

The Sun

Ralph K. Winter

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The death of Judge Ralph Winter, coming at a time when even our courts are strained by politics, is a moment to recall a unifying conservative who became a giant of the American judiciary. Winter sat on the United States Second Circuit Court of Appeals for 40 years. During his span he had the kind of impact on the law that is normally associated with our wisest Supreme Court sages.

We met him only once, at a dinner at which several federal judges were present. What struck us, aside from his cheerful personality and outsized intellect, was the combination of deference and affection with which he was regarded by his colleagues. He had been educated at Taft School, Yale College, and Yale Law School. He was once described as “a jovial truck driver with a 300 I.Q.”

Winter started out with what would have been called a liberal streak (he voted, we’re told, for President Lyndon Johnson in 1964). He moved to the right over the years. He was present at the home of the Solicitor General of the United States, Robert Bork, on the evening of the Saturday Night Massacre, when, in 1973, President Nixon fired Attorney General Richardson and his deputy, William Ruckelshaus.

In order to get confirmed, Richardson had promised the Senate he wouldn’t fire the special prosecutor. Bork had made no promises. So, it later became known, Richardson and Ruckelshaus, encouraged Bork to stay on and do his duty. What a bird’s eye view the future Judge Winter had of that constitutional crisis. One can speculate it was part of his remarkable education in matters of principle. Not, though, the only one. Winter was the first clerk to Thurgood Marshall when he acceded to the Second Circuit. That began a lifelong friendship between, in Marshall, one of the giants of American liberalism and, in Winter, a giant of American conservatism. Marshall traveled to New York to swear Judge

Winter into the Second Circuit. Winter was the speaker when the [circuit’s courthouse was named for Marshall](#).

Marshall wasn’t the only liberal with whom Winter was a longtime friend. Another was Ira Glasser of the American Civil Liberties Union. As lawyers, they emerged on the same side of a seminal freedom of speech case, *Buckley v. Valeo*. It freed Americans from some of the worst campaign finance restrictions. Winter had been early in articulating the idea that restricting spending is a curb on speech.

The Second Circuit’s announcement of Winter’s death, issued by its chief judge, Debra Livingston, recalled that Winter is known for the “Cary-Winter debate.” Winter grasped that regulatory competition among the states was producing not a race to the bottom in corporate law, as had been argued, but a “race to the top.” It turned out to be a major contribution to the law and economics movement. Winter also co-authored a study warning that organizing public employees via private-sector style unions was a recipe for trouble.

Winter was, though, a modest seer. One interview with Winter recalled his confirmation hearing, when he was asked about his position at Yale Law School. “You’re just a professor, not a dean,” the hearing’s chairman had said. “No,” replied Winter. “I’m a professor, not just a dean.” What a role model for both camps in a country seeking to find its way back to a more amicable political discourse.

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