

## A Tribute to the Honorable Marie L. Garibaldi

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I distinctly remember when my high school teacher announced in history class: "Today the first woman, Marie L. Garibaldi, was appointed to the New Jersey Supreme Court." I remember thinking it could not possibly be true. In all the years that our court system existed, it was hard to believe that no other women had been appointed to this State's highest court. Several years later, I served as one of Justice Garibaldi's law clerks. I have firsthand knowledge that Justice Garibaldi is easily one of the finest jurists, male or female, in New Jersey's history.

When she looks back on her career as a Supreme Court Justice, Justice Garibaldi focuses on how she always strove to do what is legally, morally, and sensibly right, by the parties and by the residents of her State. Hearing about her life, however, reminds us of just how far women have come in the span of this one woman's lifetime.

Justice Garibaldi, an only child, was born in Jersey City, lived in Englewood until the age of four, and then returned to Hudson County where she has lived ever since. Justice Garibaldi's family provided an important foundation for her future achievements. Her father was a strong believer in equal opportunity for women. Yet during Justice Garibaldi's childhood, women were just beginning to open doors that had been historically closed to them. When she was ten or twelve years old, there were no women doctors at St. Francis Hospital where her father worked as a physician. Due in part to her father's urging, the hospital finally hired its first woman doctor. As this example illustrates, he father, through his words and actions, encouraged his daughter to pursue a nontraditional career path.

Justice Garibaldi was also profoundly influenced by her mother. Justice Garibaldi's mother imbued her daughter with a strong sense of independence. Her mother began maintaining the books for a family

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## A TRIBUTE TO JUSTICE GARIBALDI

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business at the age of fourteen, after Justice Garibaldi's grandmother passed away at the age of fifty. Justice Garibaldi's mother, an energetic and compassionate woman, is one of the Justice's closest friends. During my clerkship, her mother would call and ask to speak with "The Justice." That nickname was a telling tribute to this mother's pride in her daughter's accomplishments.

As a child, Justice Garibaldi attended Stevens Hoboken Academy, an exclusive private school, from first through twelfth grade. She then attended Connecticut College. As early as her freshman year of college, the Justice was interested in history, politics, and government. When she graduated from college with an economics major and a political science minor, Justice Garibaldi intended to follow in the footsteps of her grandfather and go to business school. Many of the most prestigious business schools, however, did not accept women. Instead, Justice Garibaldi enrolled in Columbia Law School, hoping that her legal training would provide an entrée to the business world. She was one of only twelve women<sup>1</sup> in a class of 253 students. Only one woman from that class was offered a job at a Wall Street law firm after graduation. She later left that firm upon learning that she was being paid less than the male associates with whom she worked. After graduation, the Wall Street law firms did not interview Justice Garibaldi for a position. Instead, she began her legal career with the New York Regional Counsel in the Internal Revenue Service. There, she prosecuted civil tax fraud cases in Tax Court, where she received extensive trial experience. Nonetheless, after six years she left government service, in part because the Hatch Political Activities Act<sup>2</sup> restricted government employees from political speech-making and article-writing. Next, the Justice briefly worked at the firm of McCarter & English, and then joined the firm now known as Riker, Danzig, Scherer, Hyland & Perretti, a law firm that played a critical role in her future success. Within three years of joining Riker, Danzig, she was elevated to partnership, an extremely rare occurrence for women at that time.<sup>3</sup>

While working in private law firms, the Justice served as a municipal

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<sup>1</sup> Another of these twelve women was Ruth Bader Ginsburg, now an Associate Justice on the United States Supreme Court. Her husband, Martin Ginsburg, is a tax law professor at Georgetown University Law Center. Illustrating the changing role of women in the professional world, Professor Ginsburg often quipped that his move from New York City to Washington, D.C. was prompted by his wife "getting a good job." See Georgetown University Law Center, 2000 Faculty Curriculum Vitae, at <http://data.law.georgetown.edu/faculty> (last visited Dec. 1, 2000).

<sup>2</sup> See 5 U.S.C. §§ 1501-1508 (1994); 5 U.S.C. §§ 7324-7326 (1994).

<sup>3</sup> Today, the percentage of women partners in major New Jersey law firms is only 14%, which is consistent with the national average. See Henry Gottlieb, *Women Show Net Gain in Partnerships—They Account For More Than Half The Increases in Partners at the Average New Jersey Firm This Year*, 158 N.J.L.J. 393 (Nov. 1, 1999).

court judge in Weehawken, New Jersey. There she earned the reputation as a judge who was “unaffected” in her demeanor, “managed to keep calm” even with heavily emotional cases, and was always “incredibly fair” in hearing the evidence and rendering her opinions.<sup>4</sup>

For many lawyers, the practice of law is more than enough to fill the day, but not for Justice Garibaldi. The road to the New Jersey Bar Association presidency began with her participation in the Section on Taxation, where she served as chairperson. Additionally, the Essex County Bar Association elected her trustee. Her leadership abilities were recognized, and she became Secretary, and later, President, of the New Jersey State Bar Association. A woman of firsts, Justice Garibaldi was the first woman to hold the position of president of the New Jersey State Bar. Though she did not complete her first term because of her Supreme Court nomination, it was during her term as Bar President that she first announced an initiative to explore complementary dispute resolution alternatives.<sup>5</sup>

At Riker, Danzig, Justice Garibaldi developed an active interest in the Republican Party. One day, Robert Fisher, a Riker partner, asked her to introduce Thomas Kean, an up-and-coming Republican candidate, to members of the firm. The Justice had never met Kean, but, after being introduced, told her mother that she was very impressed by him.<sup>6</sup> Shortly after meeting Thomas Kean, while serving as co-chair of his gubernatorial campaign, she attended a press conference with the candidate. A reporter asked her, “Ms. Garibaldi, isn’t it true that if Tom Kean becomes governor, he is going to appoint you to the Supreme Court?” Justice Garibaldi responded “no,” as this was the first time such an idea had ever been mentioned. After Kean was elected governor, however, he did indeed nominate her to the Supreme Court.<sup>7</sup> She was touched by the

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<sup>4</sup> Telephone Interview with Melvyn H. Bergstein, Esq. (Aug. 4, 2000) (notes on file with author). Mr. Bergstein appeared as a defense attorney before Municipal Court Judge Marie Garibaldi. Mr. Bergstein commented, “For me as a seasoned trial lawyer, I found her to be uniquely impressive.” So much so, that after his court appearance with her, he proposed her name to the Essex County Bar Association’s Nominating Committee. As a result, she was appointed one of the first women trustees of the Essex County Bar Association.

<sup>5</sup> After her appointment to the bench, the Chief Justice selected Justice Garibaldi to lead a pilot group, a Task Force, and a Supreme Court Committee. These groups helped to promote awareness, educate the public, and create and implement programs on the many alternative dispute resolution options available. In her honor, in 1998 the American Inns of Court Foundation established The Justice Marie L. Garibaldi Inn of Court for Alternative Dispute Resolution.

<sup>6</sup> See Rocco Cammarere, *Marie Garibaldi: What a Legacy!*, 9 N.J. LAW. 1 Jan. 3, 2000 (“I really met such a great guy and was impressed with him.”) (quoting Justice Marie L. Garibaldi).

<sup>7</sup> The practicalities of being the first woman justice had their interesting moments, as

overwhelming support and encouragement she received. Sandra Day O'Connor, the first female justice of the United States Supreme Court, congratulated Justice Garibaldi in person when she made a surprise appearance at a swearing-in party that the New Jersey State Bar Association's Section on Taxation hosted in Justice Garibaldi's honor.

A number of themes emerged during Justice Garibaldi's eighteen years on the court that captured her philosophy as a jurist. When evaluating cases before the high court, Justice Garibaldi's critical legal analysis was tempered with a healthy dose of good common sense.<sup>8</sup> While some judges have been accused of living in an ivory tower, this simply cannot be said of Justice Garibaldi. Real world implications were always central to her decisions.<sup>9</sup> During her years on the New Jersey Supreme Court, Justice Garibaldi strictly adhered to the principle that the court exists to resolve disputes, not to legislate. She exercised restraint even when new rules of law would conceivably benefit the parties and society.<sup>10</sup> Justice Garibaldi's opinions demonstrate her dedication to upholding the separation of powers between the three branches of government, while developing a body of case law that promoted reliability and predictability.

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Justice Garibaldi discovered when she attended her first oral argument, only to learn that the old Trenton courthouse had only one restroom – for male justices.

<sup>8</sup> See Harvey C. Fisher & Scott Goldstein, *Garibaldi Retiring; LaVecchia Named*, 8 N.J. LAW. 2712 (Dec. 27, 1999) ("Frequently, when the court's conferences focused on differing views on some esoteric principle of law, Justice Garibaldi would bring us back to earth. She always wanted to know how our decisions would play out in the real world. She would ask how it was going to work on the street.") (quoting former Supreme Court of New Jersey Justice Robert L. Clifford).

<sup>9</sup> Practical considerations also caused the Justice to disagree with her colleagues and pen dissenting opinions. See, e.g., *New Jersey Coalition Against War v. J.M.B. Realty Corp.*, 138 N.J. 326, 404, 650 A.2d 757, 796 (1994) (Garibaldi, J., dissenting) (Dissenting from majority opinion because "[i]t makes neither good sense nor good law."); *Hopkins v. Fox & Lazo Realtors*, 132 N.J. 426, 454, 625 A.2d 1110, 1123 (1993) (Garibaldi, J., dissenting) (Dissenting from majority's determination that real-estate brokers may be liable for injuries sustained by a visitor during an open-house and stating, "I wonder how a well-meaning broker, attempting to comply with the majority's ruling, will handle the problem, and how his or her solution will affect the salability of the property and the broker's relationship with the principal, the seller."); *Feldman v. Lederle Labs.*, 125 N.J. 117, 167, 592 A.2d 1176, 1203 (1991) (Garibaldi, J., dissenting) (Dissenting from majority opinion that imposed duty on manufacturer to change warning, stating "the FDA precluded drug manufacturers from altering approved labeling in any respect without prior authorization.").

<sup>10</sup> See, e.g., *Kelly v. Gwinnell*, 96 N.J. 538, 569-70, 476 A.2d 1219, 1235-36 (1984) (Garibaldi, J., dissenting) (Dissenting from majority opinion that created liability of a social host for injuries caused by a drunken driver because "[t]hat is for the Legislature" after it has investigated all alternatives to determine the "most effective course."); see also *In re Nancy Ellen Jobes*, 108 N.J. 394, 428, 529 A.2d 434, 452 (1987) ("As we have previously explained, the Legislature is better equipped than the judiciary to frame comprehensive guidelines and procedures for the withdrawal of life-sustaining treatment. Accordingly, we urge it to pass legislation in this area."); accord *In re Kathleen Farrell*, 108 N.J. 335, 343, 529 A.2d 404, 407-08 (1987).

Her indelible mark on New Jersey's jurisprudence is the result of her hard work, persistence, and exceptional respect for the critical, yet constitutionally limited role of the judiciary.<sup>11</sup>

Justice Garibaldi's writings reflect her attention to evolving societal norms. Often, support for her decisions rested not only on case precedent, but on the evaluation of sociological studies, government investigations, and law review articles that evaluated emerging social trends. For example, when deciding whether spouses should jointly determine how to spend child support contributions, Justice Garibaldi considered studies by the United States Bureau of the Census and other in-depth analyses on how divorce and child support impact a child's life.<sup>12</sup> Likewise, in her carefully crafted opinion that formalized the standards for a hostile work environment claim, the Justice relied on several sources. Justice Garibaldi consulted Congressional hearings regarding the impact of sexual harassment in the workplace, as well as law review articles that provided insightful perspectives for devising a fair standard to decide discrimination claims.<sup>13</sup>

Judicial opinions often reflect value judgments. Justice Garibaldi carefully limited the court's role when handling highly sensitive personal issues. Three right-to-die cases are perhaps Justice Garibaldi's most timeless contribution to New Jersey's jurisprudence.<sup>14</sup> These opinions recognize that respect for human life must be balanced against human dignity and individual choice. The Justice's legal analysis in these cases is compassionate and reflects a sincere understanding of the anguish that family members experience in determining when to disconnect life support systems. Throughout these opinions, a recurring theme is that "the fateful decision to withdraw life-supporting treatment is extremely personal."<sup>15</sup> Justice Garibaldi recognized that the court should not be the supreme

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<sup>11</sup> Time and again, Justice Garibaldi's rulings reveal deference to *elected* representatives to fully evaluate the legal issues presented. The Legislature is invited, and, on occasion, has promulgated legislation to alter the course of the law. For example, the Legislature overturned *State v. Szemple*, 135 N.J. 406, 640 A.2d 817 (1994) (evaluating the priest-penitent privilege to hold that the priest alone is the holder of the privilege) in the same year that decision was rendered.

<sup>12</sup> See *Pascale v. Pascale*, 140 N.J. 583, 590-91, 596, 660 A.2d 485, 488-89, 491 (1995) (considering various studies to assist the court in evaluating the best interests of the child in a child support dispute case).

<sup>13</sup> See *Lehmann v. Toys 'R' Us, Inc.*, 132 N.J. 587, 609, 612, 626 A.2d 445, 456, 458 (1993) (reviewing the findings of researchers and legal experts to develop formalized standards for determining whether a plaintiff has established a hostile work environment claim).

<sup>14</sup> See *In re Nancy Ellen Jobes*, 108 N.J. 394, 529 A.2d 434 (1987); *In re Kathleen Farrell*, 108 N.J. 335, 529 A.2d 404 (1987); *In re Hilda M. Peter*, 108 N.J. 365, 529 A.2d 419 (1987).

<sup>15</sup> *In re Nancy Ellen Jobes*, 108 N.J. at 426, 529 A.2d at 451.

arbiter in all matters. In the case *In re Hilda Peter*, the Justice wrote: “We emphasize that in this as in every case, the ultimate decision is not for the Court. The decision is primarily that of the patient, competent or incompetent, and the patient’s family or guardian and physician.”<sup>16</sup> Her sensitivity to the needs of the ill is also reflected in her dissenting opinion to *State v. Tate*.<sup>17</sup> In her dissent, the Justice upheld a medical necessity defense to the charge of marijuana possession.<sup>18</sup>

Without question, *Lehmann v. Toys ‘R’ Us*<sup>19</sup> transformed the sexual harassment landscape in New Jersey. In that opinion, which discussed hostile work environments, Justice Garibaldi announced a “new test in the hope of creating a standard that both employees and employers will be able to understand and one that employers can realistically enforce.”<sup>20</sup> The Justice’s opinion is notable for several reasons. First, she fully explained the policies and reasons for each new standard and provided ample guidance so that future litigants will understand what proofs are required to prevail on a sexual harassment claim. Second, Justice Garibaldi noted that, “[b]ecause discrimination itself is the harm that the [New Jersey Law Against Discrimination] seeks to eradicate, additional harms need not be shown in order to state a claim.”<sup>21</sup> Third, the Justice applied a new “reasonable woman” standard, and cautioned that this standard does not require a “Vulcan-like rationality and absence of feeling.”<sup>22</sup> Later, the court expanded the applicability of those legal standards to racial discrimination claims.<sup>23</sup>

Justice Garibaldi authored several opinions that reflected her support of the police. The Justice expressed a great deal of respect for the police, recognizing that they place their lives in jeopardy to promote public safety.

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<sup>16</sup> *In re Hilda M. Peter*, 108 N.J. at 385, 529 A.2d at 430.

<sup>17</sup> 102 N.J. 64, 505 A.2d 941 (1986).

<sup>18</sup> *See id.* at 95, 505 A.2d at 957 (Garibaldi, J., dissenting).

<sup>19</sup> 132 N.J. 587, 626 A.2d 445 (1993).

<sup>20</sup> *Id.* at 603, 626 A.2d at 453.

<sup>21</sup> *Id.* at 610, 626 A.2d at 457.

<sup>22</sup> *Id.* at 613, 626 A.2d at 458 (referring to characteristics that Mr. Spock and other Vulcans exhibit in the popular Star Trek television and movie series).

<sup>23</sup> *See Taylor v. Metzger*, 152 N.J. 490, 706 A.2d 685 (1998). In *Taylor*, Justice Garibaldi agreed that “the standards established in *Lehmann v. Toys ‘R’ Us, Inc.* apply to racial discrimination cases . . . .” *Id.* at 524, 706 A.2d at 701 (Garibaldi, J., concurring in part and dissenting in part). She dissented, however, from the majority’s holding that a single remark referring to plaintiff as a “jungle bunny” was sufficient, under the facts of that case, for plaintiff to defeat summary judgment and proceed on her hostile work environment and emotional distress claims. The Justice stated, “[b]y holding that a single racial slur that does not result in any ‘actual change in working conditions’, is severe enough to create a hostile work environment resulting in a LAD violation, the Court has substantially changed the *Lehmann* standard and enlarged the scope of LAD.” *Id.* at 526, 706 A.2d at 702 (Garibaldi, J., concurring in part and dissenting in part).

She authored many opinions that upheld police interests in search and seizure and privacy matters.<sup>24</sup> Justice Garibaldi was the lone dissenter from *State v. Hemepele*,<sup>25</sup> which held that there exists a privacy right in garbage.<sup>26</sup> Frustrated with the majority's determination that New Jersey residents had a greater privacy interest in their garbage than exists under the United States Constitution,<sup>27</sup> the Justice commented that she was "unable to discern a unique New Jersey state attitude about garbage."<sup>28</sup> Once garbage was placed at the curb, the Justice did not believe the freedoms guaranteed to New Jersey citizens under the state constitution would be violated "if police are allowed to search garbage . . . before it is carried to the dump."

Justice Garibaldi's opinions protect free speech, even when it is "extremely repulsive and hateful and undoubtedly caused . . . great embarrassment."<sup>29</sup> In granting summary judgment for a defendant in a defamation claim, Justice Garibaldi stated, "[a]s a society we have made a determination that the best way to combat bias and prejudice is through the exchange of ideas and speech, not through lawsuits."<sup>30</sup> Balancing the freedom of speech against the protection of a person's reputation, Justice Garibaldi observed that "[i]n recognizing that important balance, we

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<sup>24</sup> See, e.g., *Wildoner v. Borough of Ramsey*, 162 N.J. 375, 396, 744 A.2d 1146, 1158 (2000) (upholding officer's arrest of alleged batterer when reviewing totality of the circumstances in an investigation of an alleged domestic violence incident); *State v. Jones*, 143 N.J. 4, 19, 667 A.2d 1043, 1050 (1995) (finding that police officers acted in an objectively reasonable manner under the Fourth Amendment when they followed the fleeing object of the warrant into the apartment); *State v. Valentine*, 134 N.J. 536, 553, 636 A.2d 505, 513-14 (1994) (upholding officer's pat-down of suspect); *State v. Smith*, 134 N.J. 599, 614-15, 618, 637 A.2d 158, 165-66 (1994) (permitting an officer to order a passenger to alight from a vehicle when some fact or facts in the totality of the circumstances "would create in a police officer a heightened awareness of danger that would warrant an objectively reasonable officer in securing the scene in a more effective manner by ordering the passenger to alight from the car"); *State v. Davis*, 104 N.J. 490, 505, 517 A.2d 859, 867 (1986) (recognizing the "strong safeguards against governmental interference with a citizen's rights of privacy and freedom" but holding that "[c]ommon sense and good judgment nevertheless require that police officers be allowed to engage in some investigative street encounters without probable cause"); *State v. Bruzzese*, 94 N.J. 210, 239-40, 463 A.2d 320, 336 (1983) (reversing suppression of evidence found in warrantless search when officer's conduct was objectively reasonable and in conformity with recognized exceptions to the warrant requirement). *But see State v. Caldwell*, 158 N.J. 452, 461, 730 A.2d 352, 358 (1999) (determining that police officer's detention of defendant was more than minimally intrusive and insufficiently supported).

<sup>25</sup> 120 N.J. 182, 576 A.2d 793 (1990).

<sup>26</sup> See *id.* at 225, 576 A.2d at 815.

<sup>27</sup> See generally *California v. Greenwood*, 486 U.S. 35 (1988). In *Greenwood*, the United States Supreme Court held that the Fourth Amendment does not prohibit the warrantless search and seizure of trash left outside for collection. See *id.* at 40.

<sup>28</sup> *Hemepele*, 120 N.J. at 234, 576 A.2d at 819 (Garibaldi, J., dissenting).

<sup>29</sup> *Ward v. Zelikovsky*, 136 N.J. 516, 542, 643 A.2d 972, 985 (1994).

<sup>30</sup> *Id.* at 543, 643 A.2d at 985.

determine that the content of defendant's hateful statement, the context in which he said it, its lack of verifiability, and the lack of any special damages establish that [defendant's] conduct, although hateful and despicable, was not actionable under the law of slander."<sup>31</sup>

In *In re Randolph*,<sup>32</sup> Justice Garibaldi disagreed with the majority's restrictive interpretation of the First Amendment. She dissented from the majority's determination that a "\$7,000-a-year court aide who is an employee of the Sheriff's Office" could not serve in several positions in public and private organizations, including as an officer of the National Association for the Advancement of Colored People.<sup>33</sup> She stated, "[i]t is undisputed that . . . free speech and association are core First Amendment rights."<sup>34</sup> Because the majority prohibited court aides from serving "in civic and community organizations that have a potential to be involved in public controversy," Justice Garibaldi concluded that this amounted to an absolute bar on civic involvement.<sup>35</sup> The Justice wrote that "[t]he majority's interpretation not only violates an employee's First Amendment rights of freedom of association and speech," but constituted an "unwarranted extension" of the rule governing court employee participation in outside organizations.<sup>36</sup>

Several of Justice Garibaldi's opinions recognized, however, that free speech does have boundaries. Justice Garibaldi's departure from the majority in *New Jersey Coalition Against War v. J.M.B. Realty*,<sup>37</sup> a case that involved protestors' request to set up a stand at a shopping mall to collect signatures on an anti-war petition, reflected her belief that there are some limits to free speech. Justice Garibaldi rejected the argument that mall owners must allow war protestors to express their message at private shopping malls. "The inescapable mission of shopping malls is . . . to provide a comfortable and conducive atmosphere for shopping."<sup>38</sup> Indeed, she continued, "[t]he shopping mall is not a community. There is no 'mayor of the mall' . . . . [Shoppers] do not visit the mall to be informed or to inform others of social or political causes; they go to shop."<sup>39</sup>

In the business arena, Justice Garibaldi left a particularly insightful mark. *Sons of Thunder Inc. v. Borden*<sup>40</sup> analyzed the complexities of a

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<sup>31</sup> *Id.*

<sup>32</sup> 101 N.J. 425, 502 A.2d 533 (1986).

<sup>33</sup> *Id.* at 460, 502 A.2d at 551 (Garibaldi, J., dissenting).

<sup>34</sup> *Id.* at 463, 502 A.2d at 553 (Garibaldi, J., dissenting).

<sup>35</sup> *Id.* at 465, 502 A.2d at 554 (Garibaldi, J., dissenting).

<sup>36</sup> *Id.* at 466, 502 A.2d at 555 (Garibaldi, J., dissenting).

<sup>37</sup> 138 N.J. 326, 650 A.2d 757 (1994).

<sup>38</sup> *Id.* at 400, 650 A.2d at 795.

<sup>39</sup> *Id.*

<sup>40</sup> 148 N.J. 396, 690 A.2d 575 (1997).



requirements contract and the obligations imposed by the implied warranty of good faith and fair dealing. *Brenner v. Berkowitz*,<sup>41</sup> an opinion on close corporations, reinforced the court's flexibility in applying numerous equitable remedies to supplement the statutory remedies of oppressed minority shareholders. Yet, the opinion balanced flexibility with caution, ensuring that "minority shareholders are not permitted to use the statute to tyrannize the majority."<sup>42</sup>

Justice Garibaldi authored an incredibly long list of opinions.<sup>43</sup> Each opinion offers sound legal analysis, logical explanations, and a holding that provides clear guidance for future lawsuits. Indeed, many of her decisions are extremely useful to practitioners because they set out a clear legal framework for analyzing and resolving the legal issue presented.<sup>44</sup> The New Jersey Supreme Court's progressive reputation and the promise of publicity might induce some jurists to decide issues not squarely presented by the facts at hand. Justice Garibaldi scrupulously avoided the temptation to create law without factual parameters. Her opinions are firmly grounded in the facts. Legal issues not arising from those facts are explicitly left for resolution on another day.<sup>45</sup>

Not only does Justice Garibaldi possess an outstanding legal mind, but she laughs easily and lifts the spirits of those around her.<sup>46</sup> When Justice Garibaldi describes her experience on the high court, she always discusses the people who made her experience particularly enjoyable. She has immense respect for the other justices with whom she served. Though they may have disagreed from time-to-time on legal issues, they worked together extremely well. Justice Garibaldi also knew everyone in the courthouse by name.<sup>47</sup> Her immense respect and gratitude to Steven

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<sup>41</sup> 134 N.J. 488, 634 A.2d 1019 (1993).

<sup>42</sup> *Id.* at 517, 634 A.2d at 1033.

<sup>43</sup> See Editorial, *Justice Marie Garibaldi*, 10 N.J. LAW. 6 (Jan. 10, 2000) ("The list of noteworthy opinions goes on and on. No one can question Justice Garibaldi's insightful, comprehensive and scholarly contributions to our law and our jurisprudence.").

<sup>44</sup> Chief among these opinions is *Lehmann v. Toys 'R' Us, Inc.*, 132 N.J. 587, 592, 626 A.2d 445, 448 (1993) (devising a three-part test for evaluating whether a complaint states a claim for hostile work environment).

<sup>45</sup> See, e.g., *Perez v. Wyeth Labs., Inc.*, 161 N.J. 1, 39, 734 A.2d 1245, 1268 (1999) (Pollock, J., dissenting) (Joining in dissent of Justice Stewart Pollock that states, "[t]hrough the incorporation of presumed facts, the majority has created a phantom record to support the creation of its exception to the learned intermediary doctrine. That exercise has led the majority to wander from the confines of the present case.").

<sup>46</sup> See *Fisher & Goldstein*, *supra* note 8, at 2712 ("I'm sure that, like the rest of us, she had her bad days, her moments of stress and disappointment, but you would never know it from her demeanor. She was unfailingly pleasant. Her attitude lifted up the entire court.") (quoting former Justice Robert L. Clifford).

<sup>47</sup> See *Cammarere*, *supra* note 6, at 35 ("She really gave a damn about the people, whether it was the cleaning lady in the building or her mother.") (quoting former law clerk

Townsend, the Court Clerk, and her secretary Marlene Fridel, her secretary for nearly thirty years, are well-known.

Justice Garibaldi's relationship with her law clerks is equally distinctive. On most days, were you to stop in at her chambers at the Brennan Courthouse at lunchtime, you would find her eating lunch with her clerks. Before oral argument, but after she had thoroughly considered the parties' papers, the Justice engaged in a hearty debate with her clerks about the legal issues before the court. Additionally, she took a special interest in serving as a mentor, teacher and friend. Her clerks have become law school professors, journalists, authors, public interest lawyers, deputy attorneys general, private practice attorneys, in-house counsel, and most recently, a federal magistrate judge. The Justice celebrates her friendships with her former clerks at the annual "Garibaldifest." During the yearly gathering, Justice Garibaldi reminds her clerks that they are now part of her extended family. Her network extends far beyond her clerks. The number of close friendships she has maintained throughout the years is due to her warmth and her genuine interest in others.

I learned many lessons during my clerkship with Justice Garibaldi. First and foremost, she instilled in me a faith in our jury system. I learned to appreciate that a panel of appellate judges should use extraordinary care and caution before second-guessing the findings of fact that a trial court judge or jury make.<sup>48</sup> Her respect for the court system, and particularly the work of juries and trial judges, is reflected in her many opinions. Often, she not only affirmed the lower court, but bestowed the highest of compliments by incorporating excerpts from the trial judge's opinion into her opinion.<sup>49</sup>

Justice Garibaldi capably served on one of the most prestigious state supreme courts in the country. By her example, she opened up new pathways that were closed to the women before her. Although some women talk about "shattering glass ceilings," Justice Garibaldi would never refer to her successes in this way. She asserts that her achievements stemmed from simply being in the right place at the right time. In reality, the opportunities she experienced did not arise through sheer luck. Her thirst for new challenges created exceptional opportunities. Indeed, her

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Madeline Cox).

<sup>48</sup> See, e.g., *In re Nancy Ellen Jobs*, 108 N.J. 394, 409, 529 A.2d 434, 442 (1987) (stating "we believe that our traditional confidence in the factual determinations made by our trial courts is as appropriate in this as in other contexts.").

<sup>49</sup> See, e.g., *Brenner v. Berkowitz*, 134 N.J. 488, 499, 634 A.2d 1019, 1024 (1993) (Quoting Honorable John M. Boyle: "If you're talking about Joe's Delicatessen and they're giving away five pounds of bologna out the back door every day, that might be a substantial defalcation, it might be a gross mismanagement . . . but in the size of a corporation like this it would be de minimis, wouldn't it?").

courage and commitment to serve visibly in bar associations and participate in politics, and her willingness to accept new responsibilities, led to her election as the first woman president of the New Jersey State Bar Association and her subsequent appointment as the first woman justice of the New Jersey Supreme Court. The women that follow shall benefit from the trails she blazed through her exuberance, her warm compassion, and her down-to-earth, practical perspectives on complex and often obscure legal issues. As the first woman Justice on the New Jersey Supreme Court, she is a role model for women. But her eloquent execution of her judgeship secures her place in history as an inspiration for all.