Benched: Abortion, Terrorists, Drones, Crooks, Supreme Court, Kennedy, Nixon, Demi Moore, and Other Tales from the Life of a Federal Judge

On February 25, 1955, second-year Yale law student Jon O. Newman wrote the firm of Ritter and Satter about an opening for a summer job. He had obtained information about this opportunity from John Subak, who was a staff member of the Yale Law Journal and had the year before held summer employment with Ritter and Satter. Robert Satter wrote back to Newman on March 3, 1955, that “we. . .would be desireous [sic] of meeting you.”¹ He continued: “[W]e have somebody from Harvard who also has approached us so I would suggest that you come up as soon as you can. The best time I’d say would be on a Saturday when both of us are here and the telephone is not jangling.”² Satter later became a well-respected legislator and then a judge of the Connecticut Superior Court.

The Harvard applicant was not chosen, and Newman secured a summer job. After Yale graduation and federal clerkships, Newman returned as a partner, with the firm entitled “Ritter, Satter, and Newman.” From this beginning, Jon O. Newman rose to become a stellar figure in Connecticut legal history, holding the positions of Connecticut U.S. Attorney, U.S. District Judge, and, for most of his career, a judge of the Second Circuit Court of Appeals. He was a finalist to become a U. S. Supreme Court Justice, but President Clinton selected Ruth Bader Ginsburg instead. One possible reason given by some knowledgeable figures for Judge Newman’s failure to be selected was an Op-Ed that he wrote for the New York Times during the Clarence Thomas debate a few years before, urging Congress to reject Justice Thomas’ nomination in favor of

² Id.

Judge Newman has now written a thoughtful memoir of his life. Much of the book details his personal biography, including his lawyer-father’s preparation of a genealogy of Greek mythological figures that the judge completed and published at the University of North Carolina Press. He describes his education at the Hotchkiss School in Lakeville, Connecticut, Princeton, and Yale Law School. One lesson he takes credit for learning, which also serves members of the legal profession well, was the ability to write not only accurately, but speedily.

He married Martha Silberman at age twenty-one, just as he entered Yale Law School. They were married for fifty-one years, and had three children and a number of grandchildren. I served on a board with Martha, who was one of the friendliest and most competent persons whom I have ever met. She died in 2005. In 2007, Judge Newman married Ann Leventhal, a writer, and the widow of a distinguished Connecticut attorney, David Leventhal.

The book’s remaining chapters describe the Judge’s District and Appellate court experiences. The judge’s initial confirmation process in the District Court makes for fascinating reading. He ran into difficulties when the Nixon administration, after giving assurance that his name had been forwarded to the Senate Judiciary Committee, worked behind the scenes to defeat his nomination. He was helped throughout by Senator Abraham Ribicoff, whom Judge Newman served either as an informal aide or as a formal administrative assistant from the late 1950s to 1964, both in Connecticut and in Washington.

3 Jon O. Newman, Benched: Abortion, Terrorists, Drones, Crooks, Supreme Court, Kennedy, Nixon, Demi Moore, and Other Tales from the Life of a Federal Judge 181-82 (William S. Hein & Co., Inc. 2017). Judge Newman discusses the controversy over the Op-Ed in his book. He also states that he likely would have declined an appointment to the U.S. Supreme Court at that stage in his career.
Judge Newman names his most significant District Court decisions as two from 1972, finding first an 1860 anti-abortion statute unconstitutional, and then also finding unconstitutional a 1972 anti-abortion statute passed in response to his first ruling. The Judge’s rulings were based on the failure of the State to justify protecting the rights of the fetus over a woman’s right to end her pregnancy, a rationale that was adopted later by the Supreme Court in Roe v. Wade.

Judge Newman’s Second Circuit decisions are numerous. He wrote several decisions on the First Amendment, including a concurring opinion in Thomas v. Board of Education, which involved the right of high school students to distribute a publication that contained vulgar language. In his confluence, he agreed to further hearings before the school board, stating cleverly that the students had the right to wear armbands at school in protest of the Vietnam War, but not to wear Cohen’s jacket.

He has ruled multiple times on employment discrimination issues under Title VII of the Civil Rights Act of 1964. One such case was Guardians Association v. Civil Service Commission, on the validity of a test and passing rates for those applying for employment as police officers. He concluded that the test had the illegal effect of excluding African-American applicants. He has also ruled in cases involving discrimination against women in employment. Two cases where he concluded that, in contrast to the majority opinions, the women had made out prima facie cases were Fisher v. Vassar College and Brown v. Coach Stores. In both cases Judge Newman issued dissenting

5 410 U.S. 113 (1973).
6 607 F.2d 1043, 1053-1058 (2d Cir. 1979), cert. denied, 444 U.S. 1081 (1980).
7 Id. at 1054 (citing Tinker v. Des Moines Ind. School Board, 393 U.S. 503 (1969)).
8 Id. at 1055 (citing Cohen v. California, 403 U.S. 15 (1971), a case allowing adults to wear a jacket with a vulgar phrase on it into court).
11 163 F.3d 706, 713-17 (2d Cir. 1998).
opinions.

Another area of law that the Judge has ruled on is intellectual property. He has applied the “fair use” doctrine of copyright in allowing the performance of a song I Love Sodom as a parody of the New York City official ditty, I Love New York.12 On the other hand, he disallowed an uncompensated use of an artist’s “story quilt” by a television network.13

In the area of criminal law, one of his most significant cases affirmed the conviction on two counts of New York Congressman Mario Biaggi, whose operation of the Wedtech company the government alleged was a criminal enterprise.14 He has also taken a leading role in the development of federal sentencing guidelines. After serving on a committee to develop the guidelines, he clashed with the federal sentencing commission, which opposed diversions from strict calculations so that a trial judge could apply equitable considerations. Judge Newman was somewhat vindicated by the Supreme Court decision in United States v. Booker,15 giving more discretion to the district court judges in sentencing.

Judge Newman also discusses the traditions of the Second Circuit. This Court, unlike other federal Circuit Courts, permits oral argument in all cases. Although the rules of procedure allow a rehearing en banc, the Second Circuit, unlike others, hardly ever grants the request. The Judge also proposes changes to federal law, including lessening the immunity protections for law enforcement personnel, further limiting federal diversity jurisdiction, taking additional steps to end litigation abuse, and like his former partner, Judge Satter, in his own memoir,16 recommending the capping of jury awards in civil cases.

13 Ringgold v. BETV, 126 F.3d 70 (2d Cir.1997).
The Judge also discusses the outcome of the few of his decisions that were accepted by the Supreme Court for review. In *Roe v. Norton*, he ruled that the Connecticut Department of Social Services was obliged to expend Medicaid funds for clients who were entitled to have an abortion. To Judge Newman, the right to an abortion was elusive if it was too costly for the woman. His decision was reversed in *Maher v. Roe*, the U.S. Supreme Court stating that the right to an abortion did not mandate that the state must pay for it. Judge Newman continues to believe that the U.S. Supreme Court came to the wrong conclusion.

One of Judge Newman’s decisions that he does not discuss in his book is *Pinsky v. Duncan*, which had an effect on Connecticut civil practice. The majority in that case held that a prejudgment ex parte attachment of real estate was unconstitutional, changing a Connecticut practice that had been in effect since the founding of the State. Judge Newman dissented, stating “[t]he Due Process Clause is not a code of civil procedure.” He also stated that the attachment of real estate “does not deprive the owner of any possessory rights in his property.” In his dissent, he noted that, although there are some consequences with any type of attachment, due process was met in this instance by an immediate, post-seizure hearing required by state law. The Supreme Court, however, on granting of certiorari, agreed with the majority and struck down the ex parte practice. Now pre-judgment remedy hearings for real estate take place before seizure under statutes passed subsequent to the U.S. Supreme Court’s ruling.

This book has a wealth of information for Connecticut amateur and professional historians. Judge Newman describes his interactions with politicians such as Abraham.
Ribicoff, John Bailey, and Ella Grasso. He was present on the Waterbury Green on Election Day 1960 at 3:00 a.m. in a rainstorm as John F. Kennedy spoke to a massive crowd; there was no denying that Kennedy would receive Connecticut’s electoral vote.26

Judge Newman reports on his law firms from his days of private practice, including Ritter and Satter and then Satter and Fleischmann, with whom he shared space. During his 1978 Second Circuit confirmation process, he mentions the pioneering woman attorney, Barbara Sacks, who served on the President’s panel to recommend Circuit Court nominees. He also relates a run-in he had during his 1972 confirmation to the District Court with Stewart H. Jones, who had succeeded Judge Newman as U.S. Attorney in 1969.

Of course, there are the judges whom he has encountered. These include Chief Justice Earl Warren, for whom he served as a law clerk, and Second Circuit Judges Learned Hand, J. Edward Lumbard, James Oakes, Irving Kaufman, Henry J. Friendly, and J. Joseph Smith. Thurgood Marshall began his judicial career in the Second Circuit and the courthouse bears his name. Judge Newman has remembrances of Justice Marshall.

In the District Court, he portrays Judges M. Joseph Blumenfeld, and Judge T. Emmet Clarie. Judge Clarie made a telling point in reacting to Judge Newman’s efforts at appointment to the Second Circuit. Judge Clarie said to Judge Newman: “I hope you enjoy that [contemplative] library court.”27 Judge Newman shows in this autobiography how much he has enjoyed, and, how much he has benefited the people of this country, in serving as a Circuit Court Judge.

—JUDGE HENRY S. COHN*

* Judge Trial Referee, New Britain.


27 NEWMAN, supra note 3, at 129.