
PROCEEDINGS

BEFORE THE

Supreme Court of New Jersey

IN MEMORY OF

Chief Justice Joseph Weintraub

May 24, 1977

CHIEF JUSTICE HUGHES: Mrs. Weintraub, ladies and gentlemen, the Court is assembled today in order to pay tribute by way of a memorial to a very great predecessor of mine and for members of this court, Chief Justice Joseph Weintraub. I would like to call first on Mr. Roger McGlynn representing the Essex County Bar Association. Beyond that Mr. McGlynn is a member of a family associated for a very long time with Chief Justice Weintraub. Mr. McGlynn.

MR. MCGLYNN: Mr. Chief Justice, Members of the Court, friends and family of Chief Justice Weintraub, may it please the court, I appear in a dual capacity as your honor indicated to commemorate the life and career of a distinguished jurist and human being.

First, I appear as a representative of the Essex County Bar Association of which the Chief Justice was a member for over forty-four years. This Association is proud to join in this tribute.

I also appear as a long-time friend of the Chief Justice, a man for whom I have the greatest love, affection and admiration. It is difficult to be brief concerning this man but knowing his penchant for brevity I shall try.

Joseph Weintraub was born March 5, 1908 in Cranford, New Jersey. He spent most of his boyhood in Newark, and as most of you probably know at the age of thirteen he commenced to work as an office boy for my father. This was

probably the commencement of a very wonderful relationship between the two which culminated in their practice in law together for many years.

There is no need to detail his university record or law school record, it is well known. Consistent with this tribute is the fact that he graduated first in his class.

Throughout the years he remained a staunch supporter of the law school and he served on its advisory council for many years.

He was admitted to the Bar in 1930 and he tried virtually all kinds and types of cases including negligence cases for which he was sometimes criticized.

In March 1943 he was inducted as a private in the Army. He earned a Commission at the Judge Advocate School and he left service in 1946 as a captain. He returned to practice and did principally appellate work. In 1954 he served concurrently as counsel to the Governor and as the New Jersey member of the Bi-State Waterfront Commission.

On May 15, 1956 he was appointed to the Superior Court of New Jersey and in November 1956 at forty-eight years of age he was appointed to the Supreme Court. On August 19, 1957, following the death of Chief Justice Vanderbilt he was appointed Chief Justice of the Supreme Court.

On January 29, 1960 he made, as he used to put it, the greatest decision of his life, he married lovely Rhoda, who is here with us.

During his tenure on this court, a period exceeding sixteen years, his opinions are reported through Volumes 23 *N. J.* and 63 *N. J.*, and his opinions number in the hundreds.

During his sixteen year term this court became known, due to our tendency for labels, as the "Weintraub Court". The Chief Justice would be the first one to acknowledge that despite the label, the court over the years was comprised of many great men, each having an equal voice and vote in its results. The Weintraub Court gained a national reputation for decisions of note and in achieving great strides in American law. It was a court of action.

It is not only impossible but beyond my ability to review the numerous decisions, most of which have been accorded acclaim and comment elsewhere.

One particular concurring opinion of his in *State v. Funicello*, 60 N. J. 60 is well known. It expressed his immense concern with the federal judiciary in matters of criminal law. He was particularly incensed at the failure of the United States Supreme Court to provide direction. His opinion is truly a work of art. It affords an insight and true appreciation of his judicial approach in this area and is best expressed in four sentences of the opinion. I quote:

“ . . . After all, good law is a matter of ‘fairness’ and one need but insist that a given rule is ‘fundamentally’ unfair to call upon the Constitution to establish his view. The tendency is thus to claim ‘constitutional’ moment in matters which, in my appraisal, are quite minimal in a scheme of values. The more the Constitution is found to be intolerant of disagreement upon arguable issues, the deadlier becomes the grip upon the genius of men. The price of such intolerance may be sterility. . . .”

An interesting footnote to this opinion was made just a few weeks ago in a tribute by Mr. Justice Brennan of the United States Supreme Court upon the presentation of the first annual award in his name to Chief Justice Weintraub. He referred to Chief Justice Weintraub being responsible for defeating a proposal at the conference of State Chief Justices aimed at formal criticism of the United States Supreme Court. Thus despite the Chief Justice’s personal judicial disagreement he was quick to defend the institution of the United States Supreme Court.

Anyone who appeared before the Weintraub court well knows the piercing questions, quickness and perception of the Chief Justice. Some mistakenly attributed to him shortness and impatience. It is true that he would be impatient if the person wasn’t prepared. But if the preparation had been done it was a delight to appear before this court. He was a rigid taskmaster both in practice and on the court.

His mark of genius was in being able to instantly analyze a problem and express it simply.

Those who worked with him over the years knew his appetite for work. Hours meant little, his consuming desire being justice. He was quick to attack ancient judicial notions as is typified in his opinion in two sentences in *Michaels v. Brookchester*, where discussing obligations and duties between landlords and tenants he said:

“. . . Fictions have traditionally served the common law's drive to achieve justice. But a direct statement of the desirable result without figmental veneer would do as well, and indeed be more serviceable, for fictions tend to intrude into situations for which they were not invented. . . .”

Foremost in the Chief's life was integrity. It was best expressed by him in the tribute to Justice Hall. He stated: “. . . The Judiciary must exude a moral tone. It must hold the confidence of the citizenry and of the Bar that its every judgment is impeccably honest, however erroneous it may be. * * * Integrity at the top is indispensable. . . .”

Some handwritten notes of the Chief reflect his belief that it is the obligation of the Bar to secure and maintain integrity in the Judiciary and that the Bar itself, the profession of law, in affording much satisfaction represents more than a mere chance to make a buck. He lived his life by these beliefs.

On August 31, 1973, at age 65, Chief Justice Weintraub retired. Upon retirement he continued to serve the public through positions of appointment. He received numerous tributes and honors including a dedication of Volume 59 of the *Cornell Law Review* to him.

On May 6, 1974 he attended a presentation of his portrait to this court by the New Jersey State Bar Association which is reported in 65 *New Jersey*. Looking at his portrait I can almost hear him say, “Counsellor, you have almost used up your time.”

The scholarly ability, leadership and energetic devotion of Chief Justice Weintraub have had an enormous influence

upon our system. He has left an indelible mark and his contribution is an inspiration to all. Yet, he was to those who knew him warm and humble, quiet spoken and a true gentleman at all times. Those persons cherish most the memory of his companionship.

In this tribute words seem shallow, empty and truly inadequate. It is not possible to portray the measure of this man. It is his deeds that remain — these being the true test of a man. The deeds of Chief Justice Weintraub are enduring and are the true measure of him.

It has been said many times before but never more sincerely: "Each of us is better that he passed our way."

CHIEF JUSTICE HUGHES: Thank you very much, Mr. McGlynn. The Court is very deeply grateful for that beautiful tribute.

Before calling on the President of the New Jersey State Bar Association I should note the presence, and we are very grateful for that, of several former members of the Supreme Court who sat with Chief Justice Weintraub. Justice Francis, from whom we will hear later, Justice Hane-man, Justice Proctor and Justice Schettino. We have some retired Appellate Division Judges, Judge Kolovsky, Judge Leonard, Judge Collester, Judge Goldmann and Judge Labrecque. And Judge Mintz has arrived. Other members of the Appellate Division are here and there are other retired judges, presently sitting judges and officials of the State Bar. We appreciate the attendance of all these who were identified with the legal family and thus have a particular reason to remember this fine judge.

The Court will now hear from Mr. Donald Conway, President of the New Jersey State Bar Association.

MR. CONWAY: May it please the Court, Mrs. Weintraub and members of the Weintraub Family, distinguished guests and friends: It is my privilege to speak on behalf of the New Jersey State Bar Association in the honor and memory of our former Chief Justice, Joseph Weintraub.

We all knew him as a distinguished jurist and a man of enormous intellectual capability. Despite an apparent austerity, caused no doubt by the demands of his position and the great responsibilities inherent therein, the Chief Justice was warm personally and had compassion for both litigants and attorneys.

My own example of his compassion occurred when I arrived late on the morning of my admission ceremonies and missed the group oath. When Chief Justice Weintraub was informed of this by the then President of the Bar Association I was directed to the Chief Justice's chambers which I entered with considerable trepidation. The greeting I received was a smile and warm handshake which made a lasting impression upon me.

During his sixteen year tenure as Chief Justice he always made himself accessible to the officers or committees of our Bar Association particularly when the topic was improvement of various facets of the bench, bar, or judicial reform.

Initially when called upon to speak today I reflected on the many great decisions of the "Weintraub Court" as we all knew it. No doubt it was more than chance that in many instances opinions of that Court and of the Chief Justice, in particular, foreshadowed in an uncanny way subsequent decisions of the Supreme Court of the United States.

I am told that the Chief Justice wrote more majority opinions than any member of the Court. These opinions written in his concise, lucid and articulate style will survive all of us and surely be drawn upon for the great precedent setting opinions of the future.

They always exhibited the Chief Justice's broad mastery of legal doctrine, but perhaps more importantly his opinions demonstrated a sensitivity toward minimizing the intrusions of the judicial branch of government into the public sector.

In addition to the legal opinions of Chief Justice Weintraub we are all familiar with his far reaching leadership in his capacity as chief administrator of the New Jersey Court system. His actions in that field had a pervasive in-

fluence on every matter touching the judicial process. For example, we recall the careful steps he took to insure that members of the judiciary were not, and did not appear to be, in party politics. Ever mindful of the complaints of the public, he also made considerable efforts to instill in them a confidence in the integrity of both the bench and members of the Bar.

He was also able to meet the challenge of the swell of litigation which arose during his tenure as Chief Justice. The appropriate revisions of the Rules of Court gave assurances that this Court would keep abreast of the tremendous growth and assure a reasonably prompt, thorough and fair hearing for every litigant.

Chief Justice Arthur Vanderbilt has been referred to as the architect of our present judiciary system. Certainly Chief Justice Weintraub was a most worthy successor — for this incisive mind, his scholarly opinions, his leadership of a nationally renowned court, and most importantly his single-minded devotion to the administration of justice. Thank you.

CHIEF JUSTICE HUGHES: Thank you, Mr. Conway.

The Court would now hear from a former member of the court during the time of Chief Justice Weintraub. I should interrupt a moment by saying that the identification of Justice Francis with our court has continued in a very important way because he chairs our Advisory Committee on Judicial Conduct and in many other respects has been very, very generous in the efforts of this court for the Bar and for the advancement of the administration of justice. Justice Francis.

MR. JUSTICE FRANCIS: If it please the Court. It is an honor to be here and to participate in this memorial service for the late, great Chief Justice Joseph Weintraub. And, if you will permit an early aside, the Court looks as impressive from down here as I always hoped it did from up there.

An important reason why the court was impressive in my time was because Joseph Weintraub occupied that middle

chair on the bench. The impressiveness was not just a matter of appearance, it emanated from substance. It was not limited to this room nor to the Bar, as the members of the Court learned when they attended judicial conferences and bar association conventions throughout the country. Other judges told us that the opinions of the New Jersey Supreme Court were cited to them more often than those of any other court in the nation. And no out-of-state judge ever mentioned our Supreme Court without mentioning Joseph Weintraub. It was as if he was synonymous with the Court. But in his modest way, he always deprecated his own significance; he would say the greatness of a court as an entity is more important than that of an individual. His colleagues felt that without him we had a pretty good court; with his contributions we had a great court.

When we talk about him on occasions such as this there is really no need for biography, especially since we heard so eloquently from Roger McGlynn. Everyone here is aware of his momentous undergraduate academic and law school achievements, his pre-judicial public service and his accomplishments as Chief Justice of this Court. In his modest way he was proud, but never ostentatiously so, of his early law career accomplishments. Just one of them I would like to mention. He was editor-in-chief of the Cornell Law Review and during that period he wrote an article on some legal subject — I don't recall what it was now. But shortly after publication he received a letter from Justice Brandeis of the United States Supreme Court complimenting him on it. I think he was more proud of that letter than anything that ever happened to him either before or since. He had the letter framed and he always displayed it, as I am sure most of you have seen, in whatever office he occupied. While he was Chief Justice it hung just to the left of the entrance door to his chambers and I am sure he received a lift from it every time he passed by.

He was proud to be a judge and to be part of the administration of justice. He was really steeped in the tradi-

tion of Brandeis, Holmes, Cardoza and Frankfurter, whom he considered great men of the bench. He was proud to have come to the bench in the way he firmly believed all judges should attain it, that is by appointment of the Governor, and not by party election.

While Chief Justice he frequently expressed a strong personal opposition to any form of election of men to the bench. He felt, and it was the unanimous feeling of the court, that use of the ordinary political party nomination and popular election mechanism were wholly out of harmony with the ideal of an independent judiciary, entirely free from partisan political pressures. That conviction did not signify a feeling on his part that activity in politics has any tendency to make a man less qualified for the bench. On the contrary, he felt it rounded out a lawyer's experience; it might make him a more statesmanlike judge, and certainly it could assist him in the understanding of public questions. But the Chief Justice said that when a politically active lawyer undergoes the metamorphosis into a judge, he should be allowed to take the education derived from politics with him and leave the partisan influence of politics behind forever. Human nature being what it is, and the need for divorce from politics being an essential ingredient of judicial life, the conflicting pulls of the partisan organizational and elective process and of the judicial process impose a burden not conducive to tranquility of mind in either the judge or the attorneys and litigants who appear before him. The great advantage of the bi-partisan system of appointment is that the duty of the judge to conform to the highest of judicial standards is made much easier than under the elective system. As one of the Massachusetts appellate court judges wrote some time ago:

"There is no harm in turning a politician into a judge. He may be or become a good judge. The curse of the elective system is the converse, that it turns almost every judge into a politician."

Although that statement may be overdrawn, it cannot be rejected as lacking relevance. There is no denying that election has the tendency to turn the judge's eyes from the law to popular opinions of the moment or at least to divert his attention from administering justice to running a re-election campaign.

In discussing the kind of judges the courts should have and that the chances of getting them are infinitely better through use of the appointive process, the Chief Justice would quote the image of the ideal judge that he had read from two distinguished professors of political science. They said, "We want a man of integrity, but also a man of learning and experience. Law and society are not separate entities; therefore, we want a man who is a statesman as well as a legal craftsman. We want a judge who is detached in his outlook, yet familiar with the economic, social and political problems of the times; a man who has a sense of underlying popular sentiment as well as an ability to distinguish transitory moods from basic attitudes. We want a man who understands politics in the broadest sense of the word but a man who is above narrow partisanship."

I have referred deliberately to Chief Justice Weintraub's unqualified conviction about the advisability of perpetuating the practice of appointment of judges by the Governor. I have done so because of rumblings we hear about efforts to put judges into politics and partisan political elections. The Chief Justice would say if he were here that it would be a tragic day for New Jersey if such a system were imposed upon our people.

Throughout his years on the Court, he remained acutely aware of the line of demarcation between the judicial and legislative branches of government, and of the duty of the judicial branch to refrain from encroaching on the area of operation of the legislative branch. So if a statutory rule or doctrine were in question before the Court, even if it appeared to be inadequate to serve the needs of the times, he would declare that the remedy was in the hands of the

Legislature, and the Courts should not interfere. But, if a common law doctrine were involved and it was out of tune with the needs of modern society, he was quite ready to advocate change so as to adapt it to existing needs and ideals, without waiting for legislative action. He believed, and I know all of you men know, realize it, that the common law is not a compendium of mechanical rules but a living organism which must grow and move in response to the larger and fuller development of the nation. He felt that the common law's capacity to discover and apply remedies for acknowledged wrongs without waiting for legislation was one of its cardinal virtues.

Thus, his opinions, as Mr. Conway said, he did write, and I can attest to that, more majority opinions than any member of the court. Those opinions have the basic attribute of heart shining through them. Heart is not a synthetic trait. It comes only from the One Who has the power to bestow such graces on man. His opinions and his whole judicial career bespeak integrity as well. In these parlous days, we have to be saddened by the lack of integrity we have seen in high governmental circles. Integrity, like heart, cannot be bought. It is part of the warp and woof of the man or it does not exist at all. When we find men in high places with heart and integrity, we cannot honor them enough.

Thus Chief Justice Weintraub must be judged a success. He lived well and laughed often; he filled his niche and performed his task; he gained the respect and affection of intelligent men and women; he demanded the best of others, and always gave his own best; he lived greatly in the law and he left the law and the judiciary better than he found them.

No member of our Court ever contemplated the Chief's passing. If asked about it, each of us would probably have replied in Mercutio's words:

"When he shall die, take him and cut him out in little stars and he shall make the face of heaven so fine, that all

the world will be in love with night and pay no worship to the garish sun.”

In his lifetime, the Chief Justice cut out his own stars, and adorned the firmament of the law with them. They will stand as beacons for all future judges, showing the way to keep the basic principles of justice constantly attuned to the needs of the times and we will all miss him very much.

CHIEF JUSTICE HUGHES: Thank you very much indeed, Justice Francis, for those beautiful words. Just as you began to speak another former colleague whom we miss very much came into the room, Justice Nathan Jacobs. Justice Nathan Jacobs is back there as usual not wanting to attract attention. Undoubtedly caught in traffic and in view of his scrupulous respect for the law, including the speed laws, accounts for his being a bit late. We welcome very much Justice Jacobs.

Mrs. Weintraub, ladies and gentlemen: It is very difficult to realize that it was only a few short years ago when we sat in this very courtroom to receive, as the gift of the New Jersey State Bar Association, a quite wonderful portrait of Chief Justice Joseph Weintraub, which hangs here now as a continuing reminder of the spirit of that great judge who was of course with us on that very day. It will serve to inspire the judges who will be occupying this bench throughout many years to come.

The contour of history is always burdened by the infirmities of transitory human memory — and thus it is well to record by every means at hand, through artists and historians and also by speech, the recollection of a colleague and friend no longer with us. And so we come here today, indeed with a certain sadness, because we are human and feel the pain of separation. In a larger sense, however, we are translators, in a way, seeking to express and record for generations yet to come, the essentials of a quite rare human being.

When one considers the life and career of Joe Weintraub, images and superlatives come flooding to the surface of memory. As a lawyer one thinks of the term "superb". As a man of principle the word "true" and "courageous" are predominant. To his dear departed parents and to his family and the magnificent Rhoda, one thinks of the word "beloved." To the law student, "scholar-teacher." To the Governor whom he served so well, "faithful counselor." And as to this bench which he adorned for seventeen golden years, there spills out a real profusion of words to describe that judicial life — "leadership, devotion, industry, integrity, scholarship"; and an unflagging commitment to the judicial system installed by the Constitution of 1947.

That system was led first by Arthur Vanderbilt and then by Chief Justice Weintraub. These two judicial giants, in their turn, secured for the people of New Jersey the excellence of a court system unrivaled in the United States.

We who follow in these busy years have in this example of industry, much inspiration and encouragement for the tasks at hand. It is true we are confronted by new problems and besieged by new demands. Discouraged from time to time, yet we find new strength, new inspiration, in recalling the driving courage of these forebears.

And so the story of Joe Weintraub is not really ended. Time and again, a hundred years from now, Justices of this bench will be quoting in their opinions the words of Chief Justice Weintraub. They will be cited, I think, in support of constitutional right and of duty, of fairness and justice to the poor and powerless, of the righting of long imbedded wrongs, of the breaking of mindless chains of past injustice, of a firmness in confronting corruption and crime, — and of an ever renewed vision of law as an effective instrument of justice.

I think if Chief Justice Weintraub had his preference, he would like this memorial to close by attributing to him the sentiments once expressed by Justice Oliver Wendell Holmes:

Law is the business to which my life is devoted, and I should show less than devotion if I did not do what in me lies to improve it, and, when I perceive what seems to me the ideal of its future, if I hesitated to point it out and to press toward it with all my heart.

That always seemed to be Joe Weintraub's driving force; it seems most appropriate, on behalf of the present members of the Court, to repeat it now in his memory.

We thank you very much all of you for attending. We will recess now and we want you to feel perfectly welcome to greet Mrs. Weintraub and other members of the family to renew old friendships not so much in the sadness of the day but in thinking of the traditions left by this great Chief Justice.

We will recess now.

(End)