



JUDGE ALFRED C. CLAPP

## A Tribute to Alfred C. Clapp (1903 - 1988)

*Honorable Robert A. Matthews\**

On May 23rd, 1988, Alfred C. Clapp died at the age of eighty-four survived by his wife, Catharine, four sons, and seven grandchildren. Surviving as well is an extraordinary list of his accomplishments for the public good, not only as a judge, but also in the many other services he performed during his amazing career.

A lifetime resident of Essex County, Judge Clapp grew up in East Orange and later moved to Montclair. He graduated from the University of Vermont in 1923 and from the Harvard Law School in 1927.

During the 1930s, he began his long and close relationship with the late Arthur T. Vanderbilt. He joined the Essex County Clean Government Republican movement which had been founded and led by Vanderbilt.

In 1929, Judge Clapp began what was to become a long career of teaching law when he joined the faculty of Mercer Beasley School of Law. That school eventually became a part of the University of Newark and then the Rutgers University School of Law in Newark. His career at the law school culminated in his selection by the trustees of the school as dean in 1951. He resigned as dean in 1953 to accept an appointment as judge of the Superior Court of New Jersey.

Judge Clapp served as deputy surrogate of Essex County from 1939 to 1947. He came to that office with a state-wide reputation as an expert in the law of wills, trusts and the administration of estates. He wrote and published *Wills and Administration in New Jersey* in 1937, a work which has gone through several revisions and is still presently published by West Publishing Company.

In 1943, Judge Clapp became editor of the *New Jersey Law Journal*, serving in that position until he resigned to become a superior court judge. He again became editor in 1970 and

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\* The author was a judge in the New Jersey court system from 1960-1965. At the time of his retirement, he was presiding judge for administration of the Appellate Division of the Superior Court of New Jersey. He clerked for Judge Clapp and was associated with him in the practice of law from 1949-1953.

served until 1984 when he became chairman emeritus of the editorial board.

In 1947, and again in 1951, Judge Clapp was elected senator from Essex County. During his tenure he served as majority leader and as chairman of the Advisory Committee on the Revision of Statutes. That committee was charged with revising Titles 2 and 3 of the Revised Statutes to bring them into conformity with the newly adopted New Jersey State Constitution of 1947. As chairman, he coordinated the work of more than one hundred lawyers throughout the state who served as draftsmen. Moreover, during his terms in the legislature he sponsored our state's first anti-discrimination laws.

When Governor Driscoll convened the 1947 constitutional convention, Judge Clapp was one of the delegates from Essex County. His principal contribution was as the architect of the Judicial Article of the Constitution. Under the article, the rule-making power was vested in the supreme court. Judge Clapp drafted a vast majority of those rules, and when the court created a formal committee for the review and revision of the rules, Judge Clapp became its first chairman, a position which he held until his death.

Judge Clapp became a judge of the superior court in 1953 and served as presiding judge of the appellate division of that court until he resigned in 1958. His work on the court was distinguished and scholarly. If one had the difficult task of singling out his major contribution as a judge, it might be the impetus he gave toward establishment in New Jersey of the doctrine of probable intent in the construction of wills. His concurring opinion in *In re Klein's Estate*,<sup>1</sup> created the doctrine that reached fruition in *Fidelity Union Trust Co. v. Robert*.<sup>2</sup> Note the spare, cogent and incisive reasoning for the point in question:

The critical question in this case, as above stated, is what should be the standard of proof here. I think Lord Eldon's rule and the rule calling for clarity are too strongly stated. In my view the criterion should be simply probability; a provision should be implied if we are of the opinion that in all probability the testator actually intended that very provision. Such a standard produces a far more just result, than if we were to refuse to make any implication at all. We extend our efforts, as we ought, toward effectuating the testator's inten-

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<sup>1</sup> 36 N.J. Super. 407, 415 (App. Div. 1955) (Clapp, J., concurring).

<sup>2</sup> 36 N.J. 561 (1962).

tions. But—and this is the heart of the matter—the result reached does not, I think, do any violence to the overriding policies of the Statute of Wills which require the testator's intentions to be integrated into the paper propounded. For we derive a probability as to his designs from the very words on that paper.<sup>3</sup>

After leaving the court, he joined Jerome Eisenberg in the practice of law. Under their leadership, the firm of Clapp & Eisenberg grew and flourished and is generally regarded as one of the leading firms in the state.

Throughout all of these activities, except for the five years on the bench, Judge Clapp was an active, practicing lawyer.

The quintessential trait evident in Judge Clapp's accomplishments was his swift and sure dispatch of the subject at hand, unless the philosophical depth of the subject required a more deliberate response. More broadly, if one were to ask anyone associated with him as a jurist, legislator, editor, author, teacher or lawyer, to describe the qualities that best portray him, the response would be varied, but related. One might cite his "draftsmanship"; another "his drive"; others, "the speed with which he worked," or "his boundless energy," or his "prodigious memory." These related qualities were evident in all his work.

Those who knew him knew a sensitive, warm and intellectual person. He was never over-bearing or arrogant. A fine teacher as well as a scholar of the law, he dedicated his life to his profession. The citizens of New Jersey should be thankful for the generous gift of service he gave to us.

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<sup>3</sup> *In re Klein*, 36 N.J. Super at 419-20 (Clapp, J., concurring).