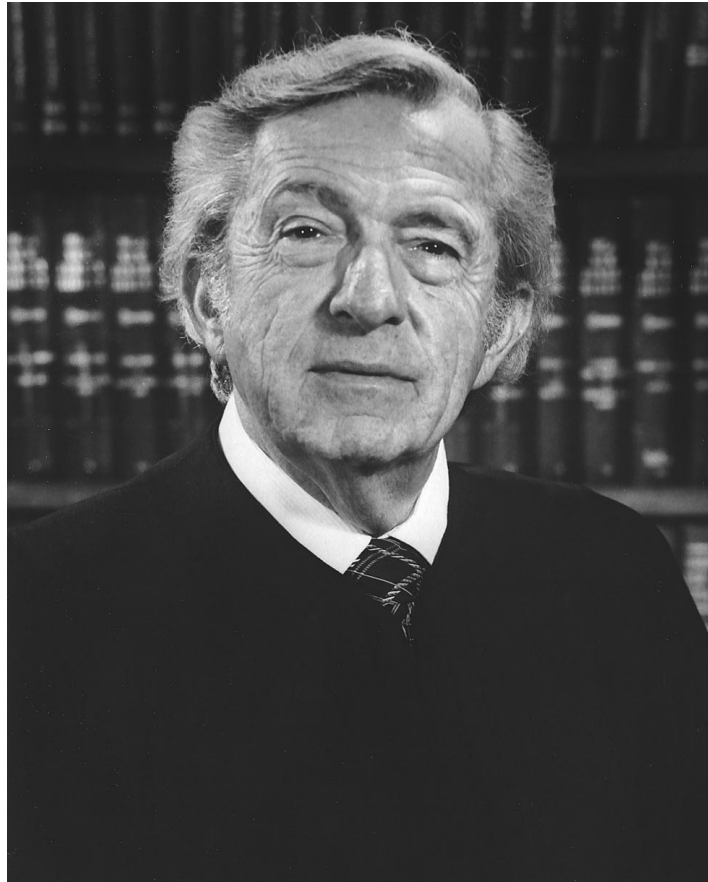


Supreme Court of New Jersey

In Memoriam
HONORABLE
MORRIS PASHMAN

Trenton, New Jersey
October 23, 2000



HONORABLE MORRIS PASHMAN

Proceedings

CHIEF JUSTICE PORITZ: Former Justices of our Court, former and present Judges, distinguished guests. The Court convenes today to honor and remember the life and career of Justice Morris Pashman. We have come together to celebrate the achievements of a man who was best described by Justice Handler when he said of his colleague and his friend that Justice Pashman's singular dedication and commitment to the life of the law was second only to his dedication to his family.

We will hear from Justices of the Court, representatives of the legal community, associates and former law clerks of Justice Pashman, and from his son. They will remind us of the many facets of this rare man who sat on our Court for ten years but left an indelible stamp on our work through the almost two decades that have followed his tenure. We hear his footsteps still and will as long as we reach for the ideal of justice he envisioned so clearly. That sense of our common humanity and of our obligation to ensure equality under the law for those least able to claim their birth right for themselves—those who lack power and wealth. Let us then share our memories today of Justice Morris Pashman.

First, I would like to call on the Honorable Sidney Schreiber, retired Associate Justice, a colleague and friend of Justice Pashman.

JUSTICE SCHREIBER: Chief Justice, Justices, the last time I addressed this Court and I looked up at the Court, I remarked that they were an awesome looking group from this viewpoint. I must say today that it's a much gentler and kindlier looking Court than I saw at that time.

IN MEMORIAM

I appreciate the opportunity of saying a few words on this occasion in memory of Justice Morris Pashman. His philosophy and career will be covered by others. But I do want to add that Justice Pashman was a powerful force on this Court. He spoke loudly, vigorously, and clearly. And when his social consciousness was stirred, he had the power of his convictions. He would not be swayed.

He was a great help to his peers not only in exploring the substantive issues of cases but also in reviewing circulating opinions. He had a habit of using red ink to mark his suggested changes on an opinion, and when he finished some opinions, he would say they resembled, as he put it, a bloody battlefield.

Morris and I would travel on the train each week to Trenton. They were memorable rides. On conference days, we would discuss some of the cases that we were to take up on that conference day, and at times, our discussions were quite vigorous. And generally we ended up in agreement. Came the conference and Morris would reverse course, whereupon I would remind him of his previous position, which led to his warm laugh and an "I changed my mind" as he returned to his original position that he had advocated on the train.

A similar circumstance occurred with respect to some of his opinions. The Court would be considering a circulated opinion by Justice Pashman. Some person would suggest some modification and Morris would reply, "I'll take care of that." Then would come the redraft and not one word would have been changed.

Justice Pashman was the most gregarious member of this Court. When we would attend some Bar function, he made it his business to chat with everyone in the room. He was the perfect example of a good will man who made it his business to be attentive, to listen, and whether called upon or not, to help you. After we both retired, Morris made it his business to call me about every week or ten days

HONORABLE MORRIS PASHMAN

whether I was up here in New Jersey or in Florida, and he was always interested in my health and that of my family and in what we were doing.

He loved this Court and he relished being a part of it. Even after he retired, he kept in touch with the Chief Justice and other members of the Court. He was so beloved that the Court gave him a party on his eighty-fifth birthday. I do not recall any other Justice who has been so honored.

I have fond memories of my association with him. He was more than my colleague. He was my friend. His memory will be and has been a blessing for me and others who were fortunate enough to know him.

CHIEF JUSTICE PORITZ: Thank you, Justice Schreiber. Our next speaker is Steven Kudatzky, one of the Justice's former law clerks.

MR. KUDATZKY: It is my honor and privilege to speak to the Court on behalf of Justice Pashman's former law clerks, many of whom have traveled great distances to be here today.

We tried to caucus together and come up with some amusing anecdotes that we might share with the Court but we concluded there was nothing that . . . that the really good stories were such that we could not share them publicly. So I honestly don't have anything that I can share at this forum.

I'd like, however, to read the words of Professor Joseph Singer, who clerked for Justice Pashman in his last year on the Court and is currently a member of the faculty at Harvard Law School. And I do this knowing the Court's not too keen on having things read to it, generally speaking. But these words were so compelling—and I think said it all for all of us—that I would beg the Court's indulgence. This is a dedication to a treatise on property law that Professor Singer will be publishing next year and it's dedicated, of course, to Justice Pashman.

IN MEMORIAM

“Justice Pashman served on the Supreme Court of New Jersey with distinction. My time clerking with him taught me much of what I believe I know about making a good legal argument. He tried to see every case from the point of view of both sides. More fundamentally, he considered how the ruling of the Court would affect those not in the courtroom, especially those who could not speak for themselves. He sought to explain his decision to everyone who needed to understand it, including lower court judges, lawyers, the public at large, and most importantly, the losing party.

“He understood that hard cases often require lawmakers to protect one legitimate interest at the expense of another equally legitimate interest. The doing of justice sometimes implied the doing of injustice. The ultimate constraint on judges, he believed, was not the stricture of rules, however rigidly applied, but the obligation to explain to the losing side why they were losing. This required the judge to empathize with both sides and to really understand the position being rejected. It is not that he thought the judges could construct arguments that would induce the losing party to agree with an adverse outcome. He did not think formulas put an end to controversy. It is the thought that the job of judging entailed the attempt to feel the pull of competing values at the moment of making a decision. The obligation to explain the legitimacy of a losing argument also entailed an inherent limit on what the winning side could legitimately claim.

“To Justice Pashman, judging was not a technical activity but one that required practical wisdom, a trait he possessed in abundance. He will always be, for me, the model of the good Judge.”

I think on behalf of all of the clerks, we share that view and knowing Justice Pashman’s preference for things to be short and not overly laudatory, I will leave it at that. Thank you.

HONORABLE MORRIS PASHMAN

CHIEF JUSTICE PORITZ: Thank you, Mr. Kudatzky. Barry Epstein, President of the New Jersey State Bar Association will now speak to us.

MR. EPSTEIN: I could never have imagined as a young attorney that in the year 2000, I would be President of the State Bar, and I think of you had told me that so many years ago, that I would actually be of the State Bar Presidents, the one chosen—because of luck really—in terms of when I served my term, to have the opportunity to speak to this Court about—I always called him Judge Pashman—is something that I think is just a unique opportunity in my own life. I'm honored and I'm delighted to be here on behalf of myself personally and the New Jersey State Bar Association.

This is somewhat of a daunting task and the reason is anybody whoever sits down to try to make remarks about an individual or an event often has material, new material with which they can work. The problem with Judge and Justice Pashman is that I think so much has been said about him. I don't think that any of us in this room have heard more wonderful and kind things said about this individual as a Judge and as a person that there's much new that can be said about it which is not repetitious.

I would like to say, though, that much has been said and written recently about the Wilentz Court and many of us were present last week at an event in New Brunswick. But I might remind you that I believe Judge Pashman, Justice Pashman came to the New Jersey Supreme Court before Justice Wilentz, and Justice Pashman had been serving there for a number of years before that. And so when we look back at the great history of the New Jersey Supreme Court in the seventies and into the eighties, I think that in many ways we could just as easily have called it the Pashman Court as we do the Wilentz Court. I know from speaking to young lawyers often, including my son, there's not a law school that you could go to in this country where you take any number of courses where you will not

IN MEMORIAM

read more than one opinion which was authored by Justice Pashman. He was truly a giant.

I had the opportunity, and I think I can bring a different perspective to this. I was admitted to practice in 1965. He was then the Assignment Judge in Passaic County and I practiced in Passaic County during my first year of admission. When I began my practice in Bergen County where I've been located now for over thirty years, he was the Assignment Judge in Bergen County. So I dare say, except for the law clerks in this room, I probably appeared before him as much as anybody in this room and I appeared before him on a regular basis.

He had all the qualities that one would want to see in a judge. He was smart. He was prepared. He was gentle. He was kind. And he was extremely courteous. Maybe I can just give you some of my other perspectives as an attorney.

Especially today, in a day of age when we worry about how attorneys are reacting to the system. I think Justice Pashman was one of the first people around who had what I called an open door policy. He worked in the third floor of the Bergen County Courthouse where he presided for many years. If you had a problem as a lawyer, whether it dealt with the calendar, whether it dealt with a family situation which impacted on your profession or your personal life, if it dealt with a case or some dilemma that you had, you could approach his chambers. There was usually somebody outside with a sheet of paper or a pad and you would say why you were there. Why were you there, the gentleman would ask. And you would always say, as many lawyers did, I would just like to speak to Judge Pashman for a few minutes or a couple of minutes. And I can say with true conviction that whoever wanted to see this man, as busy as he was, he saw everybody. And he would make you feel special. He would make you feel important. But above and beyond that, when you had your two or three or five minutes with him, when you left that room, no matter what

HONORABLE MORRIS PASHMAN

the problem was, you felt better than you did before you walked in.

And when I attended his funeral last year with throngs of other people and I left, what I could not help but feel was the Judge Pashman just represented probably a better and good time.

As I think Justice Schreiber said, he had the ability to be social and to be out. It seemed no matter when you met him, and if you did have the good fortune to meet him, he would never forget your name. And he was proud of that ability to remember your name. Just last year at our Bergen County Beefsteak Dinner, I was standing with another lawyer, and he was always very gracious and kind to me. He came over to me and said hello to me. He knew I was about to become President of the State Bar, and one of the other attorneys put his hand out to Justice Pashman and said "Justice, I'm so and so." And Justice Pashman looked at him and said, "You didn't have to tell me your name." And that's what he was and that's what he was like.

As an Assignment Judge during the era before computerized lists, he had his own special way of running the calendar. He kept these little blue cards and I don't know how he was able to write all the tons of information that he could keep on these blue cards. But I can tell you this, if you came back a month later and you asked for an adjournment or you had a problem, it had better be legitimate because he had all the information down from the prior event on those blue cards.

He was just special and I am honored that I was able to appear before him as much as I did and I am honored that I could speak here today especially because I have a unique, I think, relationship with Bergen County having practiced there virtually my whole career and having all those contacts with him. I'm also I'd say akin to the Pashman family whom I've known for many years as well

IN MEMORIAM

and I just don't think that this Court today could be performing a higher deed. Thank you.

CHIEF JUSTICE PORITZ: Thank you, Mr. Epstein. We'll hear now from Justice Pashman's first law clerk, Barry Croland.

MR. CROLAND: Chief Justice Poritz, sitting members and retired members of this great and well respected Court, Judges, members of the family and friends, fellow law clerks. Perhaps I bring a somewhat different perspective to the podium today because I was privileged to know Justice Pashman for thirty-eight years of my professional life.

My relationship with him began with an unsolicited and unexpected telephone call on December 2, 1961. While at home, I received a call from someone who identified himself as Morris Pashman. I inquired as to who he was and he informed me that I would be working with him on December 4th. I found the telephone call to be disarming, confusing, and somewhat upsetting being young, naïve, and not anticipating what my lifetime would be with him. I asked him, "Where have you come from?" I had just finished a four month clerkship with a Judge who was retiring from Bergen County Chancery. The Judge said call your father-in-law. He'll help you out with this.

I called my father-in-law and asked him, in terms that I cannot repeat before this body, "Who is this man?" And he explained that he was a friend from Passaic, New Jersey, and that my lifetime would change by meeting him. I asked for one favor from my father-in-law, an opportunity to meet the person with whom I would be working on December 4th. And he said by all means. Call him on the telephone. I did that and on December 3rd, I went to a home in Passaic, New Jersey, and in five minutes of being with him, beyond being captivated, charmed, educated without being lectured, I was a Morris Pashman fan for life. So enthused was I by this first meeting that I confess that I

HONORABLE MORRIS PASHMAN

wanted to go to my car and drive directly to Jersey City even though it was Sunday.

What did we do? Well first, if you worked for Justice Pashman, you didn't work for him, you worked with him. The first two weeks of the clerkship were spent in the normal kind of activities in the courtroom but he created an inventory of the cases before him on cards, which he was very famous for, and on a piece of paper which I can tell you was no more than five by seven and had at least five thousand telephone numbers, addresses, birth dates, wedding dates, and any other information that a left-handed person could write concentrically, as only he could write. But he found twelve cases that weren't even on the list, and he created a system in the Chancery Division of Hudson County which did not exist before.

He permitted me to be in chambers when he spoke with lawyers. He spoke on occasion with lawyers and litigants. I suspect it was much like a young painter observing one of the masters and being privileged in knowing to sit there and be quiet and try to absorb some of the greatness which had already exhibited itself to the benefit of our great court system.

It is true that in the Spring of 1962, Justice Pashman, at the request of Chief Justice Weintraub, returned to Passaic County and tried a conspiracy to commit murder trial, *State versus Wade*, *State versus Wade* being at the time the longest murder trial purportedly in the history of Passaic County where Justice Pashman was the sitting County Court Judge. He went for ten days. He tried the case, returned to Hudson County, and by June of 1962, he had no more active Chancery trials ready. So he reached out to the Assignment Judge of Hudson County and asked for non-jury civil trials to be held in the courtroom which I could only describe as being on top of the kitchen of the jail of Hudson County and God knows what the food was like there.

IN MEMORIAM

I was asked twenty five years later, after leaving the clerkship, how long did you clerk for Justice Pashman in the long years ago. I explained that when you clerk for Justice Pashman, it's a lifetime commitment. You never become anything other than his clerk.

After I left the clerkship, I was privileged to appear before him as a sitting Trial Court Judge and then what I consider to be the most significant day of my life, other than the marriage of my wife, Joan, I argued a case before the New Jersey Supreme Court in a trilogy of cases where the Chief Justice at the time permitted oral argument to be held for the entire afternoon. The experience as an attorney before him was as invigorating, stimulating, and challenging as it was to be his law clerk. There was an expectation that he would know more about the case than you knew. He never disappointed you. There was knowledge that when you had done research within the state that he would be beyond the state and ask questions which would get to the heart of the matter. But it was a thrilling experience first to be before this Court and second, to be privileged to argue a case before him.

It is special irony, perhaps cruel, that the Constitution he loved so much, the Constitution he revered, required his retirement. He did not want to leave this court. I suspect he didn't leave this Court although he certainly was no longer a sitting Justice. He loved the individuals with whom he sat. He respected them. He shared with me over the years his feelings about this Court, this State, the substantive and procedural law of this State and he said it always with great pride and humility.

After he retired, the late Chief Justice Robert Wilentz, in an article written for the Justice Morris Pashman Symposium for the Rutgers Law Review had this to say about Justice Pashman:

“A remarkable man and jurist retired from the Bench in September leaving behind him an extraordinary body of

HONORABLE MORRIS PASHMAN

work. Justice Pashman is the Supreme Court's most prolific opinion writer. He is a superb administrator." And then most significantly he said, "His capacity for work is phenomenal. A capacity matched by great effectiveness. He is incapable of wasting time. It is most uncomfortable if the circumstances force him to do so.

"There is a spirit about Justice Pashman and enthusiasm, and optimism. All part of a personality of enveloping warmth. Given the slightest encouragement, he becomes a friend, a helper, an advisor. He pats everyone on the back. And whether it be in recognition, in encouragement, in hope or in simple friendship makes little difference."

To paraphrase one of his better known lines, he cares about people. His captivation with people is matched by his fascination with knowledge. This is perhaps an understatement. This is a most complex man with inexhaustible energy and an irrepressible drive to express himself. This State, Judiciary and especially the Court have been his love and his life. He left the Bench. He remained active in the administration of justice and contributing to both substantive and procedural law in this state.

He chaired committees. He co-chaired committees. When he became concerned that the level of civility exhibited by some attorneys to members of the Court, some attorneys to each other, some members of the public to this body, he did something which he had so much in the past. He sought solutions. Justice Pashman stated on more than one occasion to me most people can recognize the problem. Few people make attempts to find solutions and the truly great individuals are those that implement solutions which are fair to the majority of the people.

Justice Pashman took an active role in the American Inns of Court, which are dedicated to professionalism, ethics, and civility. Civility was an important issue for him during the years he was off the Bench.

IN MEMORIAM

My final experience with Justice Pashman was, I suspect, a dream of every lawyer, to be co-counsel with the person you considered your friend and mentor. And as a co-counsel, he was better than advertised. He brought to meetings with clients the wisdom, the calm, a direction, advice, therapeutic and otherwise, which assisted people in difficult times. It was his suggestion, as co-counsel in a highly complex case, then enabled our mutual client to follow a case from the trial court up through this Court with decisions at every level in less than thirty days. He suggested simply—file your respondent's brief at the same time the appellant's brief is filed. A simple suggestion to save time and a simple suggestion that was rewarded.

The full depth and breadth of his humanity and his friendship and his genuine concern, I believe he would permit me to share with you now, occurred in July of 1999 when I faced certain issues. And he called me, as he had called me so many times in the past and suggested that we have lunch, which we did. And at lunch, we discussed the issues and the solutions and he was convinced that I was going about it in the right way and he indicated that. But he was concerned about everyone. His little filing system before they had palm pilots was much more effective, much more genuine, much more caring.

Seven to ten days before he died, he telephoned me again and apologized, unnecessarily, for not seeing me. We planned to meet the first week in October, 1999. On October 4, 1999, I picked up the newspaper and found that he had died. We never had our last meeting, but I confess to you that the meetings continue at least in my mind.

Today I say publicly thank you, Justice Pashman, for that unsolicited and unexpected telephone call on September 2, 1961. Thank you for providing me, the court system, my fellow lawyers and the citizens of this State with the fruits of your tireless and unselfish commitment to the law and the sound and even-handed administration of justice. Thank you.

HONORABLE MORRIS PASHMAN

CHIEF JUSTICE PORITZ: Thank you, Mr. Croland. Next, Justice Pashman's son, Louis Pashman, will speak to us of his father.

MR. PASHMAN: Chief Justice, Justices, Judges, colleagues, friends, and family. I had the extraordinary opportunity shortly before my father's death to speak at a portrait dedication in Passaic County and to acknowledge publicly his accomplishments and my appreciation for his professional and personal legacy to me. I was also able, at his funeral, to both eulogize and mourn his death. I, therefore, view this occasion somewhat differently and I want to take advantage of it to remind us all how much he loved being a lawyer and a Judge and what a grand profession this really is.

He was admitted to the Bar in 1936. His judicial career ended—not by his choice—in 1982. His legal career never ended. He got sick on Friday, September 24, 1999. On Thursday, September 23rd, he was at a meeting of the Advisory Committee on Judicial Conduct.

In cleaning out my father's home and office, I found things that even I, who knew he threw nothing away, was somewhat amazed at. This is the New Jersey Law Journal from August 27, 1936. He saved this. It was addressed to him at the office at which he clerked in the days when you clerked for practicing lawyers, and it had to have been the first or very nearly the first Law Journal he received. He didn't keep it as a souvenir. He kept it because of the lead article in it. It was an article entitled *Ideals And The Young Lawyer*, by a gentleman named George Farnam who was former Assistant Attorney General of the United States. There it was in 1936 and Mr. Farnam spoke of his concern, and I'm quoting Mr. Farnam now, about a rapidly shifting emphasis in moral values in the growing commercialism of the law, in the evolution of the modern law factory, in highly developed commercial specialization, and in the gradual transformation in its essentials of the profession into a business.

IN MEMORIAM

Mr. Farnam believed, and I think my father believed, that we had to fight against that. Mr. Farnam quoted Justice Holmes when Justice Holmes said without ideals, what is life worth. They furnish us our perspectives and open glimpses of the infinite.

I truly believe my father tried to live his life professionally, judicially, and personally remembering his ideals. Of course, he did have to make a living. This is the court jacket from a case that he argued in February, 1939. He had become a Counselor at Law in 1939 and I have to assume this was the first trial he had. It was in the Passaic District Court. He was a sole practitioner practicing in Passaic at the time. He won \$155.70.

He spent the next sixty years doing what he loved and never losing sight of his ideals. It was not those ideals alone, however, that marked one of his most important contributions. His administrative skill was legendary. Indeed, I must confess that one of the things I tried to observe and learn was how he managed to balance and complete so many tasks with such finesse.

Chief Justice Wilentz commented that my father knew the strengths and weaknesses of more Judges in New Jersey than probably anybody else in the state. That management ability was the kind of skill that made me take a step back and just say to myself, "How does he do that?"

There can be no doubt, however, that his most lasting and important contribution to the profession was his humanity. In *MacMillan versus The Division of Taxation*, the Appellate Division had held that the residents of a life care facility were not entitled to property tax rebates. In doing so, the Appellate Division said that judges must not succumb to humanistic pressures. That was anathema to him. The Supreme Court affirmed the Appellate Division. In my father's dissent, he took strong issue with the notion that humanistic considerations were irrelevant. Indeed, he

HONORABLE MORRIS PASHMAN

believed that the Court should presume the opposite, that the Legislature acts with those considerations in mind.

There are countless other examples of his finding a way to reach what he believed to be a human result. He cared not only that a ruling set forth the right general principles; it was equally important that the parties in the individual case being decided be dealt with fairly and justly.

In 1971, my father was Assignment Judge in Bergen County. He had not been getting what he believed was appropriate support from the Freeholders. He reminded them that when he was the Assignment Judge in Passaic County, he had sued the Passaic County Freeholders. The Bergen County Freeholders then appropriated 1.1 million dollars for new and remodeled court rooms. After achieving that, he found himself down nine judges. The calendar was not up to his standards. He was clearly upset that all the work he had done was being undone. He implored Chief Justice Weintraub to help and he did it using these words, "A wife seeking assistance because of an errant husband is just as important a social matter as a defendant charged with a crime. Left unattended, that wife and her children will keep our criminal courts very busy several months and years later.

"Serious negligence trials by poor plaintiff families which are delayed and unattended will keep the criminal courts busy shortly thereafter. Social justice, in my opinion, is equally as important as criminal justice. I know this cry of alarm is not new but I can only hope for more shrill."

I would not presume to guess what inscription my father would want on some hypothetical memorial but some of those words that Barry Croland quoted, which Chief Justice Wilentz wrote, I think would have to be awfully close, when Chief Justice Wilentz said this State, the Judiciary, and especially the Court have been his love and his life. And they were. I thank you for this memorial service

IN MEMORIAM

and for the opportunity of letting me say these few words. Thank you.

CHIEF JUSTICE PORITZ: Thank you, Mr. Pashman. Our last speaker is another friend of Justice Pashman's, Justice Gary Stein, who speaks to you on behalf of the Court. Justice Stein.

JUSTICE STEIN: Chief Justice, present and retired members of the Court and of the Judiciary, members and friends of the Pashman family and of Justice Pashman, and former law clerks of the Justice.

The Court thanks Justice Schreiber, Steven Kudatzky, Barry Croland, Barry Epstein, and Justice Pashman's son and colleague, Louis, for their beautiful tributes to our late Justice.

Morris Pashman was an extraordinary man. He clearly ranks among the most illustrious and influential members of New Jersey's Judiciary in the twentieth century. He merits that rank among the brightest stars of our Judiciary because of the fierce commitment to justice for the disadvantage that characterized his opinions and because of his unmatched administrative skills and achievements.

To put in sharper perspective the uniqueness of Justice Pashman's rhetoric, especially in dissent, I quote first from Chief Justice Wilentz.

For the past three years, and probably for several years before, Justice Pashman wrote more majority opinions, by far, than any other member of the Court. The misconception of the Justice as a dissenter stems, I believe, from the quality of his dissenting opinions. When he disagreed, he dissented in words that rang with the fervor of his beliefs, unrestrained by the need to forge a position [that] reflected the consensus of the Court. No secrets are betrayed when I say that the almost unbroken liberal, activist theme of his dis-

HONORABLE MORRIS PASHMAN

senting opinions constitutes a totally accurate portrayal of Justice Pashman's philosophy.

One of the most graphic and remarkable examples of Justice Pashman's activism, to which Chief Justice Wilentz referred, is displayed in his concurring and dissenting opinion in *Robinson v. Cahill IV*¹. To put that specific chapter of our thirty-year-old urban-school-based litigation in context, recall that in *Robinson I*², the Court had held unconstitutional the State's reliance on local property taxes to fund public school education, and required the State to remedy that constitutional violation. Recall also that in 1975 the Legislature passed remedial legislation, but failed to provide funding for the provisions of the law intended to remediate the constitutional violation, resulting in this Court's famous order in May 1976 effectively shutting down the state's public schools until funding was procured.³

In *Robinson IV*, decided a year prior to the order that closed down the public schools, the Court, in an opinion by Chief Justice Hughes, had ordered interim relief by mandating that approximately three hundred million dollars in State aid be distributed in accordance with the equalization aid formula rather than as provided by law, thereby increasing financing for poor school districts.

Justice Pashman concurring in part and dissenting in part, objected that the Court's remedy "was not commensurate with the magnitude and the importance of the wrong." Instead, expressing a view adopted by this Court almost twenty years later in *Abbott v. Burke IV*,⁴ he proposed a remand to the State Board of Education "to formulate statewide standards for educational quality and to evaluate each school district to determine whether it is in compliance with those standards and if not in compliance, whether the

-
1. 69 N.J. 133 (1975)
 2. 62 N.J. 473 (1973)
 3. 70 N.J. 155 (1976)
 4. 149 N.J. 145 (1997)

IN MEMORIAM

district has the financial ability to comply without further State assistance.”⁵ He stated that the Board should fully “comply with the mandate of the Court . . . in time for implementation of the board’s decisions in the next school year” adding that “[at] that time, it would be proper for the Court to consider what would be the most appropriate mode of exercising its power to compel provision of any additional resources needed to implement the mandates of the education clause if the Legislature had not acted in the meantime.”⁶

In effect, Justice Pashman’s opinion would have required the State Board of Education to establish new educational standards for all public schools, inform the Court of how much additional money would be needed to meet those standards, and then have the Court mandate that the additional funds be provided. Even by contemporary standards, the breadth and scope of the relief then proposed by Justice Pashman is startling.

Even more startling was his articulation of the rationale that justified such intervention by the Court. Justice Pashman wrote,

I regret that I am unable to concur more fully in the majority opinion. This case, born in controversy and reared in criticism, is one of rare importance for the people of New Jersey. It would be better if we could speak with a single voice. The relief ordered by the Court is a step forward and is welcome evidence of a proper judicial commitment to ultimate implementation of the education clause, but it is only a very small step and not nearly adequate to the circumstances. It does incomplete justice at best.

5. 69 N.J. at 162

6. *Id.* at 165

HONORABLE MORRIS PASHMAN

It is the State's obligation to rectify any breach of the education clause.

That obligation is not met by unsuccessful efforts by the legislative and executive branches to devise a plan to achieve the results demanded by the Constitution, however arduous and bona fide those efforts may have been. To the children of New Jersey it matters not at all whether the State's failure to provide the educational opportunities guaranteed by the Constitution is the consequence of a deliberate policy of intransigence or merely the by-product of deadlock within the coordinate branches of government.

This Court may not put its imprimatur on the consequences of the existing stalemate within the Executive and Legislature. We, too, are bound by the mandates of the Constitution. It would undoubtedly be more convenient to endure constitutional violations than to take the grave steps necessary to prevent or correct them. But if we long permit the guaranteed rights of the children of this State to be negated by governmental inaction, then we have failed to live up to our own constitutional obligations . . . The Court has the power to go even farther in ordering relief than I have urged in this opinion. It has the inherent power to completely remedy the profound constitutional wrongs identified in *Robinson I*. Delays, which are greeted with sighs of relief, are no substitute for action. We should not fear unpopularity. And further delay or inaction is not to be tolerated. It is no longer enough for this Court to make ripples. To vindicate the rights guaranteed by the education clause we must make great breakers, and, if need be, tidal waves.⁷

7. 69 N.J. at 174

IN MEMORIAM

The late Justice William Brennan might well have had Justice Pashman in mind when, in an article entitled *In Defense of Dissents*, he wrote,

The most enduring dissents, however, are the ones in which the authors speak . . . as “prophets with honor.” These are the dissents that often reveal the perceived congruence between the Constitution and the “evolving standards of decency that mark the progress of a maturing society” and that seek to sow seeds for future harvest. These are the dissents that soar with passion and ring with rhetoric. These are the dissents that, at their best, straddle the worlds of literature and law.

On rereading Justice Pashman’s extraordinary articulation of the Court’s obligation to poor urban school children, I couldn’t help but reflect on the forces that combined to insure a judicial philosophy so unique and so activist. His son, Louis, speculates that the roots of that philosophy are traceable to the beliefs of his Russian immigrant parents who apparently possessed a characteristic compassion for the needy and downtrodden. Another indication of his deeply progressive beliefs is that among the Justice’s private papers were found issues of the *New York Times* he had retained from the 1950s that contained memorable speeches of Adlai Stevenson, himself a great liberal, delivered during his two unsuccessful Presidential campaigns against President Eisenhower.

Justice Pashman’s activism as a judge surely was enhanced and infused by his pragmatism and political sophistication. Not only was he a highly successful practicing lawyer in Passaic from 1936 to 1959, but he also enjoyed considerable success and recognition in the political arena. Beginning as Police Judge of Passaic in 1946, he later became Magistrate, Mayor from 1951 to 1955, and served as City Commissioner until his appointment to the Bench. He also had two close encounters with even higher public office. In the early 1950s, Justice Pashman was a close

HONORABLE MORRIS PASHMAN

adviser in his neighbor, Paul Troast's, campaign for Governor against Robert Meyner, and was rumored to be a likely choice for Attorney General had Troast been successful. Years later, State republican leaders first approached then Assignment Judge Pashman to leave the Bench and run for Governor in 1969, an invitation that those who knew him best believe he would have accepted if not for the unwillingness of the Passaic County Republican leadership to endorse his candidacy. When that endorsement was denied him, Justice Pashman declined to run and party leaders turned instead to then Congressman William Cahill who went on to win the election. Those close brushes with high public office are testaments to Justice Pashman's leadership qualities that were widely recognized inside and outside the Judiciary.

Other aspects of his judicial experience undoubtedly contributed to his activist philosophy. His service in the Chancery Court, which he loved, solidified his confidence in the capacity of resourceful judges to address and resolve private and public disputes of great complexity. A classic example is his landmark decision in *New Jersey Sports and Exposition Authority v. McCrane*,⁸ in which he upheld the constitutionality of the law creating the Sports Authority in the Meadowlands.

And perhaps the most important influence on his tenure as a Justice of this Court was his unparalleled success as the Assignment Judge of Bergen County. Chief Justice Wilentz said, "There has been no finer Assignment Judge in our modern court history." Presiding Appellate Division Judge Sylvia Pressler has observed that Justice Pashman "defined the job of Assignment Judge" and the "his administrative and personnel skills were on the level of genius." He knew his judges' capacities and made sure each judge performed at the highest possible level. He was fair to lawyers and litigants, humane but firm and respected by

8. 119 N.J.Super. 457 (Law Div. 1971)

IN MEMORIAM

lawyers and judges throughout the state for his administrative skills. Again, I quote Chief Justice Wilentz for this overview of Justice Pashman's other administrative contributions to our court system:

The administrative assignments delegated to him are more than I can possibly list in this short tribute. They included the overhaul of matrimonial procedures, establishment of a Family Court, equalization of the Chancery work load, monitoring the revision of pretrial intervention, reorganization of probation services, planning of the Hughes Justice Complex, implementation of the Mental Commitment Review Program, creation of a new means of managing civil cases, advancement of positive relations between the press and the judiciary, plus assisting with practically every major administrative initiative headed by me or by other members of the Court.

Today's ceremony will not permit an in-depth review of Justice Pashman's opinions as a member of our Court. A symposium devoted to those opinions appears in the Winter 1983 edition of the Rutgers Law Review, a publication on which Justice Pashman served as case editor in 1934 and 1935. But I would briefly mention just a few of some his best know opinions.

In *State v. Hunt*,⁹ this Court invalidated under our State Constitution the warrantless installation of pen registers on defendant's telephones. Justice Handler wrote separately in *Hunt* to express the now widely-held view that reliance on our state constitution as an independent source of constitutional protection is most appropriate when supported by sound reasons and state law, policy or tradition. Justice Pashman disagreed characterizing that approach as establishing "a presumption against divergent interpretations of our constitution unless special reasons are shown

9. 91 N.J. 287 (1982)

HONORABLE MORRIS PASHMAN

for New Jersey to take a path different from that chosen at the federal level.”

He stated, “I would reverse the presumption. As a general rule, this Court should construe the New Jersey Constitution as it considers appropriate, taking to account the various factors that constitute sound constitutional analysis.”¹⁰

He emphasized that:

We should not be reluctant to engage in independent state constitutional analysis. None of our prior cases in this area has suggested hesitance, and there is no reason for it. Where this Court perceives that the federal constitution has been construed to protect the fundamental rights and liberties of our citizens inadequately, it cannot shrink from its duty to act. The New Jersey Constitution provides the citizens of this state with a fully independent source of protection of fundamental rights and liberties. It is our role alone to say what those rights are and it is our solemn obligation to enforce them.¹¹

In *Right to Chose v. Byrne*,¹² Justice Pashman continued to assert his belief that our state constitution stands as an independent and explicit affirmation of fundamental rights and liberties. The majority in *Right to Choose* held that the equal protection guarantee implicit in the New Jersey constitution required that all medically necessary therapeutic abortions be paid for under the state Medicaid law. In his separate opinion, Justice Pashman asserted that our State constitution required the State also to fund a woman’s choice to obtain an elective, non-therapeutic abortion observing that “[t]he freedom to choose whether or not

10. 91 N.J. 324

11. *Id.* at 332–3.

12. 91 N.J. 287 (1982)

IN MEMORIAM

to bear a child is of such fundamental importance that I believe our Constitution affirmatively requires funding for abortions for women who choose them and cannot otherwise afford them.”¹³

Returning again to the theme he addressed in *Hunt*, Justice Pashman added:

I would hold that the New Jersey Constitution provides our state’s citizens with a fully *independent* source of protection of fundamental rights and liberties. This means that we should not presume the United States Supreme Court interpretations of the federal constitution dispose of the state constitutional issue. Our state constitution must be interpreted on its own merits, and the liberties it protects are in no way limited by the extent to which they are protected by the federal constitution.¹⁴

This very term, our Court had occasion to reconsider the limits of Justice Pashman’s landmark opinion in *White v. The Violent Crimes Compensation Board*,¹⁵ in which, writing for a sharply divided Court, he concluded that a crime victim’s claim for compensation was not barred by the substantive statute of limitations included in the Act because the victim’s inability to file her claim on time resulted in part from the injuries sustained during the underlying criminal assault.

In *State v. Saunders*,¹⁶ Justice Pashman, writing again for a divided Court, concluded that New Jersey’s fornication statute was unconstitutional under the right of privacy protections afforded by both the state and federal constitutions.

13. 91 N.J. 287, 324

14. *Id.* at 332–333.

15. 76 N.J. 368 (1978)

16. 75 N.J. 200 (1977)

HONORABLE MORRIS PASHMAN

I could refer to many other opinions authored by Justice Pashman that reflected his unerring instinct for deciding cases by emphasizing the importance of fairness and individualized justice. As Justice O’Hearn once observed, Justice Pashman “like the psalmist, yearned for justice and never ceased in its search.”

As Justice Schreiber has noted, Morris Pashman loved the New Jersey Supreme Court. He described his service on the Court to me as “the greatest job in the world.” After his retirement, he never missed a Court function and willingly took on official and unofficial assignments in the Court’s service.

When he returned to private practice with his son, Louis, in 1982, after turning down an opportunity tendered by Governor Kean to fill an important position in state government, he brought to bear his remarkable personal enthusiasm to the business of lawyering. A rainmaker of considerable skill, he relished the opportunity to work with lawyers throughout the state who sought his counsel.

He loved the law for its own sake and he was happiest in the company of judges and other lawyers. That his love for his chosen profession was reciprocated by the Bench and Bar was profoundly demonstrated at a gathering earlier this month at Rutgers Law School where almost two hundred lawyers and judges convened to contribute in excess of \$175,000 to the Rutgers Law School Scholarship Fund established in his honor.

In an editorial following his death, the *New Jersey Lawyer* described Justice Pashman as “a magnificent presence in our judicial and legal universe.” To that I would add only that his remarkable qualities about which our presenters have spoken today have earned Justice Pashman a special place in the history of this Court and the enduring respect of the people of the State of New Jersey.

CHIEF JUSTICE PORITZ: Thank you, Justice Stein. I did not serve on the Court with Justice Pashman, but I

IN MEMORIAM

will remember his visits after I became Chief Justice. He never forgot to call first. Always considerate, he said that he “did not want to intrude.” Always he came with a list of concerns, gentle reminders about administrative issues that needed resolution or recommendations for people who were being considered for some position or appointment.

He was self-deprecating and he was kind but he was also firm and he cared deeply about the judicial system. I valued his advice as much as I admired his strong voice on this Court.

We have all been privileged to have known Justice Pashman and to have shared our memories with one another. This concludes the official portion of the program. The members of the Court invite you to join us in the Supreme Court conference room. Thank you so much for attending and for participating. The Court stands adjourned.

†