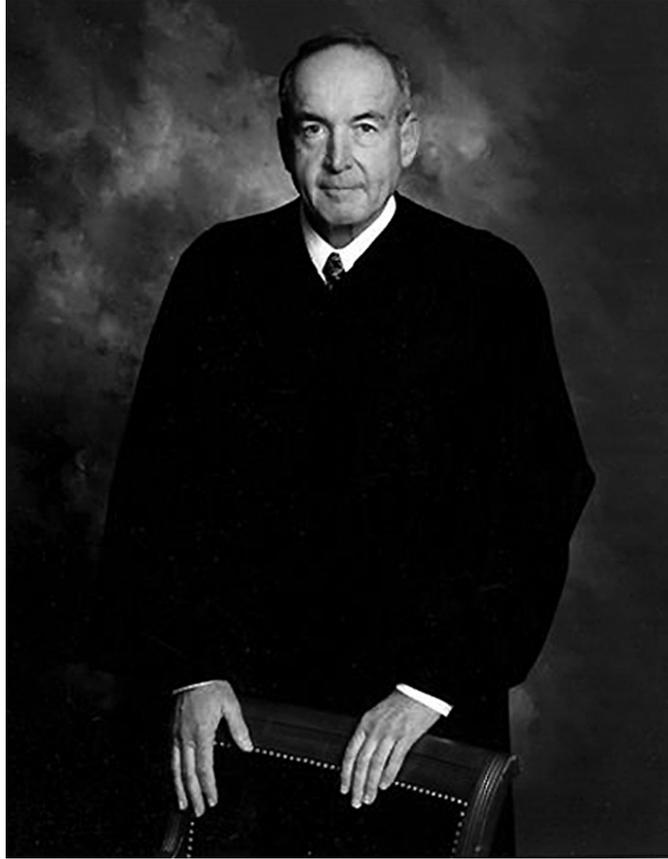


Supreme Court of New Jersey

In Memoriam
HONORABLE
DANIEL J. O'HERN

Richard J. Hughes Justice Complex
Supreme Court Courtroom
November 10, 2009



HONORABLE DANIEL J. O'HERN

Proceeding

Opening Remarks by CHIEF JUSTICE RABNER

Good afternoon. The Court is convening today to honor and remember the life and career of Justice Daniel J. O'Hern. We are pleased to be able to welcome members of Justice O'Hern's family, friends, former Justices and distinguished guests.

We offer a special welcome to Governor Brendan Byrne, who nominated Justice O'Hern to the Supreme Court in 1981. The Justice's lasting influence on this Court, after serving on it for nearly two decades, was but one aspect of his legendary record of public service.

This afternoon, we will have a chance to hear from a number of people who will share their warm memories of Justice O'Hern. First, I'd like to call on Justice Virginia Long, who will speak on behalf of the Court.

Remarks by JUSTICE VIRGINIA A. LONG

Governor Byrne, Chief Justice, present and former members of the Supreme Court, Barbara and members of the O'Hern family, and friends of Justice Daniel J. O'Hern.

In his novel, *Under Western Eyes*, Joseph Conrad suggests that when a man is no longer present to explain or add to the record of his life, he becomes what other people remember of him. In that vein, I am honored to speak today on behalf of the Supreme Court and to place on the permanent record our admiration, respect, and love for Justice O'Hern.

By way of biography, he was born in Red Bank on May 23, 1930, and remained a Red Bank boy for the rest of his

IN MEMORIAM

life. He was a graduate of two famous Jesuit institutions — Regis High School and Fordham College — and stood as a shining example of the Jesuit's notion that if given the boy, they would give us the man. A patriot, he served in the U.S. Navy and returned to attend Harvard Law School. On graduation, in 1957, he became a law clerk to Justice William J. Brennan, an experience that had a lasting influence on him — he shared Justice Brennan's constitutional vision and, fittingly, assumed Justice Brennan's seat on this Court in 1981.

For nineteen years, Justice O'Hern sat on this Court, penning more than 230 opinions, which were brilliant, concise, confident, direct, glitteringly analyzed, and elegantly written. They have been cited by courts across the nation and in treatises and law reviews.

A wag once said that a clear writer has readers and an obscure one — commentators. Well, Dan O'Hern had readers. He made accessible to the ordinary practitioner obscure and difficult legal concepts — witness the continuing trigger doctrine of *Owens-Illinois* — which set forth a logical and understandable template for allocating insurance coverage for sequential environmental exposure.

Because he knew that the Court's survival as an institution depends on public acceptance of its opinions, Dan painstakingly explained *in every case* why the Court reached the conclusion that it did. Indeed, he believed that an opinion that could not be understood by the boys at Sal's Tavern would not pass muster.

And he always reached out to the adversary. In *In re Jobes*, for example, where he dissented from the Court's order that an unwilling health care provider participate in life-ending procedures, he spoke directly to the family members who had sought the removal of life support. He said:

While I dissent from the disposition of this case . . . I reiterate my respect for the aggrieved family and their conscientious decision. I ask them only to consider that the restraints of the law that seem so cruel

HONORABLE DANIEL J. O'HERN

to them may reflect an equally profound respect for patients not surrounded by a family as loving as theirs. It is not possible for us to construct a substantive principle of law based upon the intact family status. We must construct a substantive principle of law that will endure in all circumstances.

Substantively, Justice O'Hern's opinions reflect deep concern for ordinary people and cover the gamut of human experience. Their breadth exceeds geometrically, the capacity to even scratch their surface in the brief time allotted. But no memorial would be complete without reference to *Williams v. Dept. of Human Services*, in which Justice O'Hern wrote, for the Court, that our most forgotten citizens, welfare families, down on their luck, could not be abandoned by the state when their benefits ran out. Thomas Mann said: "Be ashamed to die until you have won some victory for humanity." *Williams* was one of Dan's victories.

The lost, the poor, the downtrodden, and the despised among us, had a champion in Justice O'Hern. It is not surprising then that his colleague, Justice Gary Stein, dubbed him "the little guy's Justice."

It was not only the substance of his opinions that made Dan unique, but the very words he chose. Thomas Carlyle wrote:

Considering the multitude of mortals who can handle a pen in these days, and can mostly spell, and write without glaring violations of grammar, the question naturally arises: How is it that no work proceeds from them bearing any stamp of authenticity . . . ?

He surely did not know the work of Dan O'Hern, who could turn a phrase with the best of them. For example, in *State v. Marshall*, a death penalty case, the prosecutor castigated the defendant for bringing his sons to testify on his behalf, calling it "obscene" and declaring, "there's a special place in hell for him." Justice O'Hern said simply:

When did it become "obscene" for a man presumed to be innocent under our system of law to call witnesses on his own behalf?

IN MEMORIAM

. . .

And

Whether there will be “a place in hell” for this defendant remains for a greater judge than any of us.

And, in *Self v. Bd. of Review*, where the Court held that claimants, who had lost their ride to work, had voluntarily quit their jobs and thus could not receive unemployment compensation, he tweaked his colleagues:

There is a difference between quitting and being fired from a job. Only in the regulatory world do the concepts get confused. . . . These claimants were hardworking building maintenance employees. They wanted work, not a handout. Had they been given a few days to arrange transportation, they might have been able to return to work. Under these circumstances, only a legal fiction of Kafkaesque subtlety can convert their discharge into a voluntary quit.

But to speak of Justice O’Hern’s opinions says too little. For they only hint at his level of preparation, his work ethic, the thoughtfulness he brought to the conferences, the way he inspired collegiality and helped raise the level of discourse above mere mechanical application of legal truisms.

He was a great listener. He knew when to speak and when to remain silent. He was respectful of the views of others, and receptive to ideas that were not his own, although now and then, he was known to roll his eyes. Importantly, he did not change as he acceded to great power, he was never arrogant or overbearing, but remained always humble.

And he was lit from within. He had a perfect moral compass that allowed him to overlay everything with a sense of right and wrong. As William Faulkner said, Dan saw that “long, clean, clear, simple, undeviable, unchallengeable, straight and shining line, on one side of which black is black, and on the other, white is white.” For Dan O’Hern, right and wrong were not just points of view. As

HONORABLE DANIEL J. O'HERN

Justice Clifford wrote of him on his retirement in 2000: "Who will fill his place as the conscience of the Court?"

For all that rectitude, he was not a bit stodgy. Some people are old when they are children. Dan O'Hern was young until the day he died. He was the greatest laugher. He could kick-up his heels. He loved a party, *even* a memorial service. Indeed, at Justice Brennan's memorial, he regaled us with the fact that the Justice made the best Bloody Mary. He told a similar story at Justice Sullivan's, only about a Vodka Martini. He was known to hiss and hoot loudly when speeches were made at retirement parties. And he was not above standup. At Justice Schreiber's eightieth birthday lunch, he donned a rubber Richard Nixon mask and entertained the assembled crowd.

And, most importantly, although he had reached the very pinnacle of the legal profession, Dan O'Hern remained first and foremost, not a Justice, but a family man. His love for Barbara and the children and grandchildren informed everything he ever did. It was their welfare, and not his own, that was always on his mind. And he never took a single breath in this life without thinking of them. What a gift!

Recently, he wrote a book recounting years on the Court — *What Makes a Court Supreme*. It is so like him — filled with paeans to the Court he loved, and bouquets to his colleagues and mentors, not one of whom, according to him, had anything less than the most stellar qualities. Mark Twain said, "Beware of a man who belittles your ambitions." You never had to beware of Dan O'Hern.

In the conclusion to the book, Dan listed the characteristics that he thought a Justice had to have in order for a Court to become great:

courage, breadth of experience, natural intelligence, collegiality, clarity of expression, a little bit of self-doubt and a sense of humor.

He was, of course, describing himself: brave, experienced, brilliant, funny, kind, collegial, erudite, a profound

IN MEMORIAM

thinker, and critically, a worrier. That worry about the effect of our decisions on our fellow citizens is the hallmark of the greatest judges. The ones who always sleep soundly, convinced of the rightness of their judgments, are the ones to watch out for. You never had to watch out for Dan O’Hern.

Antoine de Saint-Exupéry, who wrote *The Little Prince*, reminds us that if we cherish the memory of one who has gone, he abides with us “more potent, nay more present” than any living man. And so it is with Justice Daniel J. O’Hern, whose life and work are emblazoned in our hearts. We are grateful for having had the opportunity to share in his journey.

CHIEF JUSTICE RABNER: Thank you. We will now hear from Justice Alan Handler, retired Associate Justice of the Court, and a colleague and friend of Justice O’Hern.

REMEMBERING DANIEL J. O’HERN

by
Alan B. Handler

May it please the Court, Chief Justice and Justices, Barbara and family and friends of Justice O’Hern.

Daniel J. O’Hern became a member of the New Jersey Supreme Court in 1981. He left the Court in 2000. It is not possible to fully measure or capsulize Justice O’Hern’s distinctive role and rich contributions to the Supreme Court and to the State of New Jersey.

The opinions of the Court during Justice O’Hern’s tenure, including majority and separate opinions authored by him, bear his distinctive imprint. The Court’s opinions then — and indeed throughout its history and today — strove to be sound and scholarly; correct, fair and just; and persuasive, understandable, and acceptable. The Court’s opinions ranged a wide spectrum of human, social and governmental issues. They addressed the rights of the homeless, standards of uniformity in criminal sentencing, press access to public records, strengthening and extending the laws against invidious discrimination, decisions

HONORABLE DANIEL J. O'HERN

that specifically recognized the plights and rights of women — the battered women's syndrome as a criminal defense and as a basis for spousal recovery; and the parental priority of a surrogate mother (the *Baby M* case); and sweeping opinions recognizing and explaining the imperative for affordable housing and the entitlement of children in the poorest school district to a thorough and efficient public education.

Justice O'Hern was considered by his colleagues to be a consensus builder who believed the Court should be unanimous on important matters, that such solidarity added weight and heft to its dispositions. But, he strove for this goal as a matter of principle — to bring the Court to the just and right result that would be understood and accepted — and he did so by dint of his insight and intellect, his scholarship and comprehension. These rarely failed to win the Court. However, he was not afraid to disagree with his colleagues, and his concurring and dissenting opinions, invariably both respectful and regretful, became critical and worthy accretions to the law.

Justice O'Hern authored more than 230 majority opinions during his nineteen-year tenure on the Court. Those opinions had common threads. They were penned with precision and clarity — and with extraordinary efficiency — rendering complex legal principles both comprehensible and persuasive. Justice O'Hern brought this talent to bear in explaining complex and controversial issues: these included the standards governing the reach of constitutional protections in the general criminal law; school searches of students; the state's system of prosecuting capital crimes and the need for enhanced due process; and reviewing death sentences as revealed by his analysis of capital punishment proportionality review to assure equality and uniformity.

Even with complex and controversial opinions, Justice O'Hern underscored the need to communicate, to explain, to persuade. He often applied his famous “Sal's Tavern test”: an opinion failed if it did not make sense to the regulars at this popular establishment in his hometown of

IN MEMORIAM

Red Bank, not just to lawyers and academics. “The way he saw it”, a colleague commented, “the more complicated the issue, the more it needed simplifying.” Justice O’Hern had observed: “I loved to unravel complex cases and try to state their resolution in simple terms.” Complexity did not daunt him. He explained valuation standards of unusual industrial property, and the concept of the “continuous trigger” in applying a statute of limitations to determine the extent of insurance coverage for ongoing environmental harm.

Justice O’Hern valued collegiality and cooperation. For him, the court was greater than the sum of its members. Yet, he appreciated the singular and distinctive attributes and contributions of his colleagues in defining and characterizing a court that he felt must be great. This ideal impelled him to pay close attention to his colleagues, and he had from time to time provided glimpses of them. Unintended, these pictures of his colleagues are mirror images of himself. The virtues (not the few peccadilloes) that he found in the justices, he shared.

For example, he admired in Chief Justice Wilentz his powerful writing, his uncompromising honesty, his wry sense of humor and personal charm. These are fair descriptions of Justice O’Hern.

He greatly enjoyed Justice Clifford “not just for his good humor and piercing wit, but for his enduring contributions to the style and substance of its work” and in a sense his worldliness and institutional sense. What he admired in Justice Clifford he shared in large measure himself.

Justice O’Hern knew that history, tradition and culture were fundamental and constituent elements of law itself. He found this appreciation in Justice Pollock and very much relished his law review article, “The Art of Judging”. He shared Justice Pollock’s values expressed with extraordinary feeling and insight in the most sensitive areas of human experience — such as wrongful life and birth and familial relations.

HONORABLE DANIEL J. O'HERN

He esteemed Justice Garibaldi. He warmed to her unfailingly pleasant demeanor, a demeanor that was perfectly natural, not assumed; and her independence and capacity to be clear and forceful, yet never expressing or revealing exasperation or impatience. He was moved by Justice Garibaldi's profound and persuasive signature opinions, the trilogy of the right-to-die cases. And Justice Garibaldi as the architect of our gender-discrimination law, as well as sweeping opinions of free speech. Again, we see those qualities in full measure in Justice O'Hern.

Justice O'Hern developed enduring friendship with Justice Stein. He said Justice Stein's Wall Street mentality produced an extraordinary blend of dogged preparation, attention to detail and relentless determination to unravel any case; that no case was too small for his attention; no case was too big for his intellect. He commented on his determination, perseverance and consistency. Qualities in no small measure, shared by Justice O'Hern.

Justice O'Hern also saw in Justice Stein the quality of courage. That was a quality of Justice O'Hern as well. Reflecting the influence of Justice Brennan, he had stated: "I learned that respect for the law requires courage."

Justice O'Hern said I was his oldest friend on the Court; we had known each other at the bar for almost 40 years and we served together on the Court every day for 18 years. I won't relate all of his characterizations of me. I, perhaps because of my excesses, triggered his sense of propriety and restraint. He criticized one of my circulating opinion because I cited profusely authoritative publications of Professor Joel Handler, my brother and Justice O'Hern's classmate at Harvard Law School. His comment on the margin was: "Alan, we both love Joel, but we mustn't overdo the adulation." We did not differ much. But in one case, I was prepared to rule that a teacher seeking accidental disability was not entitled to include her non-teaching summer income in determining compensation. Justice O'Hern differed because he felt such income had become common and accepted. The Justice observed wryly that I, having recently returned to the

IN MEMORIAM

Court following surgery, must have had my heart cut out. We also strongly shared the view that because judges lacked the authority to enforce their opinions, the authority of courts depended entirely on the public's understanding and acceptance of their opinions. To gain acceptance, a court's opinions must be "intrinsically persuasive."

Justice O'Hern not only recognized and acknowledged the law's complexities and conundrums. He did not minimize or disguise them but strove to reconcile such differences and to fully explain his choices.

In a lecture given several years ago, he explored the lives and accomplishments of two great jurists who were contemporaries: Joseph Weintraub and William Brennan. He pointed out how similar and different were both of those legal giants. In pondering their differences, he was drawn to a critique of *The Passionate Sage*, a book concerning the legacy of John Adams, in which the reviewer considers why John Adam's legacy has been overshadowed by that of Thomas Jefferson, who has "become a patron saint of American thought." The explanation proffered was that Adams's political and philosophical views grew directly out of his personality — he was a realist when it came to assessing human nature and did not share Jefferson's sunny optimism about democracy and human reason. Adams's personality "impressed upon him the political importance of control, balance, and the modulated supervision of social change," while Jefferson, with a more confident faith in the American vision, "reversed the dichotomy." Thus, Adams and Jefferson, Justice O'Hern quoted, "shared a common vision of America's future but emphasized different features of the vision . . . The glass was always half-full at Monticello and half-empty at Quincy, even though it was the same glass." Justice O'Hern, I believe, blended both views — an enormous respect for the role and responsibility of government in preserving social order and advancing the common good, and an enormous faith in the capacities and worth of each individual, proceeding, as would Justice Brennan, with "a sparkling vision of supremacy of the human dignity of every individual."

HONORABLE DANIEL J. O'HERN

Justice O'Hern had a reverence for life. This extended even to the capital defendant with the concomitant constitutional demand for heightened and extraordinary due process. Because of the imperative that even the life of a reprehensible capital defendant must be protected, he was troubled by the victim-impact standard, which, he felt, made it unduly difficult for a capital defendant to effectively present mitigating circumstances. This reverence for life was further reflected in the separate opinions that he wrote in right-to-die cases wherein he was moved to observe, in searching for the appropriate standard to govern the ultimate determination of continued life support:

“They are not the people that we knew, but they remain the people that we love. In the cases before us, it is undoubtedly that love that deeply moves the parties.”

He had extraordinary empathy and compassion for people. His decisions explored with great feeling and sensitivity the poignant conflicts posed by the issues implicating a child's best interests and a parent's rights. In the case of *A.W.*, he elucidated the standard for determining when parents' rights could be terminated in the best interests of their children. Observing that “[t]ermination of parental rights presents the legal system with an almost insoluble dilemma,” and that “[a]s judges, it is our duty within constitutional bounds to make the choice between [conflicting] policies as reflected in our legislative scheme,” Justice O'Hern explained the exacting, comprehensive and operative standards of the “best interests” of the child. Those principles became the foundation for our current laws, both statutory and decisional, that govern parental rights.

Justice O'Hern's basic fairness and decency, as well as his faith and his moral values, found expression in the great compassion he had for disadvantaged and vulnerable litigants. This was complemented with a positive, if nuanced, view of governmental powers and responsibilities that was predicated on the good faith he imputed to

IN MEMORIAM

government. He once described in a tribute to his admired friend, Justice Hayden Proctor, that his opinions displayed a genuine understanding of the needs of ordinary people who must confront the larger institutions of government, police, insurance companies or employers. That description fits his own opinions. He acknowledged the separation of governmental powers, but appreciated that the separate branches of government had a common interest to resolve critical problems. He thus observed in the context of the “long standing policy of the state that no person should suffer unnecessarily from cold or hunger or be deprived of shelter,” as one that demanded such intergovernmental cooperation. He was inspired by Robert Frost, quoting: “home is the place where, when you go there they have to take you in,” as capturing the essential duty of the State to guarantee its homeless population a safety net.

Justice O’Hern’s colleagues were unanimous in their admiration. They have observed variously: “He was aware that justice was not always perfect and so he brought to the court a great sense of balance and perspective and helped his colleagues to overcome their disagreements in many important cases”. “He always recognized the merit in different approaches and tried to get people to see one another’s positions.” “What he did was listen very closely.” “He always exhibited an enormous respect for the law and took precedent and settled law seriously. But he also understood completely that society changes, life progresses, priorities are reordered over time, [and that an animating force] of the law is its capacity to recognize the evolution and change that demand new perspectives, approaches, and resolutions.”

One colleague commented on his retirement: “The man *** lives by the values of our forefathers: loyalty, devotion to duty, personal integrity, consideration toward others ***. This sentiment was a reflection of his own humanity and of his understanding that the role of justice, in its simplest and most basic form, is to deal fairly with the needs of ordinary people.” And he brought to everything he did a modesty that shaded his excellence. Justice O’Hern said this about his good friend, Justice Proctor:

HONORABLE DANIEL J. O'HERN

“[H]is innate modesty and self-effacing manner [] makes difficult our vision of [the] Justice’s excellence. It is like attempting to see a distant star when the many lights are nearby.” He could have been talking about himself. But, of course, he never would. Justice O’Hern was the same kind of person, a warm and caring person, boundless in his compassion, considerate of all, one who knew the meaning of friendship and practiced it unfailingly.

Reference to these few decisions and anecdotes hardly does justice to the Justice. They hint at but cannot fully reveal the full scope and depth of Justice O’Hern’s contributions to our law and, indeed, to our State. They do exemplify, however, the salient features of his judicial personality. That inspired vision of law. A broad understanding of life and people. An educated worldliness. A full awareness of society. A sharp and penetrating intellect — not daunted or deterred by the complexity or intricacies of any problem. A comprehensive view of the courts and of government — he always understood that our courts must be independent and vigilant in serving the people of the state, yet must ever be mindful of intergovernmental relationships, as well as the constraints and the demands of federalism. A sense of history and tradition.

All of Justice O’Hern’s colleagues enjoyed his modest, self-effacing and self-deprecating ways. He complained that no one would remember his opinions. He was quite wrong about that. The truth is that no one can forget his opinions. They are engraved in our jurisprudence, they are part of the fabric of our laws. His opinions not only guide us and govern us, they inspire us. If the New Jersey Supreme Court has achieved any measure of greatness over the years, Justice O’Hern has a full share of the responsibility for that.

Justice O’Hern’s greatness is symbolized by The Governor’s Executive Order No. 137, issued on his passing. Its first paragraph reads:

WHEREAS, Supreme Court Justice Daniel J. O’Hern was, for many decades, an extraordinary figure in the public life of New Jersey, faithfully serving the people

IN MEMORIAM

of this State as a respected member of the State's highest Court for just under two decades; a Commissioner in the executive branch; a chief counsel to the Governor; an elected councilman and mayor; an accomplished attorney; and a leader in civic affairs, and today New Jersey is a better place because of him and his exemplary service

His signal legacy to the citizens of New Jersey is that of a profound, brilliant and understanding judge responsible for many opinions and decisions that shaped and molded the laws that have governed and guided us for many years and will continue to do so. We may try to summarize this: he brought to the New Jersey Supreme Court, and to the public that he served in his every endeavor: pragmatism and wisdom, fairness and decency, excellence and intellect; integrity and honesty, suffused with deep religious and spiritual values.

Can these singular qualities be summed up? No one description, adjective, or word can suffice. But driven to choose, I would be inclined to use: humanity: The foundation of Justice O'Hern's legacy was his humanity.

CHIEF JUSTICE RABNER: Thank you. We will now hear from John Cromie, one of the Justice's former law clerks.

JUSTICE DANIEL J. O'HERN

by
John D. Cromie

Good afternoon Chief Justice Rabner; Chief Justice Zazzali; Chief Justice Porwitz; Justice Handler; Justice Long; Honorable Members of the New Jersey Supreme Court and of the State and Federal Judiciary; Mrs. Barbara O'Hern, and Dan, Eileen, Jim, John and Molly and your families; Governor Byrne; friends and invited guests.

I enjoyed the distinct privilege and honor of serving as one of Justice Daniel O'Hern's Law Secretaries during the 1987-1988 New Jersey Supreme Court term. I will always cherish that experience and possess an abiding sense of

HONORABLE DANIEL J. O'HERN

gratitude toward Justice O'Hern for expressing his confidence in me.

My honor in having served Justice O'Hern is matched today by the honor bestowed on me by Mrs. O'Hern and the O'Hern family in allowing me to participate in this ceremony to honor the life and contributions of Justice O'Hern to this Court as a representative of my fellow clerks who, like me, were extremely fortunate to have met, worked with and admired such a fine man. I appear before you today with a deep sense of humility and an appreciation for the opportunity to honor the memory of a man who had a profound influence on each of the Law Secretaries who were privileged to have worked for him.

The opportunity that Justice O'Hern extended to me to work for the Wilentz Court was a professional honor and a source of personal pride. The opportunity to work for Daniel O'Hern and consider him a mentor and a friend was a defining moment in my personal and professional life.

While clerking, each of Justice O'Hern's clerks relished the opportunity to interact with dedicated public servants and to address pressing legal issues. It was an honor to contribute to the work of this Court. The substantive experience we each enjoyed would serve to distinguish our respective clerkship years. We were doubly blessed because of our affiliation with and connection to Justice O'Hern — both as a Justice and as an individual.

I, therefore, think it is appropriate for me to share with you some personal reflections regarding Justice O'Hern, both as a distinguished jurist and as an individual who had a significant impact on his law clerks during his 19 year term as a Member of this distinguished Court.

I first met Justice O'Hern in early June 1986. As a law student at Seton Hall Law School, my Property Professor, Daniel Degnan, encouraged me to apply for a position as a Law Secretary after graduation. At the time, the Wilentz Court was considered by many to be one of the finest Supreme Courts in the nation. Clerkships were highly sought after.

IN MEMORIAM

When I arrived at Justice O'Hern's Red Bank chambers for my interview, the door to office building at 151 Bodman Place was locked. Taped to the glass door, I saw an unusual looking note comprised of post-it notes and miscellaneous slips of paper. Interspersed among the typewritten notes were handwriting notes and directional arrows, the sum total of which directed me to climb through the shrubs outside the ground floor and tap on the plate glass window in order to alert Justice O'Hern of my arrival. To complicate matters, as I had arrived in the parking lot, the skies darkened and Red Bank was enveloped in an early summer thunderstorm. I dutifully followed Justice O'Hern's directions, despite the worsening weather, and in so doing, passed an important test — I was able to decipher Justice O'Hern's note.

I subsequently came to learn that Justice O'Hern's directional note was a microcosm for his draft Opinions which, by virtue of his keen intellect and his love of the law and of words, would come in bursts of prose, which if not immediately written down, would be lost. Consequently, the Justice would often resort to jotting down his thoughts on whatever writing material that might be readily available — post-it notes, napkins, paper bags, and scrap paper. Interspersed among this collection of paper, you might find a piece of a legal pad or cardboard, which served as the underlying foundation. Justice O'Hern's long-time secretary, Carol Rittershofer, had the unenviable task of converting these "drafts" into working Opinions that could be edited and refined by his Clerks.

I was met at the office door by a smiling Justice O'Hern. Looking back, I must have been some sight — dressed in my best suit, soaking wet and wiping mud off my shoes. Clearly, I had made an impression — just not the one I had hoped for. Fortunately, I learned that Justice O'Hern did not put a premium on pretense or fashion. He cared more about character than appearance. Justice O'Hern graciously overlooked my disheveled appearance.

As my interview with Justice O'Hern drew to a close, the Justice pointed to a stack of resumes on his desk and

HONORABLE DANIEL J. O'HERN

asked me why he should hire me over the other well-qualified applicants that were seeking a position with the Court. I promised Justice O'Hern that, if given the opportunity to serve the New Jersey Supreme Court, he could rely on me to uphold the integrity of the Court and his position to the best of my ability.

Years later upon reflection, I realized that in giving such a response, I had unknowingly passed a second major test. Justice O'Hern did not demand or seek perfection of those who were fortunate enough to work for him. He did require, of himself and of others, a dedication to justice and a commitment to protect the integrity of the judicial system, in general, and the New Jersey Supreme Court, in particular.

For Justice O'Hern, the law and service on this Court were a vocation and not merely a job. Above all, he recognized that the integrity of the New Jersey Supreme Court was paramount and he attempted, in his words and actions, to always strive to protect this institution.

The early weeks of my clerkship, and I suspect the same could be said of my colleagues, were marked by transition to the traditions and inner workings of this body and Justice O'Hern's preferred style and procedures for handling the important work of the Court. As with most new jobs, it is often difficult to determine whether you are performing up to standards and expectations. In my own case, I received some important non-legal feedback.

Not long after I started my clerkship, I came to learn of Justice O'Hern's love of sports and his passion for tennis. When Justice O'Hern learned that my then fiancée and now wife, Patricia Van Tassel, played four years of varsity tennis for their undergraduate alma mater, Fordham University, he quickly announced, that Patty was to be a standing doubles partner for the balance of the 1987-1988 Court Term. This was a final, non-appealable order. Those who knew Justice O'Hern well can confirm that he took his tennis seriously and he readily took the opportunity to recruit Patty as his new doubles partner.

IN MEMORIAM

As with most young recent law school graduates, I had a negative net worth. To compound matters, I was driving a 10 year old car that was remarkable in its ability to continuously leak important fluids: oil, transmission fluid, radiator coolant, and brake fluid. My circumstances were complicated by my daily commute from my home in suburban Essex County to Red Bank. As a result, my trunk served as a mobile auto parts store and was complete with an emergency supply of oil, anti-freeze, transmission fluid and a well-stocked tool box. I would never give up the practice of law for auto mechanics, but out of necessity, I developed basic mechanical skills which helped me through my automotive emergencies.

Early in my clerkship and thanks to Justice O'Hern, I was quickly on a first-name basis with the best mechanics in Red Bank. Justice O'Hern's kindness in making these introductions served a very important two-fold purpose. He helped to ensure that my car would operate until the conclusion of my clerkship. As importantly, I would subsequently learn that Judge O'Hern and I shared the common burden of driving unreliable and under-performing vehicles.

On more than one occasion during my clerkship year, Justice O'Hern would call me at Chambers to solicit a helping hand in coming to his rescue to assist in dealing with his own automobile difficulties. My emergency store of supplies, basic auto mechanic skills, and knowledge of the area mechanics proved to be equally as valuable to Justice O'Hern. I was pleased to return the favor.

These personal antidotes are illustrative of the qualities that made Justice O'Hern so special. He possessed the rare ability to interact with governmental leaders, judicial colleagues and freshly minted Law Secretaries with the same grace and genuine empathy. While on our frequent visits to the area mechanics, we would discuss the work of the Court. We also spent a significant amount of time discussing our shared appreciation of history, politics, sports and Cape Cod. Justice O'Hern appreciated and relied on the substantive assistance provided by his Clerks

HONORABLE DANIEL J. O'HERN

and we readily tried to contribute our talents. It was his sincere interest in the lives of his law clerks that engendered such well-deserved respect and admiration. Justice O'Hern had the unique ability to make those with whom he came into contact with feel better about themselves.

He also had a great memory. For years after my clerkship, he would always check on the status of Patty's tennis game, the make and model of my current vehicle, and tease me about the quality of the shine on my shoes.

Justice O'Hern's playbook for life was rather straightforward. With an understated grace and a self-deprecating Irish wit, he encouraged his clerks to work hard to learn the law and to work toward achieving justice. He understood that the legal system was imperfect, but at its core, it provides a framework for the resolution of problems and disputes. Because Justice O'Hern had the intellect of a mathematician and the heart of a poet, the law provided him the best of all possible worlds; a logical framework of principles where attorneys could help to solve problems of the human condition.

Justice O'Hern had a private office in his chambers, but he preferred to work at a table in the library that we shared with two Superior Court Appellate Judges. I know he enjoyed the beautiful view of the Navesink River outside of the Chambers, but he also welcomed the opportunity to interact with his clerks and the clerks for the Appellate Judges. We relished his company.

Daniel O'Hern never forgot what it was like to operate the law practice and to deal with the pressures that attorneys confront. He had a deep and abiding respect for trial court judges and juries. Wherever possible, he deferred to finders of fact who, in his words, were "in the trenches." He quietly sought out opportunities to interact with Superior Court Judges, like my father-in-law, Judge Edward J. Van Tassel, a Bergen County Superior Judge, merely to stay in touch and to discuss issues of the day. These overtures helped Justice O'Hern to remain connected to his trial court colleagues. For the recipients,

IN MEMORIAM

these calls and notes represented selfless acts of kindness that meant a great deal.

Although Justice O'Hern took the work of this Court very seriously, he never took himself seriously. He had a terrific sense of humor and relished the opportunity to play a well-timed practical joke on his colleagues and his clerks.

Justice O'Hern was, and always will be, a native son of his beloved Red Bank. As all of Justice O'Hern's clerks can attest, he was a roving ambassador at large for the greater Monmouth County area Chamber of Commerce. He delighted in planning field trips to various locales in Monmouth County, including a traditional expedition to Ocean Grove. Many of these trips included stops for lunch at some of his favorite places: Itri's Luncheonette, Sal's Tavern and Brothers Pizzeria in Red Bank; and Max's in Long Branch. He was thrilled by the economic revival in Red Bank and savored our annual summer lunches at the many new restaurants along Broad Street.

On a deeper level, Justice O'Hern was an integral part of the rich tradition of New Jersey appellate jurisprudence. Justice O'Hern started his legal career, appropriately enough, as a law clerk to United States Supreme Court Justice William Brennan, himself a New Jersey native and a distinguished member of the New Jersey judiciary and of this Court. This Court and the State of New Jersey can take justifiable pride in the contributions of these native sons.

The 1987-1998 New Jersey Supreme Court term is known for the Court's unanimous decision *In Re Baby M*, 109 N.J. 396, (1988), in which the Court ruled that surrogate parenting for hire was illegal in New Jersey. Justice O'Hern was proud of the Court's decision in this landmark case.

Although Justice O'Hern was fond of saying that selecting a favorite Opinion was like asking a parent to identify their favorite child, I know that the Court's trilogy of cases involving the right to shelter *Franklin v. New*

HONORABLE DANIEL J. O'HERN

Jersey Department of Human Services, 111 N.J. 1 (1988); *Williams v. New Jersey Department of Human Services*, 116, N.J. 102 (1989); *L.T. v. New Jersey Department of Human Services*, 134 N.J. 304 (1993), were particularly significant to Justice O'Hern.

In May 1988, Justice O'Hern called me into his office, upon returning from a Court conference. He told me that Stephen Townsend, the Clerk of the Court, would be contacting me to assign an emergency bench memorandum. Justice O'Hern noted that the assignment was noteworthy and involved a case of first oppression in New Jersey; whether there was a constitutional right of shelter guaranteed by the New Jersey Constitution. I was honored by the assignment and a bit overwhelmed by the prospect that the Court had granted certification on an emergent basis. I had a mere three weeks to prepare a detailed bench memorandum for the Court. With his help and encouragement, I met the accelerated deadline.

In *Franklin v. New Jersey Department of Human Services*, this Court addressed, for the first time, whether the termination after five months of emergency assistance housing benefits provided by the Department of Human Services was valid. In my view, the Court's decisions in *Franklin* and the subsequent decisions in *Williams v. New Jersey Department of Human Services* and *L.T. v. New Jersey Department of Human Services*, most clearly represent the embodiment of Justice O'Hern's legal scholarship and character.

The Supreme Court's decisions in the right to shelter cases were vintage Daniel J. O'Hern. Relying upon his broad experience and philosophy that the judiciary should let "government govern," Justice O'Hern solved the underlying issue of the need to help those who were in danger of slipping through the social safety net by relying on legislative and executive branches of state government. Instead of promulgating a broad new constitutional right, the Court relied on what Justice O'Hern deftly referred to as the "art of the half said" and encouraged a practical remedy that had a direct positive impact on those in need.

IN MEMORIAM

Justice O’Hern meant different things to different individuals in his life. To his family, he was a dedicated husband, father, son and brother; to his judicial colleagues, he was a brilliant jurist who relished solving complex legal issues in a manner that could be readily understood; to his Law Secretaries, he was a professional mentor who taught them a great deal about the law, but even more about life; and to the residents of the State of New Jersey, he was and always will be a “man for all seasons” — an intellectual blessed with a common touch; a man of principle and character who exhibited a innate sense of fairness and decency in all that he did; and a public servant whose contributions to this Court will long be remembered and whose 231 Opinions will survive the test of time.

Justice O’Hern was uniquely qualified to serve on this Court due to his broad experience as a United States Supreme Court clerk, practicing attorney, municipal official, cabinet official, and Chief Counsel to Governor Brendan Byrne. These qualities, coupled with his abiding sense of fairness, served Justice O’Hern and the residents of New Jersey well. The State of New Jersey is a better place; the New Jersey Supreme Court and the New Jersey Bar are stronger institutions; and the lives of those fortunate enough to call Justice O’Hern a mentor and friend are immensely richer by virtue of his life.

CHIEF JUSTICE RABNER: Thank you. Next we will hear from retired Chief Justice James Zazzali, a dear friend of Justice O’Hern.

Remarks by CHIEF JUSTICE JAMES R. ZAZZALI (retired)

Chief Justice Rabner, Chief Justice Poritz, Associate Justices and Judges. Governor Byrne. Barbara and all of the family and friends of Dan O’Hern. Barbara asked me to speak today as a “friend” of the family. I am privileged to have a chance to say a few inadequate words. But I am also pleased to be here for another reason. I’m so happy to have the chance to speak at this podium with the knowledge that two justices will not interrupt me in the middle of a sentence.

HONORABLE DANIEL J. O'HERN

All of us have numerous recollections of this gentle man — this great man. I will not recount any anecdotes, save one. And, coincidentally, it was the last time I saw him in our 37 year friendship. I visited him at the hospital in late March, near the end. Justice Stein had been there the day before. Justice Handler was there the day after me. I went into the hospital room. The doctor was examining him. Barbara, turned to Dan, pointed to me, and said, “Who is that?” Dan paused about 5 seconds and said, “Justice Zazzali.” The doctor was elated because he was more alert than expected. Barbara and Molly were thrilled that he knew me. Most of all, I was delighted. Because no one recognizes me anymore.

Since Dan passed away, there have been many ways in which he has been honored. Letters, articles, posthumous awards, plaques, speeches, and on and on. But none of them, none of us, can be equal to the task. Still, each of those efforts is meaningful to some degree.

The most recent expression concerns, of all things, the Red Bank Train Station. That station is irrelevant to most of us. But that was where Dan took the train round trip, each day for four years, when, as a teenager, he commuted four hours daily to Regis Prep in New York City. It was a whistle stop where presidents like Teddy Roosevelt, and monarchs like George VI and Queen Mary, stopped on their tour of New Jersey. In 1977, the state planned to demolish this Victorian relic. Dan was the mayor of Red Bank at the time. Dan single-handedly fought to preserve it and refurbish it. And he won. The federal government placed the station on the National Historic Register. And it was not just Dan’s verbal support that did it. There’s a famous photo of Dan, his daughter Eileen, and a group of teenagers on a scaffold, painting the station. And that is one of the reasons why the Office of the Governor and legislative leaders are supporting legislation, to be introduced shortly, to designate the red bank station as the “Daniel J. O’Hern Station.” Although confident about passage, nothing is certain. But the spirit behind that effort is itself gratifying.

IN MEMORIAM

As with all of the other efforts these past seven months, that gesture is still not quite satisfying. The best way we can honor Dan is not by speeches, or articles, or dedications. But, rather, through our collective and individual memories. To try to keep his memory, his example, his greatness, alive in our hearts, in our thoughts and in our deeds. Not just next year but for as long as we are able. Put differently, Dan's monument is our memory.

How do we sum him up? It was in 1972, when someone said to me "You really ought to meet Dan O'Hern. He will remind you of Lincoln." There is much validity to the comparison. It's not just that they physically resembled one another. Both being the same size. Walking with that slight stoop and slow gait. Both possessed of a simple but charismatic manner, that homespun presence. It was more. Dan's core values. His appreciation of that ordinary Joe in that extraordinary tavern. His humility — real not faked. His fundamental decency. His unboundless personal and professional integrity. Dan was always himself, everywhere and with everyone, never afraid to show his private face in a public place.

How are we all reacting to all of this today? Perhaps bittersweet. One is reminded of the candidate for President who, on the night he lost an election, was asked "How do you feel?" He answered "I'm too old to cry but it hurts too much to laugh." We don't cry today. Neither can we laugh. But we can rejoice. As someone said at Lincoln's deathbed, "now he belongs to the ages." And now, Dan too, belongs to the ages. And to our memories. We should rejoice in those memories.

As much as the words of philosophers and priests try to console us in these times, the poet usually says it best. I mentioned at the outset that I was asked to speak by the family as a friend. It is fitting, therefore, to recall a few lines from a poem written by Edgar Guest called "A Prayer." It could just as easily have been called "A Friend" and it could have been a poem by Dan himself or about Dan. Just a couple of excerpts suffice:

HONORABLE DANIEL J. O'HERN

Grant me, O Lord, this day to see
The need this world may have for me;

To play the friend
Unto the end;

Grant me, O Lord, to face the rain
And not too bitterly complain;
But teach me to live so that I
Can brother with each passer-by.

I think the Lord planted those seeds in Dan. With all of us, he played the friend until the end. He “brothered” with each passer-by. The world is and will always be a better place because he walked among us. Thank you.

CHIEF JUSTICE RABNER: Thank you. We will now hear from Justice O’Hern’s son, Daniel J. O’Hern, Jr.

Remarks by DANIEL J. O'HERN, JR.

Chief Justice Rabner, Associate Justices of the Supreme Court, Governor Byrne, Chief Justice Zazzali, Chief Justice Poritz, former Justices of the Supreme Court, members of the clerk’s office, law clerks, friends and family.

On behalf of the entire O’Hern family, we thank the Court for this beautiful memorial service. I want to particularly thank Paula Burkhart for all of her hard work in organizing this service. I also want to thank all of the speakers, Justice Long, Justice Handler, Chief Justice Zazzali and John Cromie.

Several weeks ago, Justice Pollock spoke about my father at the annual professionalism awards luncheon. At the beginning of his remarks, he noted that the difficult task in speaking about my father was coming up with original material, not because there was not enough material to draw from, but because so many wonderful things have been said or written about him since he passed away. Despite his trepidation, Justice Pollock’s remarks, of course, were perfect. But I understand how Justice Pollock

IN MEMORIAM

felt. My Brother John's eulogy and Justice Stein's remarks at the funeral so beautifully captured the essence of my father.

But I had a source that no one else had, my father's office. I had the daunting and oftentimes difficult task of cleaning out his office. Those who know my father know he was pack rat; he saved anything and everything. He was able, in part to write his book about the Supreme Court because of these habits. His office contained a dizzying array of piles and files that only he could make sense of. It reminded me of what Justice Clifford wrote in a tribute to my father at his retirement about his notes on the petitions for certification: Justice Clifford wrote that only my father could make sense of what he described as "an indecipherable maze of handwritten scribbles, folded down pages from the opinion below, and one word clues, the whole mess held together, sort of, by a rubber band."

Not surprisingly there was a lot of junk in his office, but buried amidst the junk were wonderful nuggets of information, pictures, books, letters, notes, copies of speeches that he gave over the years.

One such speech was his remarks at the Seton Hall Red Mass in October 1993 when he received the Thomas Moore Award. In his usual self deprecating way, he started his remarks by saying this; "Some very nice things have been said about me and I am not sure I can rebut them without prompting the committee to withdraw the award." He said he was reminded of the joke about a boy at an Irish Wake who after listening to the beautiful words spoken in memory of the deceased, walked to the casket and peered in. The boy returned to his seat and his mother said, "What did you go up there for?" and the boy replied "I just wanted to see who was in the casket because it didn't sound like it was Dad." Needless to say, The O'Hern children did not have to do that our father's wake.

I am sure of this, if my father is looking down on us he is saying why are you people wasting your time talking about me. That was just him, he never wanted to put anyone out or have anyone make a fuss about him.

HONORABLE DANIEL J. O'HERN

There are so many things I could say about my father's service on the Court, but I thought a good place to start was the beginning of his amazing journey as a New Jersey Supreme Court Justice. August 6, 1981, the day he was sworn in. That Sunday, the local paper, the Red Bank Register, ran a story about the swearing in. The story started with these observations: "Eileen looked beautiful, Molly looked cute, Jimmy and John looked a bit uncomfortable in their shirts, ties and jackets, and Danny looked tall. All looked proud." The paper was being kind to Jim, John and me. Needless to say the O'Hern boys at the time were not paragon's of style. We just hope that the picture of us from the swearing in has been purged from the Supreme Court archives.

But we were so proud of Dad. It was a glorious day for him and our family. Although I think I can speak for all my siblings in saying that we did not fully understand the significance of the day. We were young. I was the oldest, and had just completed my sophomore year of my college. Molly, the youngest, was only 9. As time passed and four of us went on to law school, we came to more deeply appreciate what it meant to serve on this great Court.

But it was clear what the appointment to the Court meant to my father. He told one local paper that it was a lawyer's dream. Indeed it was a dream job for him, although it is not accurate to call his service on the Court a job. It was a calling of the highest order for a New Jersey lawyer. After his retirement he was asked by an interviewer if there was anything else he would have preferred to do with his life. He answered: "You want to know the truth? No."

There were so many things about the Court that he loved, the intellectual challenges, the Court conferences, the oral arguments, the opinion writing, the legal and life lessons that he imparted to his law clerks, and of course the collegiality and friendships that developed among the Justices. He captured so much of these wonderful memories and experiences in his book that was recently pub-

IN MEMORIAM

lished by the Law Journal, so there is no need to repeat them all here.

But my brother John reminded me that my father loved sharing a pastrami sandwich with Chief Justice Wilentz during conferences. My mother would never serve that at home, so I guess the Chief was an easy mark for his gastronomical delights. I have to say the practice of splitting a sandwich continued when he came to work with me, although it was always a tug of war of whether we were going eat healthy — I liked my turkey sandwich — or have something loaded with fat and mayonnaise. Mom, I did my best.

The Justices with whom my father served were highly motivated and talented individuals, but to my father the Court's institutional reputation was sacrosanct. In a tribute at his retirement, Justice Stein wrote that my father "had a full appreciation of [the Court's] institutional role as New Jersey's Court of last resort." He was extremely cognizant of the Court's role in this regard and would assiduously avoid any action by him or the Court that could in any way damage the Court's reputation in the eyes of the public.

My father also had a keen appreciation for the history of the Court. As Justice Handler wrote in tribute at his retirement, he "viewed the law from a broad perspective strongly influenced by a sense of judicial tradition and a special appreciation of history." When he joined the Court it already had a reputation as one of the top state courts in the country, and he was deeply honored to be able to serve on such a storied Court. He respected and appreciated its rich history and traditions. He admired and studied the Justices that served before him and he was committed to preserving the Court's legacy and reputation. He once told an interviewer that "As strange as it might seem, we still tell stories about old courts — people like Justice Proctor, Justice Francis, especially Chief Justice Weintraub." He told the interviewer: "They are not dead to us."

As most of you know, my father clerked for United States Supreme Court Justice William Brennan. There is

HONORABLE DANIEL J. O'HERN

no doubt that Justice Brennan had a tremendous influence on my father and that he was one of his great role models. My father would be uncomfortable having me or anyone else compare him to Justice Brennan. But there are comparisons to be made, although I will leave most of the judicial comparisons to the scholars and academics.

In a tribute to Justice Brennan, my father wrote that Justice Byron White had once said that Justice Brennan's creed was that a judge should proceed "with a sparkling vision of the supremacy of the human dignity of every individual." My father shared that vision. He never forgot that there was a human face behind every litigant that came before the court, in particular those litigants who did not have the ability, financial or otherwise, to influence the issue.

But, to me, the real comparisons to be made between Justice Brennan and my father have nothing to do with their talents as jurists or their judicial philosophies, but with their humanity, who they were as human beings. I think I had a general sense of the personal traits they shared, but they were heightened when I came across a book about Justice Brennan — where else? — on my father's desk. The book's title was the "The Common Man as the Uncommon Man." It was published by the Brennan Center for Justice at the NYU Law School and was a collection of personal remembrances and anecdotes about Justice Brennan the man, not the Judge.

I took the book home with me and started reading it, and I was immediately struck by how much the stories told about Justice Brennan reminded me of my father. My senses and emotions in this regard were no doubt heightened by my father's recent death, but I am convinced that no matter when I read them I would have felt the same way. There was one passage that was written by David Halberstam, who wrote the foreword, that particularly touched me that I would like to share with you. Halberstam wrote:

"No one who has ever met him can be other than moved by the powerful and enduring quality of his human-

IN MEMORIAM

ity. He is a man defined by his own innate decency and kindness. His constant courtesy and sweetness are no small things. They are a central part of him, and they were as important to him when he was at the height of his power on the Court as they were when he began his professional journey. He has always been unaffected by his position, and he remains incapable of posturing. With others all too often in the rise to the position of power, personal humanity calcifies, and humility evaporates. . . . But Bill Brennan has never forgotten the most elemental truth of social relations — in order to gain dignity it is important to bestow it on others.”

I wish I had Halberstam’s way with words, but when I read that passage I felt like he just as easily could have been describing my father.

My father, like Justice Brennan, never forgot that elemental truth of social relations. He, too, was the common man as the uncommon man. His innate decency and goodness infused every aspect of his life, as son, brother, husband, father, grandfather, uncle, friend, colleague, elected official and of course his service on the Court. He treated everyone he met with warmth, kindness, dignity and respect, regardless of their station in life, whether it be the janitor or postal worker at his Chambers in Red Bank, the sanitation workers at our family home in Red Bank, the staff in the Clerk’s office, or a young lawyer at a local bar dinner. If a lawyer was struggling during oral argument, his kindness compelled him to throw the lawyer a lifeline, maybe an easy question to allow the lawyer to gain his or her bearings.

He always had time for everyone, and frankly we wondered how he did it all. He had that unique package of personal qualities and talents that made him the rarest and most special of human beings. As my brother Jim has said several times since he passed away, he is one for the ages.

Halberstam also wrote of Brennan that his personal qualities “became in time a very professional tool, for they helped make him an uncommonly effective member of the

HONORABLE DANIEL J. O'HERN

Court, with a rare ability to bring others of seemingly differing views to a consensus that a less graceful and generous-spirited man might not be able to do." The same was often said of my father.

In fact, I found a letter that Justice Stein sent to my father at his retirement — where else? on his desk — in which Justice Stein said this to my father, after "Robert died, you were the Court's moral compass and, perhaps without realizing it, you provided leadership for the Court in so many ways. . . . The Court trusted you, and was willing to follow you if you would show them the way. No role on a Court like ours is more important than the one you filled so wisely and well."

After my father's wake and funeral, Justice Stein said to us that he believed that my father did not fully appreciate and understand how many lives he had touched in so many different ways, and I think he was right, and that was part of what made him such a special person: he did not think he was special, and he certainly never acted like he was.

At his retirement, my siblings and I wrote a tribute that was published in the Rutgers Law Review. I guess I have adopted some of my father's habits, because over the years I have saved notes and e-mails that he would send to me and the family, although I do not think I will be writing a book anytime soon. When he first read our tribute, he sent us an e-mail that said this: "I had a hurried chance to read the tribute that you wrote in the Rutgers Camden Law Review. I was deeply touched. You give me more credit than I deserve (the man who never missed a nap) but it was very heartwarming to me and mom."

Yes he liked his naps, but I think he was on to something as many studies have shown the health benefits of naps, including improved mental acuity.

And as you heard in his e-mail, even with his children, I do think he fully understood how he impacted and influenced our lives. But we certainly have no doubts in that regard.

IN MEMORIAM

While I would like to close with something original and profound, when something had been said well once, there is no sense in recreating the wheel, and my father always liked a good quote, so I close with this passage from our tribute in the Rutgers Law Review:

“Several years ago, one of us repeatedly asked our father what was his judicial philosophy — conservative, liberal or moderate. Our father never provided an answer. But when one of us once asked him why he went into the practice of law, he answered quickly. He said that he wanted to help people. We believe that as both a practicing lawyer and a justice he has been true to the goal which he set for himself years ago when he headed off to law school. And his judicial philosophy is clear to us now. That philosophy, like his philosophy of parenting, is one based on reason, fairness, and simple human dignity. In the end, we are pleased to have been able to share our father as an Associate Justice with the State of New Jersey. We hope that the values he instilled in us permeate not only the legal profession, but also society at large.”

Closing Remarks by CHIEF JUSTICE RABNER

Thank you, Dan, for those heartfelt, beautiful words of tribute. I did not have the honor of serving on the Court with your father, but our paths crossed on a number of occasions. I first met him while he was serving on the Ethics Advisory Panel for the Governor. That distinguished panel of two is called upon to offer counsel to Governors on some sensitive challenges that public life presents. Justice O’Hern was obviously well-suited for the task, and he handled the issues before him with wisdom, a strong sense of ethical principles, and sound, practical judgment.

The Justice was extremely gracious and generous with advice after I was nominated to the Court. He sent me a biography of Ear Warren that had just been published but first made sure to underline a few passages on collegiality. He was right to focus on that important special ingredient, which he did throughout his service as an Associate Justice.

HONORABLE DANIEL J. O'HERN

I got a sense of Justice O'Hern's strong will in the weeks that followed. I sent him a thank you note and a check to cover the cost of the book, with an explanation of my practice not to accept gifts while working in government. I thought he would understand, given his position as ethics advisor to the Governor. But he would have none of that as he made crystal clear in a follow-up conversation, and he simply refused to cash the check.

We have all been fortunate to benefit from Justice O'Hern's vision and kindness, his deep sense of commitment to the Judiciary, and his exemplary contributions to our State over the course of decades. We have been privileged to know him and will miss him.

Thank you for attending and participating in this memorial proceeding. The Court is now going to recess to the conference room, and we invite all of you to join us there. Court is adjourned.

†