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## THE 2010 CHIEF JUSTICE JOSEPH WEINTRAUB LECTURE:

### SYLVIA PRESSLER: “REFLECTIONS ON A LIFE IN THE LAW” II

*The Honorable Deborah Poritz\* &  
The Honorable Virginia A. Long\*\**

*Rutgers School of Law—Newark  
November 30, 2010*

#### JUSTICE LONG:

On the occasion of her retirement, March 25, 2004, Sylvia Pressler presented this Weintraub Lecture. She called it “A Life in the Law” and it was vintage Sylvia—deeply personal, studded with colorful anecdotes and observations, and full of praise for others. It was just about perfect.

And so, when Dean Farmer asked us to speak tonight about Sylvia, we thought long and hard on how we could follow her. We worried that for those of you who knew Sylvia, anything we chose to say might be superfluous and for those of you who did not, it would be difficult to scratch the surface. For those of you who attended her Weintraub Lecture, heard her speak, there seemed little to add.

Compounding our discomfort, the Chief Justice and I know each other very well and know that our voices are not identical. As a former English teacher, to her “less is more.” To me, “much more is more.” Thus, even reaching an angle of repose regarding the words

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\* Chief Justice, Supreme Court of New Jersey (Ret.).

\*\* Associate Justice, Supreme Court of New Jersey.

on the page could be problematic. All of those concerns dictated our approach.

CHIEF JUSTICE PORITZ:

And so we decided that we would try to tell a broader story, about Sylvia's life, where she came from, how she responded to those around her, how they responded to her. And that we would tell that story through the eyes of those who knew her—her family, the colleagues who worked with her, past and present,<sup>1</sup> and the opinions she wrote—that we would speak their words and her words, when we could, and that we would try to understand what shaped Sylvia Pressler's view of the law and of life.

Tonight we will bring you that story, interlaced with our sense of who she was and how she influenced and changed us in important ways.

We begin with origins—Sigmund Freud's student, Theodor Reik, tells us that the parent-child relationship is indelible and indestructible. So we begin with family.

JUSTICE LONG:

Sylvia's father, Noah Brodsky, hailed from Pinsk, which, as her husband David says, was either in Russia or Poland depending on who was in control at the time. His family was prosperous in the lumber business, but his life was upended by World War I and the prospect of military service. Immigration quotas blocked his way to America so nineteen-year-old Noah traveled alone to Argentina to start a new life. It is a tale repeated again and again, a tale of migration from the old world to the new.

In Argentina, Noah started various businesses, including hauling bones from a slaughterhouse, and, eventually, his brother joined him and they worked together.

CHIEF JUSTICE PORITZ:

Keep in mind that the brothers were still subject, as Eastern European Jews, to American immigration quotas. The next part of our story is about how they got here, to America, and it is one of those "if I made this up, you wouldn't believe it" moments.

In addition to their other businesses, the brothers, who played musical instruments, started a popular dance band that carried them into the upper reaches of Argentine society. Think of it—Noah Brodsky became the Benny Goodman of Buenos Aires. And, as a re-

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1. We reached out to Sylvia's family, friends, and colleagues for their personal stories and, in turn, received an overwhelming response. We are thankful for their generosity.

sult, the brothers came to the attention of the Archbishop who engaged them to tune the pianos in every convent in the Archdiocese.

JUSTICE LONG:

No, I am not going to tell you that Sylvia's mother was a nun, but the story is just about as strange. Noah's relationship with the church blossomed over time, and ended up providing two European Jews with passage to America. It happened because the priest in charge of vital statistics gave Noah and his brother false Argentinean papers, including proof of baptism. There was, you see, no American quota on citizens of Argentina at the time.

CHIEF JUSTICE PORITZ:

On the way to America, Noah stopped in Cuba where he reunited with and married his beautiful, blue-eyed girlfriend, Bella Gofsaoff. Bella was the child of scholars who had come with her from Russia to Cuba.

So it was that in 1927, Noah and Bella arrived in New York, through Ellis Island, and began their married life in the Bronx. There, Noah worked long hours to save enough money to pay the back taxes on a parking lot, thereby acquiring the lot to support his family.

In addition to her grueling schedule as a milliner in a Bronx sweatshop, Bella ran the Brodsky home and presided over a weekly bingo game, the proceeds of which built one of the first orphanages in Israel. She was a kind, gentle, and loving woman revered by all who knew her for her charity. Yet, she was by no means a pushover—she was clever, and could get her point across, often with humor.

Her grandson, Noah, tells us this story:

Every week she made a chicken for her cousin who lived in the next apartment building. She always kept her wallet in her pocket and she carried the chicken in her pocketbook. Once a mugger came into the elevator with a weapon and ordered her to hand over the pocketbook. She did. . . . When she told us. . . we were all so shocked and scared. And she laughed and said, "My wallet was in my pocket, all he got was a chicken. Maybe at least tonight he will have a good dinner."

Bella and Noah had two daughters, Annette and Sylvia. When Sylvia was nine, Noah died suddenly at the age of forty-one. It tells you a lot about this family that Noah's brother, without missing a beat, continued to support Bella and the girls until his death.

JUSTICE LONG:

We turn now to Sylvia's formative years. There, we see the still undeveloped woman she later became, the early stirring of intellect,

the humility and the energy, the humor. From Noah and Bella—perhaps built into Sylvia’s very DNA—were hard work, scholarship, excellence, principles, and doing for others.

Sylvia qualified at the age of ten for Hunter College Junior High, a school for gifted girls. Every day with lunch and two nickels, one for the subway up and one for the subway back, she traveled to school. Ten years old! She was a star at Hunter, as she was everywhere else in her life. She was good at everything she ever did. She was the Valedictorian of her Hunter High School class, president of the class, editor of the newspaper. Even in the summer, her leadership was recognized—she went to camp where she was “top girl”—the captain of color wars.

CHIEF JUSTICE PORITZ:

She was recruited by Radcliffe and Cornell and offered scholarships, but Sylvia felt that a Jewish girl from the Bronx might be out of her element at one of the seven sisters. Instead, she chose Queens College, which was then the jewel in the city college crown, and there she was an A+ pre-med student.

One summer she met David Pressler at a fancy hotel in Loch Arbor where they were on the wait staff. People speak of meeting the “love of my life” and the phrase has become shop-worn, but, in this case, it was true. She married him in 1954, and transferred to Boston University. The young couple lived in a converted coal bin in the basement of a house in Cambridge (only people of a certain age even know what a coal bin is), and both graduated in 1955, David from Harvard Law School and Sylvia from Boston University.

After a year in the military, they lived in Newark and, then, in East Orange. Sylvia enrolled at Rutgers Law School, having gotten the “law bug” when she audited David’s classes at Harvard.

JUSTICE LONG:

She came to Rutgers in 1956. According to her professors and her peers, she was one of the most brilliant students they had ever seen. She was an editor of *Law Review* and graduated in 1959 with high honors. She loved law school, the law, and especially members of the faculty she met here. She was a research assistant to Tom Cowan, a radical thinker of the era. Years later, her conversations and her legal analyses were peppered with remembrances of Clyde Ferguson, Alfred Blumrosen, Saul Mendlovitz, Willard Heckel, Morris Schnitzer, Arthur Lewis, Gerald Moran, Lewis Tyree, and, of course, William Hawland of Uniform Commercial Code fame. What a line-up. In Sylvia they met an equal.

Remember, that when Sylvia left law school in 1959, there were few women practicing law. Regardless of their class rank or overall

performance, women were not welcome at the legal banquet table, literally and figuratively. In fact, Sylvia could not attend the annual dinner of the Bergen County Bar Association because no women were permitted. It took an edict from the Assignment Judge of Bergen County to gain her entry.

Sylvia went on to lecture here at the Law School. She served as First Assistant Bergen County Counsel and was chosen to be Englewood City Solicitor.

CHIEF JUSTICE PORITZ:

And it is here that we pause for a moment, to tell another tale worth telling, a tale of Sylvia's personal involvement in the struggle for affordable housing. In 1968, on the heels of the Newark riots, but long before *Southern Burlington County NAACP v. Township of Mount Laurel*,<sup>2</sup> Sylvia was the City Attorney for Englewood. She was appointed by a new town council elected on a platform calling for the construction of low and moderate income housing to replace the substandard housing in the minority ghetto.

The election was a squeaker—won by seventeen votes—and the council majority members knew that they would be defeated when they ran again in two years. There was so little time in which to complete the plans, put shovels in the ground, and fight a brutal election contest.

JUSTICE LONG:

Sylvia told it this way:

I represented the incumbent, and the loser challenged the validity of the vote of every one of the . . . three hundred black voters who had registered for the first time that year, having been assured that this was, after all, the north and there was nothing to fear, and all of whom were then subpoenaed . . . We played to a full house for four weeks, and then the trial judge found that 35 votes had been illegally cast and threw out the election . . . The Appellate Division, God bless it, promptly reversed and sustained the election holding that even if the 35 votes had been illegally cast, a proposition we vigorously contested, the challengers had failed to show . . . that those votes had actually changed the outcome.<sup>3</sup>

CHIEF JUSTICE PORITZ:

Sylvia continued:

[W]e all knew that the inevitable appeal would doom the project.

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2. 336 A.2d 713 (N.J. 1975).

3. Sylvia Pressler, *Reflections on a Life in the Law*, N.J. L.J., Apr. 5, 2004, at 15.

In desperation, . . . I was authorized to draft a letter to the Chief Justice . . . to explain our plight . . . and to ask for help . . . . [I]t seemed so audacious, so presumptuous . . . . To our utter astonishment and infinite joy, we received a copy of an order signed by the Chief Justice practically by return mail. The order deemed our letter to have been an emergent application . . . required the notice of appeal . . . to be filed within five days directly with the Supreme Court, set an accelerated briefing schedule, and fixed an early date for oral argument. The eloquent and forceful opinion by Justice Hall, affirming everything and to a substantial degree laying the philosophical groundwork for the first *Mt. Laurel* decision of a decade later, was issued a couple of weeks after that.<sup>4</sup>

And although Sylvia, always generous and self-deprecating, attributed that amazing outcome solely to Chief Justice Weintraub, it was due in great measure to her willingness to step outside the box in the fight for justice.

#### JUSTICE LONG:

She later became a hearing officer for the Division on Civil Rights. Today, most everyone remembers her ruling, centered on a broad reading of New Jersey's Law Against Discrimination still followed by our courts. She held that Little League could no longer keep girls out.<sup>5</sup> Her words reverberate today: "The institution of Little League is as American as the hot dog and apple pie," she said.<sup>6</sup> "There's no reason why that part of Americana should be withheld from girls."<sup>7</sup> That ruling was national news and indeed was the headline in her lengthy *New York Times* obituary.<sup>8</sup>

As the *Law Journal* pointed out—it was a trailblazing opinion by someone who had been a trailblazer herself.<sup>9</sup>

#### CHIEF JUSTICE PORITZ:

Let us return to Sylvia's mentor, Morris Schnitzer. According to Sylvia, Morris, who taught her New Jersey practice, was the person at the Law School who influenced her most. She put it this way in her own Weintraub Lecture: "[H]e not only taught us the court rules, but more importantly, the procedural due process concerns that drive

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4. *Id.*

5. Nat'l Org. for Women v. Little League Baseball, Inc., 318 A.2d 33, 35 (N.J. Super. Ct. App. Div.), *aff'd*, 338 A.2d 198 (N.J. 1974).

6. Joan Cook, *Jersey Bids Little League Let Girls Play on Teams*, N.Y. TIMES, Nov. 8, 1973, at 51.

7. *Id.*

8. See Bruce Weber, *Judge Sylvia Pressler, Who Opened Little League to Girls, Dies at 75*, N.Y. TIMES, Feb. 17, 2010, at B18.

9. Henry Gottlieb, *Sylvia Pressler, Rules Maven, Appellate Judge and Trailblazer for Women*, 75, N.J. L.J., Feb. 22, 2010, at 6.

them and their proper function in the quest for substantial justice *on the merits*.”<sup>10</sup> That lesson remained with Sylvia for a lifetime.

#### JUSTICE LONG:

Shortly after the adoption of the first set of court rules under the 1947 Constitution, Morris, together with Julius Wildstein, undertook their monumental rules treatise. And in circumstances that mimic John Guare’s *Six Degrees of Separation*,<sup>11</sup> we learn that in the 1960s Gann Law Books was simultaneously initiating a rules service based on Schnitzer and Wildstein and codifying municipal ordinances.

During that period, Bernard Protzel, then president of Gann, met Sylvia, who was, at the time, the lawyer for Englewood. And he never forgot her.

As Judy Russell, a Gann editor tells it:

As time went on and it became clear that more input was required for the rules service, Mr. Protzel thought immediately of that very impressive lawyer from Englewood. It was perhaps the most important sales job he ever undertook, and he succeeded in convincing that lawyer to get involved in the project.

Thus, Sylvia became the rules commentator.

#### CHIEF JUSTICE PORITZ:

As rules commentator, Sylvia was collegial and informed. We were not surprised when Judy, speaking for all the editors at Gann, echoed what we heard from other sources, that Sylvia’s

encyclopedic knowledge of the rules, her insistence on intellectual rigor and honesty and her commitment to excellence made her a joy to work with. There was no case that ever made it into the book that she had not read, digested and understood. There was no issue a Gann editor could not raise, no question a Gann editor could not ask her, though she sometimes had to tell us that her duties as a judge precluded an answer.

Although the folks at Gann may believe the rule book is theirs, Judge Jane Grall, who clerked for Judge Matthews, tells us that

the first time Judge Pressler asked for a copy of the “Gann” rules, she was met with a blank stare [so she] reached for the open rule book on the clerk’s desk [herself]. In an effort to explain the apparent ignorance, [a] clerk advised: “We call them Pressler’s rules.” The Judge shook her head, but I think I saw her smile.

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10. Pressler, *supra* note 3, at 14 (emphasis added).

11. JOHN GUARE, *SIX DEGREES OF SEPARATION: A PLAY* (1990).

## JUSTICE LONG:

While she was commenting on the rules, it made perfect sense for Sylvia to chair the Civil Practice Committee. Judge Sabatino, who is now the chair of the committee, reports on how Sylvia ran those meetings: “She frequently indulged suggestions and viewpoints about the rules, some of them my own, that were unwise or impractical. She received such off-the-mark ideas not only with diplomacy, but with an arresting sense of humor that made our meetings pleasurable as well as productive.”

Jack went on to report what every Civil Practice Committee member recalls: “How many agenda items closed with a notation that ‘Judge Pressler will draft the proposed rule amendment.’”

And retired Supreme Court Justice Peter Verniero tells us that when Gann was announcing authorship of the rule book, “we were careful in saying I was succeeding Sylvia, not replacing her. The reason was simple: Sylvia was irreplaceable.”

## CHIEF JUSTICE PORITZ:

Sylvia made it very clear that the rules were not intended as a trap for the unwary, or as a sword against those with meritorious cases who had merely made a mistake. As her former law clerk, later Appellate Division Judge, Lorraine Parker explained, for Sylvia

the Rules of Court are intended to serve the litigants and are not to be used or interpreted to create barriers to the courts or to exclude legitimate litigants from pursuing their claims. Sylvia viewed the rules as a means to level the playing field, not to oust rightful litigants, but to assure a fair and equitable result.

Always, Sylvia remained faithful to the vision of the rules instilled in her by Morris Schnitzer.

## JUSTICE LONG:

She was appointed as a judge of the Superior Court in 1976 and assigned to the Appellate Division in 1977, a meteoric rise. She was only the second woman to serve on that court.

We should mention that after law school she clerked for Milton Conford, the Appellate Division Presiding Judge, which was an enormous feat in those days. Clerkships were nearly impossible for women to come by. Some judges openly explained that their wives would not like them to hire women clerks. But Judge Conford took a leap of faith and, as Sylvia put it later, her association with him “until his death some thirty years later, was the keystone of [her] professional life.”<sup>12</sup>

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12. Pressler, *supra* note 3, at 14.



Following in the steps of Milton Conford, in 1984, Sylvia became the Presiding Judge for Part E, and then served as Presiding Judge for Administration from 1993 to her retirement.

Those are the facts of her tenure. The heart and soul is to come.

CHIEF JUSTICE PORITZ:

Sylvia loved the Appellate Division with a passion that is ordinarily reserved for one's children. She was so proud of "her" court, protective of "her" judges, always concerned about their caseloads and the pressures they faced. She came to me, as Presiding Judge to the Chief Justice, fierce in her determination to improve the way cases were handled in the Appellate Division. She wanted to provide relief from the overwhelming, unrelenting stream of boxes arriving in chambers week after week. She never, never gave up the idea of sabbaticals for Appellate Division judges—they deserved time out for reflection and rest, she said. And she never stopped claiming the very best judges for "her" court, because, she said, we are the best intermediate appellate court in the country, and only if the best trial court judges are chosen to fill our ranks will we maintain that excellence.

Our court, she told me once, is more than an error-correcting court. Yes, we do that, and it is an important function, but we are the last word in so many cases—we establish the law, at least until the Supreme Court can get to the issue. We have to do it right.

She spoke of the court in her Weintraub Lecture, saying,

I am enormously proud of this court and its work product, and although I once described us as a troop of compulsive-obsessive, passive-aggressive, manic depressive paranoids, I value beyond measure my friendships and associations with the hard-working, dedicated, talented, and altogether extraordinary men and women who comprise the Appellate Division, both past and present.<sup>13</sup>

JUSTICE LONG:

And, as Sylvia valued us, we valued her. She was the ideal colleague—brilliant, as retired Appellate Division Judge James Ciancia put it, "without making you feel like a lesser luminary"; the hardest worker (she took the most difficult cases herself); self-effacing (always giving credit to others); helping colleagues who were bowed down by their burdens, and always, always, doing what she said she would do.

She never suffered from burnout, a problem in professions like ours, the currency of which is, too often, human suffering. After five decades of fighting the good fight in the trenches, she still had 20-20 vision when she saw injustice.

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13. Pressler, *supra* note 3, at 17.

Sylvia was a little guy's judge, aware always of the real world consequences of our decisions on ordinary people. She often recalled the story of her client, Maria Lopez, who was severely burned due to her radiologist's negligence. Lopez learned of that negligence belatedly and her lawsuit was dismissed on timeliness grounds. In that case, Sylvia and David (her co-counsel) strengthened the discovery rule and, of course, generated the first *Lopez* hearing.<sup>14</sup>

CHIEF JUSTICE PORITZ:

Sylvia bent over backwards to see that the "regular Joe" received his day in court. She was a fan of process, and not so enthusiastic about summary judgment, especially when the proverbial David was standing against Goliath. Once, when Judge Edwin Stern was sitting with Sylvia, he suggested that she publish a particular opinion. "Why?" she asked, "It is nothing out of the ordinary." "Oh, yes it is," he said, "you ruled for the carrier."

And she was brave. Whether it was *Little League*;<sup>15</sup> the infamous *Trantino v. New Jersey State Parole Board*;<sup>16</sup> affordable housing;<sup>17</sup> or gay adoption,<sup>18</sup> all subjects that infuriated some and certainly generated light and heat, she moved forward without fear or reservation. She taught the people around her to be brave. And her bravery continued on through her illness—she remained upbeat and unstoppable to the end.

Sylvia treated each case as if it were *Brown v. Board of Education*.<sup>19</sup> She never said, this is "just a rear-end hit case" or "just a motor vehicle case" or "just a parole denial." She gave every case her full attention, never capitulating to the "guilty as sin" rationale, and she taught new appellate judges to do the same.

JUSTICE LONG:

Here, in her words, is what she told us:

It is always painful to see constitutional rights—the right to a fair trial—diluted, by saying, in this case or that, that the prosecutor's overstepping summation or the failure of the court correctly and fully to instruct the jury in a myriad of ways or the admission

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14. See *Lopez v. Swyer*, 300 A.2d 563 (N.J. 1973).

15. *Nat'l Org. for Women v. Little League Baseball, Inc.*, 318 A.2d 33, 35 (N.J. Super. Ct. App. Div.), *aff'd*, 338 A.2d 198 (N.J. 1974).

16. 687 A.2d 274 (N.J. Super. Ct. App. Div. 1997) (Pressler, J., concurring in part, dissenting in part), *aff'd as modified*, 711 A.2d 260 (N.J. 1998).

17. *Prowitz v. Ridgefield Park Vill.*, 568 A.2d 114 (N.J. Super. Ct. App. Div. 1989), *aff'd*, 584 A.2d 782 (N.J. 1991).

18. *In re Adoption of Two Children by H.N.R.*, 666 A.2d 535 (N.J. Super. Ct. App. Div. 1995).

19. 347 U.S. 483 (1954).

of incompetent evidence didn't really matter . . . . *These errors always matter* . . . whether or not we are convinced the error clearly made a difference, if the proposition is nevertheless reasonably debatable or if the error is egregious, we *have* to be able to say "do it over and do it right, and perhaps next time, when *for sure* it will matter to everyone, you won't make the same mistake again."<sup>20</sup>

In conference she taught by example. She was prepared, collegial, and a good listener, but powerful (though polite) in expressing her own position and, if necessary, in dismantling an opposing view. On the few occasions when she was convinced that she missed the mark—no face-saving moves—she'd just say, "okay."

As retired Appellate Division Judge David Landau put it, "There were none of the pretensions that often accompany the gifted . . . . To be sure, she was no wimp. You always knew where she stood. She was not shy about using her persuasive talents, but willing to consider and adopt well-reasoned counter-arguments or modifications."

In my own experience, she never said, "I told you so," and in her few dissents, it was on the merits and never personal. As retired Appellate Division Judge Howard Kestin puts it, "I learned a lot from Sylvia. Not only about the standards of performance that governed me, but also about the integrity and style of the best judges."

#### CHIEF JUSTICE PORITZ:

With new appellate judges, Sylvia was like a parent watching a child take her first tentative steps. She applauded them, even if they were not perfect. Retired Appellate Division Judge Geoffrey Gaulkin characterized her as a Mother Superior who not only supported her judges with her intellectual fire power, but was a shepherd who cared for her flock—with soup if they were ill; with compassion in their darkest days; with joy in their good fortune; with the names of babysitters and housekeepers; and by even arranging a date for one of her clerks with the man who later became her husband.

#### JUSTICE LONG:

Sylvia wrote thousands of opinions during her career. For us to survey, or even categorize what she did, would be impossible in the time allotted. Thus, we have chosen a few to stand for the many.

Preliminarily, we observe that her opinions are remarkably short on boilerplate. The ideas that fell from her pen were hers, expressed by her without attempt to deflect later criticism or controversy. She wrote to explain and teach the law and not to titillate future generations of scholars.

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20. Pressler, *supra* note 3, at 17 (emphasis added).

Judge Philip Carchman described her work this way:

When we review the work of an accomplished judge, especially [a judge who has] attained iconic stature, we search the reports to find the “blockbuster.” Sylvia had her share yet, . . . for both judge and lawyer alike, her enduring legacy lies not in the “big one” but in those scores of opinions where she was the teacher, informing us . . . how to ply our respective trades, how to be better lawyers and judges, how to work to make the law and lawyering a more noble endeavor.

. . . .

She did not hector or shout at us but explained, as would the best in the professorial ranks; she taught us in a way that we would be sure to listen. She did not overburden us with string citations and sometimes there were no citations at all, just a knowing sense of the right way.

CHIEF JUSTICE PORITZ:

Her work was economical, sometimes spare, always clear. She was master of the direct and powerful exposition and she possessed consummate skill in presenting the facts and the context so that they told a story. How many times have you heard—let the facts speak for themselves—and how many times does that really happen? Yet, it is often the story that prepares us for the result; it is the story, set in the prongs of relevant legal precedents and principles, that compels the result, and that brings us back to the real people whose lives are altered by what judges decide. Sylvia knew her stories and she never lost sight of the real people.

JUSTICE LONG:

So let us look at some of her opinions.

In 1995, Sylvia wrote the decision in *In re Adoption of Two Children by H.N.R.*,<sup>21</sup> which reversed a trial court that had barred the adoption of children by the same-sex cohabiting partner of their natural mother on the ground that she did not qualify under the stepparent adoption statute.<sup>22</sup>

CHIEF JUSTICE PORITZ:

The opinion is not long. Essentially, Sylvia tells the story and when she is done, we understand that she is describing two loving parents, both committed to nurturing the twins they cared for and to promoting their growth and development. Without knowing the law, we are already receptive to the creation of a family through adop-

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21. 666 A.2d 535 (N.J. Super. Ct. App. Div. 1995).

22. *Id.* at 538.

tion—on these facts.

She then considers the purpose of the stepparent adoption statute and reviews cases from other jurisdictions that had dealt with similar statutory language.<sup>23</sup> She tells us that, with few dissenting voices, those courts had broadly construed the stepparent exception.<sup>24</sup> She finds the reasoning of the Vermont Supreme Court persuasive and quotes from its opinion. What she chooses is quintessential Sylvia:

When social mores change, governing statutes must be interpreted to allow for those changes in a manner that does not frustrate the purposes behind their enactment. To deny the children of same-sex partners, as a class, the security of a legally recognized relationship with their second parent serves no legitimate state interest.<sup>25</sup>

Sylvia understood that same-sex couples are entitled to the rights and benefits of married couples years before *Lewis v. Harris*<sup>26</sup> ever came to the New Jersey Supreme Court.

JUSTICE LONG:

Likewise, in 1985, in *Pushko v. Board of Trustees of the Teachers' Pension and Annuity Fund*,<sup>27</sup> Sylvia foretold what would ultimately become the law. She was the first to recognize psychic trauma (the so-called mental-mental category) as satisfying the traumatic event standard for accidental disability under the retirement statute.<sup>28</sup> As she put it, if psychic trauma “results in the disabling of one’s mental or emotional processes, it constitutes no less an externally applied blow to the mind than a physical force constitutes an externally applied blow to the body.”<sup>29</sup>

In 2007, in *Patterson v. Board of Trustees, State Police Retirement System*,<sup>30</sup> citing *Pushko*, the Supreme Court agreed, specifically observing that Judge Pressler had come to the right conclusion two decades earlier.<sup>31</sup>

CHIEF JUSTICE PORITZ:

*State v. Carty*<sup>32</sup> involved a routine traffic stop on the turnpike

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23. *Id.* at 539-41.

24. *Id.*

25. *Id.* at 540 (quoting Adoption of B.L.V.B., 628 A.2d 1271, 1275 (Vt. 1993)).

26. 908 A.2d 196 (N.J. 2006).

27. 493 A.2d 1309 (N.J. Super. Ct. App. Div. 1985).

28. *Id.* at 1312-13.

29. *Id.* at 1313.

30. 942 A.2d 782 (N.J. 2008).

31. *See id.* at 793-94.

32. 753 A.2d 149 (N.J. Super. Ct. App. Div. 2000), *aff'd*, 790 A.2d 903 (N.J. 2002).

during which consent to search was sought and granted.<sup>33</sup> Obviously concerned about the eroding strength of the warrant requirement found in our State constitution, Sylvia held that, even with a signed consent form, an officer must have “reasonable suspicion” to search an automobile during a routine traffic stop.<sup>34</sup> She knew that the United States Supreme Court had not set the bar so high, but trusted that the New Jersey Supreme Court, under the New Jersey Constitution, would agree with her. And that was exactly what happened.

JUSTICE LONG:

Thus, we see how Sylvia approached tough substantive issues, pushing the envelope when necessary, in the name of justice. Procedurally, she understood that rules, to be effective, must be followed, and she knew, also, that fairness would sometimes require exceptions.

CHIEF JUSTICE PORITZ:

*Tucci v. Tropicana Casino & Resort, Inc.*<sup>35</sup> is emblematic. In *Tucci*, the plaintiffs fell in an elevator at a casino.<sup>36</sup> They sued the casino and the elevator company.<sup>37</sup> As a result of delays on the defendants’ part, and personal problems that beset the plaintiffs’ lawyer, their expert report was thirty-nine days late.<sup>38</sup> The judge refused an extension and the defendants moved to bar the expert.<sup>39</sup> That motion was granted and the case was dismissed because of the absence of an expert.<sup>40</sup> In reversing, Sylvia, writing for the panel, began her analysis by recognizing that Best Practices (remember “Best Practices”)<sup>41</sup> were

“designed to improve the efficiency and expedition of the civil litigation process and to restore state-wide uniformity in implementing and enforcing discovery and trial practices.” [*But t*]hey were not designed to do away with substantial justice on the merits or to preclude rule relaxation when necessary to “secure a just determination.” While we agree that the Best Practices rules were intended to counteract an unfortunate and increasingly dilatory, ca-

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33. *Id.* at 150.

34. *Id.* at 152.

35. 834 A.2d 448 (N.J. Super. Ct. App. Div. 2003).

36. *Id.* at 449.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. The New Jersey Court Rules were substantially revised and updated in accordance with “Best Practices” in September 2000. The revisions generated substantial controversy in the legal community.

sual and desultory approach by some members of the bar to their litigation responsibilities, the fulfillment of that function *does not* mandate dismissal of this action with prejudice.<sup>42</sup>

Given the defendants' delays and the personal problems that beset the plaintiffs' lawyer, a "reasonable modicum of judicial indulgence" was required, Best Practices notwithstanding.<sup>43</sup>

JUSTICE LONG:

Likewise, in *Fehnel v. Fehnel*,<sup>44</sup> in which the Appellate Division reversed the denial of an adjournment by a trial judge, Sylvia wrote,

[it] appears from the record before us . . . [that] the single benefit likely to be obtained from the denial of the adjournment . . . was in terms of calendar clearance. . . . We, of course, do not intend to deprecate the legitimate and serious concerns engendered by calendar backlogs and protracted dispositions. These are the concerns which have been encapsulated by the axiom that justice delayed is justice denied. . . . But just as surely as the denial of justice may result from its delay so may justice prematurely dispensed constitute a denial of justice both to the litigants and those irrevocably affected by the outcome of the litigation.<sup>45</sup>

Again, "substantial justice" prevailed over slavish adherence to the rules.

In addition to her published and unpublished opinions, Sylvia was a silent partner in many of the great decisions of the day because nearly everybody tried their newest and shiniest legal theories out on her. And I never once heard her say, although I knew it to be true, that some great idea for which a colleague was being praised was actually her own.

CHIEF JUSTICE PORITZ:

There is so much more to say about Sylvia's work, about her ideas, but to focus solely on her intellectual life would tell only part of her story.

Sylvia was smart enough not to live solely for the law. She was a great reader, a raconteur, a traveler, an avid sports fan (the Yankees from the land of her birth) and, of course, the Giants. She had a rich and full personal life surrounded by family and friends and I know that if David was standing up here he would characterize his wife as worth a price above rubies.

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42. *Tucci*, 834 A.2d at 450 (emphasis added) (citations omitted).

43. *Id.* at 451.

44. 452 A.2d 209 (N.J. Super. Ct. App. Div. 1982).

45. *Id.* at 211-12.

## JUSTICE LONG:

She was reckless and spendthrift in her love for her parents and her sister, but mostly for David and her children, Jessica and Noah, and her grandchildren, Rachel, Brandon, and Isabella. As her law clerk, retired Appellate Division Judge Lorraine Parker observed, “Sylvia served as a role model for a generation of women lawyers with her management of family and career. There was never any doubt where Sylvia placed priorities. David, Jessica, and Noah were always number one.”

What a gift to them!

## CHIEF JUSTICE PORITZ:

Retired Appellate Division Judge Richard Cohen tells this story:

One day in 1989, as best I can recall, I was in Hackensack for oral arguments, and I dropped in to see Sylvia. I don’t recall why. I may have wanted her horseback opinion on a tough case, or I may have been feeling Yiddish joke deprived, or I may have simply wanted to say hello to a good friend. I walked into Sylvia’s office. Those of you who have been there know it was a serious office. It was large, it had two walls of windows, serious furniture, book cases galore, and gave the general feeling that this is where important things take place. As I walked in, I saw Sylvia sitting in her power chair, at her power desk. A tiny baby was in her arms; here and there on her cashmere sweater set was recycled formula, and her face radiated fulfillment and contentment. Jessica needed the morning off for postpartum mental health, and Grandma was babysitting. The rest of the world could wait.

That is my personal enduring picture of Sylvia Pressler. It is constant reminder that her extraordinary scholarship and energy had the soundest of foundations; love, and the need to make things as right in the world as she could.

## JUSTICE LONG:

Some people know a little about a lot. Some people know a lot about a little. Sylvia knew a lot about a lot. Jessica tells us that her mother knew the answer to every question. That was not just from a child’s perspective. Sylvia knew everything about politics and what was going on in the world; she could answer math and physics questions. “Sylvia, remind me again about Heisenberg’s Principle.” She knew every flower and shrub in her garden by its biological name. She had read every novel I had read, and more. She knew about the shipping lanes. She knew about everything.

She could cook up a storm. Her dinner parties were legendary. At every one, the guests were sure that Paula Dean and Bobby Flay and Molto Mario were hiding in the kitchen. And, like the proverbial



loaves and fishes, she could whip up a meal for any size crowd with what she found in her refrigerator.

But do not let me leave you with the impression that the reason people wanted an invitation from Sylvia was the food. It wasn't. People wanted to go there for another reason—as Jessica tells us, “her home was your home.” Her guests were cared for and cosseted with a hospitality that only comes from genuine feeling for others. Sylvia lived Brillat-Savarin's observation that when you invite someone to your table you assume responsibility for his happiness during the time he is there.

She did and we were.

CHIEF JUSTICE PORITZ:

With the kind of professional and personal schedule she kept, you might have expected a frazzled and worn out Sylvia. But nothing could be further from the truth. She was endlessly resilient and enthusiastic. If she had a fault it was that she held herself to standards unattainable by the rest of us. If she accepted a task, no matter how difficult, it could be considered done. She had the inner resources to do just about anything she wanted to do.

So, was she perfect? No. She was not thrilled with fools, and even less with knaves, and could be edgy when confronted with a fool or a knave in the courtroom. If you treated one of hers badly (that included not only her biological family and friends, but also her judicial family) she would hold a grudge; she was rather cavalier about medical checkups; and she continued to light up throughout her life, unable to stop; though, as we all knew, she tried again and again.

JUSTICE LONG:

And she did insist on telling jokes in dialect with Yiddish punch lines. I must say on that score, however, that she was laughing so hard at the end of the joke that it hardly mattered that she was speaking a foreign language.

She had an absolute appreciation for the absurdities of everyday life and she was so, so funny. Her business card on retirement said, “Sylvia Pressler, retired, no worries—no phone—no pinks—no greens—no job—no money.”

Judge Laura LeWinn reminds us that:

Judge Pressler spoke at the retirement dinner for Judge Herman Michels (he was retiring as Senior Presiding Judge for Administration and she was replacing him). All the previous speakers had praised Judge Michels for the “clarity of his writing” and Judge Pressler said to him, “I certainly agree with all the accolades about the clarity of your writing. How true. Your writing is so clear that when I read one of your opinions, I know

immediately why I disagree with you.”

CHIEF JUSTICE PORITZ:

As Mark Twain said, “Against the assault of laughter nothing can stand.”<sup>46</sup> She was a great and easy laugher—generous and hearty, not sarcastic or mean-spirited, and never at another person’s expense. She enjoyed humorous stories and told them herself, always aware of the power of laughter to deflate our pretensions and renew our souls.

JUSTICE LONG:

In the end—how do we take the measure of this remarkable woman? To be sure, her intellectual gifts informed everything she did. Great ideas came to her effortlessly. Leaps of legal imagination and creativity seemed to burst out of her, as the poet Gerard Manley Hopkins would say, “like shining from shook foil.”<sup>47</sup> What she had innately was that indescribable thing that painters and playwrights, bridge builders and inventors have—a way of seeing things that is hidden from the rest of us. But to suggest that she was only “intellect” beggars the truth. There are many brilliant jurists who are not Sylvia Pressler. Retired Supreme Court Justice Gary Stein, who reviewed hundreds of Sylvia’s opinions, places her among the great names in New Jersey jurisprudence—with Joseph Weintraub, Robert Wilentz, and Nathan Jacobs.

CHIEF JUSTICE PORITZ:

Like them, she had a progressive vision, a sense of humanity and justice, and a complete mastery of the tools of her trade. Without drama or hyperbole, she drew on the strands of principle and precedent, on examples from other progressive courts, and on her innate sense of fairness. Using a craftsman’s skill, she wove those strands together with her understanding of the way the world actually works, with a deep wellspring of compassion, and with a concern for the effect of her decisions on her fellow citizens.

She was the judge described by Penn Professor Clyde Summers:

The life of law is precedent. But the life of a lawyer [and judge] should be something more, to search within themselves for answers which precedents cannot provide, to go beyond the question “What does the case hold and why?” To ask, “What is good, what is just, and what is kind.”

Sylvia asked and answered those fundamental questions. And for that, we are grateful.

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46. MARK TWAIN, *THE MYSTERIOUS STRANGER* 142 (1916).

47. Gerald Manley Hopkins, *God’s Grandeur*, in *POEMS AND PROSE* 27 (1953).