SUPREME COURT OF NEW JERSEY

Memorial Proceedings

for

THE HONORABLE JOHN J. FRANCIS, SR.

and

THE HONORABLE FREDERICK W. HALL

September 10, 1984

In Attendance:

Chief Justice Robert N. Wilentz
Justice Robert L. Clifford
Justice Sidney M. Schreiber
Justice Alan B. Handler
Justice Stewart G. Pollock
Justice Daniel J. O'Hern
Justice Marie L. Garibaldi

Eulogies by:

William J. Brennan, III, Esq., President, New Jersey State Bar Association
Justice Haydn Proctor (Retired)
John J. Degnan, Esq.
Justice Worrall F. Mountain (Retired)
Richard H. Herold, Esq.

In Memoriam

CHIEF JUSTICE WILENTZ: Good morning. Before hearing oral argument today we're going to conduct memorial proceedings for Justice John J. Francis, Sr. and Justice Frederick W. Hall. I'd like to call upon Mr. William J. Brennan, III on behalf of the New Jersey State Bar Association first.

MR. BRENNAN: Thank you, Chief Justice.

Members of the Francis family, members of the Hall family, Chief Justice and Associate Justices, Honorable Judges, family and friends—this occasion summons feelings of sadness, sympathy and pride for those of us privileged to know Justices Francis and Hall. We feel sadness at their loss, sympathy for their families on whom that loss falls so harshly and pride in their achievements and the contributions that each made to his family, his Court, his State and his country.

Each of us was enlarged because of these two men. Although they are no longer with us, the legacies that Jack Francis and Fred Hall left behind them live on in this Court, in its work and in our hearts.

Thank you, sir.

CHIEF JUSTICE WILENTZ: Thank you, Mr. Brennan.

Justice Haydn Proctor will address us next. Justice Proctor?

JUSTICE PROCTOR: Mr. Chief Justice and Associate Justices, I'll speak about Justice Francis.

John J. Francis had a most distinguished career spanning 58 years. For a quarter of a century he served as a member of the Judiciary of our state. After serving as a trial judge for five years he was designated in 1952 to sit on the Appellate Division. In 1957 Governor Meyner appointed him an Associate Justice of the Supreme Court. He sat on that Court for 15 years. The late Chief Justice Joseph Weintraub once wrote, and I quote, "John J. Francis always wanted to be a Judge. Of course he would not know that he would be but had he been assured, he could not have been better prepared for the call." I'm sure we"ll all agree with that assessment.

Justice Francis was an outstanding trial lawyer for many years before he was appointed to the Bench. He was involved in a wide variety of litigation, civil and criminal, and he encountered all sorts of people in all kinds of situations. This rich trial experience as an active practitioner sharpened the sense of fairness that he was born with. This was evident in his judicial thinking and in the opinions he wrote. His background surely influenced the approach he took. He knew that we were living in a time of new demands upon the courts. Outworn judge-made law and concepts were overtaken by social, economic and political development. Greater protection for the average man was needed. His approach and his opinions exhibit the depth of his compassion and his fervent desire to see that the little fellow got justice.

Justice Francis 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. His opinions have been cited widely by the courts of this country. Among them, are the *Henningsen v. Bloomfield Motors, Inc.*, 32 N.J. 358, 161 A.2d 69 and the *Santore* cases. These great opinions put a heart into the products liability law. They made New Jersey a leader in protecting individuals against harm from defective products. People were no longer frustrated by the lack of a practical remedy. The roadblocks built upon the then existing rule of privity were removed. Legislatures throughout the country followed the example of these cases. Laws protecting the consumer were enacted in most states. These laws were the natural outgrowth of the opinions Justice Francis wrote for the Court.

Dean Prosser commented upon what happened following the *Henningsen* case in the field of strict liability. "There occurred," he said, "unquestionably the most sudden and spectacular overturn of a well established rule of law in the entire history of the law of torts." But we should not allow these consumer protection cases to divert our attention from the wealth of the other opinions he has written. One researching practically any area of the law is bound to come across a major decision written by Justice Francis. Many of his opinions will be remembered as landmarks in common law jurisdictions throughout the world.

The Rutgers law review dedicated its entire 1970 winter issue to Justice Francis and his work. Leading scholars and jurists contributed to this issue with articles discussing and analyzing the approach he took and his sensitivity to the needs of the average man. How unusual it is for such a tribute to be paid to a judge while he is still actively serving on the Bench.

Jack Francis had three deep loves in his life: his religious faith, his family and the law. His family was closely knit. I have often heard him say to me, and he'd say it of his wife Chub, that she was the best thing that ever happened to him. He was proud of his daughter Cynthia and her talents and his two sons John and Hugh, both of whom have followed their father in the law.

Opinions are only one part of the many contributions Justice Francis made to the law. Other aspects of his judicial career are not so apparent to the Bar and the public as they were to his colleagues. His opinions cannot show the preparation and insight he brought to our conferences. He meticuloulsy marshalled the facts of each case so that the legal issues could be clearly defined. He inspired team work among us. He brought to the Court a strong feeling of right and wrong and fairness that went beyond the mechanical application of cold legal principles. He gave our discussions a sense of humaneness. His thoughts were helpful and persuasive. At times when the arguments in the conference room threatened to become a little too heated, his quick genial wit lowered the temperature, and often his gentle sense of humor relieved the tension in the courtroom.

One of my favorite recollections is of the time during an appeal when one side was being argued by a queen's counsel from Ontario. Being in court in another country, he was naturally tense. In response to a question from one of the Justices he replied, "Well, your Lordship." He was interrupted by another Justice who said, "You don't have to say that." Then Justice Francis with his delightful Irish smile said softly, "I kind of like it." The tension was immediately broken.

But his interest in the betterment of our judicial system did not end or slow down with his retirement. After retiring as a member of this Court he engaged in many judicially related activities. He was Chairman of the extremely important Supreme Court Advisory Committee on Judicial Conduct from its beginning in 1973 until his death. He was Chairman of the Supreme Court Committee on Grand Jury Reform. He was Chairman of the Committee of New Jersey lawyers appointed to screen and recommend candidates to fill four vancancies in the Federal Court Bench for the District of New Jersey. Even during his last illness he kept that enthusiasm for the improvement of our judicial system. When I visited him in the hospital, he expressed his delight with his appointment by Chief Justice Wilentz to the newly formed committee on extrajudicial activities. His comment to me was characteristic. He said, "I have some ideas I think that would be most useful to the committee."

It is not easy for one who has been a close friend and a colleague for many years to speak objectively about one of the truly great judges of our time. Every judge who ever sat with him or anyone associated with him in any capacity will remember him as I do for his enthusiastic search for the truth and justice and, above all, that warm human touch. There's a verse by Emily Dickenson;

> 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.

Jack Francis, in his life, many, many times was called to rise and without fail his stature surely touched the skies.

Thank you.

CHIEF JUSTICE WILENTZ: Thank you, Justice Proctor.

We'll next hear, also speaking in memory of Justice Francis, from John Degnan, former Attorney General.

MR. DEGNAN: May it please the Court, I am honored this morning to speak before this Court, an institution that Justice Francis so deeply revered. However, to give his life and its so many accomplishments their due, I would require a skill in speaking commensurate to the eloquence that so evidently characterized the Justice's opinions, indeed perhaps his life. I had the good fortune to serve as the Justice's law secretary for two years and in the process, as is typical of so many whose lives he touched, came to respect and care for him very much.

I use that word "revere" in describing the Justice's regard for this Court advisedly. He had, it seemed to me, at once an awe for the Court's power and a conviction about its function in the adjustment of law to social change and innate justice. It was a power he and his colleagues on that Court used again and again to fulfill that function.

Justice Francis' contributions to the jurisprudence of this state adhere fully to the maxim once articulated by Roscoe Pound: "The law must be stable, but it must not stand still." Stand still in Justice Francis' career most assuredly it did not. Certainly notin *Henningsen v. Bloomfield Motors*, which, as Justice Proctor has noted, was called by Dean Proser a spectacular decision that began an avalanche of reform in the areas of product liability and consumer protection. And not in the *Reste Realty Corp. v. Cooper*, 53 N.J. 444, 251 A.2d 268 case, which so fundamentally reordered the landlord-tenant relationship in our state by emphasizing the mutuality of obligations in such a relationship, thus spawning the covenant of habitability. And not again in the *Ellsworth Dobbs, Inc. v. Johnson V. Iarussi,* 50 N.J. 528, 236 A.2d 843 decision, which redefined the fiduciary relationship between a real estate broker and his or her principal by requiring that the law, notwithstanding substantial precedent to the contrary, reflect the common expectation of the parties in that relationship.

Certainly to isolate only three of the Justice's many landmark decisions would be to understate seriously the quality and depth of his contributions to the body of law in both our state and our nation. On the other hand they do reflect, it seems to me, some consistent themes in his judicial career, in the memory of which we join here this morning, for they vividly portray what, in the 1970 Rutgers Law Review article, Professor Tom Lamberts said of Justice Francis:

> He is immune from the ancient admonition that Judges should not sit like the figure on a silver coin, ever looking backward; rather they reveal the Judge at his supreme function, accommodating change within a framework of continuity. So viewed they are part of the grand design. They take on something of the grandeur of the larger vision, recalling Justice Holmes' argument to the legal profession that one who stands aloof from the action and passion of his time does so at the peril of having been judged not to have lived.

Moreover, those three opinions and so many others fall within the category of judicial opinions characterized by Justice Cardozo as magisterial or imperative because they possessed an inherent dignity and power, and because in the course of deciding they persuade and instruct. In that context, what always amazed me was the Justice's method of authoring opinions. He wrote each one personally of course, I wish I could claim otherwise, in hand and with remarkably few interlineations or revisions. To achieve the degree of eloquence he so often did with so little apparent effort in finding the right words or style always suggested to me great gifts of clarity and insight both in thought and in communication. His opinions, long as they often were, were quite simply literary delights.

Finally, in honoring the memory of Justice Francis one cannot overlook his magnificent personal attributes of compassion and warmth, intelligence and common sense. To relate in this forum all the vignettes that came to my mind and that typified the man is a great temptation, but each of us favored to know him will no doubt find it easy to recall his or her own stories and, in so doing, to smile on his memory. Surely none will do it with greater ease than his wife Chub who shared with him his ability to touch people with both warmth and compassion, or than his children John and Cynthia and Hugh of whom he was always clearly so proud. His respect for and his loyalty to his colleagues on the Court was legendary among the law clerks and, while I know it was felt for all, I shall never forget his relationship with Chief Justice Weintraub or with Justice Proctor with whom he so frequently consulted and confided.

In closing, we all know that Justice Francis would have been embarrassed to have heard all that has been said today for in all his great accomplishments he never succumbed to arrogance. I remember, for example, the pride with which he only recently received a medal from the American Trial Lawyers Association. I believe then that he was genuinely surprised to have been so honored. And yet, notwithstanding his humility, there always seemed to me to be in Justice Francis an enviable self-contentment in his character. In assessing his magnificent career, it may have been with what Holmes referred to as the secret isolated joy of the thinker. He described it this way:

> Such a person knows that 100 years after he is dead and forgotten men who have never heard of him will be moving to the measure of his thoughts. The subtle rapture of postponed power which the world knows not because it has no external trappings but which to his prophetic vision is more real then that which commands an army.

I, as we all, shall miss his friendship and his wisdom.

Thank you.

CHIEF JUSTICE WILENTZ: Thank you, Mr. Degnan.

We'll now hear, speaking in memory of Justice Hall, from Justice Worrall Mountain.

JUSTICE MOUNTAIN: May it please the Court, Justice Frederick W. Hall sat as a member of the Supreme Court of New Jersey from 1959 until 1975. Before his elevation to the Supreme Court he had served as a trial judge in the Superior Court for about six years. In those days the volume of litigation was not what it is today. At one time Fred Hall held the position of Assignment Judge simultaneously in five different counties extending from Sussex County in the north to Ocean County in the south. Today that would of course be impossible and even then it was difficult.

Frederick Hall was a very fine trial judge. This I know from personal experience. It was my good fortune and great pleasure to have appeared before him in those days with some frequency. He was meticulous in his adherence to the rules of court, conscientious almost to a fault in his insistence that every aspect of a case be thoroughly probed. He often rendered oral opinions from the Bench—concise, accurate, clear and dispositive. I should add parenthetically that he always possessed, both on and off the Bench, a delightful sense of humor.

A word should be said about his ability as an opinion writer. In the statement of analysis of facts and in the defining and delineation of issues he was truly outstanding. This was due, I believe, to two things: the clarity of his thinking and the meticulous and lucid manner in which he habitually expressed himself. As a trial judge he already manifested the great interest in and wide knowledge of zoning and planning law that later, as a Supreme Court Justice, brought him national fame. Also, he read extensively in this field and enjoyed discussing problems that land use law presented. I recall remarks in conversations with him in those days that clearly portended what he later articulated comprehensively in his brillant opinion in *Mount Laurel*. Because I believe it to be so apt, permit me to repeat what I once before said about Justice Hall.

Several hundred years ago Sir Edward Coke described the law as a jealous mistress. More recently Justice Holmes assured us that the law is a great calling when greatly pursued. Justice Hall was in and of that tradition. He gave his life to the law. During the 16 years that Justice Hall sat on the Supreme Court of New Jersey it was considered one of the finest courts in the land, as indeed it is today. His contributions to the law during that period were many. His great reputation in the field of land use law has tended to deflect attention from his important writings in other fields. He was completely at home in the entirely intricate field of municipal law; he wrote important opinions in the areas of torts, criminal law, constitutional law and many other subjects. Few judges possessed his extensive knowledge of procedure and the Rules of Court.

Those of us who knew Fred Hall well will always remember him as a scholar of high attainments, a master of the law and a loyal and kind friend and colleague.

CHIEF JUSTICE WILENTZ: Thank you, Justice Mountain.

Also speaking in memory of Justice Hall is Mr. Richard H. Herold.

MR. HEROLD: Mr. Chief Justice and Associate Justices of the Supreme Court, the family of the late Frederick W. Hall and of Justice Francis and honored guests, this occasion seems to present itself as a kind of ceremony of divestiture but it really isn't that. As we've already heard, it's rather an opportunity to recall unusual human effort and excellence, and that is the cheerful focus that brings us together. We fittingly gather here in a courtroom to honor Frederick W. Hall who so outstandingly served for 22 years on the Bench. Nevertheless, I would like to emphasize some of his other life as a member of a family, a lawyer, a public servant and a friend.

From the outset it's clear that his academic record was an accurate reflection of the quality within him. Fred Hall began school in Neshanic, New Jersey at the age of five and that sounds ordinary enough, but he began in the third grade and that was not so ordinary. Keeping up that pace, he completed grammar school in 1918 at the age of ten and he went on to a successful high school and college career. He graduated from Rutgers College second in his class of 160 and was elected to Phi Beta Kappa in his junior year. In 1928 the Justice entered Harvard Law School from which he was graduated Cum Laude in 1931. Those were undoubtedly high noon years at Harvard as Dean Pound presided over a faculty that included Professors Williston, Scott, Powell and Peale. The class of 1931 also offered fast company, including in its membership William J. Brennan, Jr., who is of course now an Associate Justice of the Supreme Court of the United States, Archibald Alexander, later an under secretary of the Army, and several students who were themselves to become professors at the law school, Paul Freund, Milton Katz and Ernest Brown.

With his fine education and record it was no surprise that the new law graduate was accepted as a law clerk in the office of Arthur T. Vanderbilt. He honed his trial law skills in the future Chief Justice's office and also began there to accumulate his deep knowledge of municipal law. In 1935 the Justice married the former Jane Armstrong, and the couple had a son Peter who is with us today.

The Justice cared deeply for his family and his love for Jane and Peter and later his daughter-in-law and his grandson was one of his cornerstones. Indeed he showed unusual concern for the families of others as well. If a friend's young child received some minor notice in a newspaper the Justice was sure to recall it at next meeting. And if a personal difficulty arose for a colleague he would willingly help and offer soft and generous counsel. In the words of one of his former secretaries, you went to him when you were in need.

The Halls lived in Bound Brook, New Jersey during their entire marriage and during the 1930's Justice Hall became friendly with Gerry Wharton who then was and remains an eminent practitioner in nearby Somerville. I'm happy to say that Gerry also is with us today. In 1941 the firm of Wharton and Hall was formed and there the Justice served in a busy general practice until his appointment to the Bench in 1953.

During the years of his general practice the Justice also demonstrated his sense of responsibility to the larger community in which he resided. He served as a member of the Bound Brook Planning Board, was a member of the Bound Brook School Board for 15 years, a member of the Board of Managers of what was later known as the New Jersey Neuro-psychiatric Institute, a trustee of the Bound Brook, Presbyterian Church and President of the Somerset County YMCA. These then are a few unadorned facts of Justice Hall's prejudiciary life and I'm afraid such a recital leaves one unsatisfied with how little is said about the man. However, it is not easy to describe Frederick Hall anecdotally. He was a person of high and steady purpose, dignified but not pompous, serious but not falsely solemn. He was studious, lacking in artifice and seemingly free of those tendencies to self-aggrandizement which afflict the rest of us. Thus his integrity and consistent commitment to his fellow man are evidenced much more by the calm examples he gave them by any colorful afactations or self-asserted claims to fame.

A few observations may be partially descriptive. Most of those here know that Justice Hall was born without a left hand. That disability was surely troublesome to him, but he appeared to be bothered little by it. He became a proficient bowler, he was an avid sports enthusiast and he worked around his inconvenience with no fanfare. He treated his long and debilitating last illness in the same way—he simply was not heard to complain. If there was any fretfulness it was only for Jane who also underwent a long illness and died only a few weeks before her husband.

In 1975, after his retirement from this Court, Justice Hall returned to his former law firm, now Wharton, Stewart and Davis, where he remained as counsel. I recall our amused interest at that firm when almost immediately after the first *Mount Laurel* decision had rather resoundedly landed, Justice Hall was invited to Trenton to speak to the New Jersey State League of Municipalities on the meaning of the decision. It was, we thought, courageous of him to face the many municipal lions in their den. But he went down and he spoke to them with courtesy and understanding and his audience, which was poised for high irritation, ended up granting him their respect, albeit, I will have to recall in honesty, a grudging respect. That invitation of course was only the beginning. In the years following his judicial service Justice Hall was invited just about everywhere to speak to almost everyone and many honors were tendered. He turned down much. It was not, however, that he scorned recognition but rather that he simply remained uncomfortable with testimonials and scrolls. That which was enduringly important to him Justice Hall had already demonstrated persistently and with great care. His scholarship, devotion, patriotism and honesty are profound lessons for all of us.

Thank you.

CHIEF JUSTICE WILENTZ: Thank you, Mr. Herold.

Chief Justice Hughes, retired Justices, Judges, Attorney General Kimmelman, friends and family of Justices' Francis and Hall, we have held this ceremony in memory of two great Judges who sat on this Court. With not very much by way of precedence to guide them, each pronounced new rules of enormous consequence, rules that have had a significant impact on society and that have withstood the test of time. Indeed the only questions that remain concerning the rules relate not to their wisdom but to the ability of others to follow them faithfully.

These are men to be admired. Their grasp of events and relationships, their vision and courage are gifts mysteriously conferred on but very very few. The state, indeed the nation, is most fortunate to have had the benefit of such talents through their services on this Court. Personally we will miss them, we miss them now. We join their friends in expressing our sympathy to their families.

The Court is now going to recess for a few minutes to the conference room and we would appreciate it if the friends and families of Justices Francis and Hall and the retired Justices and Judges would join us there.