



The Newsletter of the NYSBA Committee  
on Courts of Appellate Jurisdiction

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## Welcome

With all eyes focused on the United States Supreme Court these days, *Leaveworthy* is especially proud to print an exclusive interview with the Court's Clerk, the Hon. William K. Suter. The editorial staff would like to thank the following people who helped bring it about: the Honorable James E. Pelzer, the Honorable Stuart M. Cohen and Samuel E. Bartos, Esq.

A reminder to our readers: your contributions regarding cases, articles, interesting events and the like will all be considered for publication in future issues. Submissions can be sent to [appcourts@nysba.org](mailto:appcourts@nysba.org).

Draw near and ye shall be heard.

— The Editorial Staff



## Interview with Hon. William K. Suter, Clerk of the United States Supreme Court

By William B. Stock, Esq.<sup>1</sup>

**WILLIAM B. STOCK:** Starting right now, we are recording and taking notes. This will be a game of Twenty Questions, and that's really all I have to say by way of introduction, so let's jump into it . . . Sir, you had an illustrious background before becoming Clerk of the United States Supreme Court. Could you possibly give us a thumbnail précis, as it were, of your prior military and legal career?

**WILLIAM K. SUTER:** Well, first about my military career. I was commissioned through the ROTC program at Trinity University in San Antonio, Texas, which I participated in while a student there. I grew up in Kentucky, and I went to Trinity to get a good education—it's one of the small schools, and I was lucky enough, a year after I arrived, to be given a school basketball scholarship. I had previously attended a military prep school, so I was accustomed to the military and took the ROTC training at Trinity. The draft was on in those days—I knew I was going to serve, and thought I might as well serve as

an officer. Then, after finishing at Trinity, I was lucky enough to go to Tulane Law School in New Orleans on an academic scholarship.

By the time I finished law school, I'd been married three years—my wife was a schoolteacher, and we'd met at Trinity. I knew I would be going into the Army, so I went to the JAG Corps, and after some schooling was assigned to Fort Richardson, Alaska, which is outside Anchorage. They always say that your first assignment is the one that molds your thinking about the military and determines how you feel about it, and my wife and I just loved it.

I had the greatest bosses, and dealt with all kinds of legal issues, from prosecuting and defending felony cases to every kind of issue relating to claims. For example, I was there during the great North American earthquake called the Good Friday Earthquake. You name it; we had a little bit of everything that first tour in the Army.

1. Mr. Stock is an appellate attorney and litigator, as well as a degreed Law Librarian, with more than 20 years' experience.

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So one tour led to another, and we served all over the world. I was even in Vietnam as a JAG, and I ended my career in the Pentagon as The Assistant Judge Advocate General. I liked every assignment and every place we went. I just thoroughly enjoyed my time in the military.

**WBS:** How did you become Clerk of the Supreme Court?

**WKS:** Well, a few months before I retired from the army I started looking for a job—and had to get a resume written. I'd never looked for a job before—had never even been interviewed for that matter—so I burned up a little of that energy writing resumes, and started sending them out cold. Then my wife heard through a friend that this job was open. There had only been 18 clerks of the Supreme Court up to that time. She convinced me to apply, and I did; six weeks or so later, I got a call to come down to be interviewed, and I was interviewed by Justices O'Connor, Kennedy and Scalia. That was a very interesting interview, and lasted for an hour. A day later I was called to come down to meet with Chief Justice Rehnquist, and I did so. He offered me the job, and less than two weeks later I was in the chair of Clerk of the Court—so it happened rather quickly.

**WBS:** And what are the exact duties of the Clerk of the Supreme Court?

**WKS:** Well the duties are the same as the clerk of a trial court or any other appellate court—whether it's state, federal or even foreign. I visit foreign countries occasionally, and when I do, I always visit the Supreme Court, meet the clerk, and the chief justice if I can, and it's amazing how we all do just about the same thing. We handle the documents and do the planning for the legal business of the court. Some clerks have more responsibility, especially in the smaller states, because they have a smaller setup. Here, for instance, I have nothing to do with the police. We have a marshal, and she's in charge of the police. The clerk is again like any other clerk, you have to deal with the clerk when you want business before the court. So that's what we do. We handle all the petitions, the briefs in opposition, the reply briefs and the motions. Everything goes onto an electronic docket. Notices are sent out, conference lists are prepared and argument calendars set, and we work on the Rules of the Court. All the legal business, except the opinions, which I do not write or participate in. That's done by the justices and their staff.

**WBS:** Are there any functions of the Clerk's Office of the Supreme Court that you have not already covered?

**WKS:** (laughing) No that's pretty much it. The petition comes in—we get about 8,000 cert. petitions a year, which includes oppositions, waivers and reply briefs, plus some appeals. They all go on an electronic docket; then there is a weekly list of ripe cases, for which the time has come for the Court to grant the writ of certiorari or deny it. We also have a few appeals, but there aren't many of those. So this thing is 52 weeks a year of rolling thunder—it just keeps coming, and then up to chambers, where the law clerks work on memos and the justices read them and the briefs. The justices also meet most Fridays during the Court calendar year, which is October through June. At the Friday

meetings they grant some and deny the rest—they grant maybe 75 out of the 8,000 during the year—and notices are sent out to the parties telling them what's happened. For those whose petitions have been granted, they're now in a whole new ball game. Those parties have to file briefs on the merits and get ready for oral arguments. We set the oral arguments schedule here as well, though it has to be approved by the Court, but we know how to do that. So it's a little bit of everything.

**WBS:** Most people think of the Supreme Court as just being composed of nine justices, but it is actually a pretty large organization. Would you elaborate?

**WKS:** Yes. Now, most people think of the Supreme Court as just nine justices, but I think the number of employees right now stands at about 425, which includes a sizeable police force of about 150. We also have a library, and we print our own opinions right here. It's very self-contained—we have our own painters, plumbers and electricians, even an editorial staff under the Reporter of Decisions, who is charged with editing and publishing the opinions in final format. It's actually, quite frankly, a very small organization: if you look at the other two branches of government and then look at the third branch, especially the Supreme Court, it's a very small place.

**WBS:** Regarding the other statutory administrative personnel in the Supreme Court, such as the Reporter and Marshal, how do you divide all your administrative duties?

**WKS:** It's very interesting. When I came here, I was accustomed to a slightly different kind of staffing in the Army. There you have a commander and a chief of staff, and then you have the coordinating staff—you have personnel, intelligence, logistics, operations and chaplains and so forth, and you interact by going through the chief of staff. Here our responsibilities are carved out a little more cleanly than that.

If I'm going to propose something that I know will have an impact on the Marshal, I will coordinate with the Marshal before going to the Chief Justice or to the Conference (that means all nine justices). If it doesn't, I may deal directly with the justices as the case may be. The library pretty much speaks for itself; my office might coordinate with the Reporter of Decisions on the wording of the final paragraph of an opinion or on a question about how to cite to the Internet. We will coordinate with the Marshal on matters like the use of the courtroom, including seating. The Chief Justice himself has a Counselor, and they work together on the budget, on managing the lower courts, and on running the Smithsonian Museum.

**WBS:** I was once told by someone who worked at one of the appellate courts of New York State that part of his job (I think he was one of the chief clerks) was to serve as the institutional memory and keeper of the traditions of the Court. Is that part of your job, and if it is, how do you carry it out?

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**WKS:** The answer to that is yes and no. A lot of institutional things go on around here; for instance, I wear a morning coat on Court days—formal attire with a long coat, striped pants and a vest. The Marshal also wears a morning coat and so does the Solicitor General and his staff, on days when they're arguing in Court. It's part of the tradition. But as far as recording things that go on, we have a Curator who comes under the direction of the Counselor to the Chief Justice. Her job is to be the historian, and she keeps records and puts on exhibits and things like that. Again, we will work with her as the case may be. Let's say something unusual comes up in Court, like a husband and wife arguing cases on the same day; that's something I would send her an e-mail or a document about and just say "here's something interesting." I just try to keep her informed—we all do, because these are things that become part of history. Another example might be a record number of cases argued by the same counselor, that sort of thing. We all contribute, and the Curator is the keeper of that history.

**WBS:** What was your greatest surprise after you became Clerk? If there was one, that is.

**WKS:** Let me think. . . . Two things. First, how small the staff is up here—four hundred people, and that really is not a lot. You have to remember that the responsibility for guarding the building all night long belongs to the police that are here, on their various shifts; then there is the maintenance outside, including the flowers and the courtyards, and things that go on like the social functions sponsored by the Court. After all such events there is a lot of cleaning up to be done, many things to be cleaned and put away so that we can have the Court running the next day.

I really thought the operation would be bigger, I don't know why. I just thought Washington would be thousands of people or something, I hadn't ever really thought about it, but I think I was surprised.

The second thing, which I was delighted to find, was the absolute dedication to their duties shown by the employees here. These employees are not just here to get a paycheck. By the way, they're all at-will—nobody is civil service at the Supreme Court. At-will means at the will of either the Court or one of the officers. That's not a threatening comment, it's just the way it is. People are here because they want to be here. They come in early on days when they need to be early, they stay late when they need to stay late. They are not worried about the paycheck as much as about getting the job done. It's a lot like the Army in that regard, too. People here are really dedicated to the mission of the Court.

**WBS:** What interactions do you have with the Chief Justice and the Associate Justices?

**WKS:** Whenever they want me, I'm here. I deal a little more with the Chief than with anyone else. We meet every Monday and confer about the list of legal issues to be covered by the Conference, and we'll chat for a few minutes about almost anything. My office tries to anticipate

the needs of the Court and produce whatever they need before they ask for it. So the fewer things they ask for, the better we feel we're doing our job. But they are very approachable. Any one of them might just pick up the phone and call us—we have these little screens where it'll say Chambers of Justice Kennedy, for example, and I don't delay in picking up that phone to see what I can do for him. It's usually a small thing, maybe something having to do with a case, but if it's something more we produce it.

**WBS:** This next question is not on my prepared list, I ask it because I happen to have a library degree, so I'm just curious. Is the library still used as often, now that most of the Court's research is surely done electronically in chambers?

**WKS:** Well, there is a lot of electronic research of course, but our library is absolutely essential mainly because of the research librarians. They are excellent, as is the whole staff up there. You can't have just research librarians, and the staff is not large—I don't know the exact number, but it's a small library staff. You can ask a question and get the answer very quickly. They do research for us as well. Thirty years ago, of course more law clerks and staff would be up there sitting in the main reading room reading the volumes, and that's just not true anywhere, anymore. But we still have to have the library. By the way, it's an excellent library with an excellent librarian.

**WBS:** I know that by independent reputation. By the way, could you describe a typical day at the Court—and also an unusual day of your own choice?

**WKS:** A typical day was today. I arrive at work at 7 a.m., and that's because I like to get here at 7 a.m. We don't open for business until 9 a.m. That's in the Rules of Court—9 a.m. to 5 p.m., although the place has people here already. People like to come in early and get ready for the day. Today I met with the Chief, did some paperwork and at 9:15 a.m. briefed the counsel who argued the case. We only had one case argued today. As it turned out, the briefing was pretty short because of the three counsel that argued in that one case, one has done twenty-five arguments and the other two have about sixty each, so I didn't really have to brief those three gentlemen about how things work up here. However, when you have somebody that's never been here, they need help! And not just on that day; we help them from the very beginning, when the cert. petition is granted. We help as much as we can.

In December 2000, there was one unusual day of crucial activity. That was of course the day when the Court turned its attention to the presidential election. At the time, I was at our lake house near Fredericksburg, and I came back to get on this job. We helped counsel for both sides. They worked tirelessly, as all briefs had to be filed electronically and simultaneously, that is, within 24 hours. It never happens that way, but everything got filed.

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**WBS:** As I understand it, part of your job is to sit in on every argument. What makes a good appellate advocate before the Supreme Court? How should one prepare for an argument?

**WKS:** I sit in on every argument. On the subject of what makes a good advocate, let me mention the "Guide to Counsel" on our website, which has examples of both good and bad things from the past. I do not mention any names, but it is very useful. The main thing is preparation. You should know everything in the record, and everything that happened in any court below, so that you are prepared for any possible question.

**WBS:** In your opinion, what mistakes do first time certiorari-seekers specifically make?

**WKS:** I would say the main mistake that petitioners make is over-optimism. You know, with regard to law firms, which have to pay a fee, the number of applications hasn't changed in thirty years: it's about 2,000 per year, which means they're doing very good lawyering, not saying to every client, "let's file a petition for cert," but giving good advice. If there isn't a split among the circuits, if there isn't a federal question involved, it's just not appropriate.

On the other hand, the in forma pauperis and pro se cases have greatly increased. These petitioners don't have to pay a fee, and it's not required that their petition be printed—they can submit a typescript. There were 3,000 of those per year twenty years ago, and now there are 6,000 a year. So that makes a total of 8,000 cert. petitions a year.

**WBS:** What resources can cert. seekers call upon to do a better job, other than those on the website and the Clerk's office?

**WKS:** Well, there are a number of books. First among them I would say is Scalia and Garner's *"Making Your Case"*; it's about oral arguments and briefs. There are many other books on cert. petitions, and they're all very good. Rule 10 of this Court suggests that you should show either that there is a circuit split below on a federal question or that there is a federal question in your case that has not been answered.

**WBS:** What is the atmosphere of the Court like when it is hearing or deciding a major contentious case?

**WKS:** It is the same as any other day—business as usual. Even the demonstrations outside really don't make a difference. Those demonstrations are always orderly. It's their constitutional right as Americans, and they're always at a safe distance. We have our Supreme Court police force and they always coordinate with the Washington D.C. police.

**WBS:** And you also have the Capitol Hill Police, as I remember.

**WKS:** Oh yes, and the Capitol Hill Police. Right, exactly. Now, it's a right as Americans to demonstrate, it's part of our system of justice, and that definitely has its place.

**WBS:** One book I consulted said that while one third of Americans cannot name the three branches of government, virtually everyone knows the Supreme Court and holds it in high esteem, even if he or she does not agree with a particular decision made by it. Do you have any thoughts as to why that might be the case?

**WKS:** You know, we are lucky to have our Constitution, and the history that led up to the creation of the Constitution, as well as our history of government using the Constitution. It's hard to jump-start a democracy. We were able to grow ours step by step, which included respect for the law and the peaceful settlement of disputes as a cornerstone . . . unlike some countries nowadays that try to start a democracy right off the bat—as, for example, parts of the former sphere of influence of the Soviet Union.

The Supreme Court is like referees in sports, and the American public respects that kind of thing, respects it and knows we are lucky because what we have is the product of two hundred years of development.

**WBS:** I understand the Court has its own basketball court and you are known to have played there. Do you still play basketball on the "highest court in the land"? What are your outside activities?

**WKS:** Well, I'm retired now from basketball and skiing. I enjoy being with my family and traveling—my wife loves to travel. We just got back from Montana. We also do a lot of gardening at our country place, and we fish, we see family, we have hobbies—but no golf, I do not play golf. And I like to read.