

Guide to the  
Papers of the  
Honorable Judge  
James L. Oakes

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Oakes-2

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### Biographical Sketch of Judge James L. Oakes (1924-2007)

James Lowell Oakes was born in Springfield, Illinois on February 21, 1924. He attended Harvard University (A.B., 1945) and Harvard Law School (LL.B., 1947), graduating cum laude from both institutions. He was also a book review and article editor for the Harvard Law Review, from 1945 to 1947.

From this time through 1950, Oakes clerked twice (1947-1948 and 1949-1950) for the Honorable Harrie Brigham Chase, Judge for the Second Circuit Court of Appeals (who held the position that Judge Oakes would himself be appointed to). Oakes also became an associate at the law firm of McCutcheon, Thomas, Matthews, Griffith, & Green in San Francisco, CA, and was part of the firm from 1948 to 1949. In 1949, he was admitted to the California Bar, and in 1950 was admitted to the Vermont Bar. Shortly thereafter, he became a partner in the Bennington, VT law firm of Gannett & Oakes (1950-1964) and Gannett, Oakes & Weber (1964 -1966). From the time of his relocation to Vermont from California in 1950, he was ever after a resident of the state. Oakes had a brief career in Vermont state politics, serving as a state senator from Windham County from 1961 to 1965. He was later elected Attorney General, and served from 1967 until 1969.

In 1970, President Richard Nixon appointed Oakes judge to the United States District Court for the District of Vermont, where he served but one year until May of 1971. Then in 1971, he was elevated to judge to the United States Court of Appeals, Second Circuit, by President Nixon. In January of 1989, he was appointed Chief Judge of the Second Circuit. He stepped down as Chief Judge in 1992, but remained on the Court under Senior Judge status until he retired in January of 2007. The closing of his office on Pearl Street in New York in January of 2007 ended a nearly 37-year career as judge.

Judge Oakes wrote many articles for law journals such as the Hofstra Law Review, the Harvard Law Review, Ohio State Law Journal, Michigan Law Review, University of Michigan Journal of Law Reform, New York University Law Review, and the Vermont Law Review, to name just a few. He was invited to give the 14th Annual Madison Lecture at the New York University Law School in 1979. He also spoke at the University of Michigan Law School Murray Lecture in 1982. He wrote about copyright issues and testified at a joint US House and Senate committee hearing on intellectual property rights, copyright, and trademarks in 1990. He was on the Ad Hoc Committee on Habeas Corpus Reform in Capital Cases (the Powell Committee) from 1989-1991. He participated in communications law conferences and programs on topics related to cases he was involved in during his tenure as judge in the Second Circuit Court of Appeals, such as the Pentagon Papers case (U.S. v. New York Times Co., 1971) and Herbert v. Lando, 1977. Judge Oakes wrote a dissenting opinion in the Second Circuit's hearing of the Pentagon Papers case that was later adopted by the US Supreme Court when it overturned the second Circuit's decision, something the judge was very proud of. He contributed opinions that strengthened environmental law, expanded procedural rights for people accused of crimes, and barred sexual discrimination in education.

James L. Oakes died on October 13, 2007 in Martha's Vineyard. He is survived by his wife, Mara Williams of Brattleboro, VT, and a brother, John D. F. Oakes of Wayne, PA. He also is

survived by three children from a previous marriage: James L. Oakes, Jr. of Fairfield, CT; Elizabeth H. Oakes of Baltimore, RI; and, Cynthia O. Meketa of Bonsall, CA, as well as four stepchildren and six grandchildren.

Judge Oakes was recognized by many as a brilliant jurist on the Second Circuit Court of Appeals, which hears appeals from New York, Connecticut, and Vermont. He was known for possessing a keen intellect, but without prejudice for one's status or title. He prided himself on treating everyone with respect and regard, and claimed friends from many levels of society: judges, government officials, senators and governors, as well as farmers and neighbors. Judge Oakes felt a responsibility to all people while in his role of judge and was constantly aware of the effects of court rulings on people from all walks of life. He was appreciated by the scores of people who clerked for him, many of whom went on to distinguished careers in legal and other professions, including Vermont Law School President and Dean Geoffrey B. Shields.

Judge Oakes was on the Board of Trustees for the Vermont Law School for 30 years and was honored by having the main building named for him and his late wife: The James L. and Evelena S. Oakes Hall. Judge Oakes was also awarded a Doctor of Laws honorary degree by the Vermont Law School in 1995, from Suffolk University in 1980, and from New England College in 1976.

Judge Oakes was also highly regarded and beloved by fellow judges and their staffs. He was always available to mentor, and always highlighted the positive in the clerks that worked for him and his colleagues. The principles that Judge James L. Oakes stood for were evident in his decisions and opinions. He treated everyone with respect and dignity. He cared for people and he cared that the law affected everyone.

### Provenance

The Papers of the Honorable Judge James L. Oakes were generously given to the Vermont Law School by Judge James L. Oakes and his wife, Mara Williams, in December of 2006. Supplemental materials were delivered in June 2013.

### Scope and Content Note

The Papers of the Honorable Judge James L. Oakes and Supplemental Materials (14 boxes, 14.8 linear feet) contain bench notes, reviews of self-authored legal journal articles, reprints of (Judge Oakes') and other legal journal articles, article publication drafts and proofs, copies of published case decisions (including some from the United States Supreme Court), handwritten and typed drafts of case decisions, office correspondence in the form of memos and letters both faxed and copied, personal correspondence, cards and letters, photocopies of legal articles and rulings for case research, bar exam notes, clipped and copied newspaper articles, a chart and graph of case evidence, handwritten and typed speech drafts, printed memorials for deceased judges, and conference itineraries and schedules of events. The papers document the career of a Second Circuit Court of Appeals judge and his undertaking of the process of reaching decisions in appeals brought before the court. Though most do not appear to be complete case files, such

as those held in the Second Circuit's headquarters in New York City, the files do amply represent the thought processes, research, and discussions and debates between judges in deciding cases, and the issues, legal precedents, and thorough research performed by Judge Oakes and his fellow adjudicators. These case files also demonstrate the judge's broad knowledge of the law and its application. They also reveal some of the background of the assessments made by many lawyers, prosecutors, and other judges as to his professionalism, thoroughness, fairness, and respected ability to render well-considered, and technically and analytically sound opinions.

The papers also reveal events that Judge Oakes was involved in over the years, due to his experiences in deciding cases of important legal precedent. These cases include the Pentagon Papers case (*US v. New York Times*, 1971) involving the government's attempt to force the NY times to cease publication of information obtained from and claimed as classified documents by the U.S. government. Also figuring prominently in the papers is *Herbert v. Lando*, 1977, the defamation case brought against writer/producer Barry Lando by retired Army officer Anthony Herbert, in relation to a 60 Minutes CBS television show focusing on Herbert. Both cases and their eventual Supreme Court hearings and decisions, created much political, social, and legal debate in the years after. Judge Oakes attended conferences relating to those cases and his role in the adjudication of those cases and their eventual effect on American law and society.

The Supplement Materials contain more documents and items from Judge Oakes' personal files as well as reflections from others after his death. Eulogies from family and colleagues, including Unites States Supreme Court Justice Sonya Sotomayor, provide perspective. Numerous sets of Judge Oakes' remarks to new American citizens, and memorabilia from Judge Oakes' bid for Vermont Governor, showcase his broad commitment to public service.

### Series Breakdown

The Papers of the Honorable Judge James L. Oakes are arranged into three main series:

Series I: Selected Cases Decisions of Judge Oakes, 1971-2005. Series I is, itself, broken into four subseries:

Subseries I (I.I): Noteworthy Decisions Selected by Judge Oakes, 1980-2005;

Subseries II (I.II): Noteworthy Environmental Decisions, 1973-2004;

Subseries III (I.III): Noteworthy Decisions Selected by Judge Oakes' Law Clerks, 1972-1988; and,

Subseries IV (I.IV): Noteworthy Decisions Selected by Lucy McVitty Weber, 1971-2001.

Series II: Personal Files, c1949-2004.

Series III: Supplemental Materials.

## Series Descriptions

The entirety of Series I (and its subseries) is made up of selected case files from the Second Circuit Court of Appeals cases heard by Judge Oakes, in which he wrote either the decision for the majority or the court, or a dissenting opinion. These files document his work in these cases, which were deemed noteworthy or significant by the judge or his clerks over the span of his career. The files bring insight into the process of arriving at an opinion in an appeals case- from the reviewing of bench notes and related information gathered about the cases at their inception, to the analysis and discussion of previous precedent-setting cases and their possible applications, to debate and an eventual vote with fellow judges resulting in a final decision.

With the exception of Subseries I (I.I), each subseries' files are arranged in date-descending reverse-chronological order (most recent to oldest) within each box. However, without exception, every series and subseries file contents are organized solely on the basis of date-descending order. Materials are dated when a date can be ascertained where none was given. Documents are marked as undated (or "n.d.") when no date could be determined. When there was any question as to where materials could be identified as to their proper location within the folder contents, they were left in their original location. Generally, dates of photocopied original research materials, such as published legal journal articles, do not factor into the date range assigned to each folder unless there is a substantial quantity of such documents.

Series I, Subseries I (I.I): Noteworthy Decisions Selected by Judge Oakes, 1980-2005 (2 boxes, 2.0 linear feet), contains case files selected by Judge Oakes, himself. These cases held special significance for Judge Oakes for their importance and relevance in everyday life and how they may affect everyone from the general public to corporations and governing bodies, and beyond. The files are arranged as they were listed by the judge, with no attention to order of chronology, except within the files, themselves. Each file's contents are arranged in reverse (date-descending) order, from front (earliest) to back (oldest).

Series I, Subseries II (I.II): Noteworthy Environmental Decisions, 1973-2004 (1 box, 1.5 linear feet), contains case files that were selected by Judge Oakes and his clerks due to their significance within environmental law. These are listed as supplied by the Reference Librarian of the U.S. Court of Appeals for the Second Circuit, Mark J. Schwarz (as of December 2006). Of note in this series is the case *Southview Associates Limited v. Bongartz*, 980 F2d 84 (2nd Circuit 1992). Judge Oakes opinion upheld Vermont's Act 250 statute in a case in which a vacation-home developer was denied a land use permit by Vermont's Environmental Board. The developer claimed that the State's denial amounted to a physical or regulatory taking. The plaintiff's appeal was denied by the Second Circuit in Judge Oakes opinion.

Series I, Subseries III (I.III): Noteworthy Decisions Selected by Judge Oakes' Law Clerks, 1972-1988 (2 boxes, 3.0 linear feet), contains cases selected by Judge Oakes' many law clerks over his 35-year tenure on the Second Circuit Court of Appeals. While it isn't clearly defined which clerk made any specific selection, it can be deduced from the list of individuals who clerked for him (see Appendix B: List of Judge Oakes' Clerks, 1970-2006) which clerks (as a group) are responsible for each year's selected cases. Most recognizable in the group is *Herbert v. Lando*, 1977, the famous case brought against Barry Lando of the CBS television program 60 Minutes for defamation against Anthony Herbert. This case, another eventually heard by the US Supreme Court, weighed the question of how much a well-known figure that brings a libel action can inquire into a journalists opinions, and even thoughts, in the making of a broadcast.

Series I, Subseries IV (I.IV): Noteworthy Decisions Selected by Lucy McVitty Weber, 1971-2001 (2 boxes, 2.0 linear feet), contains those cases hand-picked by NH State Representative Lucy McVitty Weber, mainly for their topics and subject-matter. Lucy Weber was instrumental in the selection and gathering of the Oakes Papers before they were given to the Vermont Law School. Ms. Weber was at the time and is now the representative to the State of NH House of Representatives for Cheshire County District 2 and lives in Walpole, NH.

Series II: Personal Files, c1949-2004 (3 boxes, 4.5 linear feet), contains material related to the cases Judge Oakes presided over, but not as business conducted by the Second Circuit Court of Appeals. Much of this series pertains to lectures, conferences, and published articles by Judge Oakes. It also contains materials relevant to the memorial given for the late Judge Sterry R. Waterman, Second Circuit Court of Appeals, in September of 1984, in which Judge Oakes was a contributor. The judge's notes for his California (1949) and Vermont (1950) bar exams are located in this series, and are the oldest documents within the papers. This series documents the personal and professional aspects of his career aside from the cases he was involved in while sitting on the Second Circuit Court of Appeals. Of particular interest are the files concerning several important articles he wrote that were published in well known law journals:

- The Doctrine of Prior Restraint Since the Pentagon Papers. *University of Michigan Journal of Law Reform* v.15, #3, (497) Spr. 1982;
- Proof of Actual Malice in Defamation Actions: An Unsolved Dilemma. *Hofstra Law Review* v. 7 #3, Spr. 1979; and,
- The Proper Role of the Federal Courts in Enforcing the Bill of Rights. *New York University Law Review*, v. 54 (911), 1979

The files pertaining to these cases show the thought process and research Judge Oakes used in writing these articles. There are many notes and article drafts that provide insight into the progression in the judge's process of creating legal articles for publication.

Two appendices are included after the box contents listing. Appendix A: Case Descriptions and Box/Folder Locations Cross-Reference- Series I: Selected Cases Decisions of Judge Oakes, 1971-2005, is a list of all the cases described in Series I with an accompanying brief synopsis. Each case has a corresponding box/folder location that identifies where in the papers it is located.

Appendix B: List of Judge Oakes' Clerks, 1970-2006, is a list of all the people who clerked for Judge Oakes in his 34 years as judge for the Second Circuit Court of Appeals. This list helps to identify individuals who may have been key in the selection of some of the cases found in Subseries I.III, as well as the other subseries.

Series III: Supplemental Materials (4 boxes, 1.8 linear feet), contains more documents and items from Judge Oakes' personal files as well as reflections from others after his death. The files include poetry, remarks and speeches (published, unpublished, and draft), eulogies, obituaries, tributes, memoriams, articles (by and about Judge Oakes), certificates, photographs and portraits, personal books, correspondence, notes, and materials relating to Judge Oakes' political activities.

## Related Materials

The following materials related to the life and career of the Honorable Judge James L. Oakes, or written by him, can be found in the Julien and Virginia Cornell Library at the Vermont Law School, or attained via interlibrary loan:

### Books in the Collection

A tribute to James L. Oakes and guide to the Oakes papers held in the archives of Vermont Law School edited by Carl A. Yirka.

Imprint: South Royalton, Vt. : Vermont Law School, c2007.

Call Number: KF373.O24 J84 2007

Federal justice in the Second Circuit : a history of the United States courts in New York, Connecticut & Vermont, 1787 to 1987 by Jeffrey B. Morris ; with a foreword by James L. Oakes.

Imprint: [New York, NY] : Second Circuit Historical Committee, c1987.

Call Number: KF8752 2nd .M67 1987

Judge Gurfein and the Pentagon Papers by James L. Oakes.

Imprint: [s.l. : s.n.], 1980.

Call Number: KF373.G8 O25

The Vermont constitution, how to read it, understand it and use it in your practice materials prepared for use at the seminar by Charles Martin and David Putter.

Imprint: Montpelier, Vt. : [s.n.], 1985.

Call Number: KFV401.5 .V62 1985

### Some Articles and Book Contributions Available Through Electronic Resources

The Doctrine Of Prior Restraint Since The Pentagon Papers. University of Michigan Journal of Law Reform, Spr. 1982, 15 (497)

The Second Circuit Review -- 1981-1982 Term: Foreword: The Status Of Sandstrom In The Second Circuit. Brooklyn Law Review, Sum. 1983, 49 (641)

Book Review: Strict Construction Eschewed: Values Redevisus. Constitutional Choices by Laurence Tribe, reviewed by James L. Oakes. Harvard Law Review, Feb 1986, 99 862

Survey Of Books Relating To The Law: I. The Federal Courts And The Constitution: Tolerance Theory And The First Amendment. The Tolerant Society: Free Speech And Extremist Speech In America. by Lee C. Bollinger, James L. Oakes. Michigan Law Review, Apr, 1987/May, 1987, 85 (1135)

Judge On Judging: Grace Notes on "Grace Under Pressure". Ohio State Law Journal, Sum. 1989, 50 (701)

Copyrights And Copyremedies: Unfair Use And Injunctions. Hofstra Law Review, Sum. 1990, 18 (983)

Memorial To Harold R. Medina. Columbia Law Review, Oct 1990, 90 (1459)

Commentary On Judge Edwards' "Growing Disjunction Between Legal Education and the Legal Profession". Michigan Law Review, August, 1993, 91 (2163)

Book Review: The Tenth Justice. Brooklyn Law Review, Sum. 1994, 60 (831)

Book Review: Hans Linde's Constitutionalism, Intellect and Craft: The Contributions of Justice Hans Linde to American Constitutionalism. Edited by Robert F. Nagel, Reviewed by James L. Oakes Oregon Law Review, Win. 1995, 74 (1413)

Book Review: On Appeal: Courts, Lawyering, and Judging. Yale Law Journal, Jun 1995, 104 (2369)

Tribute: Jack Weinstein And His Love-hate Relationship With The Court Of Appeals. Columbia Law Review, Nov 1997, 97 (1951)

The Fifth Annual Frankel Lecture: Commentary: The Dead Sea Scrolls: A Live Copyright Controversy. Houston Law Review, Spr. 2001, 38 (219)

## Series III: Supplemental Materials

Box Folder

<u>No.</u>	<u>No.</u>	<u>Description</u>	<u>Date</u>
1	1	<u>James L. Oakes – Poems</u> <i>Cellar Holes</i> <i>Hourglass Sand</i> <i>The Back of a Fireplace</i>	undated
1	2	<u>James L. Oakes – Unpublished speeches</u> VT A.G. <i>Individual Rights and Public Order</i> , U.S. Judge, District of VT <i>Remarks to New Citizens</i> ,	7/2/1967 5/11/1970
1	3	<u>James L. Oakes – Reprint from <i>New York Law Journal</i></u> “Thoughts on Original Intent,”	3/5/1992
1	4	<u>Eulogies</u> Lisa Hamilton Karen McAndrew Hon. Sonia Sotomayor, VLS	10/27/2007 10/27/2007 11/12/2007
1	5	<u>Obituaries</u> <i>New York Times</i> <i>Brattleboro Reformer</i> (2)	10/16/2007 10/16/2007
1	6	<u>Tributes</u> <i>New York Law Journal</i> William Patry Blog Marlboro College celebration Vermont Law School celebration	3/19/2007 10/16/2007 10/27/2007 11/12/2007
1	7	<u>Articles about Judge Oakes</u> <i>Brattleboro Reformer</i> , “The Power of One Vote” <i>Brattleboro Reformer</i> , “Portrait Unveiled”	3/28/2006 10/7/2007
1	8	<u>In Memoriam – Booklets</u> Vermont Law School, <i>A Tribute to JLO: And Guide to the Oakes Papers Held in the Archives of Vermont Law School</i> USCA for the Second Circuit Special Session, <i>In Memoriam</i> Second Circuit Judicial Conference, <i>In Memoriam</i>	5/2007 2/4/2008 2008

<u>Box No.</u>	<u>Folder No.</u>	<u>Description</u>	<u>Date</u>
1	9	<u>Media – CD</u> Investiture/Swearing in, Hon. Bernard Letterer speech	5/1/1970
1	10	<u>Media – CD</u> James L. Oakes, Madison Lecture, NYU Law	1979
1	11	<u>Media – CD</u> James L. Oakes, Interview by John Kristensen	1998
1	12	<u>Media – CD</u> James L. Oakes, Oral History, U.S. Court of Appeals, Second Circuit	2005
1	13	<u>Media - DVD</u> Memorial Service	10/27/2007
1	14	Certificate, Member of the Board of Bar Examiners	10/1/1967- 10/1/1970
1	15	<u>Speeches</u> James L. Oakes, miscellaneous	1963-1968
1	16	<u>The Champlain Waterway</u> James L. Oakes, Vermont State Senator, article, reports	1963
1	17	<u>James L. Oakes, Run for Governor of VT</u> campaign materials, news releases covering topics such as Vermont's natural resources, individual rights, poverty in Vermont, assistance to farmers.	1968
1	18	James L. Oakes, <i>For the Use of Witnesses</i>	undated
1	19	James L. Oakes, Attorney General of Vermont news release, <i>Law Day USA</i>	5/1/1967
1	20	<u>Irasburg Affair</u> James L. Oakes, Attorney General of Vermont, booklet, <i>Findings and Recommendations of Board of Inquiry: Investigating the so-called Irasburg Affair.</i>	1968

<u>Box No.</u>	<u>Folder No.</u>	<u>Description</u>	<u>Date</u>
1	21	<u>James L. Oakes, Speeches, Commentary</u> Draft of speech, VT Bicentennial at Oldcastle Theater Co., Bennington, VT	1991
		Draft of speech, "What it Means to be an American Citizen," Op-ed in <i>Brattleboro Reformer</i>	7/3-4/2010
		Editorial on speech, "What it means to be an American Citizen," <i>Vineyard Gazette</i>	7/6/2010
		Newspaper article on new citizens, unknown source	undated
		Remarks to New Citizens	5/11/1970
		Remarks to New Citizens	6/21/1971
2	1	Court Photographs	
2	2	New England Association of Chiefs of Police, Related materials	1975-1976
2	3	"The Function of Concurring and Dissenting Opinions in Court of Last Resort"	Undated
2	4	"Observations on Religious Intolerance"	Undated
2	5	"Prescription"	Possibly 1988
2	6	"Vermonters of the Year," Vermont Sunday Magazine, <i>Rutland Herald</i>	12/27/1992
2	7	"The Top U.S. Commercial Court," John P. Frank, <i>Fortune Magazine</i>	1/1951
2	8	Photographs, Professional Portrait	1972-1984
2	9	Correspondence	6/10/1972- 1/17/1973
2	10	Memorial Day, Drafts	1968
2	11	Legal Notes	6-7/1970
2	12	Freemans' Oath Plus	Undated
2	13	Newspaper Articles of Interest to Judge Oakes	1970, 1979

<u>Box No.</u>	<u>Folder No.</u>	<u>Description</u>	<u>Date</u>
2	14	Portrait, Painted by Marion Miller	2002
3	1	“Environmental Litigation: Court Developments and Suggestions for the Future,” <i>Connecticut Law Review</i>	Spring, 1973
3	2	“Theories of Water Pollution Litigation,” Peter N. Davis, <i>Wisconsin Law Review</i>	1971
3	3	Notes on Environmental Paper	Undated
3	4	“The Federal Power to Protect the Environment: Available Devices to Compel or Induce Conduct,” Albert J. Rosenthal, <i>Southern California Law Review</i>	1972
3	5	Brief of Appellee, Supreme Court of Vermont, <i>Fisher v. Town of Marlboro</i>	Undated
3	6	Smithsonian, Draft of Speech	Undated
3	7	Environmental Protection Act of 1973 Committee on Commerce, United States Senate	1/1973
3	8	“Memorandum on Recovery of Expenses (Including Legal Fees) In NEPA Litigation,” David Weinberg	1/18/1972
3	9	“The Federal Government and Environmental Control: Administrative Reform on the Executive Level,” Peter A. Donovan, <i>Environmental Affairs</i>	1971
3	10	“Environmental Protection – Reaching Maturity and The Obligations That Go With It,” John R. Quayles, Jr., <i>Environmental News</i> , Conference	11/30/1972
3	11	“Cans,” Articles Selected	Undated
3	12	“Cannots,” Articles Selected	1972-1973
3	13	Philosophy	1972-1973

<u>Box No.</u>	<u>Folder No.</u>	<u>Description</u>	<u>Date</u>
3	14	Environmental Articles of Interest	Undated, 1949, 1971
3	15	Environmental Articles of Interest	1972
3	16	“International Environmental Law and Development,” Charles E. Di Leva, <i>Georgetown International Environmental Law Review</i> , Vol. X, Issue 2	Winter 1998
4	1	Book: “The Life of John Marshall,” Vol. I, Albert J. Beveridge	1916
4	2	Book: “The Life of John Marshall,” Vols. II & III, Albert J. Beveridge	1916