

A TRIBUTE TO JUSTICE WORRALL F. MOUNTAIN

*The Honorable Sidney H. Schreiber**

I had the good fortune of serving some five years on the New Jersey Supreme Court with Justice Worrall Mountain. Upon reflection of that experience, the first thing that comes to mind is the man. Justice Mountain was a good and kind human being: ever thoughtful of others, never an unkind word and always a gentle man.

I do not mean to overlook his erudition as a judge. It was Justice Mountain who authored the leading opinions concerning equitable distribution in a matrimonial dispute. In *Painter v. Painter*, 65 N.J. 196, 320 A.2d 484 (1974), he upheld the constitutionality of “equitable distribution.” It is noteworthy that he rejected an attack that the standard was unduly vague because the phrase, as he put it, “simply directs and requires that the matrimonial judge apportion the marital assets in such manner as will be just to the parties concerned, under all of the circumstances of the particular case.” He followed up that thought simply by reminding us “[t]hat a judge shall do equity is a notion understood by lawyer and litigant alike.” *Painter* was vintage Mountain rationale — straightforward, clear, forceful and unimpeachable.

Justice Mountain recognized the line that had to be drawn when evaluating public policy and private interests. He acknowledged that each exercise of the police power involved some incursion upon individual rights. Exercising his perceptive judgment, Justice Mountain found that the police power was properly utilized in determining that the equitable distribution statute applied to marriages predating the effectiveness of the statute. See *Rothman v. Rothman*, 65 N.J. 219, 320 A.2d 496 (1974) (observing that the statute sought “to right what many may have felt to be a grave wrong.”).

When the legislature acted to the extent of substantially depriving an individual of his property, Justice Mountain held that even absent a physical invasion of the property or a direct legal restraint on its use, just compensation had to be paid to the

* Justice Schreiber served on the New Jersey Supreme Court from 1975 until 1984. The justice is currently Of Counsel in the Morristown, N.J., law firm of Riker, Danzig, Scherer, Hyland & Perretti.

owner. In *Washington Market Enterprise v. Trenton*, 68 N.J. 107, 343 A.2d 408 (1975), Justice Mountain, writing for a unanimous court, held that where the threat of condemnation had such a substantial effect so as to destroy the property's beneficial use, there has been a taking for which the owner had to be compensated.

Justice Mountain was sensitive to the balance between the judicial function and the legislative prerogative. It was his thesis that the solutions of many social problems would be more speedily and effectively devised by the legislature than by the courts. This sensitivity did not thwart his efforts to satisfy modern demands for updating common law principles. Thus, he had no hesitancy in filling a gap in a will on the basis of probable intent. *Engel v. Siegel*, 74 N.J. 287, 377 A.2d 892 (1977).

The people of this State, particularly the bar, have been enriched by Justice Mountain. We are the beneficiaries of his legacy so eloquently expressed in his opinions. They are embedded in our jurisprudence. That memory will be a blessing for all.