JUSTICE SULLIVAN—AN APPRECIATION

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The retirement of Associate Justice Mark A. Sullivan of the Supreme Court of New Jersey marks the end of one of the longest periods of judicial service in the modern history of New Jersey. Starting as a District Court judge at age thirty-four in 1945, the Justice became a Superior Court judge in 1952, was eventually assigned to the Appellate Division, and was appointed to the Supreme Court by Governor Cahill in April 1973. His actual Supreme Court tenure began in September 1972 as an acting Justice to fill a temporary vacancy on the Court.

Justice Sullivan's service on the Court has represented a highly useful and varied contribution to its work and to New Jersey jurisprudence. In output of opinions, he ranked as one of the two most prolific writers on the Court during his period of membership. The frequency of his writing assignments reflected recognition of his diligence in producing opinions in cases assigned to him and the clarity and conciseness of his dispositions. A Sullivan opinion rarely exceeded ten or twelve pages and was sparing of footnotes. Proportionately succinct were his relatively infrequent dissents and concurrences. Justice Sullivan possessed the rare knack of getting quickly to the heart of the issue at hand, addressing it directly, and resolving it with economy and simplicity of expression. It was the Justice's belief that a judicial opinion should be comprehensible to the public as well as to the bench and bar.[1] He raised the eyebrows of his colleagues in publicly criticizing what he termed the prolixity and complexity of the Court's opinions.[2] In dissenting or concurring, Justice Sullivan did not write to persuade colleagues or to memorialize his views at length for posterity, but merely to record the essence of his position, without elaboration.[3]

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[1] In concurring in Pascack Ass'n v. Mayor and Council of Washington, 74 N.J. 470, 494, 379 A.2d 6, 18 (1977) (Sullivan, J., concurring), which culminated a series of controversial zoning cases in the Court, Justice Sullivan said: "In directing local government as to how it must exercise its zoning power pursuant to law, it is essential that we speak with more clarity, directness and simplicity."

[2] Sullivan, *New Jersey Supreme Court Opinions: A Critique*, 102 N.J.L.J. 249 (1978).

[3] *See, e.g.*, Tevis v. Tevis, 79 N.J. 422, 435, 400 A.2d 1189, 1196 (1979) (Sullivan, J., concurring).

Justice Sullivan was one of the most edifying members of the Court in reporting to it on certification petitions assigned to him for review.[4] Using notes only sparingly, the Justice was in full command of the law and the facts in rendering his report and recommendations in each case.[5] His long prior service in the Appellate Division afforded him the advantage of familiarity with the many recurrent issues presented to the Court on certification applications, adding substantially to his value to the Court in conference on these matters, as well as in conference on disposition of argued cases and motions.

Acting as Chairman of the Supreme Court's Committee on Relations with the Media, Justice Sullivan was instrumental in the inauguration of photography and television in the courtroom on an experimental basis—a program which promises to advance public understanding of the judicial process without demeaning it.

Justice Sullivan's capacity for quick analysis and comprehension of legal materials and his sound grounding in legal principles enabled him to do his work in less time than it took others. He came to conclusions readily and without extended soul-searching.

It is not easy to categorize the Justice philosophically. His votes on the Court would probably best warrant the label of centrist. He generally would be found in the mainstream of the Court current, evoking few dissents to his opinions and dissenting from those of others only when strongly moved to do so. The Justice was strongly committed to fostering the public image of the Court as an institution of strength and stability. He believed that restraint in dissent or concurrence advanced that image.

If the confidence of the public in the courts is correlative with public approval of the courts' adjudications, then Justice Sullivan's service has undoubtedly fostered such confidence. Though necessarily couched in legal concepts, his determinations were characteristically invested with lay common sense.

Lay common sense is sometimes reflected in law by the application of "public policy" to the development of the common law. Justice Sullivan's work exemplifies that process. In *Shell Oil Co. v. Marinello*,[6] he wrote the landmark ruling prohibiting a gasoline distributor from terminating a dealer's lease and franchise agreement except for cause, citing the absence of bargaining equality between

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[4] Petitions for certification are distributed among three Court committees for review and report to the Court at conference. However, the full Court votes on each petition.

[5] The writer has had the benefit of collegial association with Justice Sullivan on the Court, having served as a temporary member of it during extended periods of time from 1972 to 1979.

[6] 63 N.J. 402, 307 A.2d 598 (1973).

the parties.[7] In *Van Ness v. Borough of Deal*,[8] he broadened the scope of the public trust fund doctrine, holding that it accorded the general public the right to use that portion of municipally-owned ocean beaches upland of the mean high water mark. In *Faustin v. Lewis*,[9] he discarded the defense of unclean hands in allowing an annulment of a marriage into which a Haitian woman had been induced to enter as a sham, solely to obtain immigrant status in this country. His rationale was that the public benefit of declaration of marriage status outweighed the objective of punishing the woman for participating in a fraud.[10]

But in *Karlin v. Weinberg*,[11] Justice Sullivan's view of public policy did not prevail. Over his dissent,[12] a four-three majority of the Court upheld a restrictive covenant entered into by a junior physician with a senior partner not to compete with the latter for five years within a ten-mile radius of the office. The dissent was based on the public policy of allowing patients unrestricted access to their physicians.[13]

The supreme test of the resolve of the Court to enforce its decisions came in 1976 when, after the Court had held the existing system of financing public schools to be constitutionally inadequate,[14] and later upheld a legislative revision of that system,[15] the legislature refused to appropriate the funds necessary to implement the new statute. Justice Sullivan made the difficult decision to join a five-two majority of the Court which voted to enjoin the operation of the schools as of July 1, 1976, unless the Legislature by that time provided the funds to implement a valid school financing program.[16] The Legislature complied shortly thereafter, enacting an income tax for the purpose.

While generally a staunch supporter of the Court's constitutional authority in the area of promulgation of rules of practice and procedure, Justice Sullivan believed it necessary for the Court to exercise restraint in adopting rules trenching on the Legislature's exclusive authority to legislate with respect to substantive law. In *Busik v.*

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[7] *Id.* at 408, 307 A.2d at 601.
[8] 78 N.J. 174, 393 A.2d 571 (1978).
[9] 85 N.J. 507, 427 A.2d 1105 (1981).
[10] *Id.* at 513, 427 A.2d at 1108.
[11] 77 N.J. 408, 390 A.2d 1161 (1978).
[12] *Id.* at 425-27, 390 A.2d at 1170-71 (Sullivan, J., dissenting).
[13] *Id.*
[14] Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973).
[15] Robinson v. Cahill, 69 N.J. 449, 355 A.2d 129 (1976).
[16] Robinson v. Cahill, 70 N.J. 155, 358 A.2d 457 (1976).

Levine,[17] involving a controversy over the court rule providing for prejudgment interest in tort cases, Justice Sullivan joined the concurring opinion of Justice Hall expressing the view that if a prospective rule of court involved the possibility of substantive effect the matter should be settled in consultation with the other branches of government.[18]

Justice Sullivan's voting record in the Court shows a conscientious balancing of the State's interest in law enforcement with the constitutional rights of criminal defendants. Thus, he wrote for the Court majority upholding a conviction for armed robbery as against the defense of insanity notwithstanding the trial court had charged the jury erroneously that there was a "presumption" of sanity.[19] The erroneous instruction was not deemed prejudicial to the defendant.[20] He ruled there was no double jeopardy in allowing the State to appeal a judgment of acquittal notwithstanding the verdict;[21] and he held the marital privilege was not violated by a prosecutor's statement in summation in response to a plea of alibi, that defendant had not called his wife to support that alibi.[22] Reliance was placed by the Court on defendant's calling attention to his wife's presence in the courtroom when testifying to his alibi, thereby waiving the privilege.[23]

There are many instances of the Justice's solicitude for the rights of criminal defendants. In *State v. Redinger*,[24] he held the State could not prosecute a defendant for perjury in testifying to and pleading guilty of careless driving when the prosecution had evidence beforehand that the defendant was not driving the car and failed to disclose that information at the municipal hearing. Justice Sullivan cited the principle of fundamental fairness.[25] In *State v. Johnson*,[26] Justice Sullivan authored a reversal of a conviction because the prosecutor's undue emphasis in cross-examination of defendant and in summation on defendant's prior criminal record, conveyed the impression to the jury that "defendant was a hardened criminal" and that "the jury

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[17] 63 N.J. 351, 307 A.2d 571 (1973).
[18] *Id.* at 374, 307 A.2d at 583 (Hall, J., concurring).
[19] State v. Paglia, 64 N.J. 288, 315 A.2d 385 (1974).
[20] *Id.* at 297, 315 A.2d at 390.
[21] State v. Kleinwaks, 68 N.J. 328, 345 A.2d 793 (1975).
[22] State v. Walker, 80 N.J. 187, 403 A.2d 1 (1979).
[23] *Id.* at 192-93, 403 A.2d at 3-4.
[24] 64 N.J. 24, 312 A.2d at 129 (1973).
[25] *Id.* at 50, 312 A.2d at 134.
[26] 65 N.J. 388, 323 A.2d 450 (1974).

[should] infer guilt from that fact."[27] In *State v. Davis*,[28] the Justice wrote to reverse a conviction on the ground, among others, that a custodial statement of defendant to his parole officer had been admitted at his trial, in violation of the *Miranda* rule, notwithstanding defendant had not taken the stand in his own defense. In *State v. Talbot*,[29] Justice Sullivan ruled the defense of entrapment was available to a criminal defendant, despite evidence of defendant's predisposition, where a police informant had supplied heroin to the defendant with which to make the sale for which he was convicted.[30]

In the same vein, the Justice ruled violative of the privilege against self-incrimination the interrogation of a witness before the State Commission of Investigation consisting of a series of "Do you know?" questions concerning known or suspected members of organized crime.[31] It was reasoned that answers to such questions could furnish a link in the chain of evidence to incriminate.[32]

In the contentious area of the law of search and seizure, Justice Sullivan has participated in the steady progression of the Court from the Weintraub Court era, when warrantless searches were rarely invalidated, to the present even-handed enforcement by the Court of the rule that a warrantless search or seizure is prima facie invalid and will be sustained only if the circumstances bring the case within one of the recognized exceptions to the warrant requirement. Note Justice Sullivan's agreement with the Court majority in invalidating warrantless automobile searches in *State v. Slockbower*[33] and *State v. Ercolano*,[34] and his joinder in a three-four dissent in *State v. Carpentieri*,[35] where the majority refused to give retroactive effect to a United States Supreme Court decision striking down the random warrantless search of an automobile.[36]

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[27] *Id.* at 392, 323 A.2d at 452.

[28] 67 N.J. 222, 337 A.2d 33 (1975).

[29] 71 N.J. 160, 364 A.2d 9 (1976).

[30] Other examples of Justice Sullivan's concern for maintenance of fairness in the criminal trial process are his opinions in: State v. Manning, 82 N.J. 417, 413 A.2d 605 (1980) (admission of hearsay statement highly prejudicial and denial of defendant's right to confrontation); State v. McCombs, 81 N.J. 373, 408 A.2d 425 (1979) (reversible error to allow jury selection while defendant is unrepresented); State v. Williams, 80 N.J. 472, 404 A.2d 34 (1979) (rule of reciprocal criminal discovery entitles State to discover only memoranda or statements which defense intends to utilize at trial); State v. Jones, 76 N.J. 208, 386 A.2d 844 (1978) (youthful offender status of defendant considered in evaluation of excessive sentences); State v. Alston, 76 N.J. 1, 384 A.2d 1076 (1976) (allowing drug possessors as well as users into statutory diversion program).

[31] *In re* Ippolito, 75 N.J. 435, 383 A.2d 117 (1978).

[32] *Id.* at 440-41, 383 A.2d at 120.

[33] 79 N.J. 1, 397 A.2d 1050 (1979).

[34] 79 N.J. 25, 397 A.2d 1062 (1979).

[35] 82 N.J. 546, 556, 414 A.2d 966, 971 (1980) (Pashman, J., dissenting).

[36] *See* Delaware v. Prouse, 440 U.S. 648 (1979).

On the other hand, the Justice upheld the right of the police to accost and question a suspicious individual on the street, leading to a discovery of narcotics on his person,[37] and he voted with a four-three majority to validate the "frisk" of a suspect based upon a tip from an anonymous informant that defendant was carrying a gun.[38]

Justice Sullivan advanced the cause of increased independence of state courts from restrictive federal construction of individual constitutional rights in *State v. Johnson*,[39] where he authored the Court's opinion that the validity of a police search based on consent was dependent upon a showing that the subject knew he was free to refuse consent. The United States Supreme Court had held such knowledge not to be an absolute prerequisite under the Fourth Amendment.[40] This is one of a number of recent instances of state courts giving their own constitutions more liberal construction than is being accorded the Federal Constitution by the United States Supreme Court under the incumbency of Chief Justice Burger.

Justice Sullivan has made a substantial contribution to administrative law in this State—an area of increasing complexity and difficulty. In *Division 540 v. Mercer County Improvements Authority*,[41] the Justice walked the tightrope between expansive legislative collective-bargaining authority in the public sector and the Court's reluctance to allow delegation of governmental decisions to arbitrators. While the Court upheld the statutory mandate to county improvement authorities to offer to submit labor disputes to binding arbitration, it stated that matters involving "exercise of delegated police powers" must be excluded from the arbitration process.[42] Further litigation on the subject appears inevitable.

Broad reading of legislative delegation of rule-making authority to state agencies was indulged by the Justice's decisions in *Heir v. Degnan*[43] and *New Jersey Association of Health Care Facilities v. Finley*.[44] *Gilhaus Beverage Co. v. Lerner*[45] required the careful

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[37] State v. Sheffield, 62 N.J. 441, 303 A.2d 68 (1973).

[38] State in Interest of H.B., 75 N.J. 243, 381 A.2d 759 (1977).

[39] 68 N.J. 348, 346 A.2d 65 (1975).

[40] Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

[41] 76 N.J. 245, 386 A.2d 1290 (1978).

[42] *Id.* at 251, 386 A.2d at 1293.

[43] 82 N.J. 109, 411 A.2d 194 (1980) (upholding administrative deregulation of retail price maintenance of alcoholic beverages).

[44] 83 N.J. 67, 415 A.2d 1147 (1980) (validating regulations requiring licensed private nursing homes to accept reasonable number of indigents).

[45] 78 N.J. 499, 397 A.2d 307 (1979).

balancing of administrative investigatory needs with constitutional rights. Justice Sullivan's opinion for the Court upheld an administrative questionnaire to wholesale liquor solicitors in the course of investigating illegal discounts, rebates, etc., in the industry, but the opinion warned that the notice had to inform respondents that they were free to decline to answer questions which might incriminate them.[46]

On occasion, Justice Sullivan was not beyond the common judicial impulse toward result-orientation in statutory construction. In *Makwinski v. State*,[47] he wrote for the majority, holding that a police chief of long service should not lose his pension because of conviction of misconduct in office, the misconduct consisting of allowing a policeman to do repair work on a Knights of Columbus building while on duty. In view of the free community service to which the building was put, the police chief's conduct was not regarded as "dishonorable" within the pension statute disqualifications.[48] So, also, in *White v. Violent Crimes Compensation Board*,[49] the Justice joined a majority of the Court in permitting entertainment of a claim of a disabled crime victim filed beyond the apparently absolute statutory bar of one year after the crime. The Court read into the statute a tolling period for the duration of the disability of the victim.[50] Similar indulgence toward a statute of limitations was shown in Justice Sullivan's joinder in a three-two majority for the Court holding that limitations would not bar a personal injury claim where a plaintiff's lawyer had mistakenly, but timely, filed a previous suit in a federal court which had no jurisdiction in the case.[51]

But Justice Sullivan refused to accord judicial indulgence to a failure to institute a timely action against a foreign corporation which was subject to long-arm jurisdiction in this State. In *Velmohos v. Maren Engineering Corporation*,[52] the Justice dissented from a majority holding that limitations did not bar the action because of an express provision for tolling when a defendant corporation had no agent for service in the State.[53] It was his view that statutes of limitation should be construed to serve their purpose whether the result was to save or forfeit a claim.[54]

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[46] *Id.* at 512-13, 397 A.2d at 313.
[47] 76 N.J. 87, 385 A.2d 1227 (1978).
[48] *Id.* at 91-92, 385 A.2d at 1230.
[49] 76 N.J. 368, 388 A.2d 206 (1978).
[50] *Id.* at 384, 388 A.2d at 214.
[51] Galligan v. Westfield Centre Serv., Inc., 82 N.J. 188, 412 A.2d 122 (1980).
[52] 83 N.J. 232, 416 A.2d 372 (1980).
[53] *Id.* at 296, 416 A.2d at 380.
[54] *Id.* at 298, 416 A.2d at 381.

Justice Sullivan generally shared the risk-spreading philosophy of most modern judiciaries in the areas of negligence, strict liability in tort, and workers' compensation — a trend notably accelerated in New Jersey by the Weintraub Court. In *Rowan v. Mitchell*,[55] he wrote the majority opinion holding that in a comparative negligence situation the jury should be instructed as to the effect on ultimate recovery of their allocation of percentages of negligence — a rule which the minority found would subvert the honest performance of the jury function.[56] In both *Moraca v. Ford Motor Co.*[57] and *Stec v. Richardson*,[58] the Justice took an expansive view of the proofs favorable to the plaintiff. In *Fosgate v. Corona*,[59] he modified the normal rule on allocation of the burden of proof to require, in a malpractice case where the plaintiff was being treated for a previous disease, that the negligent defendant carry the burden to establish what part of the plaintiff's ultimate injury and damage he claimed was attributable to the previous condition rather than to the defendant's malpractice. In spite of the foregoing predilection, however, Justice Sullivan would not join a four-three majority of the Court in *Suter v. San Angelo Foundry & Machine Co.*[60] in modifying the Court's then recent holding in *Cepeda v. Cumberland Engineering Co.*,[61] that the voluntary and unreasonable self-exposure of a machine operator to a known hazard of the machine would bar recovery. The *Suter* majority ruled for an exception to that rule in the context of dangerous machines used in factory employment.[62]

Justice Sullivan was similarly liberal in workers' compensation cases. In *Torres v. Trenton Times Newspaper*,[63] he held that the rate of compensation for a part-time newsboy injured in employment should be fixed on the basis of employment in a forty-hour week. In *Parkinson v. J. & S. Tool Co.*,[64] he joined Justice Pashman's majority opinion granting dependency status to a woman who had divorced the decedent workman before his injury but was cohabiting with him again at the time. An "equitable and humanitarian" approach was deemed appropriate because the subject matter was workers' compen-

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[55] 82 N.J. 336, 413 A.2d 322 (1980).

[56] *Id.* at 356, 413 A.2d at 332 (Clifford, J., dissenting in part).

[57] 66 N.J. 454, 332 A.2d 599 (1975) (plaintiff in products liability action not required to prove specific defect).

[58] 75 N.J. 304, 381 A.2d 789 (1978) (plaintiff's proofs so strong that directed verdict required).

[59] 65 N.J. 283, 321 A.2d 244 (1974).

[60] 81 N.J. 150, 406 A.2d 140 (1979).

[61] 76 N.J. 152, 386 A.2d 816 (1978).

[62] 81 N.J. at 167, 406 A.2d at 148.

[63] 64 N.J. 458, 317 A.2d 361 (1974).

[64] 64 N.J. 159, 313 A.2d 609 (1974).

sation.[65] The Justice's liberality in this area, however, was not broad enough to prevent his dissenting from an award for total and permanent disability of a sixty-year old man, based on the "odd-lot" doctrine, in *Barbato v. Alson Masonry*.[66] The dissent found the Appellate Division's conclusion that the case did not fall within the odd-lot doctrine to be adequately supported by the record.[67]

Correlative with liberality toward accident claimants goes the trend toward judicial construction of liability and indemnity insurance policies against insurers. Justice Sullivan follows the mainstream in that direction. In *State Farm v. Zurich American Insurance Co.*,[68] he joined a four-three majority of the Court in voting for liability coverage in favor of the second in a chain of implied permittees from the owner-insured of the car, on the judicial rationale that "an insured would want his friends to be covered."[69] In *Perez v. American Banker's Insurance Co. of Florida*,[70] the Justice held for the Court that a policy extending uninsured motorist's coverage could not require corroboration of the facts of a hit-and-run accident when the statute mandating such coverage in automobile policies did not authorize such a provision. Another Sullivan opinion of this genre is *Kissil v. Beneficial National Life Insurance Co.*[71] Plaintiff purchased a major medical insurance policy covering family members including newborn children "upon attaining the age of fifteen days."[72] According to the medical experts, plaintiff's child was born with cystic fibrosis, and the disease is congenital. Yet the five-two majority opinion held that there was a jury issue as to whether the disease "manifest[ed] itself during the first fifteen days of life."[73] If it did not, there would be coverage.[74]

Justice Sullivan entertained strict views of the standards of conduct to be expected from members of the bar. Two of his opinions, one a dissent, are illustrative. In *In re Callan*,[75] where an escrow fund in the control of a tenants' association was created *pendente lite* for rents payable during a landlord-tenant litigation, the association, to the apparent knowledge of its counsel, distributed the funds to the

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[65] *Id.* at 168, 313 A.2d at 614.
[66] 64 N.J. 514, 537, 318 A.2d 1, 14 (1974) (Sullivan, J., dissenting).
[67] *Id.*
[68] 62 N.J. 155, 299 A.2d 704 (1973).
[69] *Id.* at 179, 299 A.2d at 717.
[70] 81 N.J. 415, 409 A.2d 269 (1979).
[71] 64 N.J. 555, 319 A.2d 67 (1974).
[72] *Id.* at 557-58, 319 A.2d at 68.
[73] *Id.* at 561, 319 A.2d at 70.
[74] *Id.*
[75] 66 N.J. 401, 331 A.2d 612 (1975).

tenants in violation of a court order. Contempt proceedings were brought against counsel for failing to advise the court of the impending distribution. Although holding that contempt had not been committed, Justice Sullivan reprimanded the attorney for "poor judgment" in not bringing the matter to the court's attention.[76] A three-judge minority expressed the contrary view that counsel's primary duty in the circumstances was to his client, not the court.[77]

In *In re Sears*,[78] the Court faced the disturbing problem of appropriate discipline for a lawyer who had an exemplary record of public service to the State over a long career but who had been found to have delivered $200,000 in cash, ostensibly to a national presidential election campaign committee, but in fact to influence the outcome of an SEC investigation of the lawyer's client. Balancing the competing considerations, the Court voted for a three-year suspension from practice. Justice Sullivan alone voted for disbarment, believing no lesser discipline was warranted for an attempt "to corrupt the processes of government."[79]

In *Vreeland v. Byrne*,[80] the Justice found himself in the difficult position of having to pass upon the constitutionality of the appointment of a Supreme Court Justice, particularly in the context of an equal division of the other six members of the Court. The majority, including Justice Sullivan,[81] held the appointment violated the consti-

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[76] *Id.* at 407, 331 A.2d at 616.

[77] *Id.* at 408-11, 331 A.2d at 616-18.

[78] 71 N.J. 175, 364 A.2d 777 (1976).

[79] *Id.* at 202, 364 A.2d at 791.

The views expressed by Justice Sullivan in the *Sears* case are mirrored by his attitude toward probity in public employment. For example, in State v. Savoie, 67 N.J. 439, 341 A.2d 598 (1975), he dissented from the Court's construction of N.J. STAT. ANN. § 2A:105-1 (West 1969) as penalizing acceptance of money by a public official from a citizen (there a "Christmas" gift of $150 or $250) only if the payment was made in return for the performance by the official of his duties and not if made as a "pure gift." 67 N.J. at 449, 341 A.2d at 604 (Sullivan, J., dissenting). It was Justice Sullivan's view that such construction "seems to give sanction to the odious practice of a public officer accepting 'gifts' . . . from persons who stand to benefit or lose from the way in which the public officer performs his duties." *Id.* at 465, 341 A.2d at 612 (Sullivan, J., dissenting).

This holding may be compared to Knoble v. Waterfront Comm'n, 67 N.J. 427, 341 A.2d 593 (1975), where the Waterfront Commission had revoked the employment license of a port watchman for falsifying payroll records to the advantage of a relative in the amount of $444.50, and the Appellate Division had reduced the penalty as too severe to one year's suspension. Justice Sullivan, stressing the requirement of "honesty as a condition of employment from those engaged in the sensitive work of safeguarding property on the piers," *id.* at 431, 341 A.2d at 595, restored revocation as not arbitrary or unreasonable. *Id.* at 432, 341 A.2d at 595.

[80] 72 N.J. 292, 370 A.2d 825 (1977).

[81] *Id.* at 307, 370 A.2d at 833 (Sullivan, J., concurring).

tutional prohibition of appointment of a member of the Legislature during his elected term to a position whose emoluments were increased during that term. The appointee was a Senator, and the salary of Supreme Court Justices had been increased during his term. An exception to the increase was held to constitute invalid special legislation, but otherwise severable.[82] In joining the majority, Justice Sullivan opined that salary increases to meet the increasing cost of living should not reasonably disqualify a legislator so voting, but that such a conclusion would require a "substantial modification of the constitutional provision, a matter beyond the province of the Court."[83]

Justice Sullivan was firm in his view of improper legislative classification, even if a majority of the Court disagreed with him. Thus, in *State v. Corbitt*,[84] the Justice dissented from the decision of the majority that the New Jersey law on sentencing for murder was valid.[85] The statute makes mandatory a life sentence of an accused who goes to trial and is convicted. One whose plea of *non vult* is accepted by the court is eligible to a sentence for any term of years not exceeding thirty, which can be suspended. The dissent held that the scheme denied equal protection to an accused who elected to go to trial and chilled his exercise of the option to go to trial.[86]

In *Robbiani v. Burke*,[87] Justice Sullivan's views as to an arbitrary classification again failed to prevail with the majority. Under challenge there was the state school lunch law, which exempted from the program school districts wherein less than five-percent of the enrolled pupils qualified as "needy" for free or reduced-priced lunches. The Justice declared that the classification "[did] not make sense" and was arbitrary because the program provided lunches for children able to pay as well as for the needy.[88]

The Court's necessary involvement at times in matters of delicate family relationships is illustrated by the case of *Mimkon v. Ford*.[89] The controversy there was over visitation rights of a grandparent whose daughter, parent of a nine-year old child, had died. The father then married a woman who adopted the child. The litigation reflected a tension between a statute granting grandparents rights of visitation in such an exigency and another statute protecting an adop-

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[82] *Id.* at 301, 370 A.2d at 830.
[83] *Id.* at 308, 370 A.2d at 833-34 (Sullivan, J., concurring).
[84] 74 N.J. 379, 378 A.2d 235 (1977), *aff'd*, 439 U.S. 212 (1978).
[85] 74 N.J. at 403, 378 A.2d at 247.
[86] *Id.* at 403-05, 378 A.2d at 247-48 (Sullivan, J., dissenting).
[87] 77 N.J. 383, 390 A.2d 1149 (1978).
[88] *Id.* at 396, 390 A.2d at 1155 (Sullivan, J., dissenting).
[89] 66 N.J. 426, 332 A.2d 199 (1975).

tive family from disturbance by natural parents.[90] The Court held that the visitation by the grandparent should be allowed over the objections of the child and the adoptive and natural parents if a hearing indicated such visitation would be in the best interests of the child.[91] But Justice Sullivan, concurring, emphasized that if the new family relationship were impaired or the child harmed by the visitation it should be discontinued.[92]

A similarly sensitive issue was presented to the Court for adjudication in *In re Estate of Jackson*.[93] The Court considered whether a county welfare board which had furnished financial aid to a dependent child pursuant to statute was entitled to reimbursement therefore from a tort recovery on behalf of the child for personal injury, the mother having signed an agreement to repay. After review of relevant state and federal legislation, Justice Sullivan held there was a right of reimbursement except for that part of the recovery needed for the child's future medical expenses.[94] Thus he wisely accommodated the demands of the statute with the needs of a helpless child.

Time and space preclude a more extensive survey of the hundreds of opinions in many areas of the law from the pen of Justice Sullivan during his nine productive years on the Court. Opinion writing is of course only a part of the work of a judge. The strong voice of Justice Sullivan was influential in the outcome of many cases where opinions were written by others, and his suggestions and criticisms frequently strengthened the dispositions of his associates. The enforced retirement of the Justice leaves a void which will be difficult to fill. His contributions, both quantitative and qualitative, stand as a rich legacy from which his successors will draw for precedent and wisdom for a long time to come.

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[90] The statutes involved were N.J. STAT. ANN. §§ 9:2-7.1, :3-17 to 30 (West 1976).

[91] 66 N.J. at 438, 332 A.2d at 205.

[92] *Id.* at 438-39, 332 A.2d at 205-06 (Sullivan, J., concurring).

[93] 79 N.J. 517, 401 A.2d 517 (1979).

[94] *Id.*