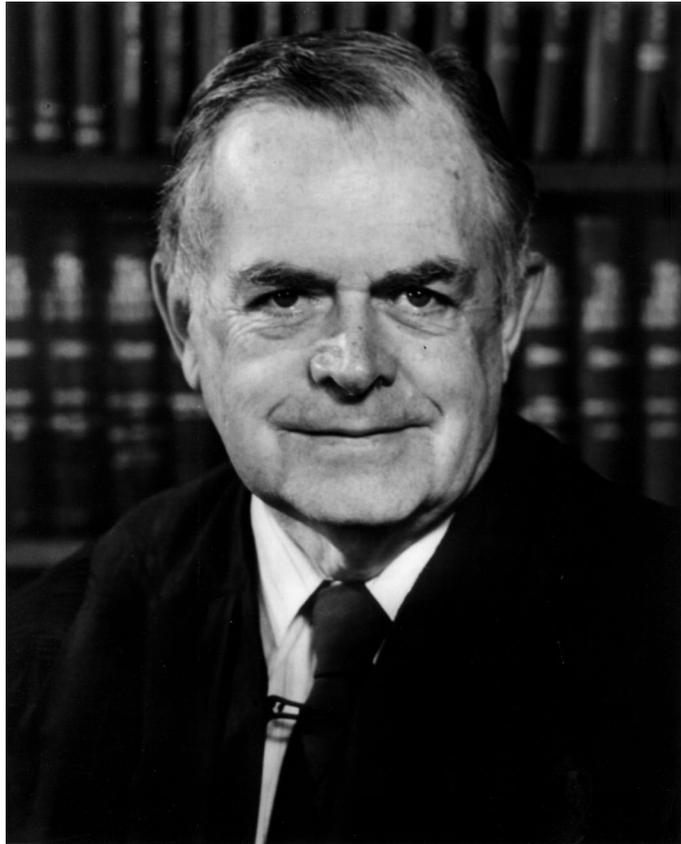


Supreme Court of New Jersey

In Memoriam
HONORABLE
MARK A. SULLIVAN

Trenton, New Jersey
November 18, 2002



HONORABLE MARK A. SULLIVAN

Proceedings

CHIEF JUSTICE PORITZ: Please be seated.

Former Justices of our Court, former and present Judges, the Sullivan Family, distinguished guests, the Court has convened today to honor and celebrate the life and achievements of Justice Mark Anthony Sullivan. The son of a Justice of the former Supreme Court and the father of a Superior Court Judge, Justice Mark Sullivan was noted for many things, but foremost for his love of family, his knowledge of the law, and his commitment to public service. Today we will remember together the special qualities of this remarkable man.

We will hear from a number of speakers, all of whom will, no doubt, strive to emulate Justice Sullivan's seemingly effortless ability to communicate effectively with a few well-chosen words.

First, I would like to call on retired Justice Robert Clifford, a colleague and a friend of Justice Sullivan.

JUSTICE CLIFFORD: Thank you, Chief Justice Poritz and members of the Court. I am grateful to the Court and to Judge Sullivan and his family for permitting me to participate in these memorial proceedings honoring Justice Sullivan in the presence today of his family, his friends, his former law clerks, his judicial colleagues.

Governor William T. Cahill made six appointments to the Supreme Court during his four years in office. Five of those appointments, including two Chief Justices, came in one year, 1973. When Justice Sullivan took his seat in March of that year he was the senior judicial officer in point of length of continuous service in the entire system.

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Justice Sullivan began his judicial career before the 1947 Constitution, in October 1945, when he was appointed to the Second District Court of Jersey City. He once showed me a photograph taken at his swearing-in, with Governor Walter Edge in attendance and the brand-spanking new judge in his Navy officer's dress blue uniform. As his son, Mark, has explained to me, the uniform was correct attire not only because his father was, after all, still in the Navy (although a matter of hours, we suppose, from his formal discharge) but also, and probably more to the point, because he didn't own a suit; I mean, having been in the service since 1942.

After the '47 Constitution, Justice Sullivan served in the Hudson County District Court, the Superior Court, and for fourteen years in the Appellate Division of the Superior Court by assignment of Chief Justice Joseph Weintraub. His appointment to this Court was met with the universal approval of the bench, the Bar, the public press, professional press, and all who were fortunate enough to know this quiet, gentle, thoroughly civilized man.

My own appointment to the Court came in September 1973. When the term commenced, I found myself seated at the far right of the bench—as one faces it—in the seat traditionally occupied by the junior member, now graced by Justice Albin. Next to me was Justice Mark Sullivan.

I have no intention of dwelling on the “intimidation” factor, but if perchance any member of this Court past or present may have asked in your early days, “What in the world am I doing here?”, your wonderment, be assured, could not have begun to match my own: The first member of this Court with no prior judicial experience seated next to the one with more time in service than any of the other almost 300 judges in the system. I know, I know, we get over that, but it wasn't easy.

Valuable as Justice Sullivan's vast prior judicial experience obviously was (if it weren't for his prodigious memory

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of case law, I would suggest that he had probably forgotten more law than most of us would ever learn) it seems to me that his special genius lay in his remarkable ability to go right to the jugular of a case. This was a natural gift rather than a matter of book learning. It's just the way the man's mind worked. He would lay bare the heart of the dispute and reduce the most complex issues to readily understandable terms. He decided only what had to be decided, content to leave for another day the resolution of other tantalizing, if only distantly related, questions. Presented with a circulating draft of someone else's opinion that tend to go on and on, Justice Sullivan more than once gently reminded us that the text of the opinion in *Brown v. Board of Education* takes up fewer than six pages in the Supreme Court Reporter.

The Justice's penchant for economy of expression carried over to his sparing use of citations. String cites were of course anathema.

I am reminded of the case in which Justice Sullivan wrote the majority opinion and I unburdened myself of a little dissent. The issues presented were hardly cosmic in nature, dealing as they did with the interpretation of a policy of major medical insurance. Before Justice Sullivan's opinion for the majority, five pages in length in the official reporter, arrived in chambers, I had drafted my minority opinion, four pages, supported by citation to a couple of cases and maybe a treatise or so. When I read the Justice's opinion, the majority opinion, I discovered, however, that he had cited not a single authority. Not one! At that point I decided that the interests of symmetry would be well served and the interests of judicial craftsmanship would not be mortally wounded were I to remove all the citations from my opinion as well. And so the opinions were filed unencumbered by any authority, a feature that so far as I know does not appear in any other reported multiple-opinion case. The curious may consult 64 N.J. 555 (1974) for *Kissil v. Beneficial National Life Insurance Co.*

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Precedent, or lack thereof, was not about to slow the Justice down when he was convinced that he was on the right track. He once circulated an opinion—again, early in my time here—that chartered new waters to reach the result for which the Court had tentatively voted in conference, leaving it pretty much to the author to figure out how to get us there. I know you don't do that kind of thing anymore, but I will tell you that that used to be resorted to occasionally. After studying the draft, I called Justice Sullivan and allowed that although I found the opinion persuasive, I was not aware of any authority for the stated proposition. Justice Sullivan's reply was a classic, delivered with but thinly-concealed exasperation and, I am certain, much rolling of the eyes heavenward. (I couldn't see that, but I could "hear" it): "Robert"—now I knew something portentous was going to come down right away with the formal address of "Robert"—"This is the Supreme Court. We don't need authority—we are the authority." I promptly gave him my vote in favor of the opinion and decided that this was turning out to be a pretty swell place to work!

On the non-judicial side I remember well the Justice's virtuosity with a little pen knife that he always carried with him for use in a variety of ways beyond the paring of this daily apple: fixing the plumbing in the men's room adjacent to the Court's conference room in the State House Annex—I have to depart from the text here. Let me tell you about that.

There was a men's room next to that gorgeous conference room. It was about half the size of Grand Central Station. You could have convened a judicial conference in there and there were facilities galore, but lovely, ancient, and nonfunctional frequently, and when the things would start to drip and water run, it irritated Justice Sullivan to the point where out would come the little knife and he would leave us and go out into the adjoining room and do whatever he did with the thing, and he fixed the plumbing. We didn't need any maintenance people. As well he wres-

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tled with that stunning, if incorrigible, grandfather's clock that still graces the conference room, I guess; it is still, I suppose, as temperamental as it was then. (The clock won that one. He'd get it to work for a day or so and then it would fail.)

I have not dealt with Justice Sullivan's post-retirement service to the Court system. Others today will do so; but I want to resurrect the most remarkable order signed by Chief Justice Robert Wilentz in December 1981, setting forth the terms of the Justice's recall to judicial serve. Never before or since, I suspect, has such all-encompassing jurisdiction been conferred on a single judicial officer. The order speaks volumes of the confidence that this Court placed in this great Judge. It reads:

Ordered that former Associate Justice Mark A. Sullivan retired on pension and recalled for temporary service within the judicial system by virtue of the order dated August 3, 1981, is hereby temporarily assigned to the Superior Court, Chancery Division (General Equity and Matrimonial cases) the Superior Court, Law Division, the Juvenile and Domestic Relations Court of all counties and the county district court of all counties, to hear such matter or matters as assigned by the Chief Justice without need of further order with respect to the particular case so assigned.

Look, in other words "any kind of case in any court, top to bottom, anywhere in the New Jersey Court system." I don't think that there is another Order quite like that.

Let me end with a description of Justice Sullivan taken from the Court's statement on his death. I can't improve on the expression, so I quote it directly.

Justice Mark Sullivan was a practical man, a cultured man, and most of all, a man who dearly loved the work he performed so well. He was a firm believer in tradition, and he deeply respected

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the institution he and his fellow Justices served. Those qualities helped make him an invaluable part of the Supreme Court. In the light of his wealth of experience, his arrival on the Court was viewed with anticipation and pleasure, his service with appreciation for the quality of his performance, and his departure with sincere and deep regret.

Thank you.

CHIEF JUSTICE PORITZ: Thank you, Justice Clifford.

Our next speaker is retired Justice Daniel O'Hern, who was appointed to the Supreme Court as Justice Sullivan's successor in 1981.

JUSTICE O'HERN: Chief Justice, members of the Court, retired Justices, especially the judges of Hudson County with whom Justice Sullivan spent his final years on the bench, Mark and members of your family, and friends. Now I'm the lucky fellow who replaced Mark Sullivan. I didn't really replace him, I succeeded him, and I had the experience of spending the first several years on the bench in his company. At first we shared chambers in Asbury Park and later in Red Bank. I inherited his secretary, Carol Rittershoffer. I inherited his system, and members of the Court who sat with me know I didn't use it as well. He had an extraordinarily simple system. Petitions for certification were scribbled on the back of the brief and a majestic recital would follow from that. Conference notes were brief, if nonexistent, but the case could always be presented clearly.

I showed Justice Sullivan my first opinion before I circulated it, and he looked at it, he read very quickly, he said it was fine and then added one thing I never forgot. He said, "It's the right result, Dan." He had an innate sense of justice.

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For many years I enjoyed lunches with Justice Sullivan, retired Justice Haydn Proctor, and several older Monmouth County attorneys; Sol Lautman, Vince Keuper, Morris Oppenheim, and a retired banker named Jim Forsythe. Although I was in my fifties, the age of our luncheon group averaged 80. I heard many wonderful stories of the old days in Hudson County, including the legendary “Rice Pudding Day.” And if you’ve never heard the story of Rice Pudding Day, on one occasion the faithful workers were seen walking into city hall with paper bags on New Year’s Day: it actually was New Year’s. And a newspaper reporter said, “What’s in the bags?” They said, “Rice.” “What’s the rice for?” “Rice pudding,” they said.

Mark’s wife died before he did. At her funeral service the eulogist compared the Sullivans to the first families of Maryland, describing the Sullivans as among the first families of Jersey City, and they were surely that. You’ve heard from Justice Clifford of his father, Mark A. Sullivan, Senior. The name Mary Anthony resounds with dignity. It was only natural that Justice Sullivan would follow a career in public service.

His father was one of the “earlier campaigners for democracy, now forgotten, [who were] the forerunners of Woodrow Wilson. Their battles against privilege and their efforts to meet the problems raised by urbanization and industrialization educated New Jersey voters in reform and laid solid foundations for the work that Wilson would do.”

Justice Sullivan was a gifted Judge. You have heard that he was recalled to service. I had the privilege to share chambers with him when Chief Justice Wilentz appointed him to preside over the 1981 election contest recount involving Governor—soon to be Governor Kean and Candidate Jim Florio. The other panel members were Appellate Division Judges Jack Fritz and Bill Bischoff and what a panel they were. They cleaned up all the issues in about a week without a single matter ever coming to our attention or being in serious dispute.

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During the Florida procedural quagmire during the Bush/Gore election contest in 2000, I liked to tell people how New Jersey would have handled the case, with a single tribunal empowered to hear all the matters arising from the dispute.

That case was but one example of the extraordinary ability of Mark Sullivan. Milton Conford, who sat with him on the Appellate Division, said of Justice Sullivan:

The frequency of his writing assignments reflected recognition of his diligence in producing opinions in cases assigned to him and the clarity and conciseness of his dispositions. A Sullivan opinion rarely exceeded ten or twelve pages and was sparing of footnotes. Proportionately succinct were his relatively infrequent dissents and concurrences. Justice Sullivan possessed the rare knack of getting quickly to the heart of the issue at hand, addressing it directly, and resolving it with economy and simplicity of expression. It was the Justice's belief that a judicial opinion should be comprehensible to the public as well as to bench and bar.

In his then famous article in the Law Journal about opinion writing he said the use of "copious citations of, and quotations from, other cases and authorities . . . is showy, but much of it is unnecessary. The use of footnotes, a distraction at best, is carried to excess."

Off the court, Justice Sullivan was a charming person. He loved a good martini, a vodka martini. He loved to cultivate tomatoes. He taught me a lot about raising tomatoes. He loved a day of golf, dinner at the Spring Lake Golf and Country Club, and after retirement could be seen at the races at Monmouth Park.

Most of all, he loved the companionship of Joy M. Sullivan, his childhood sweetheart from Jersey City, and took pride in the accomplishments of his son, Mark Sulli-

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van, III, who had followed the family tradition and became a Superior Court Judge.

One of my favorite recollections of his retirement years is his story of Joy at the nursing home patiently correcting the grammar of the care givers in the facility.

The Court, as you know, has an institutional memory. The memory of Justice Sullivan was fresh when I joined the Court, and I heard firsthand the accounts that Justice Clifford has related regarding his contributions to the work of the Court. When Justice Sullivan retired, Chief Justice Wilentz summarized those contributions:

One would have to spend years of study in order to give full credit to Mark Sullivan's contribution to the people of this State. His published opinions are an important part of his judicial career; in terms of the development of our law, the most important part. But a judge contributes to society every day of the week, not just on the day that his opinion may be published. For thirty-six years this dedicated man brought justice into the lives of thousands of people. He brought not only sense to the laws of this State in the valuable opinions he authored, but also good common sense to evidence rulings, determinations of motions, and decisions on the merits.

Chief Justice Wilentz continued:

One would actually have to participate in the Supreme Court's work, as you do, to understand fully his value. Published opinions are but one part of our work. Disposition of motions, disciplinary matters, and petitions for certification by far outnumber our opinions. The variety of questions, the kinds of situations involved, outstrip the knowledge of most lawyers and judges. It is not at all rare that a Justice will find a matter before him, or before the Court, which has to be decided fairly

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quickly, involving either a factual pattern or unusual proceeding or question of law with which he has never been involved. What a comfort, and more importantly, what enlightenment, for a Justice to be able to speak to a colleague who has handled numerous such proceedings, determined many similar, if not identical motions, and who is completely at ease with the factual pattern before the court.

Chief Justice Wilentz concluded that we were lucky to have him with us for so long, and he only wished that the public knew “how much . . . he has done for them, how hard he has worked, [and] how devoted he is . . .” All of us here, family, colleagues, and friends, were lucky to have had him with us for so long.

CHIEF JUSTICE PORITZ: Thank you, Justice O’Hern.

Richard Badolato, President of the New Jersey State Bar Association, will now speak to us on behalf of the organized bar.

MR. BADOLATO: May it please the Court, Chief Justice Poritz, Associate Justices, distinguished guests, family, and friends of Justice Sullivan. I am honored to be able to speak on behalf of the New Jersey State Bar Association at this tribute to the life and accomplishments of Justice Mark Sullivan.

Justice Sullivan has been called a judge’s judge by those who worked with him on the bench, and no wonder. He committed almost his entire legal career to the judiciary beginning in 1945, even before our modern judicial system was in effect, and continuing past his mandatory retirement age in 1981. Justice Sullivan worked his way up from the trenches in the Second District of Jersey City to the County Superior Court, to the Appellate Division, and finally to the New Jersey Supreme Court in 1973. Even after his mandatory retirement in 1981, Justice Sullivan

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returned to the bench on recall service, making himself available to the Court wherever and whenever he was needed.

Others today will tell you about the significant opinions that Justice Sullivan wrote and about how those opinions provided clear guidance to the bench and the bar. As someone who has practiced for 37 years, I can tell you respectfully, of course, that clarity is not always the hallmark of judicial opinions. In this regard, Justice Sullivan performed the significant service to generations of lawyers. The true extent of that service will likely never be known, as I understand, from an impeccable source that Justice Sullivan was the author of many of the Court's per curiam ethics opinions issued during his tenure.

Justice Sullivan not only committed himself to serving the judicial system through service on the bench, but he also played an important role in the administrative side, particularly regarding attorney and judicial ethics. Shortly after his retirement, then Chief Justice Robert Wilentz appointed him as chairman of a Supreme Court committee on attorney discipline structure, which came to be known as the Sullivan Committee. That committee issued a sweeping report, which resulted in major restructuring of our disciplinary system, including, among other things, the creation of separate offices to handle complaints against lawyers, appeals of those complainants to the Disciplinary Review Board, and complaints against judges. The Sullivan Committee's recommendations were the essential first step in creating a more responsive and efficient disciplinary system and almost twenty years later, the structure it proposed still stands.

However, I cannot simply note the achievements without also mentioning another recommendation of the Sullivan Committee—that all attorneys be assessed an annual fee to financially support the disciplinary system. Then the fee was \$25, and while I do not recall the precise details, I

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suspect that the bar objected to the assessment; that, too, has a twenty-year history.

The other areas of ethics to which Justice Sullivan devoted much of his energy involved the ethical conduct of judges. After his retirement, Justice Sullivan served first as Vice-Chairman and then for nine years as Chairman of the Advisory Committee on Judicial Conduct. This is perhaps the most important of the Supreme Court Committees, attested to in part by the fact that its leadership is always comprised of a retired Justice. And who better to serve that role than a retired Justice who had experienced firsthand the challenges and rewards of each level of judgeship. It is before this tribunal that complaints against judges are first considered and if found to have merit, heard in a full adversarial proceeding.

During his tenure as Chairman, the workload of the Committee greatly increased, but the number of grievances, which ultimately came before the Court as formal complaints, did not. In part, that was due to Justice Sullivan's skillful handling of these matters after careful consideration of all the unique circumstances in each particular case.

Justice Sullivan's practical and evenhanded approach is perhaps best illustrated by an informal comment he once made to the Committee in the context of judges exercising their contempt powers. He remarked that during the entire career as a judge, he had not issued a single contempt order; instead, when he felt things might be getting a little out of control, he would call a recess, go back to his chambers, count to ten or, as he admitted, even a lot higher, and only then would he return to the bench and continue the proceedings in the calm and thoughtful manner all had come to expect from him. This is true judicial restraint, something to which we all can aspire.

The Sullivan Family has deep roots in the New Jersey judicial system that date from Justice Sullivan's father's career, which began in 1910, and continues with his son,

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Mark A., Junior, who sits in the Superior Court, Monmouth County. Such an inheritance and legacy—such is the inheritance and legacy of great Justice Mark Sullivan.

Thank you.

CHIEF JUSTICE PORITZ: Thank you, Mr. Badolato.

Next, we will hear from Justice Sullivan's son, Mark. Judge Sullivan?

JUDGE SULLIVAN: May it please the Court. Chief Justice, Associate Justices, family, and friends. The fact that this proceeding is taking place today would please my father greatly. He loved the courts of this State, and the Supreme Court in particular. I'm sure that he is very proud of how well this Court is doing today.

At the time he was born, his father was the sitting Judge of the Court of Errors and Appeals, then the State's highest court. By the time I was born, he was already a judge of the Second District Court of Jersey City. Over the course of the next 45 years, he was to sit on the Hudson County District Court, the Superior Court, Chancery Division, Essex County, the Appellate Division, and the Supreme Court. After retirement he was recalled to the Law Division, Monmouth County, and then to the Appellate Division. Ironically it was while he was on recall in the Law Division that he handled one of the most sensitive cases of his career involving the disputed outcome of the gubernatorial election of 1981.

There are people here more qualified than I to discuss the major cases that came before the Court during his tenure. My recollections are more personal. During the time that my father served in the Chancery Division in Essex County from 1953 to 1959, I was between six and 12 years old. Occasionally, if I did not have school on a particular day I would go with him out to Newark and watch the proceedings in his courtroom. His chambers were in the Hall of Records. The present Essex County Courts Building hadn't even been built yet.

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Since he was in the Chancery Division, his courtroom did not have a jury box. However, on one occasion when I was there he was doing a competency hearing. In those days only a jury could make a finding of incompetency. Since there was no jury box, though, the jury had to sit on the first long public bench in the courtroom. When my father came out, everyone stood up. He said, "Please be seated." All 12 jurors sat down and the bench they were using collapsed. No one was hurt, fortunately, and they were able to go on with the trial.

On another occasion when my cousins Arthur and David McGuire were there, when my father was off the bench we took turns playing judge and attorney in the courtroom. Many years later when I was in private practice, I was still trying cases for the Attorney General's Office as outside counsel, when I had two trials scheduled on the same day, one in Gloucester County and one in Essex County. The trial in Gloucester County started first, so the one in Essex County had to be carried day to day. Unfortunately, the one in Gloucester County lasted six weeks, so Essex County was getting a little impatient. (This was before Judge Falcone's days there as Assignment Judge.) So when I finished the trial in Gloucester I went to Newark and was quickly told to report to Judge Walls for trial. I asked the assignment clerk where Judge Walls was located and she said Room 316, Hall of Records. I went over there and as we went closer, everything began to look familiar. I finally realized that this was my father's old Chancery Division courtroom. And it was a very emotional experience for me to be trying a case in a room that I had played in in the 1950s. I did tell my witnesses to be very careful where they sat, however.

When I got home I called my father and said, "You'll never guess where I'm trying a case, your old courtroom in Newark." I told him that there was now a real jury box in the courtroom, so I didn't have to worry about the seat collapsing. I also told him that they had moved the wall in

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the chambers between the judge's office and the secretary's office to make the secretary's office larger. He replied that they should have done that a long time ago, the secretary's office was always too small and the judge's too large.

From the time when I was maybe twelve up to the time I left for college, he would frequently tell me a series of facts, advise me of the law involved and the issue in dispute, and ask me what I would do. This was the beginning of my own legal reasoning process. My father always had the ability to spot the real issue in a case. Once he had spotted the issue, he resolved it and then stopped writing. His opinions were all short.

I have a cousin on my mother's side who's a Jesuit Priest, Father Frank Hamill. Some people refer to him as Fast Frank because his masses and sermons were always short. My father's opinions and Father Frank's sermons have a lot in common. They don't use a lot of words, but by the time they finish, you know exactly what they're telling you.

I'm reaching the stage in my own career where many of the judges I worked with for years are retiring. They all have different plans; some want to retire completely, others want to do arbitration. When my father retired he couldn't imagine doing anything other than going back and being a judge. He stayed on recall as long as he was physically able. For a short period of time we even had chambers across from each other, which was a very rewarding experience.

Several months before my father passed away, Justice O'Hern wrote a beautiful article about him in the New Jersey Law Journal. I brought it over and read it to him. Typically, his only comment was, "I'm undeserving of such praise." On this one point, I have to disagree with him. It is, therefore, on his behalf that I wish to thank the Court for conducting this proceeding and permitting both his families, the family into which he was born and married and the

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family of the bench and bar, to come together and remember him.

CHIEF JUSTICE PORITZ: Thank you, Judge Sullivan.

Justice Sullivan's former law clerks are well represented among today's speakers. The first is our Essex Vicinage Assignment Judge, Joseph Falcone.

JUDGE FALCONE: Chief Justice Poritz, members of the Court, past members of the Court, family, and friends of the late Associate Justice Mark A. Sullivan. During my 34 years at the bar, I have been blessed many times. The very first blessing occurred during the spring of 1968 when I received a call from the Judge offering me a position as his law secretary of the upcoming court year. I'll spend a few moments that I was told I had—by Mr. Townsend—recounting some of those experiences, which I think tell you a lot about the man.

In late October 1968, the building at 520 Broad Street was abuzz with news that the bar results had come out. The Judge called me in chambers and said, "Joe, have your heard?" I said, "No, I haven't." He said, "Go make a phone call." I was so nervous I went out in the hallway and used the public telephone. My late mother came to the phone and I said, "Mother, did something come for me today from the State?" And she said, "Yes." And I said, "Well, open it." She said, "Well, let me go get my glasses." And I kept yelling into the phone, "You don't need to get your glasses, tell me if it's thick or thin." Because in those days you knew by the thickness or the thinness whether you had passed or not. So I stood in that phone booth. It seemed like an eternity before my mom came back, put her glasses on and said the good news. I immediately went back in and told the Judge. In a typical fashion he congratulated me, and then he took me around to see the other Appellate Judges Gerald Foley, Edward Gaulkin, and Victor Kilkenny. And

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I'll never forget how he introduced me. He introduced me as the newest member of the bar.

Several months later into the clerkship he said to me on a Friday, "I want you to come in next week and watch one of the arguments" because it involved, as one of the attorneys, the late Judge Alfred Clapp. And as one would expect, it was a will contest. I sat in the courtroom at 520 Broad Street, and I listened as one of the judges propounded a question on Judge Clapp. And he pondered a moment and then he did something I have never seen since and can't possibly forget. In responding to that question, he cited himself as the authority. I can still see his adversary slumping ever so slowly in his chair.

On a very regular basis, Judge Sullivan would call me into chambers and we would discuss a variety of things, not just the cases I was working on, so he taught me a lot about life, he taught me a lot about public service. On one of those occasions we were discussing a particular appeal I was working on. It involved a criminal case out of Essex County. And we talked about the transcript. At that point we knew that my next job was going to be as an Assistant Essex County Prosecutor. So he said to me, "Joe, when I read future transcripts about cases you try, I don't want to see you making those mistakes." And I can't tell you how many times I thought of those words as I prepared and tried cases in Essex County.

How I interact today with my law clerks is based on my experience as a law clerk with Judge Sullivan. In terms of preparing me for the real world, I couldn't ask for a better role model and teacher, and I try my best each and every year to do the same for my law clerks.

As many of you know who visit the Essex County Court Complex, photographs of every Essex Vicinage Assignment Judge are proudly displayed in the lobby of the new courts building. I am awed and proud to have my photograph displayed with my first mentor, Justice Sulli-

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van, who, many of you may not know, served as acting assignment judge in Essex during the months of November and December 1956 when I was a freshman in high school.

And, finally, Mark, I want to thank you personally for asking me to participate in this wonderful tribute to your father. I am truly privileged to have known him and to have worked with him.

Thank you.

CHIEF JUSTICE PORITZ: Thank you, Judge Falcone.

We will next hear from another of the Justice's law clerks, State Senator Joseph Charles, Junior.

SENATOR CHARLES: Chief Justice Poritz, members of the Court, former Justices of the Supreme Court, Judge Sullivan and family. It's my honor to be here this afternoon saying a few words about a person who has had a profound impact on individuals' lives as well as the life and the lives in the State of New Jersey through his public service. I think that one of the things that was most important in Justice Sullivan's life was his feeling of privilege to be able to serve the public.

When I was asked if I would participate here this afternoon, I answered of course I would have the availability to be here. What it has caused me to do in thinking about Justice Sullivan—he was Judge Sullivan when I clerked for him in the Appellate Division—was to reflect on him and also to think a little bit about where I am as a State Senator now and other things that have happened.

I think, first and foremost, Judge Sullivan was a subtle man. He was very, very shrewd. He was very, very mysterious in many ways. A lot of people, I think, still can't imagine that in 1969—that was during the Age of Aquarius, you know, when there was a lot of unrest, political, social, legal—how Judge Sullivan then came to Rutgers Law School in his search for a law clerk and indicated that he

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wanted all kinds of applications submitted to him to interview for his position as an Appellate Division law clerk. There were only twelve such positions in the State of New Jersey at that time. Thirty-three years later there still are some issues about law clerks and who's law clerking and things of that nature. Thirty-three years ago, Justice Sullivan, then Judge Sullivan, understood the responsibility of all people to make opportunities available for all people. My clerkship was a product of that and I am proud of having been able to serve and even more proud of the fact that Justice Sullivan came by and showed that kind of perception and that kind of sensitivity.

As law clerks we came in and did not know what the practice was about, how we should approach law. In those days there was a lot of protest about the law. The lesson that anybody who clerked for Judge Sullivan received was that the law was an instrument, it was a means to achieve justice. That's characterized by his opinions. We talk about the terseness, the brevity, the clarity of his opinions. That's because I believe that Judge Sullivan sought to do justice in every case. He sought to attain justice in the individual case as well as to have that case stand for a just result. It gets easy when that is your motive, when that is your only motive in discharging your duties as a member of the judiciary, to try to do justice.

As others have said, he went to the core of issues amazingly. I can remember on a number of occasions going into the chambers with the Judge, particularly on emergency-type matters, and trying to understand what was going on and whether this emergency application should be granted or denied. Justice Sullivan would always ask the question of what is right, what is just in this case. He was very strong on the issue of due process and fairness, substantive, procedural, and when that is your guiding star, it's easier, I think, to reach conclusions. I think Justice Wilentz saw that in Judge Sullivan. He should not be a Judge constrained by other judges' opinions, constrained just to decide cases

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based upon what other judges had decided, what Supreme Court Justices had decided, what the other Appellate Division Judges might have decided. He belonged on the Supreme Court of this State of New Jersey so that he could truly do justice where he could sit and write. Even when there was no opinion doing justice, he could author that opinion, which did justice.

I am grateful, I am thankful for having had the opportunity to clerk for Judge Sullivan, later Justice Sullivan. I would just like to say to Judge Sullivan and to his family that your father was truly, truly a very remarkable man and someone who has had profound impact.

I close with this. You know, we all talk about Judge Sullivan. He was an elegant man, dignified, calm steady. You can imagine clerking with that person, a person with that style. On either side of him—on one side of him was Judge Kilkenny, a brilliant, a lot of color. A lot of color. The other side was Judge Matthews. Brilliant, provocative, not as humble as Judge Sullivan.

Thank you.

CHIEF JUSTICE PORITZ: Thank you, Senator Charles.

Our next speaker, Richard Brennan, is another former law clerk, now a partner at the law firm of Drinker, Biddle & Shanley.

MR. BRENNAN: Madam Chief Justice, and may it please the Court. I clerked for Judge Sullivan in 1967 through 1968, and I can say without reservation that it was probably one of the finest and extraordinary years I have ever had in the practice of law. What was extraordinary was that I got the job in the first place. Don't forget now, I was a Seton Hall boy and we had only thirteen graduating classes, so I was pleased as punch and very, very lucky to have been asked to be his law clerk. And I wasn't even from Jersey City. But I got the job and I just loved it so much.

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Our Part consisted of Judge Sullivan, the presiding Judge, Judge Leon Leonard, and Judge Gerald Foley, and that was a hard-working Part. There were only twelve judges in the entire Appellate Division, and they each had one clerk; and, as now, the Appellate Division was truly a very hard-working court. We had three memos a week to do, three opinions to get out. And I remember working with Judge Sullivan and the polestar, not to steal anyone's thunder here, was always what is fair. I would come in with a tentative opinion. He would say, Richard, is this fair, is it the right thing to do. And he would carry us over into oral argument. He was given to standing up a lot during oral argument, walking behind his chair, and either putting his hands on the back of the chair or folding his arms in front of him, and he would say, counsel, we have your point, but where is the prejudice; or, counsel, we've read your brief, but is this the right thing to do that you're asking us to do. So that was the theme of my year with the Judge.

I remember one case, which is still cited. It's at 100 N.J. Super. 67, Justice Clifford. It was *McLaughlin v. Bassing*, where the Appellate Division had no trouble dismissing a case because the plaintiff's lawyer did not issue the summons until three-and-a-half years after the filing of the complaint. Justice Sullivan wrote a dissent. It doesn't even take up a whole page in the reports. Less than a full page. He says, I would dissent, sure the plaintiff lawyer was derelict, but why visit the sins of the lawyer upon the innocent client, there is no prejudice, I vote to reverse. On cert, the Court did and adopted Judge Sullivan's dissenting opinion in that case.

He was goal oriented. He always chose to do the right thing, and tried to inculcate in others the zeal and the knowledge to see what the right thing is.

On a personal level, he was a true mentor to me. As the clerkship was winding down and I had to decide where to work, he would speak to me and he would say, "Richard, find a place that offers you the values that you like, find a

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place that will treat you fairly, and try to find a place where character prevails.” He said to me, “If you ever get an offer from Bernard Shanley, take it.” Which I did, so I am very grateful for Judge Sullivan for really starting my legal career, to Mark for asking me to speak, and to the Court for honoring this fine man.

CHIEF JUSTICE PORITZ: Thank you, Mr. Brennan.

As a sampling of the former law clerks who have spoken here today makes clear, Justice Sullivan’s teachings continue to affect us all through those who learned from him and now serve in government, including the Judiciary, and the law firms of our State.

Our final speaker, another friend of Justice Sullivan and his family is Justice James Zazzali, who will speak for the Court.

Justice Zazzali?

JUSTICE ZAZZALI: Thank you, Chief Justice, present and former members of the Court, Judges, Mark, your family, and friends and colleagues. As the ninth speaker at the end of the lineup of nine speakers, I think my responsibility is to say something meaningful and different and fresh, hopefully, and as the hour is late, I can only emulate Justice Sullivan, who once told me about the three Bs.

We all have heard about his brevity in the written word. That carried over to his oral presentations as well because he said to me, “The three Bs of giving a good talk are to be brief, be good, and be seated.” I can only guarantee you that I’ll meet the last test.

I have watched this Court and, as many of you have known and have noted, it’s been graced by so many men and women who have been able to vigorously advance and argue their principles and beliefs. They have always done so with an abundance of good will and an abundance of good faith. And Mark Sullivan was the embodiment of that

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ideal. Like all that preceded him and succeeded him, his independence was exceeded only by his great integrity.

Turning to his opinions, his understatement in a matter belied his understanding of the matter. As someone said a few days ago and as you've heard echoed here today, no one had a better sense of natural justice. He had his penchants as well for slicing to the core of matters with less fuss feathers and less faldarole than anyone I know.

It's difficult, however, as much as one might attempt it, to synthesize and to summarize his judicial philosophy. He certainly did have an expansive outlook of government, and I think that was probably attributable—based on my conversations with his family and what I have read—probably attributable to his dad's reform efforts. Because before becoming a judge, his father was active in the reform movement in Jersey City and indeed urged then President of Princeton, Woodrow Wilson, to run for governor of the State of New Jersey.

Ironically, Hudson County 90 years ago was a hotbed of reform politics. I think that was largely attributable to the fact that the railroads were centered there and the railroads in this State and in this nation were a significant issue.

In any event, as best I can piece it together and to sum it up, that judicial philosophy was a product, at least in part, of the progressive Wilsonian tradition of his dad and the Populist principles practiced by his Congressman father-in-law, James Hamill.

His decisions were very much his own. He was his own man. He approached, as you've heard today, each dispute on an ad hoc basis, applying the law to the facts in order to come up with the right result, and he never—as you've heard also—did or say more than was absolutely necessary under the circumstances.

Time does not permit at this late hour a recitation of his opinions, a litany of them, or the like. Just a few

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highlights. Of course in *State v. Carter*, he held that Rubin Hurricane Carter deserved a new trial on charges that you're all too familiar with. But Justice Sullivan led that Court in a courageous decision in concluding that prosecutors had failed to disclose exculpatory materials. In *Roman v. Mitchell* he wrote that juries should be aware of the legal consequences of their findings in comparative negligence trials so that they might better function as fact-finders. In *Van Ness v. Borough of Deal* he opened up the beaches of Deal to the public, and upon reading that decision, I was anxious to note whether—this is 1978, I think—whether Chief Justice Wilentz, who lived in Deal, was the Chief Justice at the time. He wasn't. It was Richard Hughes. The inevitable and the unanswerable question is, "What if." In *GATX Terminals Corp.*, Justice Sullivan did a wonderful opinion in terms of environmental cleanup. In *Fosgate v. Corona* he explained the responsibilities of physicians seeking to limit malpractice claims and on and on and on. These are just samples of 150 opinions.

Our lives, if I may, intersected in a number of ways. And I mention that only as a background to speak more about him, not about myself. Justice Sullivan sat, as you heard, in Chancery in Essex County in the Hall of Records. A few years later I sat on that same third floor as a law clerk for Judge Whipple. That third floor, Mark, Room 315, you said, was the context for at least one story concerning his incredible calmness. But in fact, although you all thought that Justice Sullivan was unflappable, on one or two occasions he did "flap". And I'm thinking of the time that after a short vacation in Sea Girt or Spring Lake, I forget which, in the Hall of Records he came back to his courtroom after two weeks, and found the courtroom reeking of alcohol. It had turned out that the State Police had been trying and testing a new test called the breathalyzer test, and the State Police were loading up volunteers with liquor and testing them while he was on vacation. Predictably, the State Police did not tell him.

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Another incident is when he received a call from the Monmouth County Clerk's Office where he had a friend there who said, "Gee, I heard you sold your house in Spring Lake." Justice Sullivan said, "I never sold my house, I'm still there." It turned out that a disgruntled pro se litigant before this Court had forged deeds to each of the Justices' houses in her name. And I suspect one or two of you in the audience may have been victims as well. To former Associate Justices, to the present Justices, I say, "Watch out!"

Now I mentioned Judge Whipple, Justice Sullivan, and Judge Sullivan. Justice Sullivan and Judge Whipple, as some of you know, were very, very close friends. They lived on Bentley Avenue together; one was at 90, the other was at 92. They lived in a house. They were separated by a party wall. And on one side you had the Sullivan Family. Now remember that Justice Sullivan was the son of a distinguished judge who had helped Wilson become governor. Furthermore, his father-in-law was a Congressman who had journeyed to Versailles with President Wilson in 1919. That was one side. So those were his mentors, his father-in-law and his father. And on the other side of that party wall was Judge Whipple whose mentor was Mayor Kenny. And I often had a wish that I was a fly on both sides of that party wall to hear what was said.

In any event, and more to the point, my respect and affection for him gestated in my years arguing before the Appellate Division. My first argument before the Appellate Division was on a day in the mid 60s, the first day of September when he was the new presiding Judge of Part D. From then on I always prayed that I would appear before Judge Sullivan in Part D, not because I thought he was so great, but because presiding judges of the other panels were Gaulkin, Conford, and Goldman, for those of you who have a long memory. I'm not sure whether Justice Sullivan was so nice to me in those years because my father played golf with him or because my wife's parents were close friends of Mark and Joy or because he just felt sorry

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for me, because in those years I was, to borrow Governor Byrne's phrase, the oratorical equivalent of a blocked punt.

Particularly for those justices on my left who may not have known and were not privileged to know him as I was, he is and was an iconic figure, someone whom we should emulate. To sum it up, I would call him a pragmatist with principle, who inevitably and invariably combined dignity with the decency that we witnessed. He was so much a gentleman. That's a motif that really was what his life was all about. That was the fact. That was a reputation. He was simply incapable—as one of the former Justices said to me, he was incapable of an unkind word, he was incapable of any unkind act.

In his final years in the nursing home, the nurses loved him so much because, as Mark told me, "he was such a gentleman," and that gentlemanliness was demonstrated and reflected in the treatment that he accorded his wonderful wife, Joy. Those nurses witnessed it firsthand. They watched it when he made the decision to have Joy come from one nursing home to his nursing home so they could be together. They witnessed it when at the front door of that nursing home the day she was arriving he was sitting there in his wheelchair impatiently worrying about her so that she would make it okay. And they witnessed him every night going down to her room as the nurses would tuck her in and he would say goodbye, or good night, and ultimately goodbye. He was a gentleman, thus, to his fingertips, he was a gentleman to the end.

I would note, lastly, or next to last, that the one thing he liked to be called, he liked to be called a gentleman, but, if you would allow me, he loved being known as a "Gentleman of Georgetown."

The Chief Justice mentioned in introducing today's ceremonies, that his name was Mark Anthony Sullivan. I think Justice O'Hern made the same comment, and that seems to resonate importantly because you all know the

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eulogy by Antony of Caesar in the play. That's the hackneyed one that's so overused. The more interesting farewell and the one that fits best today is Antony's other eulogy of Brutus at the end of the play when Antony used certain words about Brutus that Mark Antony might say today about Mark Anthony Sullivan, and I think you would say as well. And what he said is the following: "His life was gentle, and the elements were so mixed in him that all of nature would stand up to all of the world and say, this was a man."

Thank you.

CHIEF JUSTICE PORITZ: Thank you, Justice Zazali.

I neither served on the Supreme Court with Justice Sullivan nor knew him personally. I was reminded today, however, that I represented him. I was one of the attorneys in the Attorney General's Office who was assigned to get those deeds cleaned up. Fake liens were filed against the members of the Court.

I do know Justice Sullivan's work as a Judge and a Justice and I know many who have been his friends. I know also with certainty of his love for this institution that is the Court and of his deep commitment to the fair and equal treatment of all people before the bar of justice.

We celebrate today Justice Mark Sullivan's thirty-six years on the bench, his lifetime of public service. As was mentioned earlier and to repeat, Chief Justice Robert Wilentz wrote of him more than two decades ago, "Justice Sullivan did much for the people of New Jersey. He worked hard for us. He was devoted to us. That effort and devotion can be found again and again in the decisions he handed down throughout a judicial career that spanned more than four decades. The people of New Jersey and the Justices of this Court are much the richer because of Mark Sullivan's life-long dedication to public service."

This concludes the official portion of the program. The members of the Court would like to invite the Sullivan

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Family and today's speakers to join us and our retired colleagues in the Supreme Court conference room.

Thank you all for coming today. The Court stands adjourned.

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