

Supreme Court of New Jersey

In Memoriam
HONORABLE HAYDN PROCTOR

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HONORABLE HAYDN PROCTOR

Proceedings

CHIEF JUSTICE PORITZ: Please be seated.

We are here today to celebrate the life and career of Justice Haydn Proctor. To his daughters, his grandchildren, and his great grandchildren, he was above all other things a good father, grandfather, and great-grandfather. To others who knew him, he was a man of wit and humor, a man to be trusted and respected. And to those of us who only knew of him, he was a role model, a man of integrity and unparalleled courtesy, a man who devoted his life to serving the people of New Jersey. And so we all come together to share our memories and our thoughts about Haydn Proctor, to honor his public achievements, and to remember him as a good man.

First, I would like to call on William Gearty, a longtime friend of Justice Proctor.

MR. GEARTY: May it please the Court, Chief Justice Poritz, honored Justices of our Supreme Court, family and friends of Haydn Proctor.

It's always a privilege for a lawyer of this state to stand at this podium and address our Supreme Court. It's a privilege and it's an honor; it's not always a pleasure. This is one of those occasions, however, where it is very pleasurable because I and every attorney who stands here this afternoon will be able to say to himself or herself, all seven of them are going to agree with everything I say. That is pleasurable and that is unique, as Haydn Proctor was unique.

I had the good fortune to become an acquaintance of Haydn Proctor at a time after his retirement from this

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Court. He returned to his native Monmouth County and sought out the company and friendship of other lawyers, and, indeed, all sorts of people. He came to join a bar association in our part of the county known as the South Monmouth Bar Association. A word about that will perhaps put other things into perspective. The bar association has its principal headquarters and dining complex at 703 Tenth Avenue, Belmar, New Jersey. The premises are also shared by Jack, who runs Jack's Tavern at the same location. The phone number which you see in the *Diary* is that of Jack's. So if you call on business of the South Monmouth Bar, it would be my suggestion that you call on Monday between 11:30 and 12:30. When a person answers the phone, do not go into any confidences because you will be talking to Augie, the bartender, who is not privy to any of our business. You could suggest that he call someone from the large table by the front window, and your business will be expedited.

Another item about the South Monmouth Bar. If you go through your *Lawyer's Diary*, you will see that it is the only bar association in the State of New Jersey which sports a Latin motto. It's published in our *Diary*, it's there for your reading, and it states in clear Latin, "Justitia Aequalis Sub Lege et Proxima Mare." And in fair translation, that is, "Equal Justice Under the Law and Right Next to the Ocean," and that is the motto which we have.

Many bar associations have committees which are committed to influencing public opinion, the appointment of judiciary, and progressive legislation. That is not so in the South Monmouth Bar Association. Under the leadership of Justice Proctor, we never took any position on the entire controversy doctrine, we never discussed legislation affecting the auto insurance problem which is plaguing our state. There has been no paper written on the divorce bills presently before the Legislature, and we have suggested no reform of the probate system.

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The South Monmouth Bar Association sees its mission as a limited and perhaps a modest one. Our program consists of an occasional dinner at which our wives attend and at which we generally honor Justice Proctor, and annual golf outing and cultural convocation which takes place in October, and every Monday a luncheon. He reveled in it. He loved being with lawyers, with judges, he loved being with people, he loved to talk about the profession that he loved so dearly, the bench that he had just left which he revered so much, and he loved to tell us stories about the earlier days when life and practice were simpler in Monmouth County.

One of the stories that he liked, I assume because he told it so many times, was about the early days in the municipal court in the county. In those days, they were not judges of the municipal courts, they were magistrates. They were not attorneys and from what I understand, there was no qualification of an educational background necessary in order to be appointed to such a position. He told us about a case that he had pending in such a court, and he went there with all the enthusiasm of the young lawyer that he was because he had a case that was precisely on point. Not only was it precisely on point, but it was fresh. It had not made the bound volumes yet, and it was in the familiar blue paperback, *The Advance Sheets*. At the appropriate moment, he'd start quoting from *The Advance Sheets*. He was interrupted by His Honor, like that, who silenced him and said, "I don't get my law from no magazines." He didn't do well in the result.

A number of years ago, a friend of ours brought his daughter as a guest of the bar association for luncheon, and she was a very impressive young lady. She had been admitted to the New York bar two years earlier and Haydn Proctor, of course, prodded her as to what she was doing because he was always interested in what young lawyers were doing. And she was a modest young lady, but it did come out that she was specializing in First Amendment

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litigation on an appellate level, was working on a brief which was to be filed within the week before the Supreme Court of the United States, and her name was going to appear on the cover two years after her admission to the bar. He was truly and duly impressed, and he said to her, "Beth, I certainly envy you because I remember my own early days of practice, I remember those days when I was about as young and new to the practice as you are, and it seems to me that within those first two years, the profoundest opinion that I ever passed was, 'Mrs. McCluskey, if you don't make the payment, Sears & Roebuck is going to take the vacuum cleaner back.'"

On one of these occasions—and as you know, he was eminently concerned with art in all its forms—he was asked his opinion as to who was the greatest artist of the Italian Renaissance. Without too much hesitation, he said Leonardo Marina. Now that doesn't mean too much to people that are this far west in the state, but to those of us who live in Monmouth County, we recognize the name as a municipal boat basin on the Monmouth County shore of Raritan Bay.

During his tenure with our office, with our association, he sought political office, and decided that he would run for the presidency of the South Monmouth Bar Association. And he put together a ticket, people who were going to be running with him seeking election to the various offices. Now you have to understand a couple of things to appreciate this. The substantial part of the membership of this association is from Spring Lake, New Jersey. Spring Lake has been referred to by both its detractors and its well wishers as the Irish Riviera of New Jersey. He, by background, was from Ocean Grove, which is Methodist. Ocean Grove is probably more Methodist than Spring Lake is Catholic. And he put together a ticket, and the ticket consisted of an Irish Catholic Democrat from Spring Lake, an Irish Catholic Republican from Spring Lake, an Irish Catholic Independent from Spring Lake, and Haydn Proctor, the Methodist from Ocean Grove. And he said to us, "In

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light of the constituency that we are facing, I call that a very balanced ticket and we're going to go with it." And he did go with it, and we had a wonderful campaign. He had a motto of, "Prosperity, progress, and Proctor."

The ticket won unanimously. It had to be celebrated, he had to be inaugurated, and there was an inauguration dinner. It fell, however, at the same time as our annual Christmas dinner and accordingly, it had to serve two purposes. We were one, celebrating the birth of Jesus Christ, and, two, we were celebrating the inauguration of Haydn Proctor. We combined the events and in subsequent years, it was known affectionately as the "Crib and Crown Dinner."

I suppose if you think about presidential longevity, Franklin Delano Roosevelt comes to mind as the Lou Gehrig. He served as president for 13 years and he won four elections. Haydn Proctor served 16 years and won 16 elections, making him, I suppose, the Cal Ripken of presidential longevity. Those of you who read the *Diary* will notice that in next year's edition, he continues to serve us as President in Perpetuum.

Haydn Proctor was a Renaissance man. He was a man who sought out all parts of life, its beauty, its art, its culture. Other people; he understood people of all walks of life. He spent all sorts of time talking to all people in all sorts of life. We always think of him as a Renaissance man. The expression has been used in Monmouth County on many occasions, and he stands there with people like Michelangelo, da Vinci, Erasmus, St. Thomas More, and Leonardo Marina.

It was said by one of the visitors at our dinner, in fact, one of our members, that if Haydn Proctor was born 200 years earlier than when he was born, he would have been at the very foundations and the institutions of the American Revolution and the coming of this country into its existence.

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He would have associated with men like John Adams, Benjamin Franklin, and Thomas Jefferson.

Haydn Proctor was known by us mainly for his civility, and that was brought because of the many wonderful inner qualities that he had. This was the symptom. It is most appropriate that, I think, the Inn of Court which has been instituted for the purposes of teaching excellence in trial advocacy as well as in restoring the needed values of civility, collegiality, and brother- and sisterhood to the profession, bears his name. It was named after him and rightfully so.

I also think it appropriate in light of the fact that I am standing before the Supreme Court and addressing a Chief Justice of that distinct body to read to you the words of another Chief Justice, one after whom this building has been named. On the 1986 occasion of the Monmouth Bar Association's tribute to Haydn Proctor, Chief Justice, who was then retired, Richard J. Hughes wrote, and he asked that he be quoted,

"I first knew Haydn Proctor when he was a senator from Monmouth and I remember that he had the universal respect of his peers on both sides of the aisle. This mystique followed him in his judicial career, including finally his distinguished service on the New Jersey Supreme Court. I have lived a long number of years, perhaps too many, but I can tell you that in all of those years, I have never heard anyone speak of Haydn Proctor with anything less than respect and high affection. I feel that way, too, and I embrace this good friend and I wish him well."

Haydn Proctor will be remembered today by many of the accomplishments in the legislative/judicial field and they are rightfully accomplishments that should be acknowledged. But in the years in which I knew him and which he associated with us on this informal basis that I've discussed, we came to know him, to admire and love him, not for what he did, but for what he was. And it was those wonderful

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qualities that we remember more than the wonderful and great accomplishments that he made.

I would just like to close with this thought about the success of the life of Haydn Proctor, and I'd like you to—I suggest to you that against this definition, he measures up very well. The words are those of Ralph Waldo Emerson. He stated,

To laugh often and much, to win the respect of intelligent people and the affection of children, to earn the appreciation of honest critics, and endure the betrayal of false friends, to appreciate beauty, to find the best in others, to leave the world a little better whether by a healthy child, a garden patch, or a redeemed social condition, to know even one life has breathed easier because you have lived, this is to have succeeded.

And against that definition of Ralph Waldo Emerson, Haydn Proctor certainly succeeded.

Thank you.

CHIEF JUSTICE PORITZ: Thank you, Mr. Gearty.

Next, we will hear from another longtime friend of Justice Proctor's, and a judicial colleague, former Judge Frank Crahay, who sat both in Monmouth County Superior Court and in the Appellate Division.

MR. CRAHAY: If it please the Court, friends and family of Justice Proctor, retired Justices, Judges.

It is for me an honor to have been asked to join in this ceremony today. Such a ceremony is fitting, of course, but in my view, it's not really necessary because Justice Haydn Proctor, I think, honored himself in the gentle and industrious way he lived his life and served all of us. I did a little biographical background and I won't take too long with it; there's much, much more, but I think it's something that should be on the record of this Court.

First of all, we have to remember that Justice Proctor lived in every decade of this century, and very early on he

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began a public career, and in all branches of government; legislative, judicial, executive. From 1930 to 1933, he was a magistrate in Ocean Grove, of which more later. From 1934 to 1936, he was assemblyman from Monmouth County. He went to the executive branch, he was county treasurer, the years 1940 to '46. He was a senator, an acting governor at times between the years 1937 and 1946. He was on the old circuit court in '46 to '48. Prior to that, he had been a delegate to the Constitutional Convention. In 1948 through '57, he was on the Superior Court. And we have a real bar association in Monmouth County—he was president of it in the years 1950 and '51.

As you all know, in 1957–1973, he joined this Court. And he didn't slow down, even after his retirement. He served as the chairman of this Court's Committee on Opinions for many years. He served on the New Jersey Election Commission. He, as has been mentioned, distinguished himself as a member of the South Monmouth County Bar Association.

It's interesting because he touched so many people, so many judges, friends, the ordinary man. In checking, I found out that within a two-month period in 1957, he and Justice Francis joined this Court, and Justice Weintraub became its Chief Justice. He was literally a member of the Weintraub Court for all its years because again in June and August of 1973, he and Chief Justice Weintraub retired. Justice Pashman is here today, which reminds me that he took Justice Proctor's place in 1973. That's the same day Justice Clifford joined the Court, which soon became what we call the Wilentz Court.

So that's the biography. There's much, much more to it, but that's the outline.

I first met the Justice, then Judge, in 1953. I was fresh out of the armed forces for the second time, and fresh from Jersey City and Hudson County, for the first time in Monmouth County. I went there after my discharge. I met

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this fellow and he was a Judge of the Superior Court, and I was impressed. I was a law clerk with the old Carton firm in Asbury Park. And he took right to you and you took to him. He wanted to help. He wanted to know more about you. And we became friends.

And then, of course, he joined this Court in '57. Then, I met him almost daily. We had lunch in Steinbach's Department Store in Asbury Park. If he wasn't sitting on the bench or doing something more important, lunches were there. Many of his old clerks from the very first through the most recent would be there with him, and these were great, great learning experiences.

Then somebody got the idea that perhaps I should become a member of the judiciary. That was in 1960. Having been from Hudson, I ran into a little trouble because Monmouth is essentially a Republican county. One of the big character defects asserted against me, even editorially, was that I was not from the county. The good Justice suggested that maybe I get the word out that I wintered in Hudson County. And it seemed to work.

But, again, these were happy times, and he would help. He just always wanted to help. You know, you'd go to the opera with him; I remember even before I went on the bench, we used to go to the old Metropolitan with Senator Eddie O'Mara from Hudson, just great people. And you sit there as a young guy and learn and learn.

Even today, in Monmouth County, the courtroom I first sat in is now the Chancery Division. In the old days, it was grey and dark and dusty. They fixed it up now; it almost looks like a Morris County courtroom; it's beautiful, beautiful. His portrait is there and it's a beautiful portrait. We talked about it, and I said, God, when I first went there in 1962, that's 35 years ago, it was dusty and dank and in the summer time, you had to leave the windows open, there was no air conditioning. The jurors—maybe some of you remember, jurors had to dress; ladies wore dresses, men

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wore jackets and ties. He said, I learned something in Hudson—because you remember he was the Assignment Judge up there, too. What a great man to have in that job. You say it's an oxymoron, but it worked. He said, "On those really hot days, just say to the jury, 'If it's all right with the ladies the men can remove their jackets.'" And it worked every time. So he brought a little bit of Hudson to Monmouth.

I wasn't much for writing opinions in those days; County District Court, you didn't do it. Justice Handler might say I wasn't much for writing opinions when I was on the Appellate Division. We'll leave that aside. But I got my teeth into a case on quasi-contracts, and it's reported, 61 Super., *Colanno v.* somebody. So I wrote this three-page letter opinion, and I showed it to him on the way back from Steinbach's because he was always interested in what you were doing. And he read it and he said, oh, good, good, persuasive, solid, pithy; he loved to say my opinions were pithy. Well, okay, I filed that opinion and gave judgment for plaintiff on a quasi-contract. It was appealed. I think it was Justice O'Hern's partner, Chester Apy. The Appellate Division in its wisdom reversed it three-nothing. Uh-oh. Because I thought this was going to launch me on a judicial career beyond measure. So the respondent had the good sense to petition the certification. It came before this Court on which my coauthor sat. And certification was denied seven to nothing. Well, anyway, I went back to Steinbach's and I said, it was seven to nothing. He said, "You know, that Appellate Division decision was very persuasive." So we went on to other things. He was an intellectual imp, he was just wonderful that way.

He had so many, so many loves when you think of his qualities. He loved his family. It just was a beautiful thing to see. He was so shaken when his good wife Dorothy died. Just before that, my wife had died and I got a note of condolence that really helped me. It could only have been written by Haydn Proctor.

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Music. We all know of his love for music. Member of ASCAP. He used to say, dues-paying member of ASCAP. He wrote songs. We talked about it at lunch today. The opera was one of his great, great favorites, and so many people, Henry Paterson, secretary of the senate, Senator O'Mara. The opera. Shakespeare, that was one of his real favorites. We would go with him because if a Justice of the Supreme court suggested you do something on a given weekend, you did it. But we loved it. We'd go to Stratford in Connecticut. Indeed, we went to Stratford and Canada once. We were going to a branch bank, and I don't remember the fedora he wore, but it wasn't the best. We suggested he take that off because this small branch, it might have looked like a heist, we're changing our money.

And Connecticut. He loved going to Connecticut. Just a little anecdote. He was always looking for a good place to have lunch. We were driving up this road and the story was that a group were driving up the road, and I saw this very, very fancy, posh country club. It was suggested that we go in there for lunch. And no, no, no, it's not for us, it's private, no, no. Haydn said, well, let's go, the worst thing that can happen to us, the worst thing that can happen to us is we'll be humiliated.

He had a great love of the church, churches. He'd go to church in Asbury Park. Those of you who attended the beautiful funeral service in Ocean Grove, he had friends, great love of friends. We mentioned Justice Francis. Judge Larry Carton. There's a collection of correspondence between Justice Proctor and Judge Larry Carton that really could be collected and published. Judge Eddie Knight from Ocean Grove was another good friend.

We keep mentioning Ocean Grove. He really had a love for that little place over on the ocean. He called it a jewel in a tawdry sea of rhinestones, and he meant it. And this Court, two years after he retired, decided that Ocean Grove would be no more. *State v. Camp Meeting Association*. One wonders if there would have been a dissent about that if he

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was still on the court, and my guess is probably not. As much as he had this bias, his love of the law would have overridden it.

He loved to work. You all know that, those of you who worked with him. He loved to write opinions, he wrote important opinions. I was going to do a little catalog of them, but you couldn't do it, just too much. They were well written. And he used to proudly say he never, ever wrote a "far-reaching" opinion.

In one of Justice Francis's dissents, you'll see the phrase—it had to do with foreseeability, I think—on a clear day, you can see forever. One wonders where he got that idea.

What were his attributes and qualities? They were many, but just some come to mind. His wit has been mentioned. His intellect, his humanity, he was self-effacing, he was modest. These are all genuine, genuine, genuine. He had the ability to love people and he had the ability to accept love. To me one of his greatest qualities was he never took himself too seriously. He had this great love of government and law and served it well. I was thinking the other day, putting these little thoughts together, that across these United States various bar associations and courts are creating committees on professionalism and gentility. To me, the whole thing could be done if all new lawyers and old ones were told, try to be a little bit like Haydn Proctor. I think that would work.

In looking at the books, I saw that Justice Proctor addressed this Court in 1985 in honoring his old dear friend Justice Francis. And he quoted a poem from Emily Dickinson, and you'll permit a little plagiary. Justice Proctor read these words,

"We never know how high we are until we are called to rise,

"And then if we are true to plan, our statures touch the skies."

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How well that would work with Justice Proctor.

We're all going to say something today, but there really aren't enough words, there isn't enough time to do Haydn Proctor real justice. To me, it's been one of my life's greatest experiences to simply have known and met him and occasionally worked with him, laughed with him, and loved with him. He was a great, great guy. Again, I thank you for permitting me to join you in this remembrance. Thank you.

CHIEF JUSTICE PORITZ: Thank you. Our next speaker is Virginia Fenton, one of the Justice's former law clerks.

MS. FENTON: May it please the Court, Chief Justice Poritz, former and present members of the Court, friends and family of Justice Haydn Proctor. I'm deeply honored to be asked to pay tribute to Justice Proctor on behalf of his former law clerks. I've not had the pleasure of becoming acquainted with each of them, but I'm sure my experience with Haydn Proctor was substantially similar to theirs. With that reservation, I will do my best to tell you about the truly remarkable experience of serving as Justice Proctor's law clerk.

All of his clerks became familiar with his unique procedures for his handcrafted opinions. We all enjoyed our walks with him in Ocean Grove and on the Asbury Park boardwalk. Our lunches with him and the area lawyers at the lawyers' table in Steinbach's, as Judge Crahay mentioned, were experiences that we'll never forget. The issues of the day were routinely dissected. None of us could ever forget the many enjoyable hours spent with this great man and teacher.

When I began my clerkship, my understanding of a traditional appellate clerkship was that the clerk spent many, many hours researching and writing alone in the library. Occasionally, there would be a brief, formal, intellectual discussion with the judge. Clerking with Haydn

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Proctor was an entirely different experience, sort of a one-on-one intellectual exploration seeking perfection in crafting the clearest, tightest opinions possible, always considering the human impact of the opinion on the real people who might be affected by it.

The actual drafting began in his chambers where he dictated his thoughts and his clerk, yellow pad in hand, wrote patiently word by word. We stopped often to go back and test the progress, were we achieving the ultimate clarity of expression which we sought. Frequently, Justice Proctor would head through the door to the library, grab a *New Jersey Report*. He always knew which one he wanted, and remarked, Justice So-and-so addressed this issue in such-and-such a case, let's look at it. He would turn to the opinion and he would read it aloud to each other, stopping here and there to analyze its import for the issue at hand. Almost every case he cited in an opinion had been subjected to this vocal inquiry.

At first I questioned the efficacy of this reading aloud together. It seemed a very slow process, but it was a very clever and thorough method of absorbing and testing what had gone before and discovering as we read its importance, if any, to the case at hand.

I marvelled at his instant recall of virtually everything he had ever read, legal or otherwise. His precise use of language and clarity of thought made his decisions unusually easy to read and understand and at the same time not readily subject to misinterpretation.

This clerking experience with Justice Proctor was not without its humor, as we all knew him well for his wit. There was much laughter as we worked. One case stands out which elicited many laughs for us. A Hudson County court in an obscenity prosecution against a distributor of girlie magazines purported to qualify lay witnesses as expert average men, and allowed them to testify to the very, very high moral standards of Hudson County. Now, as you

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know, Hudson County had a reputation of being a hotbed of corruption at that time. In fact, Justice Proctor when he was assignment judge there in the 50s had appointed Sam Lerner to investigate official corruption, an investigation that exposed an array of corrupt practices and resulted in a series of indictments.

Anecdotal experience will illustrate Justice Proctor's intense devotion to his duties, frequently to the exclusion of external matters. After we started working one winter's day, his wife Dorothy called to warn him of a newly forecast intense storm headed toward Asbury Park. She asked him to close the office and head for home while he could still get there. He promised he would do so soon, and shortly thereafter, sent his secretary home. But we were immersed in very intensive analysis and debate and despite several more calls from Dorothy imploring him to come home, we continued with the task at hand until nearly 4 p.m. When we exited the building, we rued our delay. Getting his car out of the parking lot was an enormous task. We just left mine there. The city was deserted and the streets were several feet deep in snow drifts. We crept along in Haydn's car until we could go no further, still nearly a mile from his home. Since the storm was unpredicted, we walked the rest of the way in our dress shoes, and for me, that meant heels. When we finally arrived, we were wet and frozen, and Dorothy was understandably annoyed. I spent the night in her guest room and was very grateful for her hospitality.

Unlike some jurists, Justice Proctor did not hesitate to discuss sticky points in pending cases with lawyers he respected. In June of '64, the Court was faced with a constitutional issue regarding whether full faith and credit should be accorded an offer of a Pennsylvania court not of record in a domestic relations situation. He asked me if I knew a constitutional scholar at Yale who might help us with the issue. I recommended Robert Bork, with whom I had studied, who graciously agreed to give us his thoughts, and we met with him in New Haven where the issue was

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debated at length. The meeting was both cordial and fruitful, and I believe mutually appreciated by both the scholar and the jurist.

I started my clerkship in 1963, a year before the federal civil rights act was passed. Very few fledgling female lawyers were treated with equality. I was repeatedly denied employment in large firms and told, our senior partners don't want women in the firm. Haydn hired me, though he never told me that he worried whether a woman, no matter how talented, could do the job.

The following Valentine's Day, I found a card on my desk with a poem on the back which read,

"I used to worry if a girl could do the work
"Of a man in the duties of a judge's clerk,
"But now I fret no more, my face is bright and grinny
"Because I find she can, and never will I whinny,
"And I'll sing a song, although my voice is tinny,
"And it will be, Oh, carry me back to Old Virinny."
That was signed from "Guess Who."

It was not only a humorous acknowledgement of his earlier fears, but also a very welcome approval of my job performance. I deeply appreciated the poem, and will always treasure my Proctor original.

Haydn and I and our respective spouses remained lifelong friends and did our best to keep in touch. Even after our retirement to Florida, we often got together when we returned to New Jersey. The last time I saw Haydn was late '93, early '94 after the death of his beloved Dorothy. My husband Bill and I picked him up in Lakewood and at his request drove to Freehold where we had a memorable lunch at one of his old haunts. Afterwards, he walked us across the street to the Hall of Records where he proudly showed us the portrait of himself which the Monmouth County Bar Association had commissioned and placed in

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the Chancery courtroom. The Chancery Judge, I'm sorry I have forgotten his name, seemed genuinely delighted to welcome us and he spent the better part of an hour exploring legal issues with Haydn. Then in his 90's, Haydn was still sought out for his uncommon knowledge of the law and his clarity of thought and expression.

It is now 34 years since my clerkship with Haydn and it remains the most significant, intellectually stimulating, and personally satisfying year of my career thanks to the tutelage of this truly remarkable man who taught me so many important lessons of law and of life itself. I am sure my fellow clerks would agree it was the experience of a lifetime to be under the aegis of this brilliant, compassionate, humble, artistic, loving giant of a man, a modest man who sincerely strove to help each of us in our emerging law careers.

For myself, I shall be forever grateful for his help, and even more for lifelong friendship. Thank you very much.

CHIEF JUSTICE PORITZ: Thank you very much, Ms. Fenton.

Jay Greenblatt, President of the New Jersey Bar Association, will now speak.

MR. GREENBLATT: Thank you, Chief Justice Poritz, Associate Justices, distinguished guests, friends and family.

It's an honor as well as a pleasure to be here on behalf of the bar association and speak at this tribute to Justice Haydn Proctor. As a practicing lawyer for many, many years, I can think of few judges as worthy of praise from the bar as Haydn Proctor.

Justice Proctor was a rare person. He was a gentleman with a keen mind and wide-ranging interests. He practiced law for many years in Monmouth County, as we've heard. He was very proud of it, and he never forgot what being a lawyer was all about. He was a lawyer's judge in the best sense; namely, he understood lawyers, he understood the

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lawyers' clients, and he could readily relate to and resolve the often thorny issues and disputes that would come his way. He spoke and acted with the voice of experience and reason. He earned the respect of his colleagues in the bar and on the bench.

He was devoted to public service. He served in the Legislature for a number of years prior to his appointment, and even after his retirement, he continued in public service; as we know, he served on the Advisory Committee on Judicial Conduct of this Court. The court system, the lawyers, and most important, citizens of the State of New Jersey were well served during his distinguished career.

The lawyers of New Jersey were particularly pleased when he donned the black robe. It is when he became Your Honor that Haydn Proctor's career moved in a direction that would bring him great distinction, ultimately to be a member on this highest court of this state, and a court then and now recognized as perhaps the finest state appellate court in the nation.

I'll not detail the distinguished Supreme Court tenure of Justice Proctor; that has been left to others here and you have heard of it. But what I do want to highlight is the character of Justice Proctor and how it relates to the bar today. In case you haven't noticed, lawyers and judges have not won many popularity contests lately. If one listens to talk shows and social critics on newspaper editorial pages, it seems that we are the cause of all of society's ills. Now while I think much of that criticism is unfair and unfortunate, some of it is justified. There are problems within the legal profession and problems within the justice system that we must face. Quite simply, the practice of law is not what it used to be and the debate about whether lawyers are practitioners in a noble profession or just another breed of businessperson is a real one.

The many changes that have swept the legal profession have led to seismic changes, which have generated prob-

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lems. All of us here have heard the obvious; a growing lack of collegiality, lack of civility not only among lawyers, but between the bar and the bench; overly aggressive litigation tactics fueled by competitive demands that may transform a lawyer into a belligerent combatant rather than an officer of the Court; a judge more interested in clearing a calendar than in doing justice in an individual case; and the list goes on.

Where do we turn for solutions? Is there anything we can do at all? I think there is. One thing we must do is look at ways to focus attention on the core values that built the legal profession and which are the cornerstones of our legal system; honesty, fairness, integrity, competence, compassion, civility. When we think about those values, we need role models, mentors to emulate. As Judge Crahay said, one such person is Justice Haydn Proctor. Among all his achievements, the one that stands out is really the one that came so easily to him, the ability to live and act as a professional, to make those values I just recited real principles to live by rather than just words.

So Justice Proctor's lesson to us may not be found in the law books, but in the example he set for us as a gentleman and a consummate professional. As you know, the state bar association has joined with the Supreme Court and the law schools to create a Commission on Professionalism in the Law. The goal of the commission, quite simply, is the promotion of the very behavior that Justice Proctor exhibited throughout his life.

The New Jersey State Bar Association stands behind this effort. We're committed to a course of positive change aimed at fostering within New Jersey's legal community a new spirit of professionalism and professional responsibility that reflects the example of Justice Haydn Proctor. We thank him for his example and we hope that one day soon, we will be able to say that he would be proud of our efforts.

Thank you very much.

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CHIEF JUSTICE PORITZ: Thank you, Mr. Greenblatt.

Justice Sidney Schreiber never sat with Justice Proctor on the Court, but the two had a long friendship dating back to the days before Justice Schreiber was elevated to the bench.

Justice Schreiber.

JUSTICE SCHREIBER: Thank you. Chief Justice, Associate Justices, Justice Pashman, Justice Clifford, friends and family of the Proctors.

I must say that from this standpoint, you look like a very awesome group. I never realized it from down here.

THE COURT: You people, Sidney.

JUSTICE SCHREIBER: Today, as is our custom, we place upon the record of this Court a tribute to Haydn Proctor. Justice Proctor was the last survivor of the Weintraub Court. He became a Justice of the Supreme Court in October 1957, a few months after Joseph Weintraub had become Chief Justice. In the years that followed until 1973 when both retired, Justice Proctor was a stalwart in the modernization of the civil law of this state.

Justice Proctor's opinions are clear, understandable, and persuasive. His opinions do not meander and are undecorated by adjectival flourishes. His opinions read simply and easily. Typical is *Immer v. Risko*. The question in that case concerned the responsibility for injuries to one's spouse caused by the negligent operation of a motor vehicle. The lower courts had dismissed the suit following a 1958 Supreme Court opinion in *Koplik v. C.P. Trucking Corp.* *Koplik* had been decided by a four-to-three vote with Justice Proctor in the majority. It was his change of position in *Immer* that led to the acceptance of the realistic proposition that interspousal suits in automobile accidents should be maintainable. He observed that, "The passage of time has convinced me there must be a change."

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Justice Proctor noted that one should not consider to support a doctrine he no longer believes in simply because he at one time had a contrary view. The opinion contained an historical review of the spousal immunity principle and a cogent explanation of why the immunity should not apply to claims arising out of motor vehicle accidents. He reasoned, and I quote from his opinion,

Domestic harmony may be more threatened by denying a cause of action than by permitting one where there is insurance coverage. The cost of making the insured spouse whole would necessarily come out of the family coffers; yet, a tortfeasor spouse surely anticipates that he will be covered in the event that his negligence causes his spouse injuries. This unexpected drain on the family's financial resources could likely lead to an interference with the normal family life and it is doubtful that this void in insurance coverage would comport with the reasonable expectations of the insured that this Court has so often sought to protect.

Justice Proctor's functional approach to the law is exemplified in his opinion in *Bexiga v. Havir Manufacturing Corp.*, an opinion which barred negligence as a defense in a strict liability action wherein the equipment manufacturer did not install certain safety devices on a machine. Justice Proctor put it clearly:

The asserted negligence of plaintiff placing his hand under the ram while at the same time depressing the foot pedal was the very eventuality the safety devices were designed to guard against. It would be anomalous to hold the defendant has a duty to install safety devices, but a breach of that duty results in no liability for the very injury the duty was meant to protect against.

Justice Proctor was a warm, personable and compassionate person. He had a keen wit and sense of humor. Every person who has been associated with him in one

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capacity or another remembers him for his warm human touch. He had a great love for music, and at times wrote lyrics for popular songs. One that comes to my mind is the following, which was entitled, "Having You for a Friend," and it went this way:

It's so nice having you for a friend. Everyone has the need for a friend; not the fair-weather kind, they're so easy to find, but a friend who's a friend to the end.

Through the smiles, through the tears, through the frowns, through the years with their ups and their downs, even when we're apart, I'll still know in my heart that it's great having you for a friend.

Those of us who knew him were blessed with his friendship, and his spirit will remain forever with us.

Thank you.

CHIEF JUSTICE PORITZ: Thank you very much, Justice Schreiber.

Our last speaker is another friend of Justice Proctor's, Justice Daniel O'Hern, speaking on behalf of the Court.

JUSTICE O'HERN: Chief Justice, members of the Court, retired, present members, Appellate Division Judge Cuff, and Assignment Judge Lawson from Justice Proctor's beloved Monmouth County, family, friends, and especially former law clerks of Justice Haydn Proctor.

The Court thanks Justice Schreiber, President Greenblatt, former Judge Crahay, Mr. Gearty, and Ms. Fenton for their beautiful tributes to our deceased member.

As we have heard from the testimonials, Justice Proctor lived an extraordinary life. He achieved many of the highest honors that a New Jersey lawyer could attain. At various times, he was President of the Senate, Acting Governor, and a member of the New Jersey Supreme Court. I suspect that he would still be among us, had his beloved wife Dorothy had more years to share with him, and his two daughters, Ann McKee and Pamela Makin,

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both of whom—with other family members and friends—join us today in this tribute.

I have my own theory about judging: The better the wit, the better the judge. Not so long ago, my secretary, who worked for Judge Lawrence A. Carton and later became acquainted with Justice Proctor, reminded me of the delightful exchange of correspondence that Mr. Crahay referred to. We retrieved this “Crazy Letter File,” as Judge Carton called it. The file contains numerous examples of Justice Proctor’s sense of humor. Some are printable; others are unprintable. Examples include an occasion when, coincident with the appointments of Justice Rehnquist and Powell and the failed appointments of Clement Haynesworth and G. Harold Carswell to the United States Supreme Court, Judge Carton sent a comic poem to Justice Proctor. And in his letter enclosing the poem, Judge Carton wrote,

“Dear Haydn,

“The enclosed will never rival Gray’s Eulogy . . . As someone said recently”—and there are some omitted things here—“in speaking of my accomplishments as a poet, I have reached the acne of perfection.” Spelled a-c-n-e.

Justice Proctor’s reply followed:

“Dear Larry,

“I was delighted with your poem about the would-be and to-be Justices . . . In your letter of transmittal, you mentioned Gray’s Eulogy. Recollections of my boyhood bring to mind the word ‘Elegy.’ I understood ‘eulogy’ to be in praise of one, particularly the dead, whereas, ‘elegy’ is a mournful lament for those who have passed on. There may be a few who eulogize Carswell, but there may be many who elegize him.

“You say that you have been told that you have ‘reached the acne of perfection.’ These . . . remarks of

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mine may lead you to think I have reached the Nader of criticism." And he spelled it N-a-d-e-r, matching Judge Carton's correspondent's misspelling of "acme" by spelling "nadir" the way Ralph would.

The two took pleasure in observing nonsensically-phrased signs and news accounts. Haydn wrote on one occasion:

"Dear Larry,

"The following headline appeared in yesterday's *Newark Evening News*: 'COURT REJECTS CONVICT'S PLEA ON TOILET PAPER.'

"Apparently, the plea [Haydn continued] had been referred to the Master of Rolls and he found it to be a tissue of lies."

Justice Proctor's wry wit, however, masked granite character, a powerful intellect, and a great writing skill. Similar to what Ms. Fenton told us today, Roger Lowenstein, one of Justice Proctor's clerks, said that he did not learn how to write until his clerkship with Justice Proctor. He recalled the same experiences. He said,

I would sit in his office with a yellow pad on my lap. He would pace. We would craft every phrase, every word. On his desk were Strunk & White's *Elements of Style*, a thesaurus, and *Bartlett's Quotations*. A Proctor opinion is a gem. It is simply written, is never long, and gets the job done, with only the occasional flourish to underline the emotional subtext.

Not so long ago, Justice Pollock gave a lecture on the art of judging in which he explained that a judge is much like an artist painting on a canvass. Justice Pollack said,

The judge's art extends also to the description of the dispositive legal principles, the selection of relevant authorities, and the holding of the case. At each stage, the judge makes choices that reflect his or her perception of the judicial role . . . Similarly, the tone and

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breadth of an opinion reflect the judge's "style." Some judges paint in bold colors; others work in pastels. Some view their opinions as the judicial equivalent of the Sistine Chapel; others are satisfied to paint a Mona Lisa.

The latter was more in Justice Proctor's style, this, Mr. Gearty, would be the real Leonardo da Vinci, not Leonardo Marina.

But his innate modesty and self-effacing manner of which we have heard makes difficult our vision of Justice Proctor's excellence. It is like attempting to see a distant star when the many lights are nearby.

Justice Proctor, as we have heard, was our last link with the Weintraub Court, that extraordinary collection of seven Justices who between 1961 and 1973 reshaped the common law of New Jersey. His contributions to the work of that Court were enormous. He authored 199 majority opinions and 20 dissents. His opinions helped to weave the fabric of our law in the second half of this century. That fabric endures. We continue to cite his opinions. His opinion in *Safeway Trails v. New Jersey* on the meaning of legislative intent, recently cited by this Court in three cases that I will not mention. In her own opinion on parental immunity, *Foldi v. Jefferies*, Justice Garibaldi built on Justice Proctor's opinions in that field. In *Medici v. BPR Company*, Justice Stein built on Justice Proctor's view of inherently beneficial land uses, expressed in *Kohl v. Mayor of Fair Lawn*. On this day, by coincidence, we heard oral argument on the application of the principles of *Kohl* to the modern problem of siting a cellular phone tower.

These are but a few of the many examples of his skill as a craftsman of the law that endure as models for a new generation of judges. Of course, not every opinion of the judge is a landmark, and as we have heard, Haydn was mildly amused by references to Court opinions as "far-reaching." But every opinion of Justice Proctor displayed a

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genuine understanding of the needs of ordinary people who must confront the larger institutions of government, police, insurance companies, or employers.

Justice Proctor's understanding of an industrial worker's burden shines through in *Bexiga v. Havir Manufacturing*, a classic of New Jersey tort law that was referred to by Justice Schreiber.

I had the opportunity to hear Justice Proctor deliver in this courtroom a memorial tribute to his colleague Justice Francis and to have read his tribute to another colleague, Justice Schettino. Both tributes tell us as much about the giver as about the person remembered.

Of Justice Francis, Justice Proctor said,

He wrote many opinions that have indeed become classics in the literature of the law. His opinions are graceful and read easily. The language is never stuffy and the reason never obscured.

Of Justice Schettino, Justice Proctor said,

He treated everyone fairly no matter who they were, but there was one thing that impressed me even more than those qualities and that was his innate courtesy. Of course he was polite and had good manners, but what I am talking about is that outward aspect of his inward feelings, genuine courtesy. In other words, his heart was in the right place . . .

The qualities and talents about which I have spoken and his big understanding heart have earned him the affection of all those who knew him and entitled him to the respect of the people of the State of New Jersey.

It is stunning how fittingly those tributes apply to the man who gave them.

The qualities and talents about which each of you has spoken today have earned Justice Proctor the enduring respect of the members of this Court and the people of the

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State of New Jersey. The Court thanks each of you present for the honor that you pay to him.

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

My thanks to those of you who have shared your memories with us. We have all enjoyed hearing your personal reminiscences.

Justice Proctor held positions of importance in New Jersey over a period of five decades. As others have noted, with his passing, New Jersey has lost its last direct link with the era of the Weintraub Court, and we on today's Court have lost our Senior Justice. We mourn his passing as we celebrate his life. Justice Proctor will be long remembered by family and friends and by the legal community of this state.

This concludes the official portion of the program. The members of the Court invite you to join us in the Supreme Court conference room.

Thank you, all.

(Memorial proceedings concluded)