

A TRIBUTE TO WORRALL F. MOUNTAIN: JURIST AND GENTLEMAN

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By the start of next Term, this Court will have lost the invaluable services of another great jurist—Worrall F. Mountain. As the senior member of the Court, the experience which Justice Mountain brought to bear upon the difficult issues with which we were often confronted will be sorely missed.

Brother Mountain's early years on the Court coincided with the final period of Joseph Weintraub's tenure as Chief Justice. He was thus a stabilizing force during the inception of the Hughes' years, his presence providing continuity during the transitional period. The vast majority of his tenure, however, was served under the aegis of Chief Justice Hughes. As such, the triumphs sketched above which occurred from 1974-1979 were as much a product of his influence as they were of any individual Justice. Indeed, absent his participation in the decision-making process, many of the Court's landmark decisions may never have come to pass.

One theme that pervaded Worrall Mountain's thinking—a theme which found expression both in his writings and his oral comments during Court conferences—was respect for our coordinate branches of government. He recognized that in order for our system of government to function properly, the Executive, Legislative and Judicial branches of government must not exceed the respective spheres of power delegated by the people. Absent clear constitutional impediments, Justice Mountain was therefore extremely hesitant to upset a determination made by the state legislature, or to expand the Court's rule-making power beyond that absolutely necessary to maintain the independence and integrity of the judiciary.¹ This is not to say that he would not strike down legislation that contravened the federal or state constitutions, or that he failed to recognize this Court's power to manage the practice of law. His writing demonstrates the contrary.²

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¹ *Hyland v. Borough of Allenhurst*, 78 N.J. 190, 393 A.2d 579 (1978) (Mountain, J., dissenting); *Van Ness v. Borough of Deal*, 78 N.J. 174, 393 A.2d 571 (1978) (Mountain, J., dissenting); *City of Philadelphia v. State Dep't of Environmental Protection*, 73 N.J. 562, 376 A.2d 888, *vacated and remanded*, 430 U.S. 141, *prob. juris. noted*, 434 U.S. 964, *rev'd*, 98 S. Ct. 2531 (1978); *Donaldson v. Board of Educ.*, 65 N.J. 236 (1974) (Mountain, J., dissenting); *Busik v. Levine*, 63 N.J. 351, 307 A.2d 571 (1973) (Mountain, J., dissenting).

² *See, e.g., Helmsley v. Borough of Fort Lee*, 78 N.J. 200, 394 A.2d 65 (1978); *Passaic County Probation Officers Ass'n v. City of Passaic*, 73 N.J. 247, 374 A.2d 449 (1977); *Vreeland v.*

Justice Mountain symbolized both our Court's power to invalidate unconstitutional statutes and the concomitant responsibility that this power be exercised with great self-restraint. Thus, Worrall Mountain was not quick to overrule a legislative policy judgment, and his constant reminders of deference to that branch of government influenced the outcome of many a case.

As with Chief Justice Hughes, Justice Mountain's ability to grasp the subtleties of diverse areas of the law cannot be questioned. His opinions resolved novel and complex issues in the fields of substantive constitutional law,³ worker's compensation,⁴ criminal law,⁵ civil procedure,⁶ procedural due process,⁷ civil service,⁸ and zoning.⁹

Special note must be made of Justice Mountain's writings on the subject of equitable distribution. It was mainly through his opinions that the constitutional validity of that concept, its ramifications, and the contours of its application were established.¹⁰

The Justice was also extremely adept at resolving disputes concerning estates and interests in real property. His writings include well-reasoned analyses of problems involving landlord-tenant relationships,¹¹ tenancies by the entireties,¹² and just compensation.¹³ And

Bryne, 72 N.J. 292, 370 A.2d 825 (1977); *In re Salaries for Probation Officers*, 58 N.J. 422, 278 A.2d 417 (1971).

³ See, e.g., *In re Farber*, 78 N.J. 259, 397 A.2d 330 (1978); *Williams v. Civil Serv. Comm'n*, 66 N.J. 152, 329 A.2d 556 (1974); *Hackensack Meadowlands Dev. Comm'n v. Municipal Sanitary Landfill Auth.*, 68 N.J. 451, 348 A.2d 505 (1975), *vacated and remanded*, 430 U.S. 141 (1977).

⁴ See, e.g., *Panzino v. Continental Can Co.*, 71 N.J. 298, 364 A.2d 1043 (1976); *Dawson v. Hatfield Wire & Cable Co.*, 59 N.J. 190, 280 A.2d 173 (1971).

⁵ See, e.g., *State v. DiCarlo*, 67 N.J. 321, 338 A.2d 809 (1975); *State v. Dorsey*, 64 N.J. 428, 316 A.2d 809 (1975); *State v. Bonano*, 59 N.J. 515, 284 A.2d 345 (1971); *State v. Lair*, 62 N.J. 388, 301 A.2d 748 (1973).

⁶ See, e.g., *Lopez v. Swyer*, 62 N.J. 267, 300 A.2d 563 (1973); *Rosenberg v. Town of North Bergen*, 61 N.J. 190, 293 A.2d 662 (1972).

⁷ See, e.g., *Guerrero v. Burlington County Memorial Hosp.*, 70 N.J. 344, 360 A.2d 334 (1976); *Williams v. Civil Serv. Comm'n*, 66 N.J. 152, 329 A.2d 556 (1974).

⁸ See, e.g., *Township of Springfield v. Pederson*, 73 N.J. 1, 372 A.2d 286 (1977); *Williams v. Civil Serv. Comm'n*, 66 N.J. 152, 329 A.2d 556 (1974).

⁹ See, e.g., *Dolan v. Borough of Tenafly*, 75 N.J. 163, 380 A.2d 1119 (1977); *Oakwood at Madison, Inc. v. Township of Madison*, 72 N.J. 481, 371 A.2d 1192 (1977) (Mountain, J., concurring).

¹⁰ See, e.g., *Mey v. Mey*, 79 N.J. 121, 398 A.2d 88 (1979); *Carlsen v. Carlsen*, 72 N.J. 363, 371 A.2d 8 (1977); *Smith v. Smith*, 72 N.J. 350, 371 A.2d 1 (1977); *Stern v. Stern*, 66 N.J. 340, 331 A.2d 257 (1975); *Rothman v. Rothman*, 65 N.J. 219, 320 A.2d 496 (1974); *Painter v. Painter*, 65 N.J. 196, 320 A.2d 484 (1974).

¹¹ See, e.g., *Jones v. Buford*, 71 N.J. 433, 365 A.2d 1364 (1976); *In re Callan*, 66 N.J. 401, 331 A.2d 612 (1975) (Mountain, J., concurring).

¹² See, e.g., *Newman v. Chase*, 70 N.J. 254, 359 A.2d 474 (1976).

¹³ See, e.g., *Washington Mkt. Enterprises v. City of Trenton*, 68 N.J. 107, 343 A.2d 408 (1975).

of course, he authored our recent decision defining the permissible contours of local rent control schemes.¹⁴

Finally, mention must be made of Justice Mountain's opinions dealing with the difficult task of balancing first amendment rights against the constitutional protections afforded criminal defendants,¹⁵ and the legitimate concerns of a public employer.¹⁶ Also worthy of note is the Justice's decision in *Lopez v. Swyer*,¹⁷ a ruling which first established the adherence of the New Jersey Supreme Court to the discovery rule in statute of limitations questions.

Our senior Justice and acting Chief Justice is a sensitive, courtly and courteous man—the soul of gentleness. Tact, sympathetic understanding and a quiet sense of humor are among his many attributes. His opinions reflect imagination, sophistication and detachment—all necessary qualifications of an effective judge. Like a poet, he possesses the gifts of logic, persuasion and perfection of expression. His mind and his pen are always fresh and exciting.

The Justice's wisdom and cooperative temper, as well as his deep love of justice, have combined to earn him the respect of his contemporaries—whether judges, lawyers or the public at large. Having known Brother Worrall Mountain intimately since our days as superior court judges in Passaic County, I can state without reservation that this respect is well deserved. My pleasure in being able to serve with the man cannot be adequately expressed in words. I shall miss him as a colleague on our Court. There can be no question but that his retirement will constitute a great loss to the judiciary of New Jersey.

¹⁴ See *Helmley v. Borough of Fort Lee*, 78 N.J. 200, 394 A.2d 65 (1978).

¹⁵ See *In re Farber*, 78 N.J. 259, 394 A.2d 330 (1978).

¹⁶ See *Williams v. Civil Serv. Comm'n*, 66 N.J. 152, 329 A.2d 556 (1974).

¹⁷ 62 N.J. 267, 300 A.2d 563 (1973).