

## ANNOUNCEMENT

### UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Ralph K. Winter, a former Chief Judge of the United States Court of Appeals for the Second Circuit, and a ranking member of the federal judiciary under successive Chief Justices, the protégé (and first law clerk) of the late Justice Thurgood Marshall, and an early mentor to the founders of the Federalist Society, a group of conservative students, lawyers and judges, has died in North Haven, CT after a long illness. His death was announced by the Chief Judge of the Court of Appeals, Debra A. Livingston. He was 85 years old.

Speaking on behalf of the Court, Chief Judge Livingston said, “Judge Winter was an extraordinary jurist and human being. This is a profound loss for the Court that he served so well and with such distinction over so many years. It is an equally profound loss for the judges with whom he served. Judge Winter was a humane and generous person, as well as an exceptional judge, and we have valued our friendships with him for many years. This is a sad day for the federal judiciary and for the judges of the Court of Appeals.”

Winter was the William K. Townsend Professor of Law at the Yale Law School when he was tapped in 1981 by President Ronald Reagan to serve as a judge of the court that hears appeals from the federal district courts of New York, Connecticut and Vermont and is especially well-known to the public for its important criminal docket as well as civil cases emerging from the corporate and financial centers of the Circuit. He brought to the Court years of experience as a scholar and teacher of securities regulations as well as constitutional law, antitrust law, labor law and evidence.

Winter was born on July 30, 1935, in Waterbury, Connecticut. He grew up there and attended the Taft School in Watertown, a few miles away, as a day student. For college he moved a little farther south, to Yale College, where he received an A.B. degree in 1957.

He remained in New Haven to attend Yale Law School, where he not only received an LL.B. degree in 1960, but also met his wife, the former Kathryn Higgins, a New Haven native who was working in the law school’s library.

After law school he moved to Wilmington and served as a law clerk to Chief Judge Caleb M. Wright, of the U.S. District Court for the District of Delaware.

The following year, from 1961 to 1962, Winter clerked for a new judge on the Second Circuit, the court on which Winter would ultimately serve. Then-Judge Marshall was a recess appointee, southern Senators having balked at his nomination, and in late 1961 entered service on the federal judiciary in sudden and immediate need of help.

Winter would later recall that it was a Wednesday or Thursday in October 1961 when Judge Marshall offered Winter the job. He thanked his new boss and mentioned as casually as he could that he was getting married to Kate on Friday. That was fine, Judge Marshall replied, Winter could come in on Tuesday, which he did.

After clerking, Winter returned to Yale Law School, turning down offers to practice corporate law in Wilmington. Instead he would teach corporate law and a whole lot more. He served as a full-time member of the Yale Law School faculty from 1962 until he entered judicial service in 1982, and at the time of his nomination as a judge, he held a chair named in honor of an earlier Yale Law professor who served on the Second Circuit.

Corporate law classes today still teach students about something called the “Cary-Winter debate.” There was no debate until Professor Winter came along. An eminent Columbia Law School professor and former SEC Chairman, William Cary, had written an article in 1974 arguing that states had been engaging in a “race to the bottom” in corporate law—a competition to provide legal regimes that put managers’ interests over those of shareholders. Cary urged the federalization of corporate law. Professor Winter responded in 1977 with the then-contrarian contention that regulatory competition was actually producing a race to the top—that corporations were economically incentivized to charter themselves in states providing legal regimes that lowered the cost of raising capital by maximizing shareholder value, and that states, seeking corporate franchise fees, responded accordingly. Almost four decades later, the debate continues, with legal empiricists continuing to conduct economic event studies on the efficiency of state corporate law. Most scholars today agree with Professor Winter’s remarkable and original insight. Judge Frank Easterbrook of the Court of Appeals for the Seventh Circuit has described the article expounding this insight as “the single most important contribution to the economic analysis of corporate law since Ronald Coase published *The Nature of the Firm* in 1937.”

In the realm of labor law, Professor Winter joined forces with Yale Law School Dean Harry Wellington in 1971 to write a seminal Brookings Institution book on public-sector unionism, *The Unions and the Cities*. The book’s thesis: that government was not just another industry, and that politically powerful government-employee unions, through the use of a legal

regime designed for private-sector labor, could distort the political process and divert public resources to their members to the detriment of the public.

Professor Winter loved the intellectual give-and-take of the classroom, once telling a reporter, “Part of the fun is to be the devil’s advocate and say outrageous things and let them drive you back.” And he took great pride in his role as a teacher and scholar. At the hearing on his nomination to the Second Circuit, the chairman of the Senate Judiciary Committee asked, “Mr. Winter, you are a dean?” The nominee responded, “No. A professor.” That apparently disappointed the chair: “Oh, merely a professor? Not a dean?” To which Professor Winter famously replied, “No sir. A professor, not merely a dean.”

Still, during his academic years, Winter did not confine himself to the ivory tower. In addition to working as a consultant to the Senate Judiciary Committee’s Subcommittee on Separation of Powers from 1968 to 1970, he took time out from teaching and scholarship to actually practice law. Nearly a decade and a half after graduating from law school, Winter had finally decided to take the bar examination. He soon had a client who needed his help in an important case. The client was James L. Buckley, then the junior United States senator from New York, and today a senior judge of the D.C. Circuit. The case was *Buckley v. Valeo*, the landmark First Amendment challenge to numerous provisions of the Federal Election Campaign Act of 1971. The liberal Democrat Eugene McCarthy, the former senator from Minnesota, was a co-plaintiff in a case supported by the American Civil Liberties Union. Winter, having only recently become a member of the Connecticut bar, argued the case in the Supreme Court of the United States, and won.

On November 18, 1981, President Ronald Reagan nominated Winter to serve on the Second Circuit, and the Senate confirmed him on December 9, 1981.

Judge Winter entered judicial service on January 5, 1982. Justice Marshall traveled to New Haven to administer the oath of office to his protégé and lifelong friend, in a ceremony at the Yale Law School Auditorium. He recalled that Winter had been recommended as a law clerk to him by two Yale professors, Louis H. Pollak and Charles L. Black, Jr., and that Winter had “commuted from New Haven to New York daily to serve me,” something for which Justice Marshall always felt “indebted” to him.

From 1997 to 2000, Winter served as chief judge of the Second Circuit, taking senior status on October 1, 2000.

During his judicial tenure, Winter served as an adjunct professor at Yale Law School—teaching corporations, securities regulation, antitrust,

evidence, and sports law. He also served for many years as a trustee of Brooklyn Law School. In 1996, Winter received the Federal Bar Council's Learned Hand Medal for Excellence in Federal Jurisprudence. And in 2017, he received the highest honor bestowed by the federal judiciary on a member of its guild, the Edward J. Devitt Distinguished Service to Justice Award, in a ceremony at the Thurgood Marshall United States Courthouse in New York that was attended by active and senior Court of Appeals colleagues and five members of the Supreme Court.

Winter's marriage to Kate Winter ended after 50 years when she passed away in 2012. He is survived by his son, Andrew, his daughter-in-law Kimberly, and granddaughter, Kiersten, all of North Haven, Connecticut.