

Supreme Court of New Jersey

**In Memoriam**

**HONORABLE WORRALL F. MOUNTAIN**

Trenton, New Jersey  
March 29, 1993

**Before:**

JUSTICE ROBERT L. CLIFFORD,  
Presiding

JUSTICE ALAN B. HANDLER  
JUSTICE STEWART G. POLLOCK  
JUSTICE DANIEL J. O'HERN  
JUSTICE MARIE L. GARIBALDI  
JUSTICE GARY S. STEIN

**Appearances:**

THOMAS J. BITAR, ESQ.,  
Dillon, Bitar and Luther

JOEL A. KOBERT, ESQ.,  
President, New Jersey State Bar Assn.

ROBERT J. BRENNAN, ESQ.,  
President, Morris County Bar Assn.



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# Proceedings

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JUSTICE CLIFFORD: Good afternoon. Be seated, please.

The Court convenes in a very special session this afternoon to honor the memory of our late departed colleague, Worrall Mountain.

I regret to report that the Chief Justice is indisposed and will not be in attendance. I don't want anybody to get the idea he is seriously ill, but he was unable to attend argument this morning. I spoke with him early this morning, and he was most hopeful of being here for these proceedings. Unfortunately, he is unable to be here. He wishes me to convey his apologies, his deep regrets, and that his heart and mind are with us as we open these proceedings.

I'll call on Tom Bitar, longtime associate of Justice Mountain and friend of the family, for his remarks.

MR. BITAR: Thank you, Justice Clifford.

Justices of the New Jersey Supreme Court, may it please the Court, my name is Thomas Bitar of the law firm of Dillon, Bitar and Luther, formerly the law firm of Jeffers and Mountain. Indeed, over the years, when we wished to flatter ourselves, we would refer to our firm as Worrall Mountain's law firm, whether or not he was currently in residence.

To some of us to whom he was personally mentor and colleague and friend, our firm will always be Worrall Mountain's law firm or at least we hope we will always conduct ourselves in such a manner.

I'm privileged to appear before this Court on behalf of Justice Mountain's family. My first duty imposed on me by Mrs. Mountain is to extend the appreciation of her and Justice Mountain's children and his brother and their

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respective families for the time the Court has set apart for this special tribute. I think they would all agree that the time that Justice Mountain spent on this Court was counted by him as the most rewarding time of his professional career.

W.H. Auden, in his poem in memory of William Butler Yeats, said that when that Irish poet died, he became his admirers and, Yeats being a controversial person, he also became his critics and his detractors. But I have taken that to mean in its generality that when we are no longer here to supplement or explain the record that we've made for ourselves, we become what other people say about us. And from that perspective, I am honored indeed to appear here with those who will be making statements on the permanent record of this Court of their admiration and respect and affection for Justice Mountain.

I doubt that any detractors of Justice Mountain would speak here today even if that were permitted because over the years that I have known him, I have come to the conclusion that no such persons exist. I have never known anyone who was so uniformly held in high esteem by the people who knew him.

Worrall Mountain was the son of a judge, also Worrall Mountain. Indeed, I think it was only in recent years that Justice Mountain subtracted the junior from the end of his name in his formal signature.

Justice Mountain was a graduate of Princeton University and Harvard Law School. He came to the profession with a special predisposition to the law and an ability to apply it that most of us struggle to achieve over a lifetime and only meet with varying degrees of success.

He was scholarly and articulate, highly principled and compassionate. It was no wonder that he quickly became an accomplished lawyer and then a distinguished judge, moving rapidly through the trial courts of this state and to

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the Appellate Division. He was then appointed to the Supreme Court.

I heard him say on a number of occasions that he felt he was lucky to get that appointment, that he had never been really politically active, and that he did not think he was that well known. I think the rest of us believe that we were the lucky ones, that he was more well known than he thought, and that Governor Cahill had indeed made a wise choice.

It would be hard to say of his judicial philosophy that Justice Mountain was either a conservative or a liberal. My sense of his dealing with matters was that he brought his intelligence and judgment to matters on a case-by-case basis.

I do think, however, it would be fair to say that he was a traditionalist. That is, that he believed very strongly in the separation of powers. He believed with Hamilton that the courts have neither sword nor purse and have only the power of their judgment, and that that will be maintained only so long as it is exercised within the legitimate limits of what it is perceived to be under the constitution.

But beyond his philosophy and beyond his judicial character is the sense that all of us had that here was a man of uncommon intelligence and uncommon decency who brought to matters and to people that he dealt with a natural dignity. I would not want anyone who did not know him, however, to think that he was at all solemn, and he was never, never pompous. He had a sense of humor that was ready and you could see it coming by the twinkle in his eye.

He had a love for, and mastery of, the English language such that you found yourself wishing you had a tape recorder with you when he spoke even of the most commonplace things. I recall that Chief Justice Wilentz remarked at the unveiling of a portrait of Justice Mountain several years ago in the Morris County Court House that he from

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time to time admonished judges that in their legal writings they should not try to write the way they speak. But the Chief Justice added that admonition never, ever applied to Worrall Mountain.

I think as my mentor, Worrall Mountain would have expected me to bring to this Court at least one citation, which I do. I refer the Court to 10 Seton Hall Law Review Number 1, an issue that was entirely dedicated to a symposium entitled, "A Tribute to Chief Justice Hughes and Justice Mountain."

In that symposium, a number of judges, including present and past members of this Court, spoke with insight about Justice Mountain and his work. It is entirely appropriate that this was a joint tribute to Chief Justice Hughes and Justice Mountain because the public life of Justice Mountain was interwoven with the public life of Richard Hughes.

Governor Hughes appointed Judge Mountain to the Superior Court in 1966. They served together on this Court from the early 1970s until they both retired in 1979 and ironically they died within a short time of each other this past year.

In his introduction to the symposium, Associate Justice of the United States Supreme Court, William J. Brennan, Jr., made these remarks,

"Both the Chief Justice and Justice Mountain are modest men, more embarrassed than happy with encomiums. But that makes only the more fitting this symposium in their honor. To paraphrase Learned Hand, to acclaim ones who, all unaware of their desserts, have so richly earned our gratitude."

To that I will only add what I have said elsewhere about Justice Mountain. He graced the bar and the bench of this state and to those of us who are privileged to have known him, he graced our lives. Thank you.

JUSTICE CLIFFORD: Thank you, Mr. Bitar.

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For remarks on behalf of the New Jersey State Bar Association, we have its president, Joel Kobert. Mr. Kobert?

MR. KOBERT: Thank you, Justice Clifford.

Members of the Court, family and friends of Justice Mountain, on behalf of the New Jersey State Bar Association, I'm honored to add a few words to the tribute to Justice Mountain. I'm also honored because the Bar considers Justice Mountain to have been one of the friends of the Bar. Those whom I have talked to who have had dealings with Justice Mountain, including myself, cannot say enough about him, about the way he treated attorneys and the way he treated people who came in front of him.

It is a solemn occasion to remember the loss of a colleague and it is clear by the words that have been spoken and will be spoken today that we all hold Justice Mountain in esteem for a great many accomplishments.

The Bar of New Jersey enjoyed a productive affiliation with Justice Mountain. At the 1977 New Jersey Bar Association mid-year meeting, Justice Mountain commented upon his relationship and the leadership of the Bar. I can assure you that the Bar was impressed and continued to be impressed with Justice Mountain and the relationship that he attempted to maintain with the Bar.

Justice Mountain was a central figure in the creation of the Disciplinary Review Board and the development of current ethics procedures, an innovative step that was taken in 1977.

Even in his retirement, he continued to take an active role in the system as chair of the Committee on Judicial Evaluation and Performance appointed by Chief Justice Wilentz in 1980.

The Bar worked closely with Justice Mountain on a number of issues. They include lawyer advertising, cameras in the court room, and the matrimonial court backlog.

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Justice Mountain, to the Bar, was that rare individual who experienced the legal system at every level—as an attorney in a large firm, as a founding partner of a firm, as president of a county bar association, as a trial judge, and as an appellate judge. What Justice Mountain's life demonstrated to the bar and what is perhaps his most enduring quality to attorneys was his humanity and his ability to work with attorneys and remember from where he came. All too often, we forget that. Justice Mountain never forgot that and taught us that lesson.

I wish to thank the Court for allowing the State Bar Association the privilege to appear today to pay tribute to a fine human being, a fine lawyer, and a fine Justice. We wish all the best to the Justice's family. Thank you very much.

JUSTICE CLIFFORD: Thank you, Mr. Kobert.

We have in attendance the president of the local bar, the current President of the Morris County Bar Association. We call on Robert Brennan, President of the Morris County Bar for his remarks. Mr. Brennan?

MR. BRENNAN: Thank you, Justice Clifford.

May it please the Court, honored guests, it is my privilege to deliver remarks at this proceeding in memory of Justice Mountain on behalf of the Morris County Bar Association, which numbers Justice Mountain among its distinguished past presidents. Justice Mountain graced the presidency of our bar association in 1950.

Justice Mountain is well remembered in Morristown and in Morris County. He is remembered with love and he is remembered with respect. Reflections and recollections of Justice Mountain are so fond because of his character—always kind, always compassionate, and always patient. One knew that Justice Mountain possessed these qualities on first meeting. His gaze was always direct, his conversation always clear. His eloquence was that of simplicity and clarity. He was at ease with whomever he was speaking,

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the educated and the less so as well, but all to whom he spoke knew that he was interested, that he was listening carefully.

As a lawyer, Justice Mountain was renowned for his brilliant intellect and the precision of thought that he brought to bear on legal matters. He was astute, and he was perceptive. His career as both lawyer and judge was one of extraordinary distinction.

The civility that marked Justice Mountain's personal life also was evident throughout his professional life. He was unfailingly courteous and respectful to judges and other lawyers alike. Although he was a tenacious and determined advocate on behalf of his client, he never lost sight of the need for professional respect and for professional courtesy. The zeal of his advocacy was never tarnished by incivility.

Justice Mountain never took advantage of anyone, and he is particularly remembered for the kindness that he always showed to young lawyers.

Justice Mountain's character continues today and will continue to serve as a beacon to lawyers everywhere. He set an example that all should strive to emulate.

Justice Mountain considered a calling to the practice of law as ennobling. Those who consider it an opportunity for self-gain in which the ends justify the means that include disrespect or incivility should consider the stellar character of Justice Worrall Mountain. His life and his career were the best that a man and a lawyer can accomplish. Thank you very much.

JUSTICE CLIFFORD: Thank you, Mr. Brennan.

Mrs. Mountain, members of the Mountain family, my colleagues both past and present on this Court, members of the bench and bar, and friends of Worrall Mountain. I am honored to speak today on behalf of the Court and particularly on behalf of those members who sat with Justice Mountain.

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His appointment to the Supreme Court on March 15, 1971, to fill the seat vacated by the retirement of Justice Haneman was the first of Governor Cahill's six appointments to this Court and the first ever from Morris County. (Both his distinguished successor, Justice Pollock, and I are indebted to Justice Mountain for unlocking that gate.) He came to the Court with impeccable credentials—distinguished lawyer, original member of the Advisory Committee on Professional Ethics, an outstanding record in the Chancery Division and the Appellate Division—and his appointment was not simply well received, it was universally acclaimed. The nomination of this most apolitical of men, who had never once met or spoken to the Governor before being summoned to Trenton for the interview with Governor Cahill that preceded the submission of his name to the Senate, turned out to be a major triumph for the Governor and a blessing for New Jersey. On this Court, he gave of his many and varied talents with great enthusiasm. He was fond of referring to the position of Justice of the Supreme Court of New Jersey as “the best job in the world.” He loved it.

Of the surviving members of the Court with whom Justice Mountain sat—retired Justices Proctor, Sullivan, Pashman, and Schreiber, and Justice Handler and I—all are here today, with the exception of Sidney Schreiber, who is a thousand miles south of here, we hope basking in the warm and soothing sun. All of us, including those members of the Court as currently constituted who did not experience the privilege of sitting with Justice Mountain, have come to recognize the promise to which Justice Sullivan referred in his article in the Seton Hall Law Review on the occasion of Justice Mountain's retirement in 1979. Referring to Justice Mountain and to Chief Justice Hughes, who retired within a matter of weeks of Justice Mountain, Justice Sullivan said:

Both Chief Justice Hughes and Justice Mountain, during their respective terms, have played a large part in giving purpose and direction to the Court. Even after

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their retirements their influence will continue to be felt as the improvements in court administration and court procedures sponsored by them bear fruit. Their opinions will serve to guide the Court for many years to come. New Jersey is fortunate to have these jurists serve during a critical period in the Court's history.

And those of us who served with him and came to know Worrall Mountain count ourselves as especially fortunate. The twenty-seven men and one woman who have been named to this Court since its establishment under the 1947 Constitution surely recognized the great honor and privilege given us by the appointing authority. Serving with and working with Worrall Mountain, which of course was simply an accident of timing, turned out to be a very special aspect of that privilege. As a link from the Weintraub Court, Justice Mountain's wisdom, his knowledge of the law, his sense of perspective, his stability—all were virtually indispensable during the early years of the Court headed by Chief Justice Hughes. But beyond those qualities were the personal traits that were so much a part of his essential character and so endeared him to his colleagues—his tact, sympathetic understanding, kindness, patience, and quiet sense of humor. He came from, and exemplified in full measure, an era in which common courtesy was not uncommon, when decency and rectitude in the legal profession were almost taken for granted. Justice Pashman has referred to Justice Mountain, in the same volume of the Seton Hall Law Review as “a sensitive, courtly, and courteous man.” He was, in short, exactly what a judge should be, in addition to which, perhaps in sharp contrast to the current crop (with of course the exception of the gracious lady to my far right), he *looked* like a Supreme Court Justice and spoke like one. At our conferences, his position on the cases to be decided was always well thought out, and he stated it coherently, succinctly, and with precision. And, oh, did he write like a judge! Justice Mountain's elegance of style and lucidity of expression are not, in my respectful

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view, equalled—and are not likely to be equalled—by the efforts of any other member in the history of this Court. His opinions are classics.

Now at the risk of creating momentary unease in my colleagues, I digress for a little story with the assurance that I will not reveal any confidence of the conference room. To set the stage I must explain to those of you who may not know it that garnering four votes, never mind unanimity, for an opinion out of this Court, or indeed any other collegial court, is not always easy. The process requires the members to be flexible without giving up strongly felt positions or compromising basic principles. We take pride in our product—the opinion into which we have invested so much study and research and effort.

Some years ago there was a member of the Court—a superb scholar, a delightful man, and a major figure on this Court, no longer with us—whose idea of life's great pleasures did not include having any member challenge a statement in one of his circulating drafts of an opinion. If someone raised a question, his immediate response was to inquire whether it concerned something in the opinion or something that he had left out. If it was something that he had left out, he was more than willing to listen, with an open mind, and to accept a suggestion for improvement. Somewhat less so if the disagreement was with something he had already written into the opinion.

I recall well the conference at which Justice Mountain wished to call attention to something in his colleague's opinion that he thought represented a significant departure from well-established law. He knew better, however, than to go at the problem head on, and so he said, with apparent innocence and seeming perplexity: "Would you just look at page seven, about five lines down, and examine the next three sentences. Are you quite sure that that is correct?" I must confess that at that point I steeled myself for an anticipated confrontation, maybe even a small explosion, but apparently the approach had been completely disarm-

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ing. The author put on his glasses, opened the opinion to the offending passage, looked at it, read it carefully, studied it, read it some more, studied it again, and finally lifted his head and said simply "No." Justice Mountain immediately responded most generously and with great relief: "Oh, I feel so much better. I was afraid I had misread or misunderstood it." End of discussion, and of course the necessary change was made with no fuss or feathers. And when on the way home I confronted Justice Mountain with his almost Machiavellian maneuver, he just smiled, gave out with a little chortle, and busied himself with gazing serenely at the passing countryside.

Justice Mountain had a most engaging way about him. You will excuse the apparent extravagance when I tell you that his law clerks, many of whom are with us today, and his secretary, Jo Baldino, who likewise is in the audience, quite simply worshipped him. I never heard him speak meanly or spitefully of anyone. I never heard anyone speak harshly or unkindly of him. How many people do we know of whom that can be said?

I have not adverted in these remarks to Justice Mountain's extraordinary contribution to this Court's jurisprudence. His opinions, which are found in volumes 58 through 81 of the New Jersey Reports, have been analyzed and dissected and appraised elsewhere in law reviews and commentaries, and have invariably been accorded the high praise they deserve. He left a rich legacy, and those of us who follow him reap the benefit of that legacy.

Rather, I have sought to limit my comments to Worrall Mountain the man and colleague. He was a great man, a wonderful and inspiring man, who, to the immense good fortune of the people of this state and of this institution, happened to be a great judge as well. Those of us who worked and served with Worrall Mountain remember him today, and will always, with great admiration, profound respect, and deep affection.

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That, ladies and gentlemen, concludes these proceedings.  
The Court stands adjourned.