

# NEW YORK UNIVERSITY LAW REVIEW

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VOLUME 74

NOVEMBER 1999

NUMBER 5

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## STEWART G. POLLOCK

Justice Stewart G. Pollock retired from the New Jersey Supreme Court on September 1, 1999, after twenty years of service. The editors of the *New York University Law Review* dedicate this issue to Justice Pollock in tribute to his distinguished career on the bench. Chief Judge Judith Kaye, Judge Reginald Stanton, and Professor Howard Erichson provide insights into Justice Pollock's jurisprudence and character.

A 1954 graduate of Hamilton College, Justice Pollock received his J.D. in 1957 from New York University School of Law, where he was a Root-Tilden scholar. He would later earn a master of laws degree from the University of Virginia in 1988, nearly a decade after his appointment to the court. Justice Pollock began his legal career as an Assistant U.S. Attorney in Newark, New Jersey in 1958, and in 1960 went into private practice in Morristown. In 1974, he reentered public service as a commissioner of the Department of Public Utilities and two years later became a member of the State Commission of Investigation. Justice Pollock served as counsel to Governor Brendan T. Byrne from 1978 until 1979, when Byrne nominated him to the Supreme Court. Justice Pollock took his oath on June 28, 1979 and was reconfirmed with life tenure in 1986.

Justice Pollock played an instrumental role on the New Jersey Supreme Court as it established itself at the forefront of American jurisprudence with landmark decisions on school funding (*Abbott v. Burke*), exclusionary zoning (the *Mount Laurel* decisions), and the rights of surrogate parents (*Baby M*). In *Right to Choose v. Byrne*, an untenured Justice Pollock, writing for the court, held that the New Jersey Constitution protected the right of low-income women to receive Medicaid funding for "medically necessary" abortions. Reflecting his jurisprudential grounding in state constitutional law, he wrote,

“Although the state Constitution may encompass a smaller universe than the federal Constitution, our constellation of rights may be more complete.”

Justice Pollock distinguished himself on the court both for his consensus-building skills and through the intellectual clarity of his opinions on a wide range of subjects. In *O’Keefe v. Snyder*, Justice Pollock rejected a strict application of adverse possession doctrine in favor of a rule which recognized an artist’s due diligence in pursuing her stolen artwork. His majority opinion in *Pierce v. Ortho Pharmaceutical Corp.* has been called a “primer for protecting at-will employees from being fired for reasons that violate state policy.” And in *Francis v. United Jersey Bank*, he set forth the responsibilities of corporate directors. Justice Pollock wrote a number of major decisions in criminal law, including *State v. Martin*, which established the standards for felony murder, *State v. Medina*, which defined “reasonable doubt,” and *State v. Harvey*, which affirmed the admission of DNA evidence in a capital case.

Justice Pollock will be returning to private practice. Among his other activities, he will remain a trustee of New York University School of Law and of its Institute of Judicial Administration.

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PORTRAIT OF AN ARTIST:  
A TRIBUTE TO JUSTICE STEWART G. POLLOCK

JUDITH S. KAYE\*

The announcement of Justice Stewart Pollock’s resignation from New Jersey’s Supreme Court, for me, touched off a slew of reminiscences and a resolve to do a portrait of him. It was, after all, Justice Pollock himself who touted the aesthetic talents of the judiciary in a provocative lecture entitled *The Art of Judging*.<sup>1</sup> Now he has to suffer the consequences.

This, of course, can only be the preliminary sketch. So much lies ahead for him, and I want to be sure to avoid later “I wish I had” complaints common among portrait artists.<sup>2</sup> I look forward to many years of continuing association with my subject—at the American Law Institute, at our mutually beloved alma mater, in judicial educa-

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\* Chief Judge of the State of New York; Chief Judge of the New York State Court of Appeals.

<sup>1</sup> Stewart G. Pollock, *The Art of Judging*, 71 N.Y.U. L. Rev. 591 (1996).

<sup>2</sup> *Basic Portrait Techniques* 34 (Rachel Wolf ed., 1994).

tion circles we both enjoy—to improve my canvas. My esteem for Justice Pollock cannot be upgraded. Already it is off the charts.

### *The Personality of the Judge*

The warm, rosy hues first come to mind in preparing to capture the personality of Justice Pollock. “[E]xtraordinary grace, charm, and intelligence” is Governor Christine Todd Whitman’s image of him.<sup>3</sup> “Gentle demeanor,”<sup>4</sup> “a cardigan-sweater casualness,”<sup>5</sup> an “intelligent, sensitive gentleman”<sup>6</sup> are views of others who know him well. I would add vibrant and energetic, friendly and welcoming, eager to listen and eager to engage. Definitely bow ties with those cardigan sweaters.

What extraordinary qualities for a judge of a collegial court! It comes as no surprise to learn that his fellow justices describe him as “the Rudder” because of his facility for consensus building and quiet diplomacy on his court.<sup>7</sup> As reported, he “painstakingly worked to get other justices to join his opinions by modifying his own views, and labored to head off dissent on all votes.”<sup>8</sup> In the words of Ronald Chen, then Dean of the Rutgers Law School in Newark, “I think he’s a very accurate indication of where our Supreme Court has been over the past 16 years.”<sup>9</sup>

And just where has the New Jersey Supreme Court been over the past two decades? At the forefront of state judiciaries, forging new paths under state constitutional, statutory, and common law on issues of enormous importance to New Jersey and to the nation. Justice Pollock’s skill in achieving consensus, it appears from all accounts, has been not so much in changing his own views as in winning his colleagues to them.

### *The Vision of the Judge*

While denying that he is the judicial equivalent of Johann Sebastian Bach, T.S. Eliot, or Vincent Van Gogh,<sup>10</sup> Justice Pollock definitely sees himself, and state court judges generally, in an artistic

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<sup>3</sup> Thomas Zolper, Pollock, a Pragmatist, Leaving High Court, Record (Hackensack, N.J.), Feb. 26, 1999 at A3, available in Lexis, News Library, Njrec file (quoting Governor Whitman).

<sup>4</sup> David Kocieniewski, Judge Leaving High Court After 20 Years as Unifier, N.Y. Times, Feb. 26, 1999, at B5.

<sup>5</sup> Zolper, supra note 3, at A3.

<sup>6</sup> Editorial, Justice Stewart G. Pollock, N.J. Law., Mar. 8, 1999, at 6.

<sup>7</sup> Kocieniewski, supra note 4, at B5.

<sup>8</sup> Zolper, supra note 3, at A3.

<sup>9</sup> Id. (quoting Dean Chen).

<sup>10</sup> See Pollock, supra note 1, at 593.

role. He borrows an image from a kindred spirit—Holden Caulfield, hero of J.D. Salinger's *Catcher in the Rye*—to capture their mission. In the Justice's view, the poor, the homeless, the jobless stand at the brink, with the law as a safety net that can save them from poverty, ignorance, and isolation. "In today's world," Justice Pollock believes, "state courts are catchers in the rye. For so many people, state courts are all that stands between them and the edge of the cliff."<sup>11</sup>

That insight has placed the New Jersey Supreme Court at the vanguard of state courts today. "As the United States Supreme Court has relinquished its responsibility as 'the catcher in the rye,'" according to Justice Pollock, "state courts across the United States have assumed new responsibilities."<sup>12</sup> Indeed, it was at a symposium on one such new responsibility—state constitutional law—that I first met Justice Pollock, 15 years ago, in Williamsburg, Virginia. I was there as a student, he as a faculty member. Long before state constitutional law caught fire across the nation, Justice Pollock perceived the role—the *obligation*—of state courts under their own state constitutions to "provide a refuge in a time of need."<sup>13</sup> He individually, and the New Jersey Supreme Court institutionally, seized the gauntlet and quickly became leaders in the independent protection of individual rights under state constitutions.

That was only one of several insights that placed the New Jersey high court solidly at the forefront of modern courts—and having more than one insight, to my mind, constitutes vision. Justice Pollock and the New Jersey Supreme Court did indeed become "catchers in the rye" not only with respect to critical state constitutional law issues, such as public school funding, but also with respect to life-and-death bioethical questions, even the very meaning of "family." I know that we will debate all of these difficult questions long into the future as society redefines itself, but Justice Pollock's strong and steady voice, on and off the bench, will without doubt continue to focus and illuminate the discussion.

### *The Courage of the Judge*

Let there be no mistake about the fundamental cast of this portrait. It will be warm and rosy, luminous and visionary. But predominantly it will be bold and dramatic, and it most definitely will leave a lasting impression. Any likeness of Justice Pollock would have to.

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<sup>11</sup> Hon. Stewart G. Pollock, *Lawyers and Judges as Catchers in the Rye*, 34 *Tulsa L.J.* 1, 3 (1998).

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.* at 3.

Justice Pollock's conception of his role as a "catcher in the rye" alone surely qualifies him as a courageous jurist. But lest there be any question on that score, he also openly reaffirms his view of judging as a creative process: "Judges, even those committed to the plain meaning of statutes, cannot escape their background, experience, and basic beliefs about law and society. . . . [T]he judge, like the artist, studies the human condition and tries to make sense of the chaos of life."<sup>14</sup> These are not empty words but a reflection of two decades of exemplary performance on the bench.

An artist, we all know, is simply a person who does something—anything—very well. So, in the end, this is a tribute to Justice Pollock the Artist, as he completes one chapter of his distinguished and productive life, and moves on to the next.

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STEWART G. POLLOCK—AS SEEN FROM THE PERSPECTIVE  
OF A LAWYER AND TRIAL JUDGE

REGINALD STANTON\*

During twelve of the fourteen years that Stewart Pollock practiced law in Morristown, New Jersey, I also practiced there. During all twenty of the years that he served as a justice of the Supreme Court of New Jersey, I served as a trial judge of the Superior Court of New Jersey, and for almost all of those years we both had chambers in the Morris County Court House. We also had a common background as Root-Tilden scholars and as graduates of New York University School of Law. As a result, I have had a good chance to see Stewart Pollock up close.

As a practicing lawyer, Stewart displayed the same traits which marked his service as a supreme court justice. His intellectual outlook was characterized by openness. He was solidly reasonable. He was fair. He was meticulous about ascertaining the relevant facts. He liked and respected people.

It was a professional pleasure to work on a transaction or litigate a case with him. He was always carefully prepared and on top of the matter. He was unfailingly courteous to all participants.

I will leave scholarly analysis of Stewart Pollock's judicial opinions to others. The thing I most admire in them is that they are clear and easy to read. They also manifest the talent of an effective teacher

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<sup>14</sup> Pollock, *supra* note 1, at 614.

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of the law. One of Justice Pollock's early opinions was *Francis v. United Jersey Bank*.<sup>1</sup> I was particularly interested in that opinion because I was the trial judge on the case and had written a published opinion.<sup>2</sup> The most important issue in the case involved the responsibility of a corporate director to be aware of wrongdoing by management and to take effective steps to stop it. I found the director to be negligent and assessed heavy damages against her. The supreme court affirmed.

I had been rather proud of my opinion, but I could not help but notice how much better Justice Pollock's was. Trial judges have a more circumscribed role than do supreme court justices and they speak to a much smaller audience. Given the differences in status, power, and function of the respective courts, supreme court justices inherently speak much more authoritatively than do trial judges. Still, I wish I had had the wit, the time, and the skill to write the thorough, sophisticated, yet simple lesson on the responsibility of corporate directors contained in Justice Pollock's opinion.

Another good example of Justice Pollock's teaching skill is *Crowe v. DeGioia*.<sup>3</sup> Substantively, the case involved the duty of an unmarried cohabitant to make support payments to his former partner after the breakup of their relationship. The substantive holding of the case moved the boundaries of the law somewhat and was mildly controversial, but the substantive issue was presented in the procedural context of the granting of interim injunctive relief. That procedural context led Justice Pollock to discuss carefully the requirements for granting injunctive relief. He broke no new ground in this area, but he explained the rules extraordinarily well. In New Jersey trial courts today, *Crowe v. DeGioia* is rarely cited in a palimony context but is frequently cited for its statement on interim injunctive relief.

Scholarly writers and commentators in the general press have sometimes referred to the New Jersey Supreme Court during the twenty years of Justice Pollock's service on it as an activist court with liberal leanings. Justice Pollock is usually viewed as being in the mainstream of the court. Labeling a court as "activist" or "liberal" or "conservative" can sometimes be a useful, shorthand way to present some of the rulings of the court. However, at the very least, such labels are likely to be less than fully accurate. For one thing, even a court of last resort which has wide discretion in determining which cases to hear ends up hearing a lot of bread-and-butter cases with is-

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<sup>1</sup> 432 A.2d 814 (N.J. 1981).

<sup>2</sup> 392 A.2d 1233 (N.J. Super. Ct. 1978).

<sup>3</sup> 447 A.2d 173 (N.J. 1982).

sues which do not lend themselves to being categorized as "liberal" or "conservative." Many cases, even many important cases, are ideologically neutral. More importantly, because of the institutional responsibility which courts have, good judges and good courts cannot and do not allow their decisions to be governed by any ideological rigidity.

Justice Pollock has been a very good judge. A reading of the broad range of his opinions reveals a judge whose fundamental intellectual characteristic is openness. All of his opinions reflect a highly nuanced sensitivity to the competing interests which are always present in any litigated case, and all of them evidence his concern for the rights and the sensibilities of every person connected with a case. In those respects, Justice Pollock's published opinions parallel very closely the way he deals with issues and people in his own life. He had been a strong and steady member of a strong and steady court. He will be missed.

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#### A HERO OF MODERATE PROPORTIONS

HOWARD M. ERICHSON\*

Every lawyer needs a hero in the law. Ask me mine, and I answer without hesitation: Stewart Pollock. With Justice Pollock's retirement from the New Jersey Supreme Court after twenty years, I find myself reflecting on what makes him such a hero to me and to so many others who clerked for him, as well as to so many lawyers who appeared before him or read his opinions.

My kind of hero is neither crusader nor daredevil, but someone who can strike a balance. Law, after all, is nothing but balancing tests. What many of us do not realize, when we graduate from law school, is that a lawyer's biggest balancing test is not in the law, but in finding a life well lived in the law. It is no easy task to make a balanced life as a lawyer, nor is it easy to make a professionally fulfilling legal career. How lucky I was that my first legal role model understood not only the importance of work, but also that work is not everything. To see the intensity with which he cared about each case, his attention to detail, and his concern about his work's impact on people's lives, was inspiring. At the same time, Stewart Pollock proved by example that a life of excellent legal work need not preclude a meaningful family life nor opportunities for leisure and laughter. Whether he be presid-

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ing in chambers, working in the community, or prevailing on the tennis court, Justice Pollock always sought to balance hard work and play, career and friendship. He proved every day in chambers that work—even very serious work—can be fun, and that laughter lubricates the workplace grind.

Just as his life reflects personal balance, Justice Pollock's work as a judge reflects a rare political and judicial balance. He defied political pigeonholing. A Republican, Justice Pollock was nevertheless named to the court by Democratic Governor Brendan Byrne, in whose administration he served. One would not dare characterize the author of *Right to Choose v. Byrne*<sup>1</sup> and *Department of Environmental Protection v. Ventron Corp.*<sup>2</sup> as a conservative, but neither could one characterize the author of *State v. Harvey*<sup>3</sup> as a liberal.

If there is one thing that characterized Stewart Pollock as a jurist, it was his ability to forge consensus. His unanimous opinions are many; his dissents and concurrences are few. Unanimous opinions—for the most part—are not born, but are nurtured. Justice Pollock preferred to search for a common path of reasoning among the justices, rather than draft an opinion based solely on his own preferences. I recall how it bothered my fresh-out-of-law-school sensibilities to see, in an otherwise pristine opinion, a phrase or paragraph inserted because it was important to another justice. It is only in hindsight that I understand Justice Pollock's unwillingness to allow the perfect to become the enemy of the good. While he would never sacrifice the right result or a legally sound holding, he would sacrifice his personal preferences in drafting for the sake of unanimity or substantial majority. He saw consensus, I believe, as an aspect of good governance.

Justice Pollock also sought balance through his deference to the other branches of government. Despite his willingness to flex judicial muscle when appropriate, he knew when it was appropriate to defer to the legislature and the executive. Perhaps this deference was exemplified best in *De Vesa v. Dorsey*,<sup>4</sup> where Justice Pollock relied on the political question doctrine in refusing to invalidate the state senate's use of "senatorial courtesy" to block judicial appointments.

Perhaps Justice Pollock's balanced judicial perspective is attributable to the diversity of his professional experience. Stewart Pollock

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<sup>1</sup> 450 A.2d 925 (N.J. 1982) (holding that state constitutional right of privacy includes right to Medicaid funding of abortions to protect women's health).

<sup>2</sup> 468 A.2d 150 (N.J. 1983) (holding parent corporation liable for clean-up of pollution caused by subsidiary and stating that "[t]hose who poison the land must pay for its cure").

<sup>3</sup> 699 A.2d 596 (N.J. 1997) (affirming death penalty conviction over defendant's objection to admission of state's DNA evidence).

<sup>4</sup> 634 A.2d 493 (N.J. 1993) (Pollock, J., concurring).



began his career as an Assistant United States Attorney, then spent fourteen years in private practice before serving in various public service posts including Commissioner of Public Utilities and Governor's Counsel, and thereafter spent twenty years on the bench. Of the newer generation of lawyers, how many of us will experience working as a prosecutor, a law firm associate and partner, an executive branch lawyer, and a judge? Stewart Pollock had an uncommon opportunity for a career of balance and perspective, and he did not squander that opportunity. In our current age of lawyer-specialists, I wonder whether such perspectives will become increasingly rare.

In extolling a judge, one looks for a suitable label. Like the high school yearbook editor listing the best athlete and the most likely to succeed, one searches for something superlative. The most liberal, the most conservative, the most original, the most prolific, the most resounding—good labels, but none quite right for Justice Pollock. Stewart Pollock is a hero of moderate proportions. And in a legal world where so many issues are politicized and divisive, where it is easy to take a stand but hard to build consensus from a position of moderation, Stewart Pollock is a moderate of heroic proportions.