

The Supreme Court of New Jersey

In Memoriam

HONORABLE NATHAN L. JACOBS

Trenton, New Jersey
May 5, 1989

Before:

CHIEF JUSTICE ROBERT N. WILENTZ

JUSTICE ROBERT L. CLIFFORD

JUSTICE ALAN B. HANDLER

JUSTICE STEWART G. POLLOCK

JUSTICE DANIEL J. O'HERN

JUSTICE MARIE L. GARIBALDI

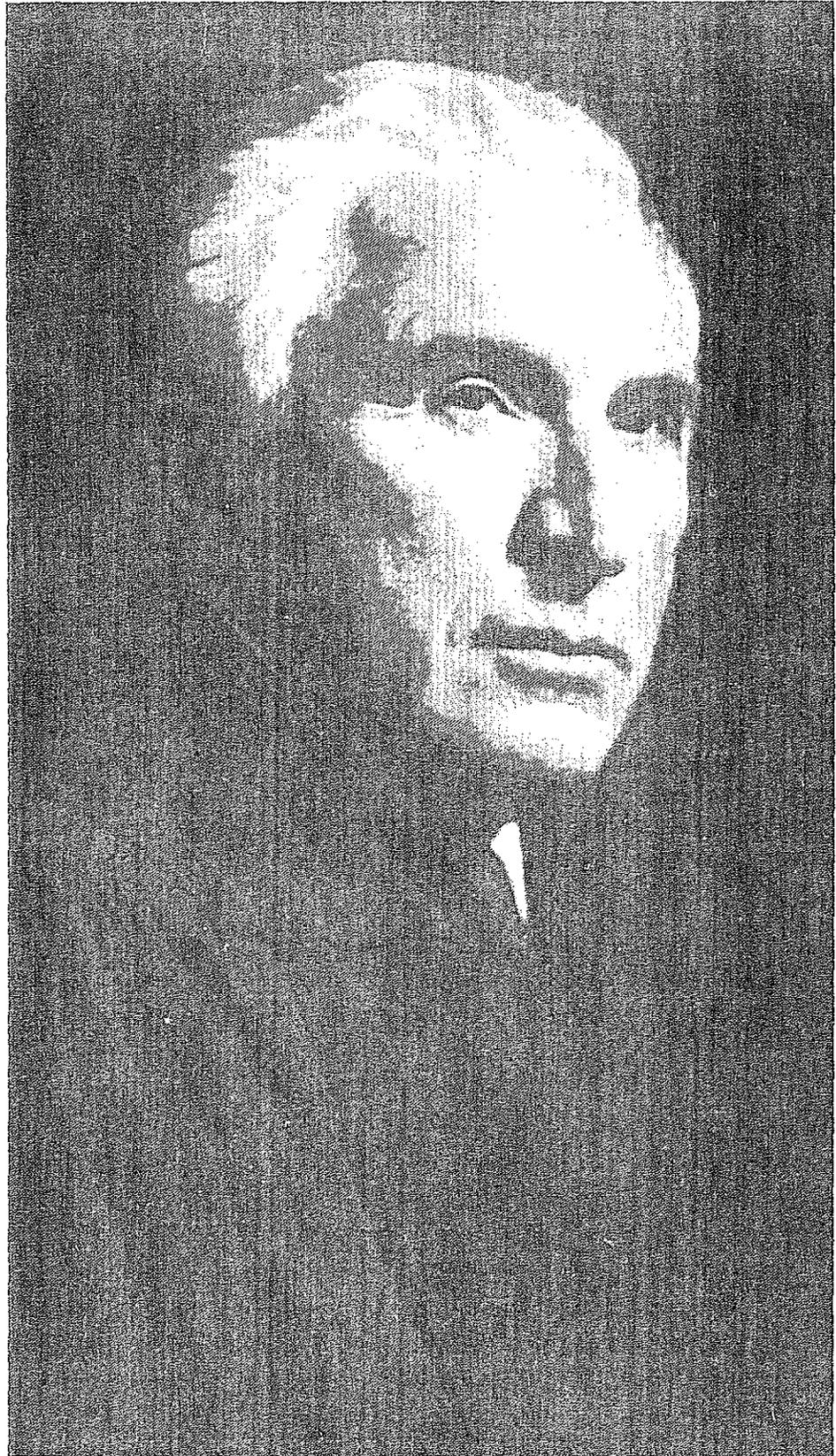
JUSTICE GARY S. STEIN

Appearances:

CHIEF JUSTICE RICHARD J. HUGHES

JUDGE PAUL G. LEVY

JUDGE DONALD S. COBURN



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Proceedings

CHIEF JUSTICE WILENTZ: Please be seated. Mrs. Jacobs, members of the Jacobs family, Justices, Judges and friends, we have convened this session of the Court for memorial proceedings in honor of the late Justice Nathan Jacobs and it's my pleasure now to recognize Chief Justice Richard J. Hughes.

CHIEF JUSTICE HUGHES: Mr. Chief Justice and Associate Justices, I hope you can hear me better than I heard you. That's one of the failings at my time of life. Dear Bernidine, Judge Coburn, other members of the Jacobs family, Judge Paul Levy, former colleagues of Justice Jacobs, Judges, and other friends of the Justice. Judge Paul Levy, on the way in, asked me to be light, tell a few of my usual jokes that I think would be in harmony with the way Judge Coburn described this as a memorial service and a celebration for the life of Justice Jacobs. It's not easy to discuss in brief words the deep meaning to New Jersey of the life of Justice Nat Jacobs. In the editorial in the *New Jersey Law Journal*, a very good one, after his death, it said, "New Jersey has lost its quintessential jurist." It thought a self-description of his philosophy of life might have quoted the Institutes of Justinian—"To live honorably, to injure no other man, to render every man his due." He stimulated this Supreme Court toward its impressive future by his unrelenting commitment to concepts of right, justice, and morality. He was impatient with the chains of *stare decisis* so far as that ancient principle would bind us to injustices of the past. He agreed with his law school teacher, Dean Roscoe Pound, that "the Law must be stable; yet it cannot stand still." England's greatest Judge, Lord Chief Justice Mansfield, thought the same in 1784 when he wrote in *Barwell v. Brooks*, 3 *Doug.* 371, 374, that "as the usages of society alter, the law must adapt itself to the various situations of mankind." In agreement with these

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authorities, Justice Jacobs felt, in the *Collopy* case for example, disavowing the concept of charitable immunity, that "The common law has always had the inherent capacity to develop and adapt itself to current needs; indeed, if this were not true, it would have withered and died long ago."

It would take a very long time to catalog the Jacobs contributions, by opinion and example, to New Jersey law. I shall mention only one that has always intrigued me. His passion for justice was largely responsible for the emergence in New Jersey of what has been called the New Jersey "fairness and rightness" Rule—attributable not to constitutional demand, but to basic human concepts, simple concepts of what is just and fair. So it is that in New Jersey a school board may not dismiss or refuse to reappoint a teacher in search of tenure without expressing a reason. Nor can a parole board deny, without expressing reason, a parole to a prisoner otherwise eligible. Nor can a prisoner be sentenced without disclosing to his counsel the main points of the presentence probation report on which his condemnation is based. Other instances could be mentioned of the continuing enforcement by our Supreme Court of extra-constitutional rights attributable only to basic justice and fairness.

And just as Justice Nathan Jacobs, Judge Al Clapp, Chief Justice Arthur Vanderbilt, and other judicial reformers were largely responsible for the new court system established by our 1947 constitution, so did Nat Jacobs' high principles, impeccable scholarship, and devotion to justice build our system over a quarter century to become what it is today, the best judicial system in the country.

I think that few of us are as entitled, as would be Justice Jacobs, to say with Dean Pound: "So majestic is the edifice of the law, that the least of us is proud who can point to one stone thereof, and say 'the work of my hands is here.'"

The genius for justice of this good man will stand out when some day the history of New Jersey in this century is written down. As do you all, I shall miss Nat Jacobs very much and I extend my warm condolences to Bernidine and her dear family. Thank you, Mr. Chief Justice.

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CHIEF JUSTICE WILENTZ: Thank you, Chief Justice Hughes. It's my pleasure now to call on Superior Court Judge Paul Levy.

JUDGE LEVY: Thank you very much. May it please the Court and the former Court, I am very honored to speak to you today in memory of Justice Nathan Jacobs, in the presence of his family and friends. Honored though I am to have been asked to make this presentation, I appear as only one of the twenty-six law secretaries who had the good fortune to serve Justice Jacobs and to learn from him during the twenty-seven years that he served on the Court of Errors and Appeals, the Appellate Division of the Superior Court, and the Supreme Court until he retired in 1975 as the Senior Associate Justice. Most of us are here today.

Although Justice Jacobs took great pride in his colleagues and in the rulings of the Court, he had a special relationship with his clerks. From our perspective, the experience actually began after we had been selected as the next year's clerk and we were invited to a dinner in the spring of our third year of law school. There we met all of our predecessors, none of whom we knew, except perhaps the incumbent. It was then we began to understand that something special and wonderful was about to happen to us. After dinner, several former clerks would speak about their experiences over the past few years. Often Judge Bigelow, one of Justice Jacobs' associates on the Appellate Division, would speak to us about his early experiences at the bar. And then came a spellbinding, high-speed talk by Justice Jacobs. Most often, he told us of the important issues decided by the Supreme Court that term, and how decisions of the past were still relevant but changing in a changing world. Soon he started a group discussion of some topical issue, unrelated to the Court but usually concerning a group's or individual's expression of rights through an expansion of the rule of law. After that night, we couldn't wait until September came.

For us, our year with Justice Jacobs was a learning experience like a fourth year of law school, except this was the "real world." We learned over the course of that year that the law, that is, the common law, was not static but

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was meant to serve the common good based on fairness and justice.

Every former law secretary who contacted me with remembrances of his or her clerkship emphasized the term "fairness." One of the first clerks noted that the Justice "viewed the task of an Appellate Judge as so much more than a search for dusty precedent." It was clear to each of us that Justice Jacobs had a passion for reconsidering any rule of law in light of society's changing needs if that law was creating an injustice. Even in his last opinion, *State v. Gregory*, decided the day before he retired, the principle was illustrated again.

The Justice's chambers were in Newark, in a suite shared with the Chief Justice and two Associate Justices. Often he would come into the library, his approach heralded by the jingling of coins in his pocket, and those of us fortunate enough to be present would be treated to discussions and analyses of current legal, social, and political issues. One former law secretary recalled those times, noting that Justice Jacobs either persuaded those present of his point of view or at least educated them with his ideas. He said that the Justice reminded him "of an ageless Indian Chieftain to whom truth and honor and honesty means everything." Justice Jacobs was very popular among all the clerks in those chambers, except, perhaps when he told each of his own clerks during that extremely anxious time every November, "I don't know why you're worried. No clerk of mine has ever failed the bar exam!"

Many writers have commented that his opinions were models of clarity. At our last dinner with him a few years ago, each of us recalled some experiences from our times with Justice Jacobs and each recalled one identical and unwavering fact of life: he wrote so well that none of us was ever able to change one word in an opinion once he began the drafting process.

Often he would ask us for some research on a particular point on a "when-you-get-a-free-moment" basis, which meant that before the end of the day, he would inquire if the work was done. Sometimes this research required finding and digesting every article written about the educa-

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tion of osteopaths or the need for re-examination of senior citizens involved in automobile accidents. We spent long hours at the Newark Public Library searching for information not to be found in the law library. And, when the work was eventually presented, we were treated to a discussion on what the research did or should have disclosed, often with a direct reference to some principle he had gleaned from his experiences with former Chief Justice Vanderbilt.

We were privileged to be provided with historical perspective from Justice Jacobs' participation at the Constitutional Convention of 1947. There he presided at each session of the Committee on the Judiciary, and that committee's report led to the modernization of the Judicial Article of the Constitution of New Jersey. On his retirement, it was noted in the *Rutgers Law Review* that by his role in the convention, "he was a major factor in the preparation and implementation of the judicial system which now prevails in our state." From his work at the source, New Jersey now has integrated all trial courts into the Superior Court.

But most of all, Justice Jacobs impressed us with the virtues of public service. During the brief year each of us served as his law secretary and at the annual dinners when he spoke to us, we learned that a lawyer was all but duty-bound to serve the public in some way. We have tried to carry this torch he lit for us and have served in many positions including Attorney General of New Jersey, professors of major law schools, judges, County Prosecutor, Executive Secretary to the Governor and Clerk of the Superior Court.

To each of us, these annual reunions with Justice Jacobs were dynamic and inspiring, a reminder of our too-brief time with him. You know, of course, that he served as Chief Deputy Commissioner and Counsel to the Department of Alcoholic Beverage Control from its inception and later on as the State Attorney and District Enforcement Officer for the Office of Price Administration during World War II. From the time he graduated from Harvard Law School until he was appointed to the bench in 1948, he was a part-time professor at what is now Rutgers Law School in Newark,

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and after he retired, he returned to teaching at Rutgers and at Seton Hall.

To perpetuate his memory, a life dedicated to public service, we, his law secretaries, are initiating an endowment to establish a law school faculty scholars program. It will provide an annual stipend to a senior faculty member, to be known as the Justice Jacobs Scholar, for research concerning those subjects in which Justice Jacobs had the greatest interest.

We feel this is an appropriate way to honor and remember a man who was not only a fine jurist but was also a splendid teacher. Thank you, Mr. Chief Justice.

CHIEF JUSTICE WILENTZ: Thank you, Judge Levy. Now I'd like to call on Judge Donald S. Coburn. Judge Coburn.

JUDGE DONALD S. COBURN: Mr. Chief Justice and Associate Justices, I am honored to address the court today for our family; to express our appreciation for these memorial proceedings, and to thank Governor Hughes and Judge Levy for their remarks. We wish to acknowledge with gratitude the presence of the Justice's friends and colleagues who have come here to join all of us in honoring his memory and celebrating his spirit.

Our customs call for recounting in the permanent reports of this court the essentials of the background and major contributions of a former justice. I am privileged to help perform that role for the court and for my father-in-law and mentor Justice Nathan Leonard Jacobs.

Justice Jacobs began his career in 1928 following graduation *magna cum laude* from Harvard Law School where he served as editor of the Law Review. He practiced law with Arthur T. Vanderbilt from 1928 to 1934. And in this period, he also returned to Harvard for one year to earn the degree of Doctor of Laws (S.J.D.). He enjoyed considerable success as a lawyer from 1934 to 1948 with the law firm he helped create: Frazer, Stoffer and Jacobs. However, his brilliant mind, boundless energy, creative spirit, and enthusiasm for reform, could not be satisfied by devotion solely to the private practice of law.

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Throughout his illustrious career, except for the court years, he consistently dedicated some of his time to the teaching of law.

His first call to public service came in 1934 when he was appointed Deputy Commissioner and General Counsel of the newly created Department of Alcoholic Beverage Control. The Eighteenth Amendment forbidding the sale of intoxicating liquors had been repealed and a state administrative agency was needed to promote temperance and prevent corruption of a fledgling industry. Justice Jacobs extensively redrafted the original legislation, prepared the Agency's rules and regulations, and firmly directed the day-to-day operations for five years until 1939.

Three years later he returned to public life, this time with the assignment of organizing and then administering throughout World War II the New Jersey Division of the Federal Office of Price Administration.

At that time in our State's history the movement for constitutional reform intensified. The Constitution of 1844 was clearly unsuitable for modern times. Nonetheless, resistance, particularly from the State Bar Association, though also from others, had stymied the reform movement. Fortunately for New Jersey, when Alfred E. Driscoll became Governor in 1947 he convinced the legislature to call a constitutional convention.

The primary object of the convention was to restructure the New Jersey courts, which were then in disarray. Now that was a glorious battle into which Justice Jacobs marched with his characteristic energy, wisdom and common sense; and from which he emerged exhausted, but with his fondest professional memories and his greatest sense of public accomplishment. He presided at all sessions of the Committee on the Judiciary. Ever the practical man, he insured that of the eleven members, five were non-lawyers. He drafted the committee's final report. Without denying the many important contributions of others, I think it is fair to say that the judicial article of the Constitution of 1947, which governs us today, bears most assuredly the imprint of his mind and spirit.

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Following an especially intense and personally grueling campaign to help win the public referendum on the new Constitution, Justice Jacobs happily prepared to continue the private practice of law. Instead, Governor Driscoll, his former Harvard classmate and friend, prevailed upon him to accept appointment to the bench. This he did, not from any desire for honor, power, or fame—he often said that he had always lacked ambition—but rather because he believed that having been a leader in the battle to create the new system he had a duty to help make it work.

Over the next 27 years, first briefly as a member of the old Supreme Court to assist its members in concluding pending business, then on the Appellate Division for four years until a retirement would permit the initially promised appointment to this court, Justice Jacobs created in his opinions a grand legacy of common law. Moreover, as a consequence of his wisdom, passion, scholarship, and the clarity of his prose, to a considerable extent his fundamental philosophies have become the bedrock of our law.

Justice Jacobs said: "Law as an instrument of justice has infinite capacity for growth to meet changing needs and mores."¹ And in the course of writing some 368 signed opinions as a member of this court, he consistently and beautifully demonstrated the truth and common sense of that proposition.

Mr. Justice William Brennan, Jr., and Justice Jacobs served together on this Court for four years. In fact, they took their oaths of office moments apart. In Justice Brennan's 1975 encomium to the respected friend and colleague who had been instrumental in convincing him to become a judge appear these words:

Justice Jacobs' brilliant judicial career has played a major role in building the New Jersey Supreme Court's reputation throughout the nation for superior distinction. The influence upon the courts of other states of his notable opinions abrogating some indefensible common law doctrines is a tribute to the massive scholarship that has been his hallmark.²

¹ *Schipper v. Levitt & Sons, Inc.*, 44 N.J. 70, 89 (1965).

² 28 Rutgers L.Rev. 209, 210 (1975).

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Mention must be briefly made of the Justice's role in the conferences of this Court. For that I turn to the words of his fond colleague Justice Haydn Proctor, who wrote:

I believe his greatest judicial contribution has been his success in instilling among his colleagues that same feeling of self-confidence which has enabled them to achieve so much in the development of the law.³

Just as he instilled self-confidence in his colleagues, so it was in his private life in relation to his family. But, for Nathan Jacobs, family was very much a private affair. So I will not dwell on that subject other than to say, in concluding these remarks, that Bernidine, his wife; Ellen and Nancy, his daughters; Jeffrey, James, Jillian and Judd, his grandchildren; Nancy's husband Stanley Grossman and I will ever cherish and preserve our memories of him as, strengthened by him, we continue to find our ways through life. Among us, mutual respect and love were always present.

CHIEF JUSTICE WILENTZ: Thank you, Judge Coburn. Today we honor a great jurist. Besides being a great jurist, he was in the forefront of the reform movement that changed our judiciary from the worst system in the country to the best. Some of us have had the great privilege, and truly the pleasure, to sit with him and decide cases together on those occasions when disqualifications required calling back retired Justices. We are always in awe of the legendary giants who shaped this Court, but how much more so when this kind, unassuming person sat with us and acted as if we were his equal.

Unpretentious, with no guile, no manipulating, no ulterior motive, he said precisely what he thought—moderating it only if it might hurt someone. His integrity, his basic honesty, was so enveloping as to squelch without argument even the slightest tendency of lesser mortals to compromise principle. It was fun to be with him. Few people have the total self-confidence that he had to express themselves directly, forthrightly, all the time. In most, that rare quality comes from an assurance that sometimes borders on

³ *Id.* at 212.

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arrogance. In precious few, it comes from true humility, and that was Nat Jacobs.

We are glad for him, for his wife, for his family, and for the state and the nation that the Lord gave him so many years. We wish it could have been more, but we are thankful for what it was. Again, I want to thank you, Chief Justice Hughes, Judge Levy, and Judge Coburn for your presentations. The Court is now going to adjourn to the conference room where we invite Mrs. Jacobs and the members of the Jacobs family and the former Justices who are here to join us. Thank you.