*, THE N.Y. TIMES, Apr. 10, 2015.

¹⁸⁹ Edward Ranzal, *U.S. Indicts Becks on Theater Taxes*, THE N.Y. TIMES, Jan. 23, 1964.

In their initial court appearance, the Becks used their new stage to share their political views with the world. In court, Julian Beck argued that the court should not require any of the defendants to post bail. “To me, bail is the privilege of the rich, which I do not wish to lean on,” he told the presiding judge.¹⁹⁰ Perhaps to make the point that the Becks were common folk, the New York Times reported that Julian Beck wore open-toed sandals in court, while Judith was attired in “a khaki shirt opened at the collar, black slacks and sneakers without socks.”



Three months later, the Becks were indicted on eleven counts of impeding federal officials. This would not be the first time the Becks had faced criminal charges; in 1957, they served short prison terms for failing to participate in a local civil defense drill.¹⁹¹ The Becks professed to be stunned by the inevitable indictment. “We are surprised and shocked that the grand jury is not able to differentiate between the devotion of artists to their art and criminal acts.”¹⁹²

¹⁹⁰ Louis Calta, *Troupe's Hearing to Resume Nov. 4*, THE N.Y. TIMES, Oct. 22, 1963.

¹⁹¹ See *supra* note 187.

¹⁹² Edward Ranzal, *U.S. Indicts Becks on Theater Taxes*, THE N.Y. TIMES, Jan. 23, 1964.

The criminal trial commenced before Palmieri on May 13, 1963. The Becks had fired their original attorney and insisted on representing themselves. Palmieri arranged for an attorney to sit near counsel table and advise the defendants, but they routinely rejected the proffered legal advice and told him to stop interrupting their defense. “We would like to humanize the case,” Judith explained to reporters during a break in the trial. “I have faith that our innocence will defend us.”¹⁹³

During the opening days of trial, federal prosecutors offered several witnesses who attested to the Becks’ efforts to break into the theater and mount a new production (thus interfering with the seizure of assets). Julian and Judith took turns cross-examining the witnesses, with Judith clad in a long black gown that she called “my Portia gown.” Despite her initial bravado, the opening days of the trial exacted an emotional toll; by the third day, Judith collapsed at counsel table. “[T]he defendant, a tiny woman who weighs about eighty pounds, began to slap with her right hand at the table at which she was seated. Then she lowered her head and began sobbing.”¹⁹⁴ Astonishingly, after a short break Judith composed herself and conducted a brief cross-examination of the same witness.

The trial stretched over nine days, with much of the time devoted to the Becks’ theatrics. On the morning of May 18, 1964, the Becks opened their defense by introducing into evidence affidavits of support from playwrights Tennessee Williams and Edward Albee (the affiants attested to the Living Theater’s cultural value as well as the “high moral character” of its founders).¹⁹⁵ Later that same day, however, the Becks were threatened with arrest for breach of the peace when, during a lunch break, the Becks and their supporters blocked the entrance to the

¹⁹³ Louis Calta, *Jury is Selected for Becks’ Trial*, THE N.Y. TIMES, May 14, 1964.

¹⁹⁴ *Mrs. Beck Weeps on Trials 3[RJD Day]*, THE N.Y. TIMES, May 16, 1964.

¹⁹⁵ *Becks in Dispute on Steps of Court*, THE N.Y. TIMES, May 19, 1964.

courthouse.¹⁹⁶ Once the trial resumed, the Becks called a *New York Post* drama critic to the stand (who testified that the events of the prior fall had not changed his opinion of the Becks' talent) and a troupe member (who asserted that government agents had seized her personal property).

If the behavior of the defendants during their trial was not enough to challenge even the most stoic of jurists, Palmieri had to deal with other theater members who attended the trial. This included a young woman who was nursing a baby in the courtroom. Upset by her bare breasts, the U.S. Marshals wanted to arrest her for public indecency. "My father said 'no,'" recalled Marie-Claude. "He had seen mothers nursing their babies during mass in Naples during the war. No nursing mother was going to be arrested in his courtroom."

The trial culminated with the surreal sight of husband and wife separately taking the stand to be examined by their co-defendant spouse. Newspapers described Julian's testimony as a fifty-minute "monologue" about the financial pressures and "nightmarish debts" facing the theater.¹⁹⁷ And after Judith Beck testified as the final defense witness, she also delivered her final arguments and begged the jurors to reject the "rigidity of the law."¹⁹⁸

The Becks were convicted on May 25, 1964. When the verdict was announced, supporters shouted protests and federal marshals rushed to remove the troublemakers. The Becks' cries of "innocent, innocent," combined with Judith's demand for immediate sentencing in lieu of "waiting to hear what is in your [Palmieri's] hard heart,"¹⁹⁹ prompted Palmieri to find the Becks in contempt of court. Then a weary Palmieri addressed the defendants. "You have made so many pathetic mistakes and I think that you are misguided but sincere people who have been unable to adjust to living in a complex society where your artistic life has come into

¹⁹⁶ *Id.*

¹⁹⁷ *Beck Tells Court of Woes with Debt*, THE N.Y. TIMES, May 22, 1964.

¹⁹⁸ *The Beck Case Goes to Jury on Monday*, THE N.Y. TIMES, May 23, 1964.

¹⁹⁹ Richard J.H. Johnston, *Jury Finds Becks Guilty in Tax Case*, THE N.Y. TIMES, May 26, 1964.

conflict with such things as tax laws.”²⁰⁰ Palmieri’s efforts to appease the defendants came to naught, with Judith shouting that the Judge would have to “cut out her tongue” to stop her cries of innocence.

On June 5, 1964, the Becks appeared in federal court for their sentencing hearing. If trial observers thought that the couple would curb their theatrics in the face of the seriousness of the hearing, they were mistaken. Julian Beck carried his wife into court, telling the assembled reporters that Judith had injured her leg and could not walk. Newspapers across the country carried the image of the dapperly dressed Julian with Judith artfully arranged in his arms.

Prior to the imposition of sentence, Palmieri introduced into evidence a letter the Becks had submitted to the court. While the couple offered a written apology, writing that they “should have controlled their passionate indignation” and not “repaid your courtesy to us with such discourtesy,” Judith could not control said passions when she addressed the court. Sitting at counsel table because of her injury, she told Palmieri how much she loved her husband, lauding him for his pacifist nature. “[He] stood by while six men beat me with clubs and did not move in my defense because he loves nonviolence more than he loves me.”²⁰¹ Then she raised her arms and asked the court for mercy.

We have, I think, already been very much punished, and it is truly beyond my comprehension to know for what. We believe we did right. I accuse the United States of murdering the Living Theatre. I say that I shouldn’t say that, but it’s the truth. I look to you to protect me from total despair.²⁰²

The *Daily News* reported that Palmieri stayed silent for almost two minutes before responding to Judith’s final plea for mercy. He spoke in a quiet voice. After observing that the Becks were

²⁰⁰ *Id.*

²⁰¹ *Prison Sentences Imposed on Becks*, THE N.Y. TIMES, June 6, 1964.

²⁰² Norma Abrams and Lester Abelman, *Living Theatre’s Beck Gests 60 Days & Wife Draws 30*, DAILY NEWS, June 6, 1964.

“very intelligent persons, although highly sensitive and emotional,” Palmieri reminded the Becks that they were still required to follow the law. “Your resistance to the exercise of lawful authority was wrong,” Palmieri somberly observed. “I cannot condone the offenses for which you stand convicted.”

Julian Beck was sentenced to sixty days in prison; Judith Beck received a thirty-day sentence. Upon learning of her lenient sentence, Judith demanded that the court sentence her to death. Palmieri, taking a cue from Judith’s “Portia dress,” demonstrated that the quality of mercy was not strained by declining Judith’s request to be executed. He even allowed the Becks to travel abroad to England and Greece for theatrical engagements prior to serving their sentences. They returned to the United States in December of 1964 and served their sentences. With that, the most consequential performance of the Living Theater drew to a close. And as for Palmieri’s role in the bizarre comedy, a former juror later wrote Palmieri and, in reference to the Becks’ antics, told the Judge that he had the patience of a saint.

Paramount Consent Decrees

Palmieri is perhaps best known for a set of cases that were not originally tried in his court. The “Paramount Consent Decrees” cases started in the late 1930’s, when the federal government sued Columbia, Paramount, RKO, Twentieth Century Fox and Universal Studios for violations of the Sherman Antitrust Act. At the time, motion picture studios were vertically aligned with movie theaters, which meant that studios owned all or a portion of individual theaters as subsidiaries (thus the studios controlled the production, distribution and exhibition of their films). In many cases, the studios limited the release of their films only to those theaters with which they were aligned, precluding other theaters from showing their films. This practice was especially detrimental to the non-aligned theaters, who could not show premiere movies

from the big motion picture studios without agreeing to also screen the studios' more mediocre fare (this was referred to as "block booking").

The litigation ended up in the United States Supreme Court and produced consent decrees in which the major movie studios agreed to end block booking.²⁰³ Additionally, the studios were forced to disband their distribution and exhibition monopolies. Under the agreement, movie theaters would have to seek permission of the federal courts regarding future theater acquisitions, licensing agreements, and film distribution.²⁰⁴ Palmieri's court was specifically assigned the cases and was responsible for overseeing compliance with the decrees. Palmieri would do so from 1957, a few years after he took the federal bench, until his death thirty-five years later.



Judge Palmieri's work on the Paramount Consent cases provided opportunities to meet Hollywood royalty, from Bob Hope (far left) to Cary Grant (right). Photographs courtesy of the Palmieri family.

²⁰³ *United States v. Paramount Pictures, Inc., et al.*, 334 U.S. 131 (1948).

²⁰⁴ Eriq Gardner, *Judge Agrees to End Paramount Consent Decrees*, THE HOLLYWOOD REPORTER, Aug. 7, 2020; Maureen Lee Lenker, *Why the End of the Paramount is Bad for Movies and Movie Theaters*, ENTERTAINMENT WEEKLY, Aug. 7, 2020.

In the decades following the settlement, the government would, on multiple occasions, bring challenges to specific instances of movie releases, which they claimed were prohibited by the settlement. On each occasion, Palmieri would consider whether the specific release was in violation of the agreement. Palmieri also oversaw hundreds of theater acquisition agreements. In 1981, a study was undertaken to consider whether the decree was still necessary.²⁰⁵ In spite of changes that had happened in the movie industry in the ensuing decades, the study concluded that the settlement was still important to prevent movie studios from once again controlling the release of films.

By the time Palmieri died in 1989, the case was “the oldest [open]. . . in the courthouse.”²⁰⁶ Maurice Silverman was a former Department of Justice antitrust lawyer who appeared before Palmieri in the consent decree cases. Silverman was moved to reach out to Claude Palmieri shortly after Palmieri’s death. “Over the many years in which he [Palmieri] presided over matters pertaining to the motion picture industry, he came to have a deep understanding of, and a great love for, the industry which he rightly regarded as an important cultural medium, one especially available to people of limited means,” wrote Silverman. “While he was fair to all, whether a large corporation or the little business man operating a single theater, he did have a special regard for the little people in the industry.”²⁰⁷

The Hollywood community also took note of Palmieri’s impact on their industry, with both the *Hollywood Reporter* and *Variety* carrying the news of his death. “No other judge, no matter who he is, could bring to the industry the vast storehouse of knowledge that Palmieri had – he knew every nook and cranny of the business,” Jack Valenti, president of the Motion Picture

²⁰⁵ Michael Conant, *The Paramount Decrees Reconsidered*, 44 L. & Contemp. Probs. 79 (1981).

²⁰⁶ Yalowitz interview. It was considered by Court administrators “to be one case” and “to be an open case.” United States v. Paramount Pictures, Inc., 1980 U.S. Dist. LEXIS 13427 at *7 (S.D.N.Y. Sept 2, 1980).

²⁰⁷ Letter from Maurice Silverman to Claude Palmieri (June 21, 1989).

Association of American, told the *Hollywood Reporter*. ““He was one of those legal mountains that nobody could scale.””²⁰⁸

The federal court’s supervision of the consent decrees continued for another twenty years. In August 2020, Judge Analisa Torres granted the government’s motion to end the decrees, with a two-year sunset provision.²⁰⁹ After eighty-four years, the Paramount Consent Decrees litigation came to a close.

Costello Naturalization

Several of Palmieri’s cases are noteworthy because of the publicity they generated, not the novel legal issues involved. This includes defendant Frank Costello, an infamous New York mob boss called “the Prime Minister of the Underworld” and “King of the Slot Machines”²¹⁰ and who was allegedly the inspiration for Don Corleone. Costello immigrated to the United States when he was a child and became a naturalized citizen in 1925. He was a member of the Luciano crime family and a bootlegger who amassed a fortune through his complex web of criminal enterprises. As with many career criminals, Costello underreported his income to the Internal Revenue Service and was repeatedly targeted by the federal government for tax evasion.

Federal law allows the government to essentially walk back the citizenship that they have granted to immigrants, usually because of some fatal flaw that existed with the naturalization itself. In 1952, the United States government changed its tactics and moved to revoke Costello’s citizenship. The government’s action was filed prior to a tax evasion conviction in 1954. In their revocation request, they alleged that Mr. Costello had misrepresented

²⁰⁸ Claudia Eller, *Palmieri’s Death Raises Issue of Consent Decrees’ Survival*, THE HOLLYWOOD REPORTER, June 19, 1989.

²⁰⁹ Danny Gallagher, *There are No More Laws Preventing Studios from Owning Movie Theaters. Now What?*, DALLAS OBSERVER, Aug. 14, 2020.

²¹⁰ Arthur Mulligan & Gilbert Millstein, *Frankie Costello Sues Police to Regain That Lost \$27,200*, DAILY NEWS, June 20, 1944.

his occupation on his citizenship application - he listed his occupation as “real estate,” when, in fact, it was bootlegging. The government also claimed that he illegally swore an oath of allegiance to the United States while actively violating United States law, also tainting his application.



Frank Costello testifying before Congress in 1951. Library of Congress.

In 1956, Costello’s denaturalization case was assigned to Palmieri. Costello was represented in court by a young attorney named Edward Bennett Williams, who would later become a legend in the Washington, D.C. legal community. The hearing was filled with drama, much of it surrounding Costello’s claims that he was suffering from a heart condition. After Costello rose from counsel table and approached the witness box to offer testimony, he suddenly stopped and grabbed the end of the clerk’s table. “Your honor,” the “thin, pale” gambler called to Palmieri in a “barely audible voice,” “I cannot take the stand. I am not physically fit. It’s all I can do to sit here. I cannot even concentrate. I am in terrible pain.”²¹¹ With that, Costello returned to counsel table, sat down, and swallowed two pills. Court was adjourned and Palmieri

²¹¹ Norma Abrams & Henry Lee, *Costello Pleads He Can’t Take the Stand*, DAILY NEWS, Sept. 27, 1956.

ordered a physician to be summoned. The doctor could not substantiate Costello's claims, finding that the gravelly-voiced mobster could testify for limited periods of time.

Two days later, a rejuvenated Costello waved to supporters as he walked out of court – Palmieri had dismissed the case without prejudice because evidence offered by the government was tainted by an illegal wire-tap. “This makes me feel better,” Costello cheekily told reporters. “By the law of averages, I was bound to win this one.”²¹²

Palmieri's ruling would later be affirmed by the United States Supreme Court. A second action was filed by the government, this time with new evidence. In 1959, Costello was denaturalized and his citizenship was revoked.²¹³ Although this denaturalization was upheld by the Supreme Court, the government's efforts to actually deport him were unsuccessful. As for Costello, his claims of pending death by heart attack appeared to be grossly exaggerated; he spent his final years gardening and entering flower shows before dying in 1973 – seventeen years after he staggered towards the witness stand in Palmieri's court.²¹⁴

The PLO CASE

One of Palmieri's most important cases occurred late in his judicial career and involved whether Congress could limit the Palestinian Liberation Organization to the United Nations. In 1987, Congress passed the Anti-Terrorism Act.⁷² Under the provisions of the law, Attorney General Edwin Meese ordered the PLO to close its Observer Mission to the UN.⁷³ The PLO refused, forcing the Department of Justice to seek legal redress in federal court. The case drew national attention, with Rudy Giuliani representing the United States and former United States

²¹² Norma Abrams & Sidney Kline, *Costello Beats Deportation; U.S. Used Wire Tap*, DAILY NEWS, Sept. 29, 1956.

²¹³ *Costello v. United States*, 365 U.S. 265 (1961).

²¹⁴ *Frank Costello Dies of Coronary at 82; Underworld Leader*, THE N.Y. TIMES, Feb. 19, 1973.

Attorney General Ramsey Clark appearing on behalf of the PLO. The United Nations was granted leave to appear as amicus, and both briefed and argued the case.

In an opinion stretching over thirty-seven pages, Palmieri concluded that the Anti-Terrorism Act did not apply to the UN Headquarters Agreement. The Headquarters Agreement was an agreement signed in 1947 between the United Nations and the United States which established a seat for the UN in New York. As part of that agreement, certain non-members are permitted by the United Nations to maintain “Permanent Observer Missions” in New York. The PLO operated such a mission. The Anti-Terrorism Act explicitly prohibits the PLO from operating any “office, headquarters, premises, or facilities” in the United States. Palmieri found that the ATA did not supersede or invalidate in the UN Headquarters Agreement.

Palmieri’s holding generated an enormous and varied response. A *New York Times* editorial remarked that Palmieri “wisely struck down the Government’s attempt to close the Palestine Liberation Organization mission to the United Nations.”²¹⁵ The *Los Angeles Times* editorial page also praised Palmieri, writing that Palmieri “has now put aright what Congress so ill-advisedly set awry.”²¹⁶ On the other hand, one author suggested that “[a]n examination of the district court’s decision leads to an inquiry as to whether the district court’s need to find the ATA inapplicable to the PLO Mission dictated its conclusions about Congressional intent.”²¹⁷ Senator Jesse Helms of North Carolina urged the administration to appeal the case.²¹⁸ Helms wrote that the “issue is the question of who determines the sovereign powers of the United States – the Congress and the president through the constitutional process, or the United Nations and a single

²¹⁵ *Opening One Ear to the P.L.O.*, THE N.Y. TIMES, July 5, 1988.

²¹⁶ *Ending an Embarrassment*, L.A. TIMES, July 4, 1988.

²¹⁷ Richard Cummings, *The PLO Case: Terrorism, Statutory Interpretation, and Conflicting Obligations under Domestic and Public International Law*, HASTINGS INT’L AND COMPAR. L. REV., Vol. 13 No. 1, Fall 1989 at 65.

²¹⁸ *White House Accepts Ruling on PLO Office*, THE CHARLOTTE OBSERVER, Aug. 30, 1988.

District Court judge in New York.”²¹⁹ Ultimately, the Reagan administration declined to appeal Palmieri’s decision. Kent Yalowitz, Palmieri’s clerk that year, recalled that the Judge was “really proud” of the work that he and his young clerk did on the case.

Despite the fact that Palmieri was a seasoned jurist who had seen it all, he still sought out feedback from trusted colleagues and former clerks – including “favorite” law clerk Ginsburg. “In 1988, for example, he ruled that Congress could not require the Palestine Liberation Organization to close its observer mission to the United Nations; in a companion opinion, however, he concluded that the government could prohibit P.L.O. activities not connected to the U.N. mission.²²⁰ ‘If and when you can get to it,’ he wrote soon after publication of the opinions, ‘I’d be grateful for your critical comment on my P.L.O. decision.’”²²¹

Pizza Connection Case (1985)

The “Pizza Connection” case involved Palmieri both as a the linguist and as a jurist. It involved an international conspiracy to import and distribute heroin in the United States. Drug dealers used pizzerias and restaurants as distribution points and to launder money, hence the case’s moniker. The twenty-two defendants included mafia chieftains in both Sicily and the United States. In addition to charges of conspiracy to distribute narcotics and money laundering, many of the defendants were charged with racketeering under the relatively new federal RICO statute. It was estimated that during the scheme’s ten years of operation, over 1.5 billion dollars of cocaine and heroin was sold. Attorney General William French Smith later described the operation as “the most significant cases involving heroin trafficking by traditional organized crime that has ever been developed by the Government.”

²¹⁹ *Id.*

²²⁰ *United States v. Palestine Liberation Organization*, 695 F. Supp. 1456 (S.D.N.Y. 1988); *Mendelsohn v. Meese*, 695 F. Supp. 1474 (S.D.N.Y. 1988).

²²¹ Letter from Palmieri to Ruth Bader Ginsburg (Aug. 29, 1988) (from a Swiss village near Montreux).

Given the scope of the case, a number of prominent legal actors were involved. The forementioned attorney general, William French Smith. FBI Director William H. Webster. United States Attorney (and future New York mayor) Rudy Giuliani. Prosecutor (and future FBI director) Louis Freeh. The trial lasted almost fifteen months, thus becoming one of the longest criminal jury trials in United States history. The trial did not proceed without drama. Two of the defendants were killed during the legal proceedings, and a juror was excused when her family received a threatening phone call. Ultimately, 18 of the defendants were convicted of various charges related to the drug conspiracy and money laundering ring.

Palmieri was not assigned to preside over the trial; instead, he had a more unique responsibility. Many of the defendants resided overseas and few spoke English. An international mutual assistance treaty existed with Switzerland which permitted “the taking of depositions overseas in criminal cases pending in federal courts.” Palmieri was designated a special master in the case, which meant that he would supervise those overseas depositions given his fluency in Italian as well as advise the magistrate on the finer points of American law.²²² “A great man joyfully undertook the great challenge,” recounted Freeh. “At 78 he took on the task with charm, youthful enthusiasm, and remarkable talents. Although he was a recognized expert on international law, he immediately took all the treaties, all the cases, all the international conferences, and restudied everything, as he prepared everything he did in his 82 remarkable years.”²²³

²²² Glenn Fowler, *E.L. Palmieri, Federal Judge, is Dead at 82*, THE N.Y. TIMES, June 16, 1989; Palmieri-Wrenn interview. Several years prior to serving as a special master, Palmieri had given an address to the Consular Law Society on mutual assistance treaties. Edmund L. Palmieri. “Treaty Aids U.S. Prosecutors to Uncork Swiss Bank Records. *New York Law Journal* (June 6, 1981): 1, 3.

²²³ Louis J. Freeh. *Honorable Edmund L. Palmieri: In Memoriam*. 740 F. Supp. ____.

In June of 1985, Palmieri flew to Bellinzona, Switzerland. He was joined by Freeh. There, the two men attended the depositions of nine witnesses in the Pizza Connection case. Freeh described it as a “grueling” six days with twelve hours days that produced one thousand pages of testimony. Early into the depositions, Palmieri had to warn several American defense attorneys that their courtroom behavior was unacceptable.

You are not before an American court. You cannot bait the Swiss judge like you might try to bait an American judge. You cannot constantly interrupt the Swiss judge [with objections], as you think you can do in America, and if this continues it constitutes nothing more than a sabotage of these proceedings. I beg you to please respect the Swiss judge’s ruling.²²⁴

One of the problems leading to the early courtroom chaos was the fact that the gaggle of defense attorneys had easy access to microphones. Louis Freeh explains the simple solution devised by Palmieri:

The first day, there were defense lawyers for twenty defendants. They all had microphones and were talking. It was chaotic. The Swiss judge was overwhelmed and adjourned early. That evening, Judge Palmieri called myself and another attorney to his hotel room. He had drawn up a diagram of the courtroom. “We need to take some remedial action to help the Swiss judge take control of the courtroom,” he said. “I want you to go over to the courtroom and remove nineteen of the defendants’ microphones, taking all but one for defense counsel table.” The next day, we sat there and waited – the defense lawyers came in, all laughing and jolly, then noticed that the microphones were missing. They got upset, but the day became much more organized because the lawyers had to take turns using the single microphone. Judge Palmieri just sat there with a contented look on his face, saying nothing.²²⁵

Despite the seriousness of the case, the long hours, and the antics of defense counsel, Freeh recounted a rare instance of humor.

In the Swiss courtroom, as was the case in every Swiss courtroom, a large crucifix appeared over the judge’s chair. On one occasion,

²²⁴ July 18, 1985, Report of the Special Master by Edmund L. Palmieri.

²²⁵ Freeh interview.

one of our non-Catholic American colleagues fixed upon the artifact and explained, “Oh, my God.” Judge Palmieri, standing within earshot, replied, “If you say so!”²²⁶

As Palmieri prepared to return to the United States, he dined with the Swiss judges, prosecutors, and defense attorneys who had participated in the depositions. Freeh was present at the dinner, and he recalled that Palmieri offered toasts to his colleagues in Italian, French and English. “His words in the toast had spoken about liberty, the rule of law among nations, and the friendship shared by people of different national origins.”²²⁷ Before he returned home, Palmieri flew to Rome to participate in an international conference on mutual assistance treaties. At the conference, he gave his lecture - entirely in Italian. Of his experiences in Switzerland, he told the Italian audience, in his typical understated fashion, that it was “a proceeding of exceptional juridical interest.”²²⁸

Naturalization Ceremonies

Palmieri loved overseeing naturalization ceremonies. “I believe that his most cherished responsibility as a judge was to preside over naturalization proceedings,” said Paul Galvani. “He was proud of his own heritage and loved to admit newcomers to citizenship.” “He was really serious about enabling these people to become citizens of the United States,” added former law clerk Florence Hutner. “He was so proud of his own citizenship.” Marie-Claude added that he was enormously proud that his own Italian heritage helped serve his country during the war.

We were fortunate to obtain a transcript of one of the last naturalization ceremonies presided over by Palmieri. His delight at participating in the proceedings is evident from the start, as he plays the role of proud host and helps the assembled throng find seats in the crowded

²²⁶ *Honorable Edmund L. Palmieri: In Memoriam.*

²²⁷ *Honorable Edmund L. Palmieri: In Memoriam.*

²²⁸ Translation of June 19, 1985 speech by Edmund L. Palmieri to the Italian-American Conference on Extradition and Mutual Assistance. On file with authors.

courtroom. “There are several chairs up here,” he called from the bench.” “I hate to see you standing up during the few minutes that remain when there are chairs available. Don’t be timid, come right up...[a]ny other candidates for a comfortable seat?”

Once the crowd was settled, Palmieri officially welcomed the attendees to a “stupendous occasion” before sharing his thoughts about the Declaration of Independence and the Constitution. “When I studied history I got a much bigger thrill out of the Declaration of Independence than I did out of anything else that affects the origins of the country because there, by this declaration, the men who signed it put their lives and property on the line,” explained Palmieri. “It was a courageous thing for them to do.” He pointed out that one of these men was Francis Lewis, for whom a local street was named. “He paid dearly for having signed the declaration,” Palmieri remarked. “[T]hey [the British] pursued him, they confiscated his property, his wife was put in jail as a result.” Palmieri briefly detailed the many hardships endured by the colonists as they fought for their freedom before reminding the new citizens of their own obligations to their new country:

As citizens, you will have many duties and many responsibilities, and it is our hope that you will take very seriously the oath that you have taken and that you will be alert, effective members of the community which needs your attention and which needs your solicitude...[y]ou have embraced a new country. This new country has embraced you. There should be a sense of untiring devotion, a willingness to serve, a willingness to make sacrifices if necessary for that country, and the ability to be discerning and helpful when you do serve.

Palmieri turned his attention to the *Star Spangled Banner*, urging the new citizens to learn the lyrics. “If I had any confidence in my own voice, I’d sing it for you now but I won’t bore you by trying it,” he joked. Palmieri closed his comments by quoting from a May 21, 1944 naturalization ceremony in Central Park, where thousands of new citizens listened to Learned Hand warn them

that “liberty lies in the hearts of men and women, and when it dies, no Constitution, no law, no court can save it.” “We must preserve the sense of our citizenship in our hearts by what we do and what we think,” explained Palmieri. “Citizenship doesn’t consist alone of voting, paying taxes or serving on juries, it consists of being an effective member of your community, an effective member of your family, of helping those who need your help.” And with that, Palmieri led the new citizens in reciting the Pledge of Allegiance.

Saying Goodbye to Judge Edmund Palmieri

In the late spring of 1989, it became evident that Palmieri was very ill. Only weeks earlier, he had been diagnosed with advanced pancreatic cancer. Now he was bedridden but still reviewing court files and refusing hospice care. Former law clerk Paul Galvani was invited by Palmieri to his residence in Tuxedo Park. His former employer had one more job assignment – he wanted Galvani to help him prepare his obituary. Palmieri made a similar request of Louis Freeh, who had worked with Palmieri in the Pizza Connection case. “There was no question that he was not going to last very long, but we had a nice talk,” recalled Galvani. After his visit, Galvani and Louis Freeh drafted the obituary.

Palmieri died on June 15, 1989 – one day before he would have celebrated thirty-five years as a federal district court judge. Only six weeks had passed between his diagnosis and death, a rapid demise which Ginsburg told the Palmieri family “was a blessing.”²²⁹ Funeral services were held four days later at the St. Vincent Ferrer Church on Manhattan’s Upper Eastside. At his insistence, his casket was covered with the American flag in recognition of his patriotism and military service.

²²⁹ Palmieri-Wrenn correspondence.

Having written the obituary, Galvani was asked by the Palmieri family to give the eulogy. “I was proud that I was asked to do it.” As Galvani stood to deliver his remarks, he faced an audience filled with the elite of New York’s legal and judicial community as well as Palmieri’s former clerks. While Galvani was nervous the night before, now a sense of calm came over him. “it was an emotional day and it was emotional the night before at the wake...but giving the eulogy itself [was like] delivering an argument to the Supreme Court. I just got on top of it and it worked.” Fittingly, Galvani drew on the words of Charles Evans Hughes to summarize the life of Edmund Palmieri:

Charles Evans Hughes authored a passage that could not be more appropriate. He wrote: “The most beautiful and rarest thing in the world is a complete human life, unmarred, unified by intelligent purpose and uninterrupted accomplishment, blessed by great talent employed in the worthiest activities, with a deserved fame never dimmed and always growing.” I do not know if Judge Palmieri ever read that passage; but I do know this. Nothing better describes the life of the man we now mourn. For truly, the Judge lived a complete life – unmarred, beyond reproach; characterized by uninterrupted accomplishment; great talent employed in the worthiest of activities; and a fame every growing. We shall miss him terribly.²³⁰

Decades earlier, Palmieri had given Galvani a Mont Blanc pen in recognition of his service as a law clerk; after the funeral service, Galvani received a second Mont Blanc pen from Claude Palmieri – one used by Palmieri to sign court documents – to thank him for answering the call of duty one more time.

Palmieri was laid to rest in the family mausoleum at Calvary Cemetery in Queens, New York. The small but elegant mausoleum is topped with a large stone cross and was built by Palmieri’s father, John, in honor of his own mother, and features a striking stain-glass window

²³⁰ Paul Galvani eulogy (on file with the authors).

which subtly illuminates the chamber. There Palmieri is interred alongside his grandparents, parents, and brother Edgar.

Conclusion

There are many reasons to celebrate the life of Edmund Palmieri. He was a loving husband and father. And a mentor to a generation of law clerks who were picked for their intellectual abilities and not for their gender or religion.

It is impossible to know whether Ruth Bader Ginsburg would have become a Supreme Court justice without first clerking for Edmund Palmieri. Certainly she had the god-given talent to serve on the nation's highest court. And by her own admission, she learned much about judging from working with Palmieri (although she did not absorb her employer's conservative political ideology). What is unknown, however, is whether the necessary professional doors would have opened if Ginsburg had not first clerked on "the mother court" for a judge of Palmieri's reputation and stature.

In the beginning of this essay, we observed that Palmieri has become obscured in the long shadow of the "Notorious RBG." While Palmieri did not live to see his protégé become only the second woman to sit on the Supreme Court, we suspect, given Palmieri's respect and deep affection for Ginsburg, that he would not have minded being known as the judge who set Ginsburg on her rendezvous with destiny. We urge our readers, however, to remember that there is much more to celebrate about Judge Edmund L. Palmieri than his fortuitous selection of Ginsburg to serve as his law clerk.

The Palmieri Law Clerks

Law Clerk	Period of Clerkship	Law School Attended
Benjamin M. Shieber (1954)	Aug. 1954- Aug. 1955	Columbia
Jeanne Ritchie Silver Frankl	Sept. 1955- Sept. 1956	Yale
Alvin K. Hellerstein	Sept. 1956-May 1957	Columbia
George I. Gordon	May 1957-Sept. 1957	Columbia
Alvin H. Schulman	Sept. 1957-Aug. 1959	Yale
Ruth Bader Ginsburg	Aug. 1959-Aug. 1961	Columbia
Malvina Halberstam	Aug. 1961-Aug. 1962	Columbia
Donald E. Nawi	July 1962-Aug. 1963	Columbia
Anthony S. Kolker	Aug. 1963-July 1964	Yale
Paul B. Galvani	July 1964-Sept. 1966	Harvard
Anthony C. Kahn	Sept. 1966-Aug. 1967	Harvard
Nancy Stagg	Aug. 1967-Jan. 1968	NYU
Paul H. Wilson, Jr.	Sept. 1967-Sept. 1968	Columbia
Irwin J. Sugarman	Sept. 1968-Aug. 1969	Rutgers
Dennis P. Lilly	Sept. 1969-Sept. 1970	University of Virginia
Janice Handler	Sept. 1970-Sept. 1971	Rutgers
Gerald Morreale	Sept. 1971-Sept. 1972	University of Buffalo
Evelyn M. Finkelstein	Sept. 1972-Nov. 1972	Columbia
Leo J. Murphy, Jr.	Nov. 1972-April 1973	University of San Francisco
Stuart A. Licht	April 1973-Aug. 1974	Columbia
Lynn Hecht Schafran	Aug. 1974-Aug. 1975	Columbia
Joseph W. Schmidt	Sept. 1975-Aug. 1976	Columbia
Edward J. Rinaldi	Sept. 1975-April 1977	St. John's
Kenneth E. Meister	Sept. 1976-Sept. 1977	Columbia
Marc Lauritsen	Sept. 1977-Sept. 1978	Harvard
Anne Kouts Golden	Sept. 1978-Aug. 1979	Rutgers
Leah M. Bishop	Sept. 1979-Sept. 1980	Columbia
James Niss	Sept. 1980-July 1981	Rutgers
Randy Schneider Segal	Sept. 1981-Sept. 1982	Columbia
Karen J. Levinson	Sept. 1982-Sept. 1983	Harvard
Thomas J. Vinje	Sept. 1983-Sept. 1984	Columbia
Steven M. Lieberman	Sept. 1984-Sept. 1985	Columbia
Deborah Yu Yeoh	Sept. 1985-Sept. 1986	Columbia
Florence F. Hutner	Sept. 1986-Sept. 1987	Columbia
Kent A. Yalowitz	Sept. 1987-Sept. 1988	Columbia
Howard J. Kaplan	Sept. 1988-Aug. 1989	NYU