

INTERVIEW WITH CHIEF JUSTICE JAMES R. ZAZZALI

MARCH 16, 2018

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Introductory comment by Chief Justice Zazzali: Because I was advised that I could make edits to the transcript of the interview, I have improved the grammar and syntax, corrected errors, and added a few items.

Although relationships, my family and friends, count the most, I have not spent significant time on them in this interview, other than the backgrounds of my parents which provides context for much of what happened later. This is not the place for many other recollections and observations. Although “time’s winged chariot is hurrying near”, I hope to set them forth in some other effort

Mark Twain once observed that biographies are but the clothes and buttons of the man, and yet the nature of this interview is such that one cannot and should not be totally “open”. That said, it promotes insight if I take off a couple buttons.

PART 1 OF 7

Forged in Newark's Melting Pot: Early Years, Experiences & Influences

Chief Justice Zazzali recalls his youth in the Vailsburg Section of Newark, New Jersey. He provides a sketch of his family's history through his mother, who emigrated from Italy, and his father, a first-generation Italian-American who established a law practice in Newark. He discusses his early schooling at Sacred Heart School (1942-1950) and Seton Hall Prep (1950-1954). He relates how his teachers, family and exposure to public issues shaped his experience as a youth.

Illingworth: This begins an oral history interview with Chief Justice Zazzali on March 16, 2018, in Trenton, New Jersey, in the Justice Hughes Justice Complex, with Shaun Illingworth of the Rutgers Oral History Archives, for the New Jersey Supreme Court Oral History Program. Chief, thank you very much for coming in today.

Chief Justice Zazzali: Thank you for the privilege.

SI: All right. To begin, could you tell me where and when you were born?

Chief Justice Zazzali: In 1937 in Newark.

SI: What were your parents' names?

Chief Justice Zazzali: Dad was Andrew Francis Zazzali. Mom was Aida Frances Taverni. She was born in Tuscany. A few months before my grandmother gave birth to my mom, my grandfather saw the opera "Aida" and that inspired my grandparents to name the baby Aida if it was a girl. I am so pleased that he did not see Figaro.

SI: So, let's talk a little bit about your parents' roots. You were telling me before we started—your grandparents had emigrated from Northern Italy.

Chief Justice Zazzali: Yes. The story of my relatives is no different at its core than the story of the average immigrant, hundreds of millions who came to the United States. It's a story primarily of courage, pulling up roots and leaving home for whatever reason.

On my dad's side, my grandparents were born in the mountains of Northern Italy and raised three or four children there. My grandfather decided in the 1870s to move to Paris where he learned the importing business, particularly fruit imports.

He lived there for a decade in the 1870s-1880s, they had four more children, and then came to the United States somewhere around 1885. My grandparents had three more

children here, including dad. My grandfather grew that importing business, ultimately bananas, to the point where he became “one of the largest dealers in the country,” according to a History of Newark in the Newark Public Library, and was called “The Banana King.”

I learned only recently that the other merchants regularly came to him to resolve disputes, to mediate and to arbitrate, so much so that he became known in the mercantile community as “The Judge.”

His last three children went to college, which was unusual a century ago, especially for immigrant parents. One went to Villanova and then Harvard Law, my Dad went to Georgetown College and Law School, and an aunt went to St. Elizabeth’s.

On mom’s side, she was born in one of those little hill towns between Florence and Siena. A couple years ago, I was browsing through *The Description of the Mediterranean*, a two-volume series by Fernand Braudel, a leading historian of the Mediterranean. [Editor’s Note: Chief Justice Zazzali is referring to Braudel’s two-volume *The Mediterranean and the Mediterranean World in the Age of Philip II.*] Braudel noted that the hills of Tuscany are the most beautiful in the world.

The contrast in my parents’ background is interesting. The Zazzalis were serious, hardworking. My mother’s family was more *joie de vivre*, simpatico. Mom’s dad came to the United States about 1902. Because he did not have the money to bring over the family, he worked for three years in New York City on the Queensboro Bridge and then as a chef, saving enough after three years to send for his wife and three children.

After coming to the United States at age six and enrolling in school, Mom had to leave in the seventh grade, again the classic story, no different than many other families, because her three first cousins who also had come over lost their parents in New York City in the 1918 pandemic. They left three orphans, and it fell upon my mom at age thirteen to raise them because other members of her family were either working or ill. She left school to raise her cousins, and then obtained a job to help support the family.

It amazes me, and I never was able to quite figure this out, that although born in Italy, she read and wrote English better than I do. I think that is in part a tribute to the public education system in those days, especially in urban settings like New York. They drilled the three “Rs” into you. Or perhaps the structure and discipline of the perfect Tuscan language helped her to learn English. A language professor has suggested that she simply had an ear for language.

SI: So, do you know what attracted your grandfather to Newark particularly?

Chief Justice Zazzali: Because you’re in the history profession to some extent, as you probably know, Newark in the late 1800s, and into the mid-twentieth century, was considered one of the great cities in the United States, the eighteenth-largest in population.

Over the years *The Star-Ledger* has done a number of pieces on Newark, concerning the fact that it had the highest percentage of factories per capita of any city in the U.S.A. Factories saturated much of what is now Down Neck, the East Ward, South Ward and Central Ward. They had more jewelry factories—factories, not outlets, two hundred—more than any city in the United States, because in the mid-nineteenth century, many members of the jewelry manufacturing community located in central Germany came to Essex County.

It was also the second-largest beer brewery city in the United States after Milwaukee, and a center for both insurance and for leather manufacturing. Newark was doing very well, and then—I am not sure what happened. That’s a separate story. It has over the last two decades seen a resurgence and I hope that continues.

SI: But, when you were growing up in the ‘40s, it was still close to that peak.

Chief Justice Zazzali: Yes. We lived in the Vailsburg section of Newark. Doors were always open, nothing was ever locked. You hear that about many other towns and cities.

SI: Well, your parents, do you know what year they married?

Chief Justice Zazzali: 1930, at the height of the Depression, after meeting on the Bradley Beach boardwalk in 1926.

Dad, to step back for a moment, was a natural athlete, though not a big man. He played three sports, first string for four years at St. Benedict’s in baseball, football and basketball. The Georgetown Basketball History Project, published by the University, reports that at a time when high school sports teams sometimes played college teams, and although he was still in high school, Dad played against Georgetown in a basketball game. According to the Project, he “held Fees, the nation’s leading scorer (then at Georgetown) to one field goal in a January 1918 game, whereupon he was recruited to Georgetown to join Fees in the Georgetown line-up the following fall”. Dad later became captain of the team for two years. The Project notes that during this period Georgetown “played 44 home games and surrendered not a single loss”, a win streak “that stands untouched to this day.” He also played football and captained the baseball team, pitching two no-hitters and later received an offer to go directly to the Cincinnati Reds but he turned it down. He said he wanted to go to law school—I suspect that his arm was also giving him trouble.

When an undergraduate at Georgetown, I explored the University archives to learn what I could about Dad. One newspaper article stated that he was “one of the finest natural athletes in the East”. As a result of all this, he was the first athlete named to Georgetown’s Hall of Fame when it was formed in 1958.

At Georgetown, he became close friends in the College and then at the Law School with three brothers named Walsh. Their father was Frank P. Walsh, a forgotten name, who died in 1937, but in the first part of the twentieth century Walsh was one of the two or

three most prominent Irish-Americans in the United States. The *Atlantic* magazine, when I was in law school, published an article about him, calling him the “Clarence Darrow of the East,” the champion of many liberal causes. But he was more than that. Besides being the nation’s foremost labor lawyer, he was a great Irish patriot, so much so that Éamon de Valera, who was stirring things up a bit in Ireland in the Time of the Troubles in 1917-1919, became a close ally of Walsh. Walsh, together with Honey Fitz, President John F. Kennedy’s grandfather, led the Irish-American cause in the United States, with their fundraising and other activities.

[Editor’s Note: Éamon de Valera (1882-1975), born in New York City, became a key figure in the Irish Independence Movement, starting with the Easter Rising in 1916, and, later, as head of (or opposition leader in) various iterations of the Irish government. Francis P. Walsh (1864-1939) represented Éamon de Valera’s Sinn Fein at the Versailles Peace Conference following World War I and, in the 1920s, chaired the American Commission for Irish Independence and served as U.S. counsel for the Irish Republic. John F. “Honey Fitz” Fitzgerald (1863-1950) served as Mayor of Boston (1906-08, 1910-14) and a U.S. Representative (D, MA, 1885-1901, 1919). His daughter, Rose, married Joseph P. Kennedy, Sr., parents of President John F. Kennedy.]

Mr. Walsh took a liking to Dad. After graduation from Georgetown Law School in 1925, Walsh asked Dad, “What are you now going to do?” When he replied that he was uncertain, Walsh said, “Come out with me to Kansas City.” That’s where Dad went and practiced law for two years. Because Dad had no place to live, Mr. Walsh took him into his home and made him part of the family.

That is the genesis of my Dad’s interest in labor law, and hence mine. I suspect that he may also have been influenced by the fact that of the eleven siblings that I mentioned, his oldest brother and sister died in their teens when eighteen or nineteen years old, probably from sweatshops or other poor working conditions in Newark.

Dad came back to New Jersey in ‘27, ‘28, and married my mother in ‘30. During the Roosevelt years, he was assigned by the Administration to investigate banks for the FDIC [Federal Deposit Insurance Corporation] in New Jersey. Truman then named him Director of the Office of Price Stabilization (OPS) in New Jersey in 1950. The OPS was the successor to the Office of Price Administration (OPA) in the Second World War, which established wage and price controls during that war. Because of the war effort, the nation had to conserve, resulting in significant price and wage controls. Everything was rationed. You couldn’t get gasoline or much of anything. It was less severe in the Korean War, when Dad was named the OPS Director. [Editor’s Note: In September 1950, the Defense Production Act, passed in response to the outbreak of the Korean War to give the government control over the economy during the conflict, authorized President Truman to establish, with Executive Order 10161, the Economic Stabilization Agency, the parent organization of the Office of Price Stabilization. The Agency’s authority expired in 1953.]

SI: Well, let me go back—when did he start the firm in Newark?

Chief Justice Zazzali: I would say immediately after he came back in '27, '28. It was across the street from the Essex County Courthouse, now a national landmark and treasure. He started his practice and his marriage at the height of the Depression. We all had parents or grandparents who lived through the Depression and have heard many stories of challenge and courage. Dad somehow managed to practice law when many New Jersey lawyers built the boardwalks as part of the WPA, (the Work Production Administration,) or worked as lumberjacks in Washington and Oregon, cutting down trees for the CCC, (the Civilian Conservation Corps).

[Editor's Note: The Civilian Conservation Corps was an agency that was part of President Franklin D. Roosevelt's New Deal, which employed young unemployed males in outdoor conservation projects from 1933 to 1942. The Works Progress Administration, or, after 1939, the Works Project Administration, was a New Deal agency that employed millions on public works projects like buildings and roads, as well as in specialized areas, such as the arts, from 1935 to 1943.]

Dad earned a living from the practice of law because of the family's name in Essex County, his reputation as an athlete, and plain hard work. But it was tough. Because of the effects of the Depression, my parents were not on their feet until the early '50s, after twenty years of sacrifice. Most Americans went through the same experience.

SI: Did your mother work outside of the home?

Chief Justice Zazzali: In those days, the culture frowned upon a wife working outside the house, especially the wife of a professional person. People would say that if a doctor's or a lawyer's wife was working, something must be wrong. Nonetheless, mom, who was tall and stately, became a model after she finished raising those three cousins. She knew how to both make and model dresses. Because she loved fashion, in the forties she took a part-time job in a dress shop in East Orange in the mornings when we were at school. I do not think Dad knew about it, until I got angry at Mom one day and squealed, "Mom's working in the mornings." He laughed. I believe he knew she was working and he was proud of her. Mom forgave my ratting her out.

SI: So, you also have an older brother.

Chief Justice Zazzali: Andy, and a younger sister, Judy.

SI: Now, what are your earliest memories...

Chief Justice Zazzali: I owe Dad so much but I also am indebted to my brother Andy. He gave me the opportunity to walk in and out of a law practice for thirty-five years, to do the different things I have been fortunate to do. He never complained and always treated me more than fairly in the firm, compared to himself. I would not have been able to accomplish what I did without his help.

My sister, Judy Hughes has been a school teacher, and now is a fine artist. She also is a great inspiration, always there for us at every turn. Judy inherited all of the best genes from our parents and Andy and I received what was left over.

Most important of course is my wife Eileen. She is foremost, putting up with me for now fifty-four years. We were fortunate to have, and are so proud of, our five children, Mara, Jimmy, Robert, Courtney and Kevin. My family eclipses everything else we discuss. I hope to discuss Eileen, our children and family in some other memoir when I catch my breath.

SI: Well, tell me a little bit about your neighborhood, where you grew up, in the Vailsburg section of Newark.

Chief Justice Zazzali: It was Irish, German, and Italian; Catholic, Protestant, and Jewish, the middle-class and the poor.

The local school, local church, was Sacred Heart—in Vailsburg, not the Cathedral. The Cathedral, now a basilica in North Newark, was still being built—it took the Church 100 years to build that basilica. The Vatican moves at a glacial speed. [Editor's Note: Planning for the Cathedral Basilica of the Sacred Heart began in the 1850s, with construction beginning in 1899. The Cathedral, the fifth-largest in North America, was not dedicated until 1954.]

Sacred Heart School was an elementary school, run exclusively by nuns. In those days, busloads of nuns came from Boston where every Irish Catholic family seemed to have a child or wanted a child who was either a nun or a priest. Those nuns were the Sisters of Charity, able and committed educators.

The school was a product of the immigrant church in the 1940s, but overpopulated. My first grade had over ninety kids and one twenty-three-year-old nun. I believe she eventually left the convent after having to put up with us, but those nuns persevered. As did the students, in the face of primitive conditions, unlike today. We had no school buses. We walked to and from school, morning and afternoon. We also walked to and from home for lunch, because there were no luncheon facilities, not even a vending machine. I never saw a water fountain that worked. The restrooms were just—we won't go there or discuss how they were maintained. The textbooks seem to have been published shortly after the Civil War. That's hyperbole, but they were outdated by a decade or two.

Still, we received a good education. The nuns were relentless, focusing on the same three Rs that my mother experienced forty years before in the New York public schools. We learned how to diagram a sentence, how to spell, how to do math, and how to read.

SI: In general, what role did the Church play in your life, your family's life?

Chief Justice Zazzali: In those days, the Church was a powerful influence. It was remarkable notwithstanding the physical deficiencies of Sacred Heart School. The pastor, a curmudgeonly old guy, nevertheless told the boys in the eighth grade that if we went to Seton Hall Prep we could go free, and the girls could go free to St. Vincent's Academy. The Church paid our high school tuitions for four years.

The tuition while at Sacred Heart grammar school itself was seven dollars a year for eight years. Couple that with free high school, and our total elementary school and high school cost was fifty-six dollars.

The priests at Seton Hall Prep were extraordinary. Father Daly, Father Sullivan, names that are forgotten these days, were wonderful men and role models.

SI: Was it a center for activity, in terms of, like, were you an altar boy or were you involved in clubs?

Chief Justice Zazzali: No, I dropped out of altar boys in the sixth grade because we had to learn Latin. I felt it made no sense to learn foreign words and repeat them by rote, if I didn't know what they meant. I was stubborn for a twelve-year-old. They also asked me to leave the choir, because I had a squeaky voice.

At Seton Hall, I could not participate in athletics, given my asthma. I also was among the smallest in the class. My father never talked about his athletic achievements, never bragged. I believe one of his reasons was that he did not want me to be self-conscious about my limitations. A four-year-old could dribble a basketball better than I could at ten. I just could not run.

When I was a sophomore at Seton Hall Prep, at age fourteen, I weighed sixty-eight pounds. My parents were always concerned about my health and survival. Dad almost pulled up roots and moved to Arizona, because my asthma was that bad and at the time there were no effective therapies or medications. The asthma attacks occurred two or three nights a week every spring and fall. Dad was told by many that the only place I could find a cure was in Arizona, because it was pollen-free in those days. Our doctor pushed back and said, "No, we'll work something out here." It lasted twenty years, and I eventually outgrew it.

My diversions were reading and the radio.

In high school, I became focused on extracurricular activities such as the debate team. In those days, McCarthyism was on the rise and supported by many Catholics. I thought McCarthyism, even as a sixteen-year old, was a menace. I remember arguments in the Seton Hall Prep hallway with Father Sullivan, our history professor. We would go at it full blast, he defending McCarthy.

McCarthy, as the history books note, especially "Demagogue", recently published, became history quickly, because of his own self-destruction, and because President Eisenhower, came down on him, a bit late in the game, but that's a separate story.

[Editor's Note: U.S. Senator Joseph McCarthy, as Chairman of the Permanent Subcommittee on Investigations of the U.S. Senate Committee on Government Operations, ran a series of hearings targeting alleged Communists that created the anti-Communist atmosphere of the early 1950s known as McCarthyism.]

Father Sullivan later became a leader in local civil rights efforts in the 50's before most other activists. He was ahead of his time. He led the fight at the Prep in 1951 to ban the annual minstrel show because of its stereotypes and inherent racism.

SI: So, that illustrates a point I wanted to get into. Were you getting into issues like McCarthyism from your own reading, or were these conversations you would have with your father?

Chief Justice Zazzali: Both. My dad was cautious about that. He would speak about current events but he never imposed his views on us. Just as he never suggested Georgetown College or the Law School to me. In both cases he in fact discouraged me. He let me make my own decisions.

SI: So, when you and your brother were growing up, did your father take you around to any political activities?

Chief Justice Zazzali: No. Although Dad was interested in good government, he limited political activities. His family and survival as a solo practitioner in the Depression and post-Depression took priority. He was well-read, always with good books around him, mostly history.

In the late '40s, the Freedom Train toured the United States for two years. The Freedom Train exterior was painted red, white and blue. The Train contained the original Constitution, Declaration of Independence, Mayflower Compact, Emancipation Proclamation and German and Japanese Instruments of Surrender in World War II. Dad brought me to Newark Penn Station to see those documents. The traveling exhibit generated protest and controversy over segregation, and later critics lambasted it for underrepresenting labor rights, the plight of minorities and overtly promoting consumerism. The more things change . . .

One of my early memories of major events was Truman's upset in 1948. In my third year at Seton Hall, in 1952, Stevenson lost to Eisenhower. Stevenson was one of our great visionaries and an extraordinary speaker. Eisenhower beat Stevenson by a landslide in 1952 and again four years later.

I have a recording—someone gave it to me when I was named to the Court—of his speeches. It was 1952 when in the Chicago stockyards, the scene of the Democratic Convention, Stevenson accepted the nomination. His voice sounded like a crystal bell. His thoughts caught the heart and the head. He emphasized that Americans must make sacrifices and that there are no gains without pains. You don't hear too much of that in these days. "Where have you gone Joe DiMaggio, our nation turns its lonely eyes to you?"

[Editor's Note: The 1952 Democratic National Convention began on July 21st in Chicago's International Amphitheater (adjacent to the Union Stock Yards). Though urged on by several personal appeals from President Truman and a "Draft Stevenson Movement," Illinois Governor Adlai Stevenson, II, initially refused to campaign for the

Democratic nomination. As Governor of the host state, he gave a rousing speech on the first day, which renewed calls for his nomination. He agreed to be nominated after several days and the failure of Tennessee Senator Estes Kefauver to secure the nomination. His acceptance speech included the passage, “Let’s talk sense to the American people. Let’s tell them the truth, that there are no gains without pains, that there—that we are now on the eve of great decisions, not easy decisions, like resistance when you’re attacked, but a long, patient, costly struggle which alone can assure triumph over the great enemies of man—war, poverty, and tyranny—and the assaults upon human dignity which are the most grievous consequences of each.”]

SI: Well, you said, because of your health, you spent most of your time reading and listening to the radio. Was it mostly histories or the news?

Chief Justice Zazzali: On the radio, I was instead captivated by *Tom Mix*, *Captain Midnight*, *Superman*, *Hop Harrigan*; those heroes of the ‘40s. They’d be on from five o’clock to six o’clock; in the evening it was the Lone Ranger—that’s the only reason most of us can hum the *William Tell* Overture. Most of all, I was a baseball Giants fan who loved listening to those games.

In terms of reading, my concentration was fiction such as the Horatio Hornblower series by C. S. Forester, and the [Rafael] Sabatini adventures, *Captain Blood* and *Scaramouche*. But there were also serious periodicals and other publications in the house. “The Reporter,” one of the finest magazines ever, now defunct, comes to mind.

My mother, although she left school to take care of her three orphaned cousins, also read widely. In those days, before this onslaught of current gimmicks, gadgets and distractions, America read far more than it does today in today’s culture.

SI: So, I wanted to also ask, with your parents’ background, both your mother coming from Italy, your father being the child of someone from Italy, was there a lot of Italian culture brought up in the household?

Chief Justice Zazzali: With any immigrant group there are usually two points of view: those who want to retain their traditions, their culture and their language, and others who say, “You’re here, you are an American first, a hyphenated American, but your primary allegiance, culture and language is American.”

Dad was of the latter school, although proud of his Italian tradition and heritage. Whenever that was assailed or as sometimes happened on the basketball court or football field, or if someone used an Italian expletive, Dad made him feel it. He was not confrontational—always the gentleman—but he did not hesitate to put bigots in their place.

Likewise, at home, Mom was a cook in the Northern Italian tradition but we only had pasta once every three months or so. We were strictly “meat and potatoes.” On the language end of it, the only time Dad spoke Italian was when speaking with Mom, to

make sure the kids didn't understand what he was saying. Because he was not fluent in Italian, he would generally just add a vowel onto the English word.

Contrast that with my mother who spoke the pure Italian. When Dante wrote the *La Commedia Divina*, he was not just writing a great epic poem. He also reframed the Italian language to make it uniform and beautiful, because at the time there were twenty-one dialects, like having twenty-one dialects in New Jersey's twenty-one counties. He succeeded in fashioning the Italian language that the Florentines and Tuscans now speak. My mother, sadly, never taught us. [Editor's Note: Dante Alighieri (1265-1321) wrote *The Divine Comedy* from 1308 to 1320 while in exile from Florence, his birthplace. His use of Tuscan in his work, rather than Latin, inspired later writers to follow suit and established the Tuscan Italian as the primary source for the pure and proper Italian language.]

This discussion of Italy reminds me of when Seton Hall University, led by Monsignor Sheeran, its President, held a convocation about fifteen years ago honoring Mikhail Gorbachev. During the dinner that followed Monsignor Sheeran introduced me to Gorbachev. When he saw my name tag, Gorbachev by way of a translator said, "What kind of a name is that?" I said, "Italian." "Oh," he said, "The Italians are the only people more confused than the Russians." He added that, "The only time that the Italians get anything done is between governments." That is historically true, with something like sixty governments in fifty-eight years. When he heard that my wife was Irish—a Fitzsimmons—he said, "Ireland is the most popular tourist attraction for Russians."

INTERVIEW WITH CHIEF JUSTICE JAMES R. ZAZZALI

MARCH 16, 2018
PART 2 OF 7

“*Hoya Saxa!*” College & Law School Years at Georgetown University

Chief Justice Zazzali details his college years at Georgetown University (1954-1958), where he majored in philosophy of government. As a member of the debating team, he developed an interest that served him well at Georgetown Law School (1959-1962), and thereafter.

Illingworth: So, what years were you in Seton Hall Prep?

Chief Justice Zazzali: ‘50 to ‘54.

SI: Okay. What were your, I guess, primary...

Chief Justice Zazzali: Shaun—what is it? Sixty-seven years ago?

SI: Yes.

Chief Justice Zazzali: Some of you have heard this line before, but the only good thing about being this old is that you know that you will not die young.

SI: What were your interests in Seton Hall, in terms of in the classroom?

Chief Justice Zazzali: I was young, having started first grade after I had just turned five, too young and too small. At the Prep I was limited because of the asthma. No athletics. I was, for lack of a better word, immature, but thanks to the nuns in grammar school, their basic training that got me through the Prep reasonably well.

Seton Hall was a good choice and I’m happy with it, but at the time I regretted not going to St. Benedict’s because my father, brother, uncles and cousins all went there.

SI: Was there a reason why you went to Seton Hall over [St. Benedict’s]?

Chief Justice Zazzali: It was a five-minute walk to Seton Hall from where I lived in Vailsburg, across the South Orange line. I walked up the hill, Varsity Road, and was there in five minutes. Concerning St. Benedict’s, Dad said that “during the winters, especially with your asthma, I don’t want you walking to get a bus, and then having to get off and walk more.” He said, “It’s your choice,” but he added, “I think you’re better [off] going to Seton Hall.” Those were one of the few times he gave me a push, a nudge.

SI: So, you said he didn’t really try to influence you to go to Georgetown, but what was your thought process in selecting Georgetown?

Chief Justice Zazzali: A creature of habit. Besides Dad, my brother had just graduated Georgetown in ‘53. Because I heard so much about Georgetown, I wanted to go there.

He had suggested places like Fairfield, a new Jesuit school in Connecticut that was founded in '46, because I would be closer to home, given the health concerns.

And so I entered Georgetown at a strapping ninety-eight pounds. Two days after I started in 1954, the class had to go out and play soccer, and I came down with a massive asthma attack. My roommate panicked when I returned to the room, with great difficulty breathing. Georgetown called home. It all calmed down including the attack, but Georgetown removed me from all gym and sports activities for the next four years.

SI: So, it seems like the asthma was really a defining characteristic of your youth.

Chief Justice Zazzali: Yes. Although I've never seen a therapist, I would like to know how it helped or hurt. I have the sense that it had some benefit. I'd have these asthma attacks and no relief. I'd wake up in the pollen season, usually May, the summer and October, two or three times a week, gasping for breath, until about eight o'clock in the morning. The only reason it stopped is that I always passed out. Although my parents were fearful, I always felt I would survive the attack. As difficult as it was to get through the hundreds of attacks over the years, each lasting for four or five hours, it perhaps taught me "stick-to-it-tiveness". That was a value. On the other hand, there's no question that, not being able to compete in sports, I did not develop more self-confidence or a more competitive instinct. Friends say that I do have that instinct. I'm not so sure.

The best treatment of asthma I have found is an early book by David McCullough called *Mornings on Horseback* [(1981)] about Teddy Roosevelt, a severe asthmatic. There's a twenty page chapter on his asthma, and wheezing through those pages one can feel each labored breath. McCullough described an asthma attack in a way that I never seen done before by any physician or writer. It's like being underwater and gasping for air until it finally comes, but then you start all over again, and it continues for hours.

Roosevelt pulled out of it with a regimen of weight-lifting. I am not known as "The Trenton Hunk," as you can see, because I never lifted weights. The Teddy Roosevelt saga is an extraordinary story that explains how Roosevelt overcame it and became the great outdoorsman, a spokesman for conservation of our land, and a true progressive.

SI: Well, before we get into your college years further, I wanted to go to a story that I've seen in a number of pieces on you, or speeches that you've given, related to your father, that he was up for a federal judgeship in the Truman Administration. In some of these stories, you seem to blame yourself for it not happening. Can you tell me a little bit about that issue, and why you feel that way?

Chief Justice Zazzali: I didn't expect to get into it, nor do I care to get into it in depth. But it is instructive.

As mentioned, in 1925 Dad went to Kansas City to join the Walsh firm and family. At that time, a young haberdasher named Harry Truman, was getting started. I don't want to overstate it because I don't know that Dad knew Truman. If he did, he typically would

not have told me. But I do know that Walsh led reform efforts against the Pendergast political machine that dominated in Kansas City much like the Hague machine ran Jersey City. At the end of the day, Truman owed more to the Walsh faction. I'm simplifying this but that was part of the reason for Truman's ascendancy.

[Editor's Note: Tom Pendergast, as leader of the Jackson Democratic Club, ran a Kansas City political machine faction known as the "Goats" from 1911 to 1939. His Democratic rivals, under machine boss Joe Shannon, took the name the "Rabbits." Pendergast's "Goats" dominated the city's political landscape from 1925 until 1939, when he was imprisoned for tax evasion. Frank P. Walsh has been noted as a reformer within the "Rabbits" faction and a frequent courtroom opponent of James A. Reed, a "Goat" ally of Pendergast who later became Mayor of Kansas City and a U.S. Senator.]

Among Walsh's colleagues, in Kansas City were four or five men who in 1950, twenty-five years later, served in the White House. They were friends of Truman from Kansas City whom he brought to Washington. They also were friends of Dad, names that I heard before Truman was President. McCullough in his biography of Truman, *Truman* (1992), references them as being in a position of significant influence in Washington.

For example, on the morning after the 1948 election when the result was still in doubt, Truman was in a Kansas City hotel listening to the results with four confidantes. One was Jerome Walsh, one of the Walsh sons and Dad's Georgetown friends mentioned above. McCulloch quotes Walsh's later recollections, comments about Truman who "displayed neither tension nor elation" on election night and the "astonishment we all felt at the unbelievable coolness with which the President faced up to the whole situation". Walsh continues: "The serenity of the President . . . suggested to all of us . . . that his years of crisis in office have equipped him with a very large reserve of inner strength and discipline to draw upon."

In 1950 there was a federal judgeship opening in New Jersey, and the Truman administration intended to appoint Dad not only because of those friendships but because of his reputation and stature in Essex County. The old *Newark Evening News*, in 1950, had Dad's picture on the front page twice, announcing that Truman would select him. There were only three judges in the entire District of New Jersey in those days. Dad would have been the fourth, and the first Italian-American to be named in the history of the District Court in New Jersey.

Long story longer. Some New Jersey politicians were anxious to know where Dad was getting his support. One afternoon, while this selection process continued, I answered the telephone call at home from a reporter for the Newark Evening News who said, "Hi, I'm So-and-So. Is your dad there?" "No, he's not." He knew he wasn't there. He asked, "Who is this?" I told him, and he cleverly pressed this twelve year-old for some history. I was so proud of my father and his background I laid it all out. As a result, that was then in the press the next day and it thus became known that Dad's support was centered in the White House.

The Hudson County machine, and particularly its boss, John V. Kenny, was extraordinarily powerful and “went to work”—to get the machine gears rolling. He had just defeated the Hague machine in 1949, and was at the height of his power. Because Kenny dominated Democratic politics in New Jersey and because Hudson County wanted that judgeship for Hudson County, Kenny prevailed.

[Editor’s Note: Democratic politician Frank Hague served as the Mayor of Jersey City, New Jersey, from 1917 to 1947 and as Vice-Chairman of the Democratic National Committee from 1924 to 1949. His political machine dominated Hudson County and played a major role in shaping the state and national political scene in the 1920s, 1930s and 1940s. John V. Kenny served as Mayor of Jersey City, New Jersey, from 1949 to 1953. Originally a top member of the Hague Machine, Kenny turned on Frank Hague when he chose to back his nephew, Frank Hague Eggers, for Mayor (1947-49). Like Hague, Kenny led a Democratic machine that held power until 1971.]

Dad never resented Kenny or Hudson County, saying it was a fair fight, that they had an opportunity to put in their person and they did. Although disappointed, he said in later years to Mom how he was pleased it did not work out because if it had, his law practice would have disappeared and when Andy and I came along, there would have been no law practice to assume. Although it was a small practice, he did not want us to struggle the way he had to. Typically unselfish.

SI: Yes, yes. It explains—I mean, I wasn’t quite sure why a reporter would be talking to the son.

Chief Justice Zazzali: He was a shrewd reporter doing his job. But instead of taking advantage of a twelve-year-old, he could have asked that Dad call him back. It was a difficult lesson for me.

SI: Also, from the way you’ve talked about this in the publications, it just seems like you’ve taken this personally.

Chief Justice Zazzali: I did. I can remember John Farmer, Jr., a fine public servant, who knew the story, saying “you’ve got to get over that.”

I have been very fortunate but I am sorry that my parents were not around to see how things developed for Andy, Judy and me. Hopefully, in some unique way, they are watching all that happened but probably still worrying about us.

My father often said to me—we worked together for about two years before he died, after I left the Prosecutor’s Office—, “Son, you’re trying to do too much. Stop it.” That was when I was twenty-eight years old. I don’t know what he would say about the last fifty-five years. He probably would have given me a swipe on the shoulders and said, ‘What is wrong with you?’ But we are what we are.

SI: Well, tell me about getting into Georgetown. You said there were these issues early on with fitting in, but, after the first few weeks and months were over, what was your freshman year like for you?

Chief Justice Zazzali: An adjustment—life is a series of adjustments. As opposed to the homogenous group at Seton Hall, it was interesting to see at Georgetown the large New Jersey/New York contingent of mostly pre-dent and pre-med students; the New England “preppy” crowd who seemed to be way ahead of the rest of us mortals in terms of how they dressed, how they spoke and how they socialized; a few Midwesterners and Southerners; a small cadre of very literate students committed to the intellectual life; a large contingent of sons of wealthy corporate-type fathers who were bent on sending their sons to a “good Catholic school”; and a catch-all group which for lack of a better word was simply “ordinary”, myself included.

Unfortunately, there were no women in the class in those days. [Editor’s Note: Georgetown’s College of Arts and Sciences did not admit women until 1969.]

I was active in extracurricular activities, which meant as much to me as my studies. I became more “socialized”, in the best sense of the word, joining the debate club, the literary society, and three or four similar activities.

Nino Scalia, later Justice Scalia, was the star of the debate club, the Philodemic Society, which sounds like a group of stamp collectors. He was Class of ‘57, a year before me. He was well-respected on the campus, the only *Summa Cum Laude* in ten years of Georgetown’s history from 1950 to 1960. He had achieved a national reputation in debating circles. I did a book review on him for *The Ledger* some years ago, fairly positive, noting that he strutted around the campus like a bantam rooster, extremely self-confident but with good reason.

I did not know him well except that we took a class together on political thought from the Middle Ages to the present. Both the Jesuit who taught the course and the textbook we used were quite conservative in their views. I often wondered to what extent that factor influenced Scalia’s thinking.

[Editor’s Note: Antonin G. Scalia (1936-2016) served as an Associate Justice of the U.S. Supreme Court from 1986 until 2016. He graduated from Georgetown in 1957 and was acclaimed for his debating prowess in the Philodemic Society there.]

Concerning studies in those days, Georgetown was interesting. Twenty-five percent of the curriculum was philosophy and theology, mandatory. You also had to pick a major which represented another quarter of the curriculum. I preferred to major in English but in those days the English program was geared largely to poetry but I was not interested in poetry, something I regret. I decided to major in government, not the nuts-and-bolts of government and politics, but the philosophy of government. We focused on the governmental systems and philosophy, the best and worst from Greco-Roman times to the 1950’s with specialties like Communism, which was the focus during the early years of the Cold War.

A core question in those courses, sometimes the ultimate issue, was “What’s the purpose of government?” For millennia, philosophers have debated that issue. I may have subconsciously or consciously implemented answers to that question when in

public service. I thought the theory of utilitarianism worked the best, the philosophy of John Stuart Mill and Jeremy Bentham, which was, in a phrase, “The greatest good for the greatest number.”

[Editor’s Note: Jeremy Bentham (1748-1832), founder of utilitarianism, became a close associate and friend of James Mill (1773-1836), who took up his utilitarian beliefs, and mentor to his son, John Stuart Mill (1806-1873), who expanded upon them.]

But utilitarianism has its defects. One must still respect diversity and understand that “the greatest number” must include minorities. We may spout a nice-sounding definition in theory but reality is different. Nonetheless, the greatest good for the greatest number can be, with fine-tuning, a workable concept whether you are in the executive, legislative or judicial branches of government.

I don’t know how you got me down the path, but you have a good way of ferreting these thoughts out.

SI: Well, tell me a little bit more about some of the extracurricular activities. Like, for example, in the debates, do you remember the topics, or what interested you most?

Chief Justice Zazzali: I remember my first debate tournament and my first disaster. I was a freshman, just turned seventeen. There was an intercollegiate debating tournament in Spring Hill, Alabama, at Spring Hill College, a Jesuit school. Georgetown’s team consisted of two seniors, a sophomore, and because there was a cancellation by the freshman team member, they needed somebody, so they threw me in at the last moment as the fourth. I was similar to how Brendan Byrne described himself—the oratorical equivalent of a blocked punt.

It was a ten-day trip. Spring Hill wisely arranged that its debate tournament in Mobile coincided with the Mardi Gras in New Orleans when inviting the various college debate teams. It was a six-debate tournament—six debates with other schools over two days. My partner, the sophomore, and I finished with a record of one win and five losses. I was too green for the challenge but I stayed with it. By senior year, and I’m not suggesting I was good by any means, but I was a bit better on my feet.

I carried that interest over to Georgetown Law School, where I participated in the moot court activities. I realized it was important to continue to learn to speak publicly, develop self-confidence and overcome adolescent speaking deficiencies.

SI: Now, when you were in your undergraduate years, from other interviews, I’ve seen that you went through several different subjects, medicine, history, others. What did you decide to do afterwards?

Chief Justice Zazzali: In those years as an undergraduate, I never gave serious thought to what I wanted to do. I kept procrastinating. I’m not making excuses but I was 20, not as mature as I should have been as a graduating senior, and not prepared to make a decision.

What to do? I had been conditioned in a positive way by the nuns and priests in those sixteen years of education to “Do good, do good, do good.” What better way to do good, given my own medical adventures, than to be a doctor? I thus took a fifth year of the sciences at Georgetown and did well in the biological sciences but poorly in physics and organic chemistry. The only thing I ever remembered was that acetylsalicylic acid is the fancy name for aspirin. You can impress your friends with that factoid.

I had received an offer of a fellowship in history at Georgetown’s Graduate School but rejected that in favor of the year of sciences.

I overextended myself in that fifth year. Because I wanted to save my father further expenses, I sought a position as a prefect on the campus, as a graduate student monitoring undergraduate dormitories, now called resident assistants. I was assigned to the discipline office, a full-time position. You could not study there every night as you could in a dormitory room. As a result, I didn’t have the time to put into it and decided, “This is not going to work out.” Halfheartedly, I decided to go to Georgetown Law School.

In my second year of Law School, I still had the doctor bug, and decided to consider two degrees, law and medicine. I thought about doing that, not because I wanted to be an expert witness and make a zillion dollars, but because of my naïve view that I could practice medicine in the morning and go to my law office in the afternoon. And so, I took physiology at George Washington in that year, received an “A,” and loved it.

However, in my last year of Law School I concluded that I should stay with the law. I was productive, a more serious student, that final year. We were required that year to take a brief-writing course. Fifty students were divided up into two teams, twenty-five teams of two persons each. When the professor announced that my partner and I wrote the best brief, that is what started to tip the scales the other way and I concluded that perhaps law was the place to be.

In the meantime, a friend and classmate of my brother, Hugh Beins, a great labor lawyer who also taught at Georgetown, called me and asked: “Would you be interested in joining me part-time in your last year of law school?” I checked with Dad who urged me to do it because of the experience it would provide.

Hugh was close to both the Dean of the Law School and the Dean of the Graduate School of Law. The Dean of the Graduate School taught an undergraduate course in the Law School, “Conflicts,” a complicated subject. He was a tough professor. Early in the semester, he called me at the start of the class. I believe Hugh asked him to test me, to quiz me.

For three years, with a name starting with “Z” and a hundred plus students in a class, this was only the second time I was ever called on to answer a question. Because I sensed something would happen, I read the assigned cases the night before. It was a two-hour class with a ten-minute break. The professor had me up on my feet for an

hour. I was relieved, but then he called me back up after the break and questioned me for a second hour.

Thankful that I would not be called again or so I thought, the next class came two days later and he had me on my feet again. Whether it was instinct or intuition or whatever, I got through an hour of questions, a five-minute break, and then another hour of questions. Yet again, in the next class two days later he called on me a third time and cross-examined me for an hour. It was a total of five hours. Given my silence the first two years, my classmates were wondering “What’s going on?” I did get the position with Hugh.

Another memorable experience in that last year was the required trial prep course, trial training. It was a Saturday morning class that was divided into groups of four students. We were assigned fact patterns, and we were divided into defense and plaintiff lawyers, two lawyers each. The teams called witnesses for direct and cross-examination.

The professor was a part-time professor, doing it *gratis*, who was the Chief Judge of the Federal District Court of Washington, an irascible curmudgeon, Matt McGuire. [Editor’s Note: Matthew F. McGuire (1898-1986) became an Associate Justice (Judge after 1948) of the District Court of the United States for the District of Columbia (U.S. District Court for the District of Columbia after 1948) in 1941. He served as Chief Judge from 1961 to 1966, when he assumed senior status.]

My defendant was accused of bigamy and I put his second wife on the stand to testify about their relationship. I asked a classmate of my sister from Trinity College in Washington to play that role. I was muddling through the direct examination, plodding along, not doing well. Judge McGuire looked down, pounded his gavel and he said, “Counselor, I’ve got to tell you something. Graham Greene” (the author who was then in his heyday) “just wrote *The Heart of the Matter*. I want you to get to the heart of the matter in this case, so get to the heart of the matter now, because you’re rambling.” The class enjoyed the put-down.

Daunted but determined, I replied, “Your Honor, this is a case of a bigamist, a bad marriage, and an affair. Graham Greene wrote another book, as Your Honor knows, “*The End of the Affair*. That’s all I’m trying to do here, is to get to the end of the affair.” The class laughed and Judge McGuire was ticked. I thought I had him one up. Wrong. The Judge then said, “Counselor, Graham Greene just published *The Burnt-Out Case*, and if you’re not careful, that’s exactly what your case will be”. The class roared at my expense.

I was sitting down at the time. I do not know what possessed me but I walked out from behind my desk, stood before him where he sat on an elevated dais, bowed and did a salaam. I said, “Now, Judge McGuire, I recognize the significance of Graham Greene’s most important work, *The Power and the Glory*.” I bowed again. He was steaming, the class was laughing, and I was through.

I received a "B+" in the course. The unanswered question is whether the colloquy helped or hurt.

Incidentally, the footnote is that Graham later bequeathed his papers to Georgetown University. The Georgetown head librarian, when I told him that story later at a Georgetown dinner, said, "Greene has donated his papers to Georgetown. I'm close with him. He would love to hear that story. "He's in Provence. Write him."

I wrote Greene and told him of the exchange. I received a letter back, saying that he was at first concerned that my letter was from a lawyer who would sue him. But he appreciated my effort and added, "If you ever come to the South of France, come by with your books and I'll autograph them. Just knock on the door and you will find "A Man Within", one of his early novels.

I knocked on that door a year later, but he had just passed away.

SI: It's interesting.

INTERVIEW WITH CHIEF JUSTICE JAMES R. ZAZZALI

MARCH 16, 2018
PART 3 OF 7

Working for the Workers: Early Years in Labor Law

Chief Justice Zazzali describes his first job in Washington, DC, as a lawyer for the Eastern Conference of the International Brotherhood of Teamsters (1961-1964), which took him regularly into upstate New York, New England and down to the Virginias and Carolinas. He discusses the state of organized labor in the different regions he served and his work with southern local unions before the National Labor Relations Board. Upon returning to New Jersey, he clerked for then Superior Court Judge Lawrence A. Whipple, which led to his later work under future Governor Brendan T. Byrne.

Illingworth: Now, you said you had this part-time work with a labor lawyer in Washington, who knew your brother. What kind of work was that?

Chief Justice Zazzali: When I graduated, I went full-time at the Eastern Conference of Teamsters with my mentor, Hugh Beins, who was House Counsel for the Conference. In the beginning, it was largely brief-writing and the like, because I had not yet graduated from law school. That is when I started to travel, largely in the South. Most of my time was preparing for and participating in NLRB hearings, traveling to Virginia, West Virginia, North Carolina, South Carolina, Upstate New York, and Western Massachusetts, where the unions were often poor and could not afford counsel. They would turn to the Eastern Conference, which was a service organization for affiliated local unions. I will discuss the Conference further later in the interview.

I would interview witnesses, prepare for hearings before the Labor Board [the National Labor Relations Board]. The Labor Board has regional offices in thirty or forty regions in the United States, but our challenge was to do battle with corporations and businesses, organize the unorganized, help negotiate contracts, doing all of the things that the labor movement does, or did. I say with pride that it was one of the most important and satisfying experiences of my life—being able to improve in small ways the conditions of workers and their families, against sometimes very difficult odds.

Columbia or Charlotte, Winston-Salem or Raleigh, you name it, were different in those days. They were small, sleepy southern towns. When I would check into a motel, the motel knew that I was from Washington, knew that I was affiliated with the trade union movement. The local police also were aware. How they knew I don't know. I don't want to overstate the circumstances but I was apprehensive when I went into a restaurant or anywhere because the anti-union animus down there was strong then, as it is now.

SI: For context, what years were these that you were [doing this work]?

Chief Justice Zazzali: It was 1961, when I started part-time, to August of '64, when I returned to New Jersey.

SI: You had graduated from Georgetown.

Chief Justice Zazzali: In '62.

SI: '62.

Chief Justice Zazzali: So, it was over two years full-time, and it was busy. At that time, the labor movement was near its zenith in terms of membership. In 1955 it hit its peak. The private sector was almost one-third organized, at least during the FDR years, which was extraordinary compared to today when the movement is about eight percent organized in the private sector.

[Editor's Note: In terms of percentage of the total American work force unionized, the labor movement hit its peak in 1954 at 34.8 percent. The peak in terms of membership totals came in 1979, when just under twenty-one million American workers belonged to a union. Citation: Mayer, G. (2004). *Union membership trends in the United States*. Washington, DC: Congressional Research Service.]

Some of that decline is due to mistakes of the labor movement, but that is a small factor. The major causes for the decline are outside influences, elements and organizations that seek to destroy the labor movement in the United States, unlike where it is so successful in other countries. For example, Germany is a model of labor-management relationships, where instead of busting unions they make them almost equal partners. It's a collaboration and everyone is better for it.

Most people today do not recognize what the historians and most sociologists have explained in their books and articles. The labor movement, when it emerged with great strength during and after the Second World War, was largely responsible for the creation of the middle-class in this country. That's an undeniable fact.

Admittedly, another contributor to ushering the working class into the middle-class was the GI Bill of Rights which provided many millions of veterans the opportunity for a college education. But it was the labor movement, obtaining contracts with decent wages, job security and safety provisions, and, until then, unheard of guaranteed health benefits and pension benefits, that made the difference. Those were halcyon years and I am proud to have had that opportunity to be a small part of it.

SI: Well, just to clarify, would you be working for one international union in particular?

Chief Justice Zazzali: It was primarily one union. It was the Eastern Conference of the Teamsters, affiliated with International Brotherhood of Teamsters. Without going into the details, the Eastern Conference was a separate though subordinate organization within the International Union. Its leadership was composed largely of Irish-Catholic trade unionists who had emerged from the labor struggles of the 30s. It serviced the East Coast, from New England down through the Carolinas.

[Editor's Note: The Eastern States Conference of the International Brotherhood of Teamsters was launched in October 1953, preceded by the Western (1937), Southern

(1944) and Central (1953) Conferences. The Area Conferences were disbanded in 1995 during the General Presidency of Ron Carey.]

My predecessor, was Don Sileo, the assistant house counsel. We were essentially a small law firm within the Conference. Hugh's predecessor for House Counsel was Bill Curtin, who later switched to representing employers and became managing partner of Morgan, Lewis & Bockius. He apparently found greener pastures.

SI: You were describing...

Chief Justice Zazzali: Don Sileo left to join the Justice Department when Bobby Kennedy was Attorney General. Kennedy interviewed him, and gave the OK to Sileo when he indicated he was an attorney with the Eastern Conference.

The Conference enjoyed a solid reputation with both labor and law enforcement. Jimmy Hoffa was General President of the International, and it was no secret that he did not get on well with the Conference which was in theory subordinate to the International but in fact very independent. Some thought he was envious of the Eastern Conference's standing. Twenty years later the International dissolved the Conference.

[Editor's Note: James R. ("Jimmy") Hoffa served as President of the International Brotherhood of Teamsters from 1957 to 1971.]

SI: So, was the Union integrated in the South at that time?

Chief Justice Zazzali: In the South it was, to some extent. The basic problem was that most places like the Carolinas were only ten percent organized, the least organized part of the country. We had many Black members in the Union itself. In the Conference, we had twelve representatives, professional organizers and negotiators, who went out to the local unions and did the grunt work in the trenches. Two of the twelve representatives were Black.

SI: What would a typical case that you would work on be like?

Chief Justice Zazzali: Both the north and south presented challenges. First, you had to organize the employees. Then as now, few employers recognized unions without an election, although they have an obligation to recognize a union if a majority of their employees signed union authorization cards. If the employees say, "We want an election," the NLRB holds an election.

The problem was not persuading workers to join the union because the unions organized effectively, persuading workers that it was in their best interests to bargain collectively, that bargaining as individuals was useless. Workers needed representation, and were aware of the good that unions could do for them. But most employers then, although we had some responsible employers out there, wanted no part of a union and would do everything they could, legal or illegal, to destroy that union's chances of obtaining recognition as the bargaining representative.

When we lost an election, we often filed objections to the election because of employer misconduct. The NLRB, if it found merit to those objections, would hold a hearing. More often than not, in the North, the regional offices of the NLRB or the flagship NLRB in Washington would order a new election and we usually won the second time around. Those successes brought satisfaction, whether it was forty or four employees.

But down South as an example, Eisenhower appointed an NLRB Regional Director in the Carolinas who had been a shoemaker. His office rarely granted new elections although the evidence was often rampant that employers had threatened and discharged employees in retaliation for their union activities.

Sometimes we would obtain relief after an appeal to the Washington NLRB. I recall one appeal brief I wrote, seeking to overturn that regional director's decision of no election. I said in my conclusion that, "If this case is any indication of how the NLRB handles elections in North and South Carolina, it is no wonder that the Carolinas are the least-organized area in the country." Hugh received a call from someone in the NLRB in Washington—everyone's protective of the herd—saying, "Why did Jim say that?" Although I was right, my approach was wrong. Youthful exuberance. A lesson learned . . . although some of my recent colleagues might disagree.

By the way, Rutgers researchers recently reported that South Carolina remains the least unionized state in the nation.

Although not in a confrontational way, I disagreed with Hoffa on a couple of issues. He did not like that, but probably respected it. He was not my boss. He was an interesting man. Whatever his problems were with law enforcement, he did an extraordinary job on behalf of almost two million members in nationwide negotiations with employer trucking associations, UPS being an example. He did not drink or smoke, and would start negotiations at nine o'clock in the morning and go until midnight, without food. A new shift of management negotiators would come in as replacements. He would then take a fifteen-minute break to do a hundred push-ups, have two cups of tea, come back and continue until daybreak.

He was effective and notwithstanding all the controversy surrounding him he did his job as a labor leader. The line that labor historians have used about him is that he "brought home the bacon" for his membership. But he was fatally flawed—a torrid tragic story.

That all said, I have found the vast majority of unions do the job and do it right.

SI: Now, when you came back to Newark, did you go into the family practice or did you go right into...

SI: No, not yet.

SI: Now, when you graduated from Georgetown, did you pass the bar in D.C. then, or did you come back to New Jersey?

Chief Justice Zazzali: I took the bar in D.C. that Summer of '62 and passed. The next summer, I was still working in Washington, the summer of '63. I wanted to go back to Jersey. Most friends, when I eventually returned in '64, said: "Why do you want to leave Washington, D.C., to come back to Newark?" I suspect that almost forty years before Dad's friends asked him why he was leaving Kansas City for Newark. I did so for various reasons, including a desire to work with my father. I also had started to date Eileen, and wanted to see more of her. Good thing I did. Marrying Eileen was the best decision of my life.

But I had to take the New Jersey bar. It was a tough bar, particularly then, when there was a high failure rate. We never learned New Jersey law at Georgetown so I had to take the six week prep course that summer in New Jersey. The Conference let me leave work for four weeks. So I had to catch up on what I missed for those two weeks, and also learn the new material. I lived in Newark. My family was down the Shore at the time, during the summer, as was Eileen. I'd catch up with her on a Sunday afternoon, maybe.

I passed the bar exam, thirty-two essay questions. Six concerned what we used to call "bills and notes," commercial law. That was a huge challenge for me because, a couple of years before when I was in Law School, the final exam in that subject was on a Tuesday morning, January 21, 1961 the day after the inauguration of John Kennedy. Rather than study on Monday, the day before, January 20, I went to the parade, crashed the Inaugural Ball that night, and then got up and took the exam on Tuesday.

Our professor was old and had the habit in his exams of starting each question with something like, "Isn't it true that..." classic leading questions. That made the answers easy. We got by. But I was totally unprepared for six commercial law questions on the New Jersey bar exam and probably got by on the strength of the other answers.

SI: Well, let me ask also, what was your reaction to the Kennedy election, the campaign? How did you feel about JFK?

Chief Justice Zazzali: In '56, when Adlai Stevenson ran for a second time for President, he won the nomination handily. The Vice Presidency was up for grabs. Estes Kefauver, who had chaired investigating committee hearings on organized crime and became a national name, wanted the Vice Presidency, but so did Kennedy, who was then a young Senator, thirty-nine years old.

He launched a campaign for Vice-President at the Convention at the eleventh hour. It was great television, great theatre. He was an attractive candidate, but he lost and Stevenson accepted Kefauver. Then, in '60, Kennedy ran and won. A good President but not a great one because, tragically, he did not have the time or opportunity to prove that.

[Editor's Note: Senator Carey Estes Kefauver of Tennessee served in the U.S. Senate from 1949 to 1963. Despite early wins over Adlai Stevenson in the 1956 New Hampshire and Minnesota primaries, Senator Kefauver lost the Democratic Presidential

nomination to the former Illinois Governor. Though his preference was for the then Senator from Massachusetts John F. Kennedy, Stevenson chose to leave the choice of running mate up to the delegates, who selected Kefauver.]

When I was in the Carolinas and Virginias in 1963, I often went to Charleston, the capital of West Virginia. Eugene Charles led the Teamsters Union in West Virginia, a “reformer” with a deep commitment to improving the lives of workers. I looked at the wall in Charles’ office and there were three pictures. Jesus was in the middle. On the left was John L. Lewis, the head of the United Mine Workers Union, and “the” force in coal country. On the right was FDR.

The Democratic primary presidential election was held three years before, in 1960. West Virginia was “D-Day” and Humphrey had to win West Virginia. If he did win West Virginia, that would probably carry him to the nomination. The State was 94% Protestant. I asked Charles how Kennedy, a Catholic when the anti-Catholic prejudice was so strong in West Virginia, could beat a revered statesman like Hubert Humphrey in the primary election.

[Editor’s Notes: Hubert H. Humphrey, Jr. (1911-1978) was a pillar in the postwar Democratic Party establishment, serving as U.S. Senator from Minnesota (1949-1964, 1971-1976) and Vice President under Lyndon Johnson from 1964 until 1968. In the 1960 race for the Democratic Presidential nomination, Humphrey lost to Kennedy in Wisconsin by a narrower than expected margin, leading him to continue his campaign into West Virginia. After Kennedy won over sixty percent of the vote there, Humphrey suspended his campaign. He later served as the party nominee in 1968, losing to Richard Nixon.]

Charles answered. “Very simply, it was his dad, Joe Kennedy, who came into West Virginia in 1960 and spread a ton of money around.”

Historians confirm most of the above.

If Kennedy had not been assassinated who knows what would’ve happened in terms of the rest of the challenging ‘60s, given Vietnam, the Kennedy and King assassinations, the chaos of it all. That’s one of the many “what ifs?” of history.

SI: Why don’t we end this session by talking a little bit about your time with Judge Whipple in the clerkship?

Chief Justice Zazzali: It was an interesting relationship. Dad had been named Regional Director of OPS New Jersey in 1951, as I indicated earlier. The OPS, regulated all prices during the Korean War. Dad was on local television a few times, and on radio each week, to speak with New Jersey citizens, particularly homemakers, about prices and costs.

Larry Whipple was designated by Mayor Kenny as the Regional Attorney of the OPS for New Jersey. He and Dad became friends. When I returned to Jersey in the mid-’60s, Judge Whipple asked me to clerk for him. I was uncertain if I needed to do that because

while in Washington I thought I had improved my writing ability and had experienced NLRB trial practice. It seemed like a step backwards, but I accepted. It was an invaluable experience.

[Editor's Note: The Honorable Lawrence Aloysius Whipple (1910-1983) served as Chief Judge of the United States District Court for the District of New Jersey from 1974 to 1978, when he attained senior status, having joined that court in 1967. He had previously served as a Superior Court of New Jersey judge from 1963 to 1967. His early career included many prominent positions in law and public service, including Deputy Attorney General of New Jersey in 1958 and as the Hudson County Prosecutor from 1958 to 1962].

It was a positive experience, a good judge to work with and for. Priscilla Roth, nineteen or twenty years old, served as his assistant for many years, and retired. When I became a member of the Court in 2000, thirty-five years later, she became my assistant.

I learned much about trial work and did improve my writing during my clerkship. Truth be told, the most significant part of the experience is that Judge Whipple, three times, said to me, "I want you to be an Assistant Prosecutor." My brother Andy had joined Brendan Byrne's office as assistant prosecutor about two years before. I said, "Judge, I don't want to be a prosecutor. I have no interest in criminal law. When I finish this clerkship, I want to do what I came back to New Jersey for, to join my father in the practice of labor law." Three times that year he said to me, "Do this first," and three times I said, "No."

[Editor's Note: Governor Brendan T. Byrne (1924-2018) served as Governor of New Jersey from 1974 to 1982. In 1959, Governor Robert Meyner appointed Byrne as the Essex County Prosecutor. He was reappointed by Governor Richard Hughes in 1964 and served until 1968 when he became President of the New Jersey Board of Public Utilities. Joseph P. Lordi, an Assistant Essex County Prosecutor from 1959 to 1964, succeeded him as the Essex County Prosecutor.]

I went to Europe in the summer of 1965, before starting with my dad after Labor Day. I told him that I wanted to take off and tour Europe before I started with him. Eileen and her roommate were over there, too.

One early evening I was waiting in the lobby in the hotel in Madrid where Eileen and her roommate were staying. I was staying in a one-dollar-a-night pensione. Eileen and her roommate were upstairs in their hotel room. The three of us were going out to dinner. I was waiting in the lobby. I did want to take a shower first but I did not use their shower until they came down and waited for me in the lobby. You can call that old-fashioned, but there is something to be said, then and now, for appearances and for manners.

While waiting for them in the lobby, I wrote to Judge Whipple. After describing the trip, I wrote "Judge, I know you want me to be an assistant prosecutor. Please, in my absence, do not speak up for me." I say that because he was close friends with the Assignment Judge, Judge Alexander Waugh, Sr., who was a mentor to Brendan Byrne.

I sensed that unless I put the brakes on it, Whipple would speak with Waugh and Waugh would recommend me to Byrne.

[Editor's Note: The Honorable Alexander P. Waugh, Sr. (1907-1998) served as Assignment Judge of Essex County, then as Assignment Judge in the Morris/Sussex/Warren vicinage before retiring in 1972.]

INTERVIEW WITH CHIEF JUSTICE JAMES R. ZAZZALI

JULY 13, 2018
PART 4 OF 7

Serving the Public: From Essex County to the N.J. Sports & Exposition Authority

Chief Justice Zazzali outlines his career in the Essex County Prosecutor's Office (1965-1968), first in the Criminal Division, then, in the Appellate Section. In this latter role, he appeared before his predecessor, Chief Justice Joseph Weintraub, leading him to reflect in general on the operation of the New Jersey Supreme Court over time. Chief Justice Zazzali then describes his later work in conjunction with the Byrne Administration (1974-1982) regarding the N.J. Sports & Exposition Authority, where he served as Counsel, and the building of the Meadowlands Complex.

Illingworth: This begins the second oral history interview session with retired Chief Justice of the New Jersey Supreme Court James R. Zazzali. This session is being held on July 13, 2018, at the Hughes Justice Complex in Trenton, New Jersey. Chief, thank you very much for sitting down with me again.

Chief Justice Zazzali: Thank you for the opportunity.

Picking up where we left off, Whipple ignored me. I came back after Labor Day, and the Judge called and said, "You're going to hear from Prosecutor Byrne." I gritted my teeth and said to myself, "Okay, might as well do it." Dad believed it was a good opportunity to gain jury trial experience, although I did not want to do prosecutorial work. A month later I received a call, not from Byrne but from his assistant who said that "Prosecutor Byrne would like to see you. Be up here at ten o'clock tomorrow morning,"

I went to meet Byrne. We were alone in his office and for fifteen minutes he cross-examined me. All through the interview, he was shining his loafers, as was his wont. He never looked up except to ask me questions while polishing. Finally, he said, "All right," "You're hired, but it'll be a risk." Although aggravated, I restrained my reaction and accepted.

SI: Before we jump further into the County Prosecutor's Office, do any memories stand out from that year with Judge Whipple? What did a clerkship in that day entail?

Chief Justice Zazzali: He reposed a fair amount of trust in me, but he was always the final author and final draftsman. Although I saw a good deal in the courtroom, what I garnered most out of it was sitting with him in chambers—my desk was in his chambers in the space-starved Hall of Records. He would often have settlement conferences in chambers because he was a consummate settler and knew how to negotiate. I learned something from him on a practical level concerning settlement.

In the Prosecutor's Office I was sworn in on a Thursday and had my first jury trial that Monday. That is unheard of these days, and it was not because of me but due to the workload. I had never tried a jury case before. I was lucky and won the first six cases. But I sensed Brendan decided that this kid had to learn the real world.

They thus sent me over to two tough judges, Judge [Joseph G.] Lyons and Judge [Charles S.] Barrett, [Jr.]. They taught humility. At first I was feeling good but they brought me down a peg. I learned lessons, especially the need for caution.

For example, I was trying a drug case before Judge Sugrue. The core issue was the weather. "Was it raining or was it not raining that night?" The police testified it was raining; defendant said it was not raining. For whatever reason, that was relevant. And so, in my summation I said to the jury, "You know the police said it was raining that day. Defendant denies that. The Judge will instruct you that you can rely on your common experiences when determining facts. You should therefore rely on those experiences. Because the event occurred in April, keep in mind the old Al Jolson favorite, *April Showers*. It obviously rains a lot in April."

With that, the Judge rapped his gavel and said, "Counsel, will you come to the sidebar, please?" He glared and said, "Counsel, may I remind you that the indictment indicates that this event occurred in January." That takes you down a notch or two.

The first year I was assigned and tried thirty jury cases. Terrific experience but I then decided to obtain appellate experience.

SI: To follow that for one second, particularly for those who might be watching this who aren't as familiar with the legal process, when you say you go from—however you would characterize the judges in the first six trials—to someone you characterize as "a tough judge," what does that exactly mean in your experience? What is that criteria?

Chief Justice Zazzali: Virtually all judges do the job and do it well. "Tough" doesn't mean wrong by any means, but they sometimes would limit my opening and closing statements, restricted cross-examination, perhaps showing concern for a defendant and to avoid overreaching by the State. Sometimes when they instructed the jury before the jury began deliberations, those instructions could bolster the defendant's case and that is permissible in appropriate cases. Judges have that right but they did not cross the line. If a judge believes that the jury needs more guidance, they exercise their discretion to assure that justice is done.

I sought to do appellate work and spent the next two years in the Appellate Section of the Prosecutor's office where the Chief was Barry Evenchick, who became both a mentor and a close friend. I was before the Appellate Division once or twice a week, and before the New Jersey Supreme Court in my final year about once a month.

I recall my first argument before the Supreme Court, I started the argument at three-thirty. It was a homicide case, which I had tried the year before, obtained a second-degree murder conviction, and I was assigned the appeal. I was on my feet for about a

half-hour when at four o'clock Chief Justice Weintraub said, "All right, gentlemen, resume tomorrow morning at ten o'clock. Be here, Mr. Zazzali. You can continue your argument at that time."

[Editor's Note: The Honorable Joseph Weintraub joined the New Jersey Supreme Court as an Associate Justice in 1956, then, from 1957 to 1973, served as Chief Justice of the New Jersey Supreme Court.]

Prosecutor Byrne was in the back of the courtroom that day to argue a search-and-seizure matter. I did not know that until I walked in the courtroom. He was watching me and I was nervous. I walked out at 4:00 p.m., got into my car and started to drive back across the State to my home in Monmouth County. I was uptight about what I had argued, what I had or had not said, and "Did I do this right? Did I do that wrong?"

I was driving for about an hour, looking at the bucolic hills of Monmouth County, except that it did not look like the hills of Monmouth County. I finally saw a sign, which said, "Pittsburgh, 120 miles." I was on the Pennsylvania Turnpike.

SI: Well, tell us a little bit more about that experience, because you've seen it from the other side, the Supreme Court. What was it like to practice before them? Were any of the procedures, from your perspective, different than what you would come to know later when you served on the Court?

Chief Justice Zazzali: No, but I'll come back to that. I would first like to focus on the Byrne experience.

SI: Sure.

Chief Justice Zazzali: Apart from his tenure as Governor, he had achieved a nationwide reputation in just a few years. Although the trend for the many years has been for young attorneys to seek to be in the United States Attorney's Office as an Assistant U.S. Attorney, in those days a number of Assistant U.S. Attorneys left that position for the opportunity to work for Byrne as an Assistant Prosecutor. That spoke volumes about him.

To go back to your question, are things different? Not really. The Supreme Court in those days, under Chief Justice Weintraub, and then Chief Justices Hughes, Wilentz & Poritz, had great leadership—as it has today with the guidance of Chief Justice Rabner.

Chief Justice Rabner has shown extraordinary leadership in dealing with a series of challenges the likes of which have not been seen previously. He has been more than equal to the task.

It is a far heavier docket today. In 1947 or so, the first year of the modern Supreme Court, after the Constitutional Convention triggered judicial reforms, there were about ten or so Petitions for Certification. Now there are about fifteen hundred Petitions a year, but, other than that, the processes are steady and stable.

[Editor's Note: New Jersey's current constitution, drafted in 1947, united the state judicial system under the New Jersey Supreme Court. During the first year under the new constitution, there were 15 Petitions for Certification filed, according to the "Annual Report of the Administrative Office of the Courts." According to the New Jersey Judiciary's "Annual Report Court Year 2017-2018," 1,232 Petitions for Certification were filed in that year.]

Going back to the Weintraub Court, I am reminded that in 1967 or so, just before Christmas, I was living at home, with my parents.

Dad came home. We had dinner together that night, and he said that he was entering his building that day, the old Academy building, a lawyers' building in Newark, and Chief Justice Weintraub walked on to the elevator at the same time. Weintraub was attending a Christmas party being hosted by his former law firm, the McGlynn firm.

I said, "You saw the Chief? What did he say?" Dad replied: "Well, we shook hands, we said, 'How are you?' I said, "What else did he say? Anything?" I was wondering if the Chief would comment to Dad about his son. He did. The Chief asked, "I cannot tell you how much I enjoy playing each June in the Essex County Bar Golf Tournament with your son Andy." I said, "Was that it?" That really meant, "Dad, was that all?" He answered "That was all," and chuckled, knowing he had struck a nerve.

Eileen and I were married in New York City in 1967. Her father, Robert J. Fitzsimmons, was considered one of the leading trial lawyers in New York State, representing clients as varied as former Mayor William O'Dwyer after he was indicted in the mid 40s, the Archdiocese of New York and Cardinal Spellman, and the famed Murchison brothers from Texas. Her mother Mary, who bore a striking resemblance to Maureen O'Hara, made many of the sacrifices my mother made to support her family. She lived with us for 16 years after she was widowed. In some other recollection or memoir, I will be able to say more about both of those good people.

So back to 1967. I left the Prosecutor's office in 1968 to join my father in 1968. He died in 1969. My regret is that I did not have more time to be with him professionally and personally.

My brother stayed with the Prosecutor's Office, and ultimately became First Assistant Prosecutor, for nine years. At that point, the practice, though a small practice that Dad left us, was slowly growing. I needed Andy and he joined me.

SI: Well, before we get into that phase of your career and your life, I want to ask a few more questions about the County Prosecutor's Office. When you would appear before the Supreme Court, was it usually, like, a capital case, that sort of thing?

Chief Justice Zazzali: Some cases were capital cases, but they were more often search-and-seizure matters, and other questions of criminal law.

Most Supreme Court cases, people believe, are blockbuster cases. However, the vast majority of matters before our Supreme Court or any supreme court including the United

States Supreme Court, although important, are not headline cases. But one capital case still resonates with me when I sought to open debate about the meaning of reasonable doubt.

I remember one unsuccessful effort. The definition of “reasonable doubt” in those days was that reasonable doubt required a juror to have “an abiding conviction to a moral certainty of the guilt of the defendant,” in order to convict. I considered that a complicated explanation. As a matter of epistemology, the philosophy of knowing, how often does one know or have “an abiding conviction” of anything to a “moral certainty?” I argued in a brief to the Court that that was an unreasonable definition, prejudicial to the public and to the State. To be sure, fairness dictates that the standard of reasonable doubt must be strict. I was not trying to loosen the standard, but to clarify it. The Supreme Court did not address the issue. I have not conducted research to determine if any subsequent decisions altered the definition. I believe the current model jury charge states: “A reasonable doubt is an honest and reasonable uncertainty in your minds about the guilt of the defendant after you have given full and impartial consideration to all of the evidence.” The charge adds that “we know very few things with absolute certainty” and reasonable doubt does not require overcoming “every possible doubt.” Common sense prevailed.

SI: Yes, I wanted to ask about how Byrne’s leadership was viewed in your days in the County Prosecutor’s Office. You said he had turned this into a nationwide model, perhaps.

Chief Justice Zazzali: Yes, we got off that, but, to answer your question, his leadership style was strong and effective. He commanded and demanded respect. He was not dictatorial, but he expected the work to be done and done well.

In later years, as reflected in the obituaries and stories about him, he was proud of the people that he assembled over the years. Many of them—I can’t go into them now for fear of offending a few by omitting names—later became among the finest lawyers, judges and public servants in New Jersey.

He was a disciplinarian, but reasonable. He conducted meetings of the staff in his office every Friday morning at nine o’clock and you had better be there and on time. If you walked in one minute late, you would hear about it from him later. He was hands-on, a great example for all of us, and we in turn were proud of him and wanted him to do well. The prosecutors worked hard as committed professionals for a leader who deserved our full commitment to the tasks at hand.

SI: Concurrent with your time there, the Newark uprising or riot occurred in the Summer of ‘67. Did that affect your work at all?

Chief Justice Zazzali: No, because I then was in the appellate section of the Prosecutor’s Office, although I did drive to the office, as did most of us, during the riots. Newark erupted that Thursday night in June of 1967. Friday was horrific, but most of us were in the Office, at some risk. It was a tough time. That’s a whole separate interview,

in terms of the issue of the Newark riots and the outcome, what caused them or did not cause them. It's an interesting but sad chapter in the State's history.

[Editor's Note: The Newark riots lasted from June 12 to July 17, 1967. They began after the police arrested an African-American cab driver and rumors spread that he had been killed in custody. The riots resulted in over two dozen deaths, over seven hundred injuries, fifteen hundred arrests and property damage exceeding ten million dollars.]

Having said that, the next significant event was that Byrne ran for Governor. Just before the election, his Counsel-to-be, Lew Kaden [Governor Byrne's Special Counsel in 1974], indicated that Byrne wanted me to do a white paper on the Sports Complex, which was then in its planning stage. The Complex had been conceived during the Cahill Administration, and now Byrne had to make the fundamental decision, whether to support it or not.

[Editor's Note: Stemming from efforts by New Jersey civic leaders to develop a sports facility in the New Jersey Meadowlands in the 1960s, Governor William T. Cahill (1970-74) signed the New Jersey Sports and Exposition Authority Act, *N.J.S.A. 5:10-1 to -38*, into law in 1971. Led by David A. "Sonny" Werblin (1910-1991), one-time part-owner of the New York Jets and, later, Chairman of Madison Square Garden, the New Jersey Sports and Exposition Authority quickly made a deal to relocate the New York Giants from their then home in Yankee Stadium to the new complex. On November 19, 1972, the N.J.S.E.A. broke ground on the initial elements of the project, the Meadowlands Racetrack, which opened in September 1976, and Giants Stadium, which opened a month later.]

I worked on a thirty-page report for two weeks and gave it to Byrne before the election. I recommended that he move ahead with the Sports Complex but I added, being a baseball fan, that there also should be a baseball stadium. That was unrealistic given that we could not build a baseball stadium in addition to the racetrack and the stadium, not at that time.

The issue with the Sports Complex that Byrne faced was existential. This was a \$300,000,000 project, a huge sum at the time, and the Complex needed financing. For complicated reasons, the State could not follow the traditional route of state-guaranteed bonds. The State could issue bonds that were not guaranteed by the "full faith and credit" clause of the Constitution, as best I recall. It's forty-five years ago, and I'm working from memory.

Instead, what the State could do to satisfy Wall Street and investors was to make a moral pledge, an interesting concept. The Governor could maintain that the State is not bound to pay the bondholders what was due on the bonds that bondholders bought. There is no legal obligation on the part of the State if there is a default on such bonds. However, the State can make a pledge that if the Sports Complex failed, and if monies are due bondholders, the State will pay to the bondholder the amount due. There was significant opposition to the moral pledge within his inner circle. Those closest to Byrne believed that the pledge and the Sports Complex would become his Achilles' heel, a

failure, and would bring him down. Byrne eventually decided to make the moral pledge that carried the day and assured the viability of the Complex.

It was an extraordinary Byrne achievement, one of many. The Sports Complex today is not what it was but at the time it was considered the finest sports complex in the nation, some would say in the world particularly when the Complex added the basketball arena to the stadium and racetrack. It was thus appropriate that when the Authority built the indoor arena a few years later, it was named after Byrne. He joked that it proved he was Italian because people started to call him “Brendan Byrne Arena”.

Just before his inauguration in 1974, Byrne asked Andy and me to be the General Counsel for the Complex. I said no at first, explaining that “it’s just my brother and I in the firm and this is a mammoth task.” The prior firm that handled matters had sixty attorneys, probably the second-largest firm in the State at the time. He asked me to think about it. I went back to Andy who said we could do it and we then said yes. Although it was a bumpy ride in the first year or so, it worked out fine. We served for eight years.

But let’s talk about what Byrne accomplished with the Complex. He put together an exceptional team that created an extraordinary complex, a controversial project that came in on time, within budget, and without a scandal. And there were no work stoppages because of his relationship with the unions, his ability to work out problems. The lynchpin to success in avoiding strikes was Byrne’s advice to labor that “you now have hundreds of jobs for your building trades members—there should not be any work stoppages or strikes,” or words to that effect.

My experience at the Complex, as I said, was challenging at the start. Even though I did not seek the position, there was resentment on the part on some of Wall Street asking, “Who is this Firm? How can two lawyers assume this mammoth responsibility?” And there was opposition, because we were replacing the law firm that the Cahill Administration recommended.

“Sonny” Werblin, the Chairman, was an entrepreneur in the entertainment field. He had been the Hollywood press agent for Bob Hope and Ronald Reagan, marrying Bob Hope’s first leading lady, Leah Ray. He then came East to continue in entertainment and show business and sports.

[Editor’s Note: Music Corporation of America (MCA), a music talent agency founded in 1924, was reshaped in the 1930s, 1940s and 1950s by Lew Wasserman and his right-hand man, Sonny Werblin, into a multimedia production company dealing in music, television, film and live entertainment. In the 1960s, anti-trust laws forced MCA, at one time, the largest talent agency in the world, to sell off its talent management assets.]

At the outset, the offices for the Complex were in the Gateway One office building in Newark because the ground had not been broken yet at the East Rutherford location. We had meetings once every two weeks with eight people at the conference table,

Sonny was at one end, the six members of the Authority sat on the sides of the table, and I was at the other end. Meetings were frosty.

After the first two months, because I needed his help, I concluded that my brother should join me at the meetings. When Andy came to his first meeting, Sonny sternly said, "Good morning, Jim", and I replied, "Good morning, Mr. Chairman." He answered, "Who's that with you?" I said, "That's my brother." Sonny asked, "Why is he here?" I replied that "he is part of the firm, and this is a joint effort to provide you with the maximum service possible." Because I thought it best to soften the mood, I added "if it means anything, Mr. Chairman, knowing the financial difficulties confronting the Sports Complex, in this first year we will not charge for Andy's time." Al Linkletter, Vice-President of the Prudential, looked up and said, "Jim, in that case, why don't you leave and have your brother stay?"

Another incident was—but I don't want to tie you up with these digressions...

SI: No, these are great.

Chief Justice Zazzali: About a month or two later, I spoke with the Secretary Treasurer of the Authority, Bud Foley, after a meeting. [Editor's Note: Adrian M. "Bud" Foley, Jr., a long-time partner at the Connell Foley Firm, as the N.J.S.E.A.'s first secretary-treasurer, helped to secure \$302 million in funding for the stadium and racetrack.] We were not close, but we had a pleasant relationship given that he had known my father. I said, "Bud, you know that we did not seek this position. Byrne asked us to do it and we agreed. Why this coolness now towards us as counsel to the Sports Authority?" He said, "Jimmy, let me ask you. How many lawyers are in your firm"? In perfect seriousness, I said, "Two, but we're going to three in the fall." To me that was a 50% increase. Probably thinking I was either a wise guy or naïve, Bud shrugged his shoulders and walked away.

The first major challenge we faced was that the Sports Authority was broke. Even with the sale of bonds, there was no way to survive in even the first year unless we could race horses at the Camden racetrack, Garden State Park Racetrack and other Racetracks in New Jersey. If the Authority could race there and receive those revenues, on the theory the Complex was the sponsor of the races, we would get by that first year, and hopefully survive. [Editor's Note: Garden State Park, located in Cherry Hill in Camden County, New Jersey, featured harness and thoroughbred races from 1942 to 2001.]

The Authority then advised me that there was a debate over whether it could race at Camden. "The Sports Authority must be able to operate a season down there for two months to survive. Can we do it?" I looked quickly at the statute and said, "I don't think so." I then again went to Andy and he said, "I think you're wrong. There's a way of doing this, and here's how." The Sports Authority approved his approach. It started the process but special interest opposition groups commenced litigation to block that effort. Nonetheless, Andy handled the case successfully before the courts. That victory assured the Complex's initial existence as did other favorable decisions that followed,

permitting the Authority to conduct racing at other racetracks in New Jersey in order to raise additional revenue to service the Bond issue.

But there is a footnote here that was an early snapshot into government and the practice of law. A few months later, after we won the litigation, I found out that the Attorney General in the Cahill administration had provided an earlier written opinion to the Sports Authority advising the Authority what it could not run at Garden State. Shortly after that, the Sports Authority also showed me an opinion from the Authority's prior General Counsel, dated a year before when this issue was percolating, that reached the same conclusion as the Attorney General: the Authority could not run at Garden State. That explained why prior Counsel, during the litigation, had expressed skepticism to my brother concerning our chances in the litigation.

When the Authority asked us to give our opinion, it did not tell us that in its back pocket or in a bottom drawer it had prior opinions from both the Attorney General and prior General Counsel, distinguished attorneys, saying we are not allowed to do what we said could be done.

In any event, we were there for eight years until Byrne left office. There are many memories of a lot of hard work by distinguished public servants. The late, great Bob Del Tufo sat on the Construction Committee for the Sports Authority. The then Attorney General, Bill Hyland, was an *ex officio* member of the Sports Authority. Del Tufo was his First Assistant Attorney General. Hyland sent Bob up to attend all those meetings. Hyland subsequently served as Chairman of the Authority for several years, succeeding Sonny Werblin.

[Editor's Note: William F. Hyland served as Attorney General of New Jersey from 1974 to 1978 during the Byrne Administration. Robert J. Del Tufo served as First Assistant Attorney General of New Jersey from 1974 to 1977, the Director of the Criminal Justice from 1976 to 1977, then, United States Attorney for the District of New Jersey from 1977 to 1980. He later served as Attorney General of New Jersey from 1990 to 1993.]

Every week, Bob would come to the meeting of the Sports Authority Board and then attend an all-day-long meeting of the Construction Committee. He and the gentleman I mentioned before, Al Linkletter, Vice President for Construction at the Prudential who was a construction genius, worked together. Bob was another one of the unsung heroes, as was Linkletter, in the creation of the Complex.

SI: Just for, again, listeners and viewers, most people associate the Sports Authority with the Meadowlands itself, but it had other responsibilities throughout the State. Can you talk a little bit about that?

Chief Justice Zazzali: Well, at that time, the Sports Authority was limited solely to running the racetrack, running the stadium, and then, managing the construction of the Byrne Arena, seven or eight years after we started up. That was the focus, and it was very successful for a good twenty years or more.

SI: But, it had some kind of authority over the racetracks down south? Would a place like Monmouth Racetrack come under...

Chief Justice Zazzali: Yes, later on, after my time, the Authority operated Monmouth Park in Oceanport.

There were a host of interesting cases involving the Sports Complex. Hare Krishna made a request to proselytize and solicit at the racetrack and at the stadium, inside the facilities, and in the parking lots. The Sports Authority Commissioners refused permission. I believed that denial of access would create a significant constitutional question, but the Authority was the client with the right to say, "No, we're going to fight this," and so they did.

We won before the federal district court, when a constitutional challenge was leveled against the Sports Authority by Hare Krishna and others. A three-member panel of the Third Circuit Court of Appeals then affirmed the lower court decision. Hare Krishna filed an application to the Third Circuit to have the matter heard *en banc*, which means the entire thirteen or so judges would decide whether the three-person panel had erred or not. The full Court affirmed by one vote. I believe it was a seven-to-six vote with six judges saying it was unconstitutional. I do not know whether Hare Krishna petitioned the United States Supreme Court. It may have concluded that it was best to fight and run away, only to fight another day. Ten years later they won the issue elsewhere. Putting it differently, we may have been acting constitutionally viewing it through a 1979 lens but not with a 1989 prism.

[Editor's Note: Chief Justice Zazzali's firm represented the N.J.S.E.A. in *International Society for Krishna Consciousness, Inc. v. New Jersey Sports & Exposition Authority*, 532 F. Supp. 1088 (D. N.J. 1981), and *International Society for Krishna Consciousness, Inc. v. New Jersey Sports & Exposition Authority*, 691 F.2d 155 (3rd Cir. 1982).]

SI: Were you working with the sports teams that were coming in to populate the arena and the football stadium?

Chief Justice Zazzali: Byrne faced a number of challenges, I mentioned them, New York, Wall Street, and the Giants themselves. The Giants were almost an adversary at the outset.

Why? Because in that transition period although Byrne signaled yes to the moral pledge, he knew things were awry. He believed that the agreement between the Giants and the State of New Jersey was a sweetheart deal favoring the Giants but he did not criticize his predecessor Governor Cahill. They worked well together. Byrne recognized that Governor Cahill had to make concessions in order to get the Giants here, had to put bait in the Hudson River to get the Giants to bite. But the Giants bit hard and obtained too many concessions. Brendan said he would not tolerate all of it, and insisted on a meeting with Wellington Mara and the Giants' coterie.

[Editor's Note: Tim Mara (1887-1959) founded the New York Giants of the National Football League in 1925. His sons, John V. "Jack" Mara (1908-1965) and Wellington T. Mara (1916-2005), served as co-owners following his 1959 death, with Wellington assuming the presidency of the club after Jack passed away.]

We met in November and December of 1973 at the Princeton Club in New York, Brendan's *alma mater*, and we negotiated for two or three days. Brendan brought Bob Del Tufo with him. After these efforts that sweetheart deal was not so sweet anymore, with Brendan wringing significant concessions from the Giants. Del Tufo, typically strong and principled, went head-to-head with the Giants' attorney, Wellington's son-in-law, in interesting verbal brawls.

Long story short, the Giants provided significant give-backs to New Jersey, but the problems continued. We were upset at the fact that the Giants allocated so few seats in the Stadium to New Jersey fans. It sounds picayune, perhaps, to remember something like that, but the allocation was unfair. New Jersey was shouldering all the risk. The Giants replied with rationalizations, some of which may have been legitimate like, "We have to consider the New York fans first." Fair enough, but they reserved almost the entire lower tier with some thirty thousand seats or more and virtually the entire mezzanine for New Yorkers. We received a few seats in the lower tier but it was essentially New York. The upper tier was three-quarters Giants and one-quarter New Jersey. In other words, New Jersey, of the total of seventy-seven thousand seats, had perhaps fifteen thousand or so seats, and many were mediocre. One of our United States Senators at the time was seated three rows from the top of the stadium and commented that "I'm so high that every time the mail plane to Pittsburgh flies by, I wave hello to the pilot."

SI: Costs?

Chief Justice Zazzali: About six months into the job, and aware that Byrne was watching progress carefully, I saw him at an event. I was starting to feel good because we were obtaining results, achieving some rapport with the Sports Authority personnel and reducing costs. I casually said to him, I said, "Governor, you will be happy to know that my brother and I have probably reduced attorneys' fees to twenty-five percent of what they were." He looked at me, and he answered, "Or less," in his inimitable way of sending a painful message.

Nonetheless, and to sum up those eight years, what began unwell, ended well.

INTERVIEW WITH CHIEF JUSTICE JAMES R. ZAZZALI

JULY 13, 2018
PART 5 OF 7

Becoming the State's 'Top Cop:' Advancing to the N. J. Attorney General's Office

Chief Justice Zazzali discusses his years in private practice, continuing the firm his father built alongside his older brother, Andrew. During this time, he also served as receiver for Bloomfield College and Seminary in Bloomfield, New Jersey (1974-1976). He then describes how he joined the Byrne Administration as Attorney General (1981-82). He pushed to raise the legal drinking age from eighteen to twenty-one, fought sweatshop labor exploitation, worked on issues related to casinos in Atlantic City, and oversaw the recount in the 1981 N.J. Gubernatorial race.

Illingworth: Could we go back a little bit and talk about how the firm grew after you joined it in '68. You said it was difficult going at first. You lost your father in the first year, then, your brother joined you. How did it grow in-between that and [the Sports Authority business]?

Chief Justice Zazzali: Slowly. I've enjoyed the practice of law, and I understand that it may be necessary to grow, to expand, or else you risk atrophy. But you don't have to grow. You just manage it as best you can, get along with others, and let the growth happen, or not.

We were starting our family and I was prepared to work hard, but not run around day and night to events, whether it was to the local Rotary Club or a Knights of Columbus meeting, this or that group, networking, developing clients. That's fine, but it was not my cup of tea. I'd rather be spending more time with family or a book.

As I have told young lawyers when I was on the Court, "Sometimes, it's more important to read a good book than to write a good brief." That might sound like heresy in some firms but we have to remain mindful of the liberal arts, whether history, literature, or whatever. That makes for better lawyers, better judges, and better human beings.

SI: Also, when did you move to Monmouth County?

Chief Justice Zazzali: After Dad died, our first child, Mara, was born. My mother was in Monmouth County while we were looking to buy in West Orange or South Orange. Having grown up in the Vailsburg section of Newark, which borders on South Orange, I liked those suburbs. But Mom was now alone in Monmouth County—my sister was in New York teaching and my brother was single in Newark. I said to Eileen, "Let's move down the Shore."

Coincidentally, her parents had made the decision a couple days before Dad passed away, to give up their apartment in New York and move to their home in Spring Lake. They were delighted that we would move just a half-hour away. My mother also was thrilled that she would be near to her first grandchild. That made a difference in her

remaining years as did the decisions by my brother to move to Monmouth County while she was still alive and my sister to be with her during the summers.

Although I had never done extensive bankruptcy work, Bankruptcy Judge Vincent A. Commisa designated me the receiver for Bloomfield College, originally a Presbyterian seminary. Because it had lost litigation resulting in major liabilities and could not continue, it filed a petition for bankruptcy. The attorney for Bloomfield College was a young lawyer specializing in bankruptcy, Frank Vecchione, who later became dean of the Bankruptcy Bar in New Jersey and who was with the Gibbons firm.

Two years later we came out of it, paid the creditors fifty cents on the dollar, as opposed to the more typical five cents or ten cents, if that. Bloomfield College survived. We had to persuade two or three hundred high school seniors to come to a bankrupt college for their education. What parent would send their child to a school in bankruptcy? I sat down with a manual typewriter and the one secretary in our firm. Over the course of a week, we sent 250 personal letters to 250 guidance counselors in 250 high schools in New Jersey, extolling the virtues of Bloomfield College, declaring "This is a good place for your child."

Somehow, for two years we eked out enough students and that enabled Bloomfield to survive. It was the first college in the United States to go into bankruptcy and it exited successfully.

SI: Wow. I would guess nothing really prepares you for an experience like that.

Chief Justice Zazzali: No, it was a wing and a prayer, but you learn to help. I did not administer the school in a direct sense, but I participated actively. We were dealing with faculty, the faculty union, student body, parents, staff, alumni, the community and the press. One learned the hard way how to juggle a few balls involving eight or nine different constituencies.

SI: Just to stick with this for another couple minutes, would you have to deal with, like, the faculty? I would imagine a lot of them probably left or tried to leave after it went into bankruptcy.

Chief Justice Zazzali: Before I came on board, thirteen professors were terminated. The AAUP, the American Association of University Professors, represented them. It sued and it won, claiming it was an improper termination for which teachers were entitled to damages. They recovered about a million dollars, substantial money in 1973, but that plunged the school into bankruptcy. Then the AAUP on behalf of the remaining faculty insisted on negotiations to achieve a collective bargaining agreement.

Because of my labor background, I put on the mediator's hat and with the input of others we persuaded the AAUP, the faculty, the administration, the minister-trustees to come to their senses. The result was their first union contract. The contract was fair but did not give the store away as with the sweetheart contract I mentioned before. We won the peace enabling the College to resuscitate itself.

SI: Any other experiences related to Bloomfield that stand out in your memory?

Chief Justice Zazzali: No. But that experience, stood me in good stead. Since I left the Court, I have worked with different universities helping to resolve disputes or to investigate internal matters.

I miss the groves of academe and I still have not won my Master's degree in American Studies. I told you the last time that I am halfway there at Seton Hall but I don't think that's going to happen in my lifetime—perhaps on some celestial college campus if a winged school bus can find one.

SI: The firm remained in Newark.

Chief Justice Zazzali: The firm then gradually grew over the years but always stayed in Newark. I'm now with both the Gibbons firm and the Zazzali Fagella firm.

SI: I know a lot of law firms were leaving the city at that time.

Chief Justice Zazzali: It is instructive. Many firms went to East Orange after the riots. But East Orange then had its own problems, which stalled its initial renaissance. Lawyers started moving to Roseland and Morristown. We stayed in Newark. As I said in the last interview, that's where my grandparents settled in the late 1880s. I have been here, on and off, ever since.

SI: So, your work with the firm, was it mostly taken up by your responsibilities with things like the College and later the Sports Authority, or was that concurrent?

Chief Justice Zazzali: Yes, that all happened in the '70s. The Sports Complex was born in '73, '74, and I did Bloomfield in 1974 to 1976; which reminds me of another Brendan Byrne caveat, perhaps rebuke is the word. When I was named receiver for Bloomfield, the press carried the announcement. We had taken over as Sports Complex counsel a few months before. Byrne had reposed trust in me, my brother, and others to make it work. When I saw him the night of the Bloomfield College announcement and mentioned the appointment, he said stone-faced, "Don't you have enough to do?"

[RECORDING PAUSED]

You asked me to discuss my designation as Attorney General. In early 1981 I received a call from Governor Byrne's Chief Counsel, Dan O'Hern. He said, "I hear rumor that you might be coming down here to succeed John Degnan as Attorney General." I said to him, "I have no interest in that, Dan. If there's rumor, I haven't heard it, but no thanks."

[Editor's Note: The Honorable Daniel J. O'Hern served as an Associate Justice of the New Jersey Supreme Court from 1981 to 2000. He served as an Environmental Protection Commissioner (1978-79), then, Counsel to the Governor (1980) during the Byrne Administration. John J. Degnan served as Attorney General of New Jersey from 1978 to 1981.]

Why did I say that? It was not posturing. I was having a difficult time with some issues in the practice of the law, some people disappointing me. I wondered whether it's all worth it. "Am I better off teaching Latin somewhere?" No personal problems but I was troubled by events and I felt that perhaps there was a different kind of life to consider. It was not a lengthy angst but for a few weeks I was down.

So, when Dan raised that, I said, "No way." But about a month later one Friday afternoon, I went from my office in Newark to the YMCA, fifteen minutes away, as was my habit every other day, for a swim. After the swim, I felt good, physically, mentally, emotionally. Returning to the office, my assistant said that the Governor was on the line. He asked: "Would you be willing to come down here and serve as Attorney General?" Impulsively, I said, "You bet I would," contrary to how I had been feeling but that swim made all the difference. He was surprised, saying "Really", because I am sure Dan had told him I had no interest, yet Brendan was persistent. "Come on down here Sunday. We'll talk about it." [Editor's Note: Chief Justice James R. Zazzali served as Attorney General of New Jersey from 1981 to 1982.]

SI: Well, at this point, I'd like to just point out that you've also given an interview to the Eagleton Institute at Rutgers on your time in the Byrne Administration, in addition to other aspects of your work in public service. So, we want to cover some of that now, but viewers can also refer to that interview for any other information.

[Editor's Note: On December 14, 2009, the Center for the American Governor at the Eagleton Institute of Politics, Rutgers, the State University of New Jersey, conducted an oral history with Chief Justice Zazzali on his experience in the Byrne Administration. Their interview can be accessed at: <http://governors.rutgers.edu/video-library/individual-interviews/interview-with-james-r-zazzali/>]

Chief Justice Zazzali: You think they have the appetite for it? [laughter]

SI: I think so. No, they're good viewers. So, you were talking about how you got the call after the swim—in '81, was that?

Chief Justice Zazzali: It was ...

SI: Or 1980?

Chief Justice Zazzali: There was also the SCI [State Commission of Investigation] experience afterwards, which you said you may want to talk about.

SI: Sure.

Chief Justice Zazzali: But you may want to first finish this segment with a discussion of the Attorney General position, and take a few minutes to do that.

As I said, I was sworn in. The swearing-in was in the War Memorial Building in Trenton. As a general rule, there's nothing particularly interesting about the average swearing-in, including mine,

Brendan livened things up, telling the audience in the War Memorial Building that he regretted having to appoint me because he wanted to be the first Attorney General in New Jersey whose name ended in a vowel.

I had wonderful people helping me as Attorney General, for example, Michael Cole, Director of the Division of Law, and Ed Stier, Director of the Division of Criminal Justice. John Degnan left me with a solid staff. We accomplished some good. It was a productive year, though stressful.

[Editor's Note: Michael Cole joined the N.J. Attorney General's Office in 1978 and served as Assistant Attorney General in Charge of Litigation, then, First Assistant Attorney General and Director of the Division of Law. He later served as Governor Kean's Chief Counsel from 1986 to 1989. Edwin Stier served as Director of the Division of Criminal Justice from 1977 to 1982.]

I had never been in that kind of a position before. You obsess about doing the right thing. As focused as you are on making the right decisions, you never know when you might step on a landmine or a booby trap. Though no fault of your own, or perhaps because of some inadvertent error that is your fault, there is the potential for problems.

As Attorney General, I did not want to simply be a "Dick Tracy." Even though a critical part of the AG's work is criminal justice, the civil side had become an overarching responsibility of AGs. By then the AG also had casinos under his or her jurisdiction including the ABC (New Jersey Division of Alcoholic Beverage Control), the State Police, and Consumer Affairs. There were and are myriad responsibilities. That is why the Attorney General, by constitutional designation and by tradition, is considered one of the most powerful AGs in the country and perhaps the most influential because of his or her wide-ranging jurisdiction. It is also the largest law firm in the State.

Although organized crime and street crime were priorities, there also were social and economic justice issues. One project, my goal, was increasing the drinking age. The drinking age was eighteen at the time. Some felt that I was a dinosaur because of my position.

I recall sitting in our kitchen with Eileen before I was sworn in. I said to her that I hoped to usher through the Legislature an increase in the drinking age. At that time, deaths of teenagers between eighteen and twenty-one due to drinking were very high. I know it's simplistic and I know there were and are arguments against it, but I felt then—and remain convinced now—that we saved lives.

I pressed for the change. There was some pushback by the staff but it had to happen. The compromise was a study committee. As any person familiar with the legislative and executive process knows, a study committee is often a facile way of practicing avoidance. A study committee is established; it issues a report; and the report is placed on the shelf and forgotten.

I was determined that would not happen but it took a long time to get the committee rolling and to do what had to be done. Two or three days before the end of my term, there still was no report. We issued the report on my last day in office, recommending and giving reason for an increase in the drinking age. Six months later it was enacted. *The Times* acknowledged our involvement as the catalyst for its passage.

We also looked at migrant workers in South Jersey, long before many people knew the word. We investigated migrant camps and addressed the exploitation of the workers.

When the Governor announced my appointment as AG at a press conference in '81, fifty reporters were in attendance. I was sure I would get hit with, "Do you represent unions?" They asked nothing about unions although they knew my background. That was not a problem. Rather, they asked if I represented casinos.

It is good to have mentors giving advice. Two years earlier when I was still in private practice I received a call from a former Jesuit who had left the Order before he was ordained. He at the time was the Executive Director of the Atlantic City Hotel and Casino Association which was seeking an attorney. He asked that I interview for that position. I was not sure what to do. Dad, who was always an unfailing guide in these situations, was gone. Because former Attorney General Bill Hyland was in private practice in Newark at the time, I went to him and asked, "What do you think?" He answered: "Jimmy, if you don't need it, don't do it," I agreed. Wise advice. Given the questions posed two years later at the press conference, I am pleased that I did not do it although some attorneys left our firm in disappointment in part because of my decision. They wanted to represent casinos, which I appreciated, but I was opposed to it.

As Attorney General we did our job with the casinos. Del Webb, not a big name now, was a major issue. We denied its application. Playboy Casino, with a casino in London and other places, applied for a license. We objected. I did not want the "Playboy culture" infesting Atlantic City or New Jersey. Hefner was denied licensure.

[Editor's Note: In November 1981, the New Jersey Division of Gaming Enforcement reported to the N.J. Casino Control Commission on its two-year investigation into Playboy Enterprises; which had been operating a casino with a temporary permit in Atlantic City since April of that year. The report implicated Playboy in bribing New York officials and violating credit regulations in its London casinos.]

A memorable casino experience, apart from six or seven other casino issues like Del Webb and Playboy, involved a New York real estate entrepreneur who was applying for a casino license. His name was Trump. I received a call from his attorney one day who said, "My client is before the Casino Control Commission. We're down here filling out some papers. We'd like to come over to introduce ourselves. He is with his younger brother, Robert." I said that I would check it out and let him know.

I had never received that kind of request before. I checked with the ethics gurus within the office. They said that "If there's an applicant that has a matter pending before the

State and the applicant would like to meet the agency, we allow that provided it is brief, there is no discussion of the merits, and there are witnesses present.” I said OK to the meeting.

You no doubt will ask, “How was he?” He was low-keyed. He knew that’s all he could do, to say hello and good-bye. It was about a five-minute meeting. I told him the Casino Control Commission would be objective and fair and call it as it saw it.

Your next question might be, “What would you do if you knew...” But I won’t answer it.

SI: Okay, well, I’ll refrain. [laughter]

Chief Justice Zazzali: I also had other decisions to make as AG; because the major casino union down there, representing most of the casino employees, had a problem with its leadership and the leadership’s “associations.” Based on demonstrable concerns, I issued a decision and order barring the union leadership from participating in any casino matters.

The decision was not anti-union. It concerned conduct that legitimately barred the leadership from being in the industry.

I am sometimes wrong on my predictions but I believed we would win in the federal court, lose in the Third Circuit, and win in the Supreme Court. That is what happened. The leadership was barred as a result of those decisions.

I was criticized by some in the trade union movement for my position and my answer was that I had taken an oath and that I had an obligation to honor the oath and to take the action that I did. I was not enthusiastic about my decision but I had to bite the bullet notwithstanding claims I had betrayed some in labor.

On a different level, I also was involved in the “solid waste disposal” questions.

We addressed the new development of ethnic gangs that were emerging. We also picked up that subject a few years later when we were with the SCI.

Returning to the social justice-economic justice issues in addition to our migrant worker mission, we focused on sweatshops. That too was a mission but not a crusade. Workers in Hudson, Passaic and Bergen Counties, especially immigrants, were being exploited to a fare-thee-well, with wages of two dollars or less an hour while working in outrageous conditions. We decided to raid the sweatshops.

I do not favor that sort of overt tactic by prosecutors or attorneys general but there was something to be said for graphic action like a raid in order to focus the public’s attention on abuses such as sweatshops. At the time, President Reagan was in the second year of his administration. His Secretary of Labor was a contractor from New Jersey whom I had met once or twice. He later had legal difficulties but he was a good public servant with a sense of social justice. He had just successfully conducted sweatshop raids in Chinatown in New York which resulted in public awareness of the exploitation. [Editor’s

Note: U.S. Secretary of Labor Raymond J. Donovan (1981-85) led a raid of a clothing factory in New York City's Chinatown in April 1981.]

For context, and as noted at the outset of this interview, my uncle and aunt, my father's oldest brother and sister whom he never saw, died at the turn of the 19th Century, probably in sweatshop conditions.

I called the Secretary and asked if he was willing to join our effort in Jersey where thousands were exploited in sweatshops. He liked the idea, said he would get back to me, and thought that we could do this together. He was satisfied that we were on the right track in New Jersey just as he was in Chinatown in New York.

I received a call from him three months later. He said, "I'm sorry but the Reagan Administration overruled me. They have decided that they will address sweatshops in the United States through self-policing. The garment industry has agreed to make its own efforts to clean up the industry." The Administration was ingenuous at best, but at least the Secretary gave me the courtesy of calling and giving notice, having the decency to tell me why he couldn't do it. New Jersey then went it alone and reforms resulted.

On a different subject, the gubernatorial election was held in November of 1981. Election night, after the polls closed, I flew to London to meet with Scotland Yard to understand more about what was going on concerning the London Playboy Club which had a bad history there. I needed more information to guide the decision in New Jersey concerning its application for an Atlantic City casino.

We planned a London meeting. I called back the morning after the election from Heathrow Airport and discovered the close result—a 1700 vote differential between Kean and Florio. I decided to fly back home that day. I asked Scotland Yard to come to the Airport to discuss matters with me that morning. I was briefed and we took the next plane back.

The important part of the election story is not that anecdote but the result. It was a fair result. We held the recount, a lengthy process. My right-hand in that effort was, again, Michael Cole, who later became First Assistant Attorney General, and who would have made a fine Attorney General. He handled that election recount with perfect pitch, fair to both Florio and Kean.

The public had to have confidence in the ultimate result and so the recount was properly conducted. The process took weeks but it demonstrated how, with committed public servants like Michael Cole, Bob Del Tufo, Bill Hyland, and on and on, the State serves well the commonweal.

[Editor's Note: In the 1981 New Jersey gubernatorial race, Republican Thomas H. Kean, a former New Jersey Assemblyman, ran against Democrat James Florio, then a U.S. Congressman. The close election night returns initially led many observers, including two television networks, to call the race for Florio, but in the end Kean

amassed a narrow margin of 1,677 votes. Neither candidate conceded and the Florio Campaign pursued a recount through the courts. The recount showed that Kean beat Florio by 1,797 votes. Kean served as Governor of New Jersey from 1982 to 1990. Florio won the 1989 gubernatorial race and served as Governor of New Jersey from 1990 to 1994.]

In 1984 or so Chief Justice Wilentz asked me to serve as a vice-chair of the Disciplinary Review Board, the appeals panel which hears cases involving alleged violations by attorneys of the Disciplinary Rules. I served in that capacity for 15 years. For a few years I later also was vice-chair of the Advisory Committee on Judicial Conduct which addresses ethics issues concerning judges.

Scholars and commentators have recognized that the New Jersey ethics requirements and procedures for both attorneys and judges are the toughest in the country. That is one of the reasons why the nation respects our judiciary and our bar. On the other hand, when there is an honest doubt concerning the conduct of an attorney or judge, and the matter is an equipoise, I believe that the image and the interest of justice in appropriate circumstances can be served by giving the attorney or the judge the benefit of a reasonable doubt.

Before we discuss the Court, I should mention one regret, although disappointment may be the better word.

Because the rights of labor are part of the broader question of human rights, in 1994 the State Department asked me to serve on the United States delegation to the United Nations Commission on Human Rights. That involved a five-week commitment in Geneva but I declined, given my obligations to family and firm. I was again asked to serve in 1997 when Geraldine Ferraro was Chair of the delegation. She invited me to her New York office to discuss that possibility. The only item I recall about the meeting is her opening comment: "Jim, I love the name of your law firm. Zazzali, Zazzali, Fagella & Nowak. It sounds like a circus high-wire act." I had to decline that opportunity as well but I did agree to do one-week stints as a delegate to UNESCO in Paris and to the ILO (International Labor Organization) of the U.N. in Geneva.

With that background, and because I lectured on human rights at the University of London (Georgetown) and the University of Parma (Seton Hall), participated in conferences at The Hague and the European Court of Human Rights in Strasbourg, and wrote articles on the subject, I sought to serve as a volunteer in human rights efforts since I left the Court. I failed. The human rights community did not have an interest perhaps because they viewed well-intentioned volunteers as a part of The Amateur Hour. And they may be correct.

To sum up, serving as attorney general was a productive experience. Although it provided a fair share of stress, the satisfactions compensated. This is particularly true of the ability, in appropriate circumstances, to make a decision and implement it promptly without undue delay. Migrant camps in South Jersey, similar to the sweatshops in North Jersey, illustrates such opportunities – – and obligations – – for an attorney general.

As a backdrop, in 1970 Peter Schack of Camden Regional Legal Services and a colleague were convicted of trespassing after they visited a farm workers camp on a Cumberland County farm. Then New Jersey Supreme Court unanimously overturned the convictions, ruling that farmers could require visitors to identify themselves and state the purpose of their visit but could not bar them when a visit would not interfere with farming operations.

But for the next score years abuses continued. In the matter that was brought to my attention in 1981, migrant farm workers sought to visit camps to distribute food, provide transportation to banks, hospitals and stores, conduct seminars on the farm workers' rights, and provide legal aid concerning pay and housing. The advocates did not make those effort when workers were in the field harvesting crops. Still, activists were physically attacked. Local police officers sometimes had friendly relations with the farmers and did not want to be involved.

I therefore ordered this State Police to provide protection to the advocates when they entered and while on the property.

The New Jersey Farm Bureau, a statewide organization of farmers, reacted with a rather tepid "we don't like it". Perhaps it did not like it, but it did not appeal it.

The story of migrant workers, together with the saga of sweatshop workers, typifies a societal problem now in its third millennium – – the exploitation of working men and women.

INTERVIEW WITH CHIEF JUSTICE JAMES R. ZAZZALI

AUGUST 7, 2018
PART 6 OF 7

In Pursuit of Justice: Service to the State & Reaching the N.J. Supreme Court

Chief Justice Zazzali details his years of service on the State Commission of Investigation, first as a Commissioner (1983-1989), then as Chair (1989-1993), where he dealt with issues such as impaired physicians and safety and corruption in boxing. He later served, at the request of the federal courts in New Jersey, as a monitor for jails in Bergen County, Monmouth County, Essex County and the Newark Street Jail. He also discusses his work for the U.S. Department of Justice as Chair of the Congressional Superfund Study Group (1981-82). He recalls his nomination by Governor Christine Todd Whitman (1994-2001) in 2000 and subsequent confirmation as Associate Justice of the New Jersey Supreme Court and contemplates the nature of serving on the Court, its work and the process of writing opinions. He then recollects his elevation to Chief Justice by Governor Jon Corzine (2006-2010) in 2007.

Illingworth: This begins the third interview session with retired Chief Justice of the New Jersey Supreme Court, James Zazzali. This session is being held on August 2, 2018, at the Hughes Justice Complex in Trenton, New Jersey, here in the New Jersey Supreme Court conference room. Thank you very much for sitting with me today again, Chief. Today, we want to begin by discussing your career with the State Commission of Investigation. Tell me a little bit about how you got into that position.

Chief Justice Zazzali: Thank you Shaun, for the opportunity to bring things, hopefully, to closure. The most important goal is to discuss the Supreme Court experience, not just from my perspective, but from the view of so many scholars and others and how they regard our Court.

But you have asked me to discuss the State Commission of Investigation, the SCI, not the most well-known agency in the State, but an important one. It is, above all, an independent agency established at the height of the concerns in the '60s and '70s over organized crime and political corruption in New Jersey. One catalyst for the creation was the exposé in *Life* Magazine and in the press generally about New Jersey in the 1960's. The agency is unique because it is independent and affects all three branches of government, primarily the executive and the legislative. It consists of Commissioners who do not indict, who do not prosecute. They investigate and report on concerns that they may have and that the public and the press should know about.

The SCI started its activities in 1969 or 1970 at the beginning of the Cahill Administration. Those years, by the way, from the late '60s through the '80s, have been identified by some, including Judge Carchman, former Prosecutor in Mercer County from 1981 to 1986, as "the golden age of law enforcement." That also was Federal Judge Anne Thompson's phrase, acknowledging law enforcement had accomplished much. Not only was the SCI vigorously pursuing its traditional prosecutorial role, but

there was also a new emphasis on trying to do the right thing for the right reasons, being diligent but also being fair. We were aware of William Safire's observation about overly ambitious political prosecutors when he famously wrote that "I would rather have a politician on the take than a prosecutor on the make." That overstates the concern but you get the point.

[Editor's Note: The State Commission of Investigation (SCI) resulted from the efforts of the Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey to address the issues of political graft and organized crime in 1968. It began its operations in 1969 and was subject to renewal every five years until 2002 when legislation made it a permanent agency.

The SCI conducts investigations and issues reports primarily on political corruption and organized crime. In the early days it was controversial because it was seen by some to be too aggressive, going beyond what was appropriate or expected.

By way of illustration, there was an attempt made by the SCI to serve Frank Sinatra with a subpoena on a boat that he was enjoying off the coast of Atlantic Highlands. Sinatra later vowed that he would never return to the State of New Jersey, and he stuck to that promise.

[Editor's Note: Singer Frank Sinatra was subpoenaed by the SCI on June 25, 1969, to testify before the Commission in regards to reputed mob figures in New Jersey. Sinatra and his attorneys disputed the SCI's ability to compel him to testify. Ultimately, on February 17, 1970, Sinatra testified in a closed session of the SCI.]

In 1983, Governor Kean appointed me a SCI Commissioner and in 1986 reappointed me for another three years. Governor Florio later designated me Chair.

We were required to navigate difficult waters concerning organized crime and political corruption investigations. Although that was our primary focus, there was a third prong to the statute that established the SCI. Under that proviso we also were to consider, for lack of a better phrase, the "general welfare" of the people of New Jersey, which we perceived to be a mandate.

We thus focused on some economic justice and social justice issues and took on challenges such as the problem of impaired physicians. That was a serious issue and the medical profession acknowledged it—physicians who were impaired either because of drug or alcohol problems or otherwise have some physical or mental issue that affects their judgment and their patients. We conducted an investigation. The statistics were convincing and concerning. I do not want to overstate it, but about eight percent, as I recall, of the physicians practicing in the state had an impairment of some kind or another. We investigated the issue, held hearings and issued a report. [Editor's Note: The SCI issued its "Report and Recommendations of the State of New Jersey Commission of Investigation on Impaired and Incompetent Physicians" in October 1987.]

We also looked at the problem of boxing. Throughout the nation and in New Jersey boxers sustained substantial brain injuries and sometimes death. The sport was also controversial because of some organized crime influence. After hearings, we recommended that boxing be banned, a dramatic step. *The Star-Ledger* and *The New York Times* gave it front page treatment, but many disagreed. Among our critics was Joyce Carol Oates, the author who has written acclaimed novels, short stories and essays. Because she is a boxing aficionado, she wrote a column criticizing the SCI and challenged us for having dared to recommend the abolition of boxing, a sport she loved. She was someone to be reckoned with because of her high standing among the literati.

[Editor's Note: Initially drawn to investigate ties between the boxing world and organized crime in 1983, the SCI began exploring other aspects of the sport during its five-year investigation, particularly its physical impact on the boxers. In its December 1985 "Organized Crime in Boxing: Final Boxing Report of the State of New Jersey Commission of Investigation," the SCI recommended abolishing the sport. Author Joyce Carol Oates wrote a piece in *The New York Times Magazine* entitled "On Boxing," on June 16, 1985, which led to her 1987 book (with photographer John Ranard) *On Boxing*, in which she criticized the SCI's suggestion.]

The SCI also addressed the problem of new ethnic groups in the 1980's. In terms of numbers, illicit profits and viciousness, Latin American, Asian, Russian and other ethnic groups started to outpace the traditional Sicilian organized crime families. We held hearings and issued a report. Because the SCI was one of the first law enforcement agencies in the nation to consider the problem, I was asked to testify before the United States Senate Committee examining the status of organized crime. Sadly, the problem is far worse today.

We also became more responsive to the need for law enforcement, including our Commission, to respect the civil liberties and the constitutional rights of human beings. We dealt with sensitive and often dangerous material. If we said the wrong thing, or the right thing in the wrong way, we could jeopardize someone's reputation, career or even life. We practiced restraint.

Allies in that cause included Bob Del Tufo, who preceded me as SCI Commissioner. In his prior position as U.S. Attorney, he took on his employer, the federal government, criticizing the Justice Department for engaging in inappropriate entrapment in ABSCAM. It required great intellectual honesty and courage to do what he did.

[Editor's Note: In the late 1970s and early 1980s, the FBI developed a sting operation code-named ABSCAM, which caught a number of U.S. politicians, including seven members of Congress, taking bribes in exchange for political favors to benefit a fictional Middle Eastern corporation. Then U.S. Attorney for New Jersey, Robert Del Tufo, charged with prosecuting the case, argued that the government's investigation was flawed and refused to take it to a grand jury. The U.S. Justice Department took the case away from Del Tufo.]

Another of my colleagues on the SCI in that time was Barry Evenchick. As noted, we had served together in the Prosecutor's Office under Brendan Byrne twenty years before. He had served Byrne as the Chief of the Appellate Section in Essex County from 1965 to 1968 and was a terrific Commissioner who provided leadership for many of these efforts. [Editor's Note: Barry H. Evenchick served as an SCI Commissioner from 1987 to 1993.]

SI: Can you give me an example of what you mean by this being sensitive to the civil liberties issues?

Chief Justice Zazzali: Well, for example, without getting into too much detail—and this has all been corrected—in the early years there was, politely put, a lot of rhetoric and flamboyance. Also, our proceedings were supposed to be confidential and secret, but inevitably there would be leaks, which was not appropriate. We corrected that.

The SCI celebrated its fiftieth anniversary last October. It had solid leadership over the years, Chairmen like former Attorney General Hyland, former Federal Judge Rodriguez, Henry Patterson, (former Mayor of Princeton), former Attorney General Carey Edwards, and others. The tradition of excellence continues.

SI: I'll just point out that you were recently interviewed for its fiftieth anniversary. So, if people want to find out more about your career with the SCI, they can reference that as well.

Chief Justice Zazzali: I doubt if they will, but be my guest.

SI: Go ahead.

Chief Justice Zazzali: At about the same time as the SCI service, the federal court in New Jersey asked me to serve as an investigator and monitor for the Monmouth County Jail. Over the course of a decade, I was asked to look into four different jails—Bergen County, Monmouth County, Essex County and the Newark Street Jail. We issued reports and recommendations, some of which bore fruit.

The conditions in New Jersey jails thirty years ago were abysmal. I am from Monmouth County and was appointed to look at its correctional facilities. For example, there was one room—probably double the size of this carpet I am looking at—about twenty feet by twenty feet. That room housed eighteen inmates sleeping on sleeping bags, with mice running over them at night. Food was awful, as was the ventilation, air conditioning, and lack of recreation or exercise. It would make Dickens write—or squirm.

In the eighties, I did have a couple of cases before the United States Supreme Court, one of which I argued. In the other matter, although we did the briefs, I had become Attorney General and could not argue the case. The matter that I argued was a labor matter concerning the rights of employees under a collective bargaining agreement when a company goes into bankruptcy. We lost. Justice Brennan wrote a dissent.

[Editor's Note: William J. Brennan, Jr., (1906-1997) served as an Associate Justice on the New Jersey Supreme Court from 1951 to 1956, when he was elevated to become an Associate Justice of the United States Supreme Court, where he sat from 1956 to 1990. The case Chief Justice Zazzali refers to is *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 104 S. Ct. 1188, 79 L. Ed. 2d 482 (1984).]

About four years later, I saw him at the New Jersey State Bar Association convention, I did not know him although he knew my father. Justice O'Hern, who was at that convention and at the annual dinner that night, had clerked for Justice Brennan. Parenthetically, he was one of Justice Brennan's favorite clerks—and Brennan had over a hundred clerks—so much so that the Justice designated Dan as one of his six pallbearers for his funeral.

Dan introduced me to Justice Brennan. I said, "I don't know if you remember, but I appeared before you a few years ago." He looked at me, he says, "Do I remember?" He took my cheeks between his hands and started whacking my face, and says, "Jimmy, Jimmy, we almost did it, we almost did it," illustrating his charm and charisma.

When I was Attorney General I was asked by the Department of Justice in Washington to chair a Congressional committee on the Superfund. Although Superfund had been enacted in the late '70s, the challenge was to determine what remedies and rights should exist as a result of toxic torts. It is one thing to have a Superfund to dispose of waste, but what do we do to protect and provide relief to victims of toxic torts?

Our committee on toxic torts rights and remedies which met for two years consisted of a national panel of experts in environmental law and practice. We issued a three-hundred-page report to the Congress and, as with so many reports, as mentioned before, it has been on a shelf ever since, but some of those recommended rights and remedies were established in a few states.

[Editor's Note: Created by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C.A. § 9601 to - § 9675, the Superfund provides funding through the U.S. Environmental Protection Agency and the states to clean up polluted sites. Chief Justice Zazzali served as Chair of the Congressional Superfund Study Group from 1981 to 1982.]

SI: Did you transfer any of that Superfund work to the state level in New Jersey? Did people come to you for recommendations; or did you lobby to get any part of that instituted here in this state?

Chief Justice Zazzali: Both as Attorney General and with the SCI, there were some things I learned in that two-year study period that were helpful and that contributed a bit to the advancement of environmental issues.

Although some say that climate is not changing, any rational observer sees tragedy approaching. We are not yet an endangered species, but we could be. The planet is at

risk. We must act now. What's the line? "I expected the worst but it is worse than expected".

SI: Now, we'll turn to your tenure on the Court. When did you first learn that you might be a candidate for a position on the Court?

Chief Justice Zazzali: I received a call from the then Governor Whitman's Counsel, indicating that I was one of a number of individuals being considered, and an interview was scheduled. I met with the Counsel and with the then Chief of Staff for the Governor.

[Editor's Note: Republican Christine Todd Whitman served as Governor of New Jersey from 1994 to 2001. In May of 2000, when Chief Justice Zazzali was nominated and confirmed as an Associate Justice of the New Jersey Supreme Court, Michael Torpey was Governor Whitman's Chief of Staff and Richard Mroz was her Chief Counsel.]

SI: How much time, roughly, elapsed between that meeting with the Chief of Staff and when you learned?

Chief Justice Zazzali: About two or three weeks later, I received another call from Governor's Counsel, asking me to meet with the Governor for a few moments, which I did the next day. When asked by counsel to come to Drumthwacket, I thought it would be either that the Governor would indicate she would nominate me or simply say that she regretted not being able to do so. But it turned out to be another full-blown interview.

I had not prepared as I had before with her staff. I thought it would be three minutes but it was an hour. She then offered me the position. Counsel later said, "You were nervous; but that's okay. You didn't come in cocky."

SI: Was it at the end of that interview that Governor Whitman said...

Chief Justice Zazzali: Yes.

SI: Did they have a press conference soon after?

Chief Justice Zazzali: There was a press conference a few days later when it was announced in the Governor's outer office.

SI: Any memories from that?

Chief Justice Zazzali: No, it's all a blur. Things were happening so fast.

SI: Now, what about your confirmation proceeding, any memories about being walked through that process by the Governor's Office, any interactions with the Senate Committee?

Chief Justice Zazzali: I anticipated and prepared for a tough interrogation by the Senate Judiciary Committee, reviewing cases, issues, thinking about answers to

prepare for the questions that might be posed. It was a ten-minute session with the Committee with few questions. They knew my record, had checked out different references that were provided, and had the background investigation and the “four-way checks.”

Although I was not nervous in that short session, whether it’s an oral argument before the Supreme Court, trying a case, or interviewing for a position, unless you are on edge, a little unnerved by the proceeding both before it happens and as it happens, you are not at your best.

SI: What about your swearing-in ceremony?

I thanked Governor Whitman, and then said, “Governor Byrne, I can’t thank you enough for all you’ve done for me during my career, naming me a Prosecutor many years ago, designating me and my brother Counsel to the Sports Complex and, then asking me to be Attorney General.” I then looked over to him and added, “Gee, Brendan, now I’m so sorry that I never voted for you.”

To digress, no one was better than Byrne with his one-liners and his extraordinary sense of timing, but it was his courage and leadership that are his legacy, abetted by wisdom and wit that enabled him to lead successfully.

SI: Well, tell me a little bit about getting adjusted to this new, very weighty role. You’d never served in the Judiciary before. Did you do anything to prepare yourself for what you might face?

Chief Justice Zazzali: In the period between the nomination and the swearing-in, I did a fair amount of reading, interviewed law clerks, and came to know the Justices.

The best part of my service was the opportunity to serve with Chief Justice Poritz and Justices Long, Stein, LaVecchia, Albin, Wallace, Verniero and Coleman. In my later years on the Court, I also served with Justice Rivera-Soto and Helen Hoens.

[Editor’s Note: See Appendix I for more information on the Associate Justices who served on the New Jersey Supreme Court with and under Chief Justice Zazzali.]

I particularly miss the wonderful law clerks and the staff who were a great part of the job, such as my assistant Donna Anepete.

The work was the most important part of it all. It can and was a collegial and congenial effort, collaborating with the Justices, law clerks and staff.

Justice O’Hern, whom I succeeded—he left in 2000 when he turned seventy and I replaced him—took me aside before I was sworn in. He said, “Just remember: the two most important things about being a Justice are, number one, your vote, and number two, your opinion.” By vote he meant that you try to do all you can to get it right, reading transcripts and briefs, analyzing the law, followed by conferences with clerks, conferences with the Court, all in order to arrive at the correct result.

One Justice said at one point, “Never change your mind.” Although that Justice was a source of sound advice. I did not fully agree. Changing one’s mind should not become a habit but may be necessary in an appropriate case.

It is better if a court is unanimous. Not unanimity for the sake of unanimity, but achieving a principled result that all members of a court can accept. That improves the confidence the bar and the public in the opinion. Sometimes there are good reasons to dissent, but I did not dissent often.

That said, nothing was more satisfying, and it happened three or four times, than to write a dissent that becomes the majority opinion, and which persuades the majority to change its mind.

In the beginning I tended to be long in my opinions. A lengthy analysis is often appropriate, but I discovered that as a general rule shorter is better. Similarly, the Court discouraged too much stylization in writing and understandably so. For example, an arch phrase or a clever word may distract attention from the main thought of the sentence or paragraph. Although my opinions tended to be plain vanilla, a judicial opinion is not the most interesting reading and a restrained style holds the reader’s attention.

Those opinions required extraordinary efforts. I will not review what I suspect other Justices have discussed but I will say that the process of an opinion passing muster with the Court is exceptional. You begin in chambers with your own drafts and redrafts, followed by your clerks’ review. By the time you circulate to the other Justices, the opinion may have experienced numerous drafts. Admittedly, many drafts may involve only four or five edits, what we used to call “nits,” minor items. We also received substantive suggestions from other Justices.

[RECORDING PAUSED]

SI: So, we were discussing the weighty responsibilities. Other Justices have talked about how intense the two-week cycle of conferences and oral arguments—and just the amount of paperwork you have to go through—can be. Did you have a particular strategy within your chambers, working with your clerks, to kind of get through that on a regular basis?

Chief Justice Zazzali: I’m not surprised that the other Justices had the same experience. The work is demanding, nonstop throughout the year except for a couple weeks in August. After I was sworn in, I thought that I would be able to conclude my work by June of each year because oral arguments are over by May. I anticipated that for the first time since grammar school I would have the summer off. That never happened.

I do not suggest that our Supreme Court works harder than every other court in the country—it is absurd to quantify such matters—but I doubt whether any state Supreme

Court or the United States Supreme Court puts in more time than the New Jersey Supreme Court.

What the public and the press do not realize is that every one of those Petitions receives the Justices' attention. We set aside a day every two weeks that is devoted to Petitions. In that two-week period the Justices read the Petitions, the Answers, and the decision below. The Court believes that as burdensome as it can be, the litigants, attorneys, and the public are entitled to our consideration of each Petition. That is quite apart from our primary responsibility to hear eight or so major oral arguments each week, to prepare for those arguments every other week, to discuss the issues at a conference, to decide the cases.

Each Justice probably puts in ten to twelve hours a day. On Saturdays and Sundays, it was commonplace for Justices to work six or seven hours each day. That was my experience, and other Justices worked harder than I did. I do not know how they did it.

It was difficult to keep up with all of that but we managed. You cannot offload this work on others whether other Justices or law clerks. Yes, they play an invaluable role, particularly the law clerks, but returning to Justice O'Hern's advice, your vote and your opinion are the most important concerns. To get that vote right in your head and in your heart and to then write it takes extraordinary time and effort.

That was my only regret—that there was not enough time in the week. I could have had double the time and it still would not have been enough because the volume of work is so extraordinary and its importance so critical.

SI: Now, we want to talk about your ascendancy to the Chief Justice position, and then, we'll talk about some decisions, but, before that, you also were reconfirmed. Anything stand out from that procedure?

Chief Justice Zazzali: No, I wasn't reconfirmed.

SI: You weren't? okay, all right.

Chief Justice Zazzali: It was a coincidence that my first seven-year term expired on my seventieth birthday.

SI: Oh, okay.

Chief Justice Zazzali: I thus never had to think about being reappointed. And I never saw or sensed that my colleagues considered reappointment when writing an opinion or vote. We always were focused on the questions. What is the law? The facts? The equities? And most important, what is the just result? They sought to reach the right result and the Devil take the hindmost without concern about reappointment.

My term was up on June 17, 2007. Justice Albin called me the next morning. I assumed, good friend that he is, that he would lift my spirits, although I did not need reassurance given that I have been in and out of public positions a few times, and reentry became

easy. As long as I was busy and working, whether on a Supreme Court decision or trying to help an employee get his job back, I was satisfied.

Anyway, Justice Albin was on the line and said: “Jim, first you were Justice Zazzali, then you were Chief Justice Zazzali, and now you are just Zazzali.” He reinforced humility.

SI: Okay. When did you first learn that Governor Corzine wanted to elevate you to Chief Justice?

Chief Justice Zazzali: It was a call from his office, asking to meet with him.

[Editor’s Note: Jon Stevens Corzine, a Democrat, served as U.S. Senator from New Jersey from 2001 to 2006 and Governor of New Jersey from 2006 to 2010.]

SI: Any memories, because you served under Chief Justice Poritz for quite a while, any memories of her style as Chief Justice?

Chief Justice Zazzali: Chief Justice Poritz was always thoughtful, considerate, and combined firmness with empathy. She was a fine public servant throughout her career, including her years as Attorney General. She led the Court with grace, dignity and courage.

She was sensible and practical. For example, at times some of us would seek a path to provide relief to, let’s say, a person who was seriously injured in an accident, when neither facts nor law supported the conclusion we sought, she reminded us that we can’t always drive the rescue ambulance.

At times, because of our life experiences, we may have a tilt or sympathy on a given issue. But at the end of the day we are bound by our oath to apply the caselaw, the statutes and the Constitution to the facts as they exist, not as we would want them to be. We can note the equities, introduce concepts of fairness, and strive for the fair result, but we cannot work miracles. But we cannot legislate from the bench.

SI: Now, when you became Chief Justice, were there any changes at all that you saw that had to be made or did you try to keep it [the same]?

Chief Justice Zazzali: No, I focused on maintaining the practices and the traditions of both Chief Justice Poritz and our predecessors and on leaving the ship of judicial state in good shape, so that those that follow would have, if not an easy road, at least a manageable path.

While an Associate Justice has few administrative responsibilities and thus can focus on the essential work of votes and opinions, a Chief Justice does have those responsibilities. I had been advised by staff that those duties consumed seventy-five to eighty percent of the time of a Chief Justice and that the judicial work, writing opinions and the like, is closer to twenty-twenty-five percent. I vowed that it would be fifty percent administrative, fifty percent judicial. I did not achieve that.

A major time-consuming challenge was the need of a salary increase for judges. Because there had been no salary adjustment for a decade, Governor Corzine supported the increase and did so enthusiastically. Although some state senators were also helpful, there was major opposition. The only appropriate course was to reason it with them. The ethics authorities within the judiciary advised that I could meet with state senators and explain the reasons for the need, and that time was of the essence given our concern about experienced judges leaving early and the inability to attract talented attorneys to the bench. Never having dealt with this type of situation before, I was reluctant to engage. I overcame the hesitation and proceeded to schedule individual conferences with state senators.

The increase went through. But it would not have happened but for the extensive groundwork by Chief Justice Poritz during her tenure to set the stage for the increase and the substantial efforts by Chief Justice Rabner while he served as Counsel to the Governor. Substantial credit also goes to The Star-Ledger and to The New York Times for their editorial support.

But all that took time.

And another increase did not happen for ten more years when Chief Justice Rabner was again able to accomplish that for the judges.

We can close this part of the interview with a brief recollection of early experiences with the judiciary that provided guidance for later service.

Until the 1970's, in the public sector public employees had few effective bargaining rights. It was only when the Byrne Administration enacted PERC and other legislation that collective bargaining became collective bargaining. It then took a decade or two for public employees to come close to an even playing field. I recognize that some would say that the field is now uneven in the other direction but this is not the place for that discussion.

I also have observed labor relations in the public sector not only as a lawyer for the employees and their representatives but from the other side of the table as well, for example, as Counsel to the Sports Authority, Receiver for Bloomfield College, Attorney General and Chief Justice. Those observations demonstrated that employers should be able to exercise reasonable managerial prerogatives as permitted by law and the agreements.

With that as context, after the PERC laws were passed the Probation Association of New Jersey (PANJ), representing probation officers employed by the State and counties, asked me to represent it in negotiations with the judiciary's supervisor who also handled its probation officer labor relations. He was a decent and hardworking representative, committed to the power of the judiciary to regulate public employees. As a result, at times he struck out provisions that the parties had negotiated into their agreement, refused to negotiate matters that are mandatorily negotiable, and declined to take matters to arbitration.

All of that was tolerable, barely. Until a referendum was placed on the ballot for that November -- the question involved the Constitutional Amendment to merge the County Courts into the Superior Courts in 1978. The New Jersey television station invited Chief Justice Hughes to speak on behalf of the referendum and he agreed, appropriately, to do so. The Probation Association was given the opportunity to appear to advocate against the referendum. The labor relations director refused permission, reasoning that probation officers were prohibited from engaging in political activity. To be sure, that is the rule but it is subordinate to the constitutional right of free speech. Put differently, regardless of the merits of the question, to say that the public employer can express himself on a public issue but that its employees cannot speak on the same issue gives pause. I believe that was a violation of §1983 and that a federal action against the judiciary would have succeeded. On reflection, PANJ concluded that was not the way to go particularly since we were satisfied that Chief Justice Hughes was unaware of the position that his subordinate took.

Ten years later Chief Justice Wilentz asked me to review the circumstances and conditions of judicial employees, interview both sides and prepare an appropriate report accommodating the interests of both sides.

Those experiences, together with the policies of Chief Justices Wilentz and Poritz that calmed the waters and established labor peace in the judiciary, enabled me to better navigate those shoals twenty years later.

Continuing on the subject of political activity of judicial employees but on a lighter note, I am reminded of a visit to my mother's home town in 2004. My cousin advised me on arrival that I was invited to attend a meeting the next evening of the Town Council which met in its thousand-year old municipal building in the center of this hill town which was created in the Etruscan era. The reason was that a local author had just written a history of that area and would discuss the subject that night. The Mayor invited me to sit at the head table and after the author finished he spoke. Because it was all in Italian I could not follow it well except that it dawned that he was speaking about me. He then presented me with a Key to the City in tribute to the memory of my mom -- a variation of Hometown boy makes good. As the current generation might put it, I was gobsmeared by the surprise. The Mayor gave me the hand mike and asked me to speak.

My pigeon Italian was inadequate, worsened by the fact that I was in front of an audience of over 100 including relatives. I tried my best but I sensed a disaster. When I tried to joke they cried, and when I became serious they laughed. I gave the mike back to the Mayor and sat down, humiliated. Except that the crowd reaction was standing and cheering. At that point I grabbed the mike back from the Mayor, and announced my candidacy for Mayor with "Saro Il Sindaco" (I will be the Mayor).

Funny? No. Because there was a reporter for the Florence press in the audience. The next day that paper printed a story entitled "Zazzali: Saro Il Sindaco."

INTERVIEW WITH CHIEF JUSTICE JAMES R. ZAZZALI

AUGUST 7, 2018
PART 7 OF 7

Memories from the Judiciary's Pinnacle: Cases & Duties on the Supreme Court

*Chief Justice Zazzali discusses the administrative duties he undertook and his efforts to serve the needs of the judicial system. He then expands on Supreme Court cases in key areas, such as: child welfare, *L.W. v. Toms River Reg'l Schs. Bd. of Educ.* (2007), *Jerkins Ex Rel. Jerkins v. Anderson* (2007), & *Hojnowski Ex Rel. Hojnowski v. Vans Skate Park* (2006); consumer protections, *Maisonave v. Newark Bears Prof'l Baseball Club, Inc.* (2005); worker's compensation, *Lozano v. Frank DeLuca Construction* (2004) & *Sager v. O.A. Peterson Const., Co.* (2004); imminent domain, *Gallenthin Realty Development, Inc. v. Bor. of Paulsboro* (2007); LGBT rights/marriage equality, *Lewis v. Harris* (2006); worker's protections, *Iliadis v. Wal-Mart Stores, Inc.* (2007); and corporate malfeasance, *NCP Litigation Trust v. KPMG LLP* (2006). He describes his post-bench career at the Gibbons Law Firm, taking on various monitoring duties and serving on Judiciary-related committees. The interview concludes with his reflections on the nature of the N.J. Judicial System and general changes in the law over his career.*

Illingworth: Are there any other administrative challenges that stand out in your memory?

Chief Justice Zazzali: A primary obligation was to appoint Assignment Judges and to elevate Judges to the Appellate Division. Of the four Appellate Division judgeships that I filled, all were women. I concluded that they would be excellent appellate judges, and they proved to be that.

Apart from that, there were other administrative duties. At least once a week, there was a major problem that required attention. The Administrative Office of the Courts was led by Judge Carchman. As I mentioned, he had been Mercer County Prosecutor in the '80s when I was Attorney General, one of the most outstanding public servants that I have encountered. He was about to leave as Director of the Administrative Office of the Courts after serving with Chief Justice Poritz. At my request he stayed on. We conferred regularly about crises. I said, "Every week, there's a major headache." He replied, "No, if you get down into the trenches, you'll see that it is a crisis *du jour*," every day there is a headache. He undertook to solve those problems and spared me many sleepless nights.

[Editor's Note: The Honorable Philip S. Carchman served as a municipal court judge, Mercer County prosecutor, Superior Court judge, Mercer Vicinage assignment judge and as an appellate division judge. He served as Acting Administrative Director of the Courts from 2004 to 2009.]

SI: Well, let's talk a little bit about your decisions, if any of them stand out specifically or if you want to talk about some of the issues.

Chief Justice Zazzali: Before getting into that, it helped that I visited the vicinages after I was first appointed and again when I was about to leave. I thought that might help morale, enable me to know the judges better at the start and then to say thanks at the end.

We have spoken about the Supreme Court and its reputation. The Appellate Division also has been recognized for decades as one of the outstanding intermediate appellate courts in the nation. Not enough attention is spent on our trial courts either. Although we have a few weak spots here and there, New Jersey still has an outstanding Law Division, Chancery Division and Family Division.

SI: Were any particular cases where either the case itself stands out in your memory, the opinion, or, even if you didn't write the opinion, if the case was memorable.

There is one decision that has a special resonance in these times. It is the Supreme Court's Lautenberg decision of 2002, both celebrated and controversial, when the Court unanimously upheld Sen. Lautenberg's right to replace Sen. Torricelli on the ballot after Torricelli withdrew his bid for reelection. I am working from memory on this so I defer to the actual opinion if there is any ambiguity.

The time for naming a replacement had expired under the governing statute. If the replacement was not allowed, the Republican candidate would run unopposed and thus be automatically elected. There was controversy concerning the question whether allowing the voters to have a choice prevailed over a statutory interpretation to the contrary. Reasonable people can reasonably disagree over the legal questions. But Chief Justice Poritz got it right, construing the statute "to ensure an opportunity for voters to exercise their right of choice..." The Court concluded in effect that the right to make a full and fair choice in an election is a critical component of the right to vote, the fundamental building block of any democracy. If there is no right to choose, there is no effective right to vote.

That is a rough characterization of the rationale of the opinion. Again, while one can disagree with the result, what was offensive was that a few suggested that politics, a preference for Lautenberg drove the boat. That is nonsense. First, Chief Justice Poritz, a Republican, wrote the opinion. Next, she relied in part on an opinion emphasizing the importance of the vote authored by former Chief Justice Vanderbilt, who was the Chair of the Republican Party in Essex County before he became Chief Justice. Further, six of the seven Justices on the Court were appointed by a Republican governor. Finally, three of the Justices who voted to allow Lautenberg were Republican or Independent. And it was a unanimous opinion.

It was the right decision for the right reason, and relevant today given recent elections and the challenges both before and after elections to the right to vote. Events have demonstrated the absolute need for citizens to be able to vote, to make a choice. The Lautenberg decision both presaged and reflected today's concerns. If this republic is to survive as a beacon to the world, the right to vote - and that includes the right to make a choice - must remain sacrosanct.

...

As I mentioned earlier in the interview, the average citizen looks at the New Jersey Supreme Court and the United States Supreme Court and assumes that both courts hear fascinating matters and that every case is super-interesting. That is not so. They all are important and most are interesting but the dispute that presents a major constitutional law question or a social or economic justice challenge is the exception. While there are such controversies, there is also the ordinary but critical work resolving criminal law questions, probate matters, civil disputes, real estate, eminent domain, personal injury, workers' comp, and family disputes. This last category is essential. Numerous judges address domestic violence, protect the health and welfare of children, and seek to reunify families where possible. In terms of the ultimate service to the public, those last items often are as important as the cause celebre.

For example, workers' rights and workers' compensation law seems to be an afterthought in the decisional law but those decisions affect the working men and women of New Jersey. Although they may not be headline-worthy, they are an important part of what we do.

We achieved progress in the area of children's rights. One of the more personally satisfying opinions was a decision which *The Ledger* described as the seminal case on bullying which happened in Toms River. A young boy in the fifth or sixth grade had been the subject of sexual harassment because he was allegedly gay. Eleven or twelve years old, he was subject to other boys touching him, molesting him. We addressed the matter of guidelines to boards of education and schools concerning bullying, whether in the classroom, the playground, or the cloakroom. Our Supreme Court was the first in the country to address those significant issues. *The Times* gave it a front-page story and an editorial.

[Editor's Note: The case Chief Justice Zazzali refers to above is *L.W. ex rel. L.G. v. Toms River Regional' Schools Board of Education*, 189 N.J. 381, 915 A.2d 535 (2007).]

There was another dispute involving a 9 year old boy. The school released the students early with no notice to parents. The boy was walking to his home two blocks away when a car struck him, paralyzing him from the neck down. We held that the school had the obligation to give notice to the parents of an early release.

[Editor's Note: The case Chief Justice Zazzali refers to above is *Jerkins v. Anderson*, 191 N.J. 285, 922 A.2d 1279 (2007).]

We addressed the situation where a woman took her boy to a skateboard rink, an entertainment venue for kids. As a condition of the eleven-year-old boy being allowed to participate, the mother had to sign a waiver on behalf of the boy that waived any rights in the event of an injury. He was seriously injured. The rink insisted that the waiver operated to bar the boy's right to sue. We held that that was void as against public policy. A parent cannot sign away a child's rights in advance.

[Editor's Note: The case Chief Justice Zazzali refers to above is *Hojnowski v. Vans Skate Park*, 187 N.J. 323, 901 A.2d 381 (2006).]

In another matter, we applied the best-interest-of-the child standard in allowing a mother to return to her native Japan with her daughter, over the father's objection.

Apart from judicial opinions protecting the rights of the children, on the administrative side we appointed a joint task force with DYFS to address the needs of children and parents who are victims of domestic abuse.

Listening to baseball games through many wheezing summers in those early years sparked my interest in the Newark Bears Stadium case. A father took his ten-year-old boy to the ballgame. The basic rule that applies is that if you are in the stands and you are "clocked" by a baseball, you have assumed the risk. You have very little, if any, basis for legal action. The Court had never addressed the question of what happens if you are not in the stands but on the concourse, buying a hot dog, or in the parking lot, and you are hit by a baseball. That is what occurred in this case when the father brought his ten-year-old boy to a Newark Stadium. They went to get a hot dog at a stand on the concourse. A baseball zoomed past the stands, hit the father on the concourse, and he was injured. We decided that there was a cause of action.

We did not hold that there was strict liability or absolute liability. Because the plaintiff was hit by a ball did not mean that the stadium owner or operator was automatically liable. We reaffirmed the rule that the limited duty rule applies to injuries occurring in the stands. However, we held that a stadium owner or operator is subject to traditional rules of negligence, specifically the business invitee rule, for injuries that occur in all other areas of the stadium.

Justice Wallace concurred, adding that the duty of care also applies to fans in the stadium seats as well. Justice Rivera Soto concurred and dissented.

The not-so-good news is that the State Legislature within a year reversed the decision. It determined there could be no liability on the part of the stadium owner or the stadium operator whether the injury occurred in the parking lot, hallway or concourse, from a foul ball or a fair ball. The press described the "undue haste" with which the Legislature ushered that law into the books.

[Editor's Note: The case Chief Justice Zazzali refers to above is *Maisonave v. Newark Bears Professional' Baseball Club, Inc.*, 185 N.J. 70, 881 A.2d 700 (2005). The law he refers to is the New Jersey Baseball Spectator Safety Act of 2006, N.J.S.A. 2A:53A-43 to - 48.]

The reversal was disappointing but that is how a representative democracy works. The Legislature, other than when there is a constitutional issue, has the right to change an opinion of the Court through a statute, and it did so here. Although I respect the exercise of that prerogative in the Newark Bears case, every baseball season we read

reports of children and adults injured by foul balls and fair balls. There should be more protections.

I spoke about workers' compensation in passing. The basic rule is that if you are injured on a job, you are entitled to receive workers' compensation, but if you are doing something recreational on your own, there is no compensation. In one matter, at the end of the day, a laborer digging a ditch had completed his work. The boss suggested that he go take a ride on the company go-cart to relax and unwind. He did but was injured. Although prior law said no relief, we held he was entitled to relief.

[Editor's Note: The case Chief Justice Zazzali refers to above is *Lozano v. Frank DeLuca Construction*, 178 N.J. 513, 842 A.2d 156 (2004).]

In another case, on 9/11/2001, a New Jersey employee working for a contractor in New Jersey, had to go to Long Island to perform a job for the contractor. Because of the 9/11 tragedy, he and other Jersey workers could not get back to their contractor's yard in Essex County. At the end of the day, the boss said, "Get yourself some dinner and we'll get you back later tonight." They did so and this employee was in an auto accident on his way back from a meal. Because they were finished work, and "off the clock", they were subject to the going-and-coming rule. The going-and-coming rule means that if an employee is injured going to or coming from work, as a general rule the employee is not entitled to workers' compensation. But because the employer said, "Go get something to eat," we held the employee was compensable.

[Editor's Note: The case Chief Justice Zazzali refers to above is *Sager v. O.A. Peterson Construction, Co.*, 182 N.J. 156, 862 A.2d 1119 (2004).]

Those are not monumental decisions but examples of improvements in personal injury law where the Court has provided significant protections to workers and all citizens. The Court continues to provide appropriate relief to victims as part of its progressive jurisprudence.

There were other areas that interested me, for example, the Walmart dispute. That was a class action brought against Walmart claiming Walmart denied its employees rest and meal breaks and forced them to work overtime in violation of corporate policy, statutory law, and administrative regulations. Reversing the Appellate Division, we upheld the class action.

[Editor's Note: The case Chief Justice Zazzali refers to above is *Iliadis v. Wal-Mart Stores, Inc.*, 191 N.J. 88, 922 A.2d 710 (2007).]

In another matter, for apparently the first time in the United States, we sustained the right of a shareholder of a corporation to sue outside accountants of that corporation for negligence which had resulted in harm to the shareholders. Some of my colleagues said this would be the most important decision I ever wrote. It was not. Although it was a significant seminal effort, it received little attention.

[Editor's Note: The case Chief Justice Zazzali refers to above is *NCP Litigation Trust v. KPMG LLP*, 187 N.J. 353, 901 A.2d 871 (2006).]

The last decision I wrote on the Court involved property rights. It had to do with the principles of condemnation and eminent domain -- where local and state governments are given a wide swath to condemn property when it is deemed to be in the public interest. In the last twenty years the trend has been arguably too much in favor of government and less consideration for the property owner. We provide more balance in the *Gallenthin* decision where we put the brakes on government and in effect, said: "Go slow. Give more attention to the due process rights of property owners."

[Editor's Note: The case Chief Justice Zazzali refers to above is *Gallenthin Realty Development, Inc. v. Borough of Paulsboro*, 191 N.J. 344, 924 A.2d 447 (2007).]

Shaun, you asked me to comment on my opinions of other Justices. No need to do that except to note that I joined Chief Justice Poritz's dissent in the gay rights case just before she left the Court in 2006.

That was a four-to-three decision. The majority of the Court unanimously held that gay couples should have the same benefits as married couples. The majority however, declined to say that gays had the right, and I'm paraphrasing, to marriage. There are some nuances concerning what I have said but that's essentially it.

Chief Justice Poritz dissented and Justice Long joined her. I may not have done this a year before when I first saw the case percolating below, but after we heard the case I decided to join the Chief's well-reasoned dissent and concluded that gay couples should have equality with married couples.

I also drafted a short dissent, concurring with Chief Justice Poritz's decision concerning unconstitutionality. I included a couple of paragraphs in which I quoted theologians who in medieval times, primarily in the Orthodox Catholic Church, had given their blessing to gay marriages, a little known fact.

[Editor's Note: The *adelphopoiesis* or *adelphopoia* ("brother-making") ceremony of the Orthodox and Greek Rite Catholic Churches united two men (in most cases) or women in a relationship acknowledged by the Church, often viewed as a spiritual brother/sisterhood. Historian John Boswell, in his 1994 book *Same Sex Unions in Pre-Modern Europe*, argued that *adelphopoia* constituted a form of same-sex marriage.]

I concluded with the comment that quite apart from the constitutional basis that Chief Justice Poritz identified, at a time when there is so much upheaval and intolerance on national and international levels, this planet would be better served with more tolerance, love and empathy that would enable human beings to find their little corner of contentment. Because I concluded that Chief Justice Poritz's comprehensive dissent sufficed, I elected not to add my concurrence.

One month after we decided the case, with the Poritz-Long-Zazzali dissent supporting gay marriage, I was sworn in as Chief Justice. At the swearing-in, former Governor

Byrne told the crowd that “until a month ago Jim was a candidate for canonization by the Catholic Church.”

[Editor’s Note: The case Chief Justice Zazzali refers to above is *Lewis v. Harris*, 188 N.J. 415, 908 A.2d 196 (2006).]

SI: So, as you noted earlier, you reached the statutory retirement date—any difficulty readjusting? You said you generally don’t have problems with that.

Chief Justice Zazzali: No. I had the same experience leaving the Attorney General’s position in 1982 or after I came back from Washington to New Jersey in 1964. I dealt with some heady issues in both places. Again, coming back to private practice was never a problem, as long as I was working. Thornton Wilder, author of *Our Town*, was eulogized for his “celebration of the commonplace”. There is something pleasant about not being in public positions and returning to a normal existence, doing the ordinary things that are the fabric, the warp and woof, of our lives and the human condition. It means the opportunity to read books you want to read, to see your friends and, most of all, relating to and loving your family.

Since leaving the Court I have done a few things. I served as the monitor-trustee appointed by the State for the Borgata Casino for four years (did not represent them), assisted educational institutions through some challenging times, engaged in toxic waste issues, and doing mediation and arbitration.

It’s been a good existence, staying active, presently serving with my former colleagues, Chief Justice Poritz, Justices Long, Pollack, and Wallace, Judge Doyne, and John Keefe, Jr., on the Judicial Advisory Panel which vets candidates for judgeships for the Office of the Governor. We do not engage in any political discussion or activities—it is quality control. We review the candidates for judgeship who are nearing the nomination point and advise the Governor whether the person is qualified or not. Most are qualified. Those panel members have labored mightily to maintain the high quality of judges and judging that we have in New Jersey.

SI: So, how did you decide [to go to Gibbons], because you had your own firm—and did that continue?

Chief Justice Zazzali: Yes, the firm that my dad formed is still in existence, Zazzali Fagella. When I left office, I joined the Gibbons Firm as of counsel. It has been a fine experience with Gibbons, an exceptional firm. But I wanted to retain my relationship with my Dad’s firm, that he had founded and where my brother and son are now practicing. It is to some extent an emotional connection, but an important one.

SI: Now, I have some overview questions to ask you, but, before we get into those, I forgot to ask, during your time on the Court, about the *Abbott v. Burke* series of cases. Any memories about that?

Chief Justice Zazzali: I have no memories, because I recused myself from those cases because of conflicts.

SI: All right. So, first, I want to ask, looking back over your long career in the law and your many roles in it, what did you find most satisfying about your career?

Chief Justice Zazzali: Before answering that question I should note that I have mentioned Chief Justice Poritz and her achievements in this interview but I have not discussed the other Associate Justices with whom I served and who played an essential part in my development. Although those Justices appear in other parts of the judicial history that the AOC has prepared, brief comment is appropriate.

Two Justices with whom I served for my entire tenure were Justice Long and Justice LaVecchia. Together, they served a total of almost thirty-five years on the Court. Both had an extraordinary ability to bring the Court to consensus, to find compromise and clarity when there was a bit of chaos. Justice Stein and I overlapped for only two years but as my cert partner in my first year, his guidance was invaluable. Although I have mentioned Justices Coleman and Wallace, I reemphasize their legacy and their example. Last, but never least, Justices Albin and Verniero have made extraordinary contributions to both civil and criminal justice. Among my closest colleagues through those years, I could have no better friends.

Although I did not have the privilege of serving with them, after my retirement and before this interview Appellate Division Judges Stern, Cuff and Wefing were temporarily assigned to the Court. Individually and collectively, they and the Appellate Division Judges more recently assigned have enhanced the Court's jurisprudence and reputation.

All of those men and women are fixed stars in the New Jersey firmament, public servants who will illuminate our jurisprudence for generations to come.

Apart from Justices who served in the last score years or so whom I have mentioned in this interview, time and space do not allow discussion of the many justices who served with distinction in the second half of the Twentieth Century, whom I—and many of the readers of this interview—were privileged to know. There are two who warrant comment, the first being Justice Stewart Pollock. He administered the oath both when I became Attorney General and SCI Commissioner. I was lucky to have him as a friend and New Jersey was fortunate to have had him as a Justice. And the other is Justice Dan O'Hern. I can say it simply. I succeeded Dan O'Hern but I did not replace him. For he was and is irreplaceable.

Finally, as I mentioned earlier, although Chief Justice Rabner's tenure has presented great challenges, he has distinguished himself with his leadership, intellectual honesty, work ethic, writing skills and, most important, he has preserved the independence of the judiciary.

Answering your question about the most satisfying part of my career, it was the opportunity to advance the interest of economic justice and social justice over these sixty plus years, even though both those efforts and the results are incremental. One

individual typically cannot make a big difference, but we all can, do make some difference by lighting the proverbial candle.

Although *The New Jersey Law Journal* said that I was “the guardian of the little guy,” that overstates it because there were and are many other justices and judges who are guardians of the underdog, “victims”, those many men and women who are in the shadows, who do not receive their fair share of economic and social justice.

There is only so much you can do—whether a judicial decision, a report to the Legislature, the representation of labor, or by addressing migrant workers and sweatshops problems. Many of those efforts occurred while in public service where there are greater opportunities, but in the private sector over the decades I hope that I’ve been helpful to others.

SI: Well, this might overlap, but what do you see as your greatest accomplishment or contribution to the field? not so much in positions you held, but specific things.

Chief Justice Zazzali: That’s so hard to answer. One area was the establishment on protections for students bullied by other students and other protections for children. Or going back to my experience as AG, being instrumental in raising the drinking age and, hopefully, saving lives. We talked about sweatshops, migrant workers and reforms concerning impaired physicians. It is difficult to quantify or to identify these efforts because you do not know how much of an impact something had or did not have.

When in the Prosecutor’s Office over fifty years ago, as part of my responsibilities, I argued for the death penalty because I believed it was a deterrent in some situations. In later years, after gaining more experience and perhaps some wisdom, and though late to the dance, I joined efforts to defeat the death penalty because while still believing that it has some deterrent value, the arguments for abolition are far more substantial.

In the ‘80s former Governor Kean and I were the Honorary Co-Chairs of the nuclear arms freeze, which endorsed and promoted an advisory referendum in the New Jersey ballot urging the United States to enter a bilateral agreement for nuclear disarmament with the former Soviet Union. Governor Kean was a formidable spokesman for that case. He was not fully recognized for his efforts, because, once again, people forget.

[Editor’s Note: During the 1980s, Governor Kean and Chief Justice Zazzali worked with several New Jersey-based coalitions, particularly the Campaign for a Nuclear Weapons Freeze, to call for an end to the nuclear arms race. In the 1983 election, a nonbinding referendum on the issue appeared on the ballot and was approved by New Jersey voters. Chief Justice Zazzali served as chairman of the New Jersey Freeze Campaign in 1986.]

SI: Well, looking at the field as a whole, what do you see as the most significant changes in the field over your tenure?

Chief Justice Zazzali: This is a profession first and a business second. Chief Justice Vanderbilt and Chief Justice Weintraub a half-century ago spoke about the dangers of

the law becoming too much a business. We may be losing that fight because, more and more, it is becoming a business.

There is a whiff of Social Darwinism – when the concept of survival of the fittest comes to the practice of law. The challenge is to keep it primarily a profession, but, again, I don't know how successful that has been.

[Editor's Note: The Honorable Arthur T. Vanderbilt served as Chief Justice of the New Jersey Supreme Court from 1948 to 1957.]

The other major change, which is part of the first, and also a separate problem, is the IT Revolution, for example, our dependence on gadgets [Chief Justice Zazzali refers to his smartphone and computers.] I know that the advances in technology, whether it's the iPhone or computers, have borne fruit in important areas, primarily medicine and science. But I am concerned that from a sociological point of view these advances can damage the individual and society. We encourage dehumanization if these systems, these gadgets, are not better controlled. They are already a major threat to society, an example being the injuries and deaths that are caused when iPhones distract drivers. In so many other areas we compulsively turn to these instruments. Look at the restaurants and see how many parents and kids are talking to their iPhones, rather than to each other.

Dare I note the fact that Bill [the videographer] is looking at his computer now? Bill, I hope you don't mind my saying that? You are Exhibit One. But I will be Exhibit Two because when we leave here today, when I get into a car, although I won't be driving, I may look at this gadget either to see who called or to make a call.

Another change in the profession is the enormous number of lawyers that we have in New Jersey. It is now around a hundred thousand. Granted, only about fifty percent of them are in private practice. Many others are working for state, local or federal governments or for corporations, as public defenders or prosecutors or in-house counsel, but there arguably are still too many lawyers in the state.

I'm not urging protectionism; I hope that new attorneys have an opportunity to make a living on this overcrowded profession. It is difficult for many practitioners to "make it." The reply we sometimes hear is that we should have an open-door *laissez-faire* policy. Fair enough but that can spawn Social Darwinism – when the concept of survival of the fittest comes to the practice of law. I don't buy it.

SI: Well, that leads into another question. The field has become much more diverse, large numbers of women entering the field, law school classes, I think, are more than fifty percent, at this point, female, and, also, large numbers of minority communities joining the bar. How do you think that has changed the profession?

Chief Justice Zazzali: Women have changed the profession for the better. Their emergence also has been a positive force on the political scene with more women holding elective and appointed office.

Diversity is critical. When Chief Justice Wilentz established the Supreme Court Committee on Minority Concerns, he asked that I chair the subcommittee concerning the need for more diversity in the courts, that is, more minority judges, law clerks and court reporters. That was in the early '80s, when the judiciary consisted of only three or four percent minorities. It has dramatically increased since then, a positive trend that's healthy and reflects the diverse citizenry of New Jersey.

[Editor's Note: The Honorable Robert Wilentz served as Chief Justice of the New Jersey Supreme Court from 1979 to 1996. Chief Justice Zazzali served as Chair of the Committee on Minority Participation in the Courts from 1985 to 1992.]

As Chief I met with groups of minority judges and minority attorneys to discuss diversity on the bench and the preparation of minority judges for leadership roles in the judiciary.

In all of these appointments, whether to the Judiciary or to a cabinet, I would echo Brendan Byrne's thesis that affirmative action, diversity, equal employment opportunity are essential components of the equation. We must have more diversity in government and in private sector positions as well. But as he said, equally important are the individual's work ethic, intelligence, integrity, and demeanor. We have to look at those factors, at the entire package. Many attorneys have those qualities. Take for example our New Jersey Supreme Court. The first two African-Americans were Justice Coleman and Justice Wallace. The Governors who appointed them searched for and found the best. The present Governor is continuing that tradition. If those making the appointments continue to be sensitive to that need to conduct a multi-faceted consideration of all relevant factors, then, we will all be the better for it.

SI: Do you see any barriers still to entry by these traditionally marginalized groups or work that still needs to be done?

Chief Justice Zazzali: There must be continued awareness of racism. Although we see it in New Jersey, it is far more prevalent in parts of the rest of the country. It manifests itself in so many different areas, and it is a tumor that I hope is not spreading. But I wonder and worry about how much progress we have made during the almost 150-plus years since the Civil War.

The situation may be improving to the extent our younger generations, young men and women in their teens, twenties and thirties, have grown up with a much better perspective. What I said before still holds. We are all on this planet together; and we are all equal while we are here. Equality, decency and dignity in our living and working conditions are essential if the republic is to survive and thrive.

SI: A number of the interviewees have pointed to the nature of the New Jersey judicial system as a whole and that the Supreme Court is not elected, but appointed. What are your thoughts on that system?

Chief Justice Zazzali: That's a softball. Unequivocally, appointed judges are to be preferred to elected judges. The same goes for prosecutors and attorneys general.

Byrne said the most important thing he did as a governor was to appoint good prosecutors and judges.

You can argue about the defects of the appointed process, and there are some flaws—but do you want a judge listening to your case knowing that your adversary has contributed to that judge’s campaign in the prior election or will contribute to that judge’s campaign in the forthcoming election? Some answer, “Oh, but those judges can be honest and objective.” Even if that’s true in most cases, the appearance of bias and favoritism remains. Justice O’Connor, who early in her career was an elected judge in Arizona, observed in her book on the subject that in one southern state forty-two percent of the judges who were polled confidentially acknowledged that financial contributions from lawyers and parties had an impact on some of their decisions. That poll was years ago but it nonetheless is extraordinary in our democracy—and intolerable. [Editor’s Note: Sandra Day O’Connor (1930-) served as an Associate Justice of the United States Supreme Court from 1981 to 2006.]

There has been a recurring debate over whether the mandatory retirement age of 70 for judges and justices should be extended or eliminated altogether. In the 1990’s at the Annual Judicial College the AOC hosted a debate between former Governors Byrne and Kean. Kean, who was not a judge or lawyer, supported an extension of the age whereas Byrne, a former judge and assignment judge, opposed an extension. Kean reasoned that, given the improvements in longevity and medicine, at 70 one can still do the job, and that 70 is the new 60. Byrne gave two reasons in opposition. First, we should give others a chance to become judges and by mandatory retirement we create more openings. Second, after one turns 70 skills and energy diminish. Both of his reasons have some merit. Some do extremely well after 70 but with others 70 is the new 90. More important, there is much to be said for making way for younger attorneys, giving them the opportunity to serve on the bench.

A sensible approach might be, as is done in some states, is to allow reappointment every two years subject to review of one’s health and competence, perhaps with a maximum reappointment for three two-year terms. In effect, it would increase the retirement age to 76.

There are variations on that theme. It is a debate worth having.

SI: You said you had some final thoughts.

It’s been an interesting journey, fast. My thanks to you, Shaun, Bill, and to Mike Mathis for walking me through it.

The year as Chief Justice went fast.

I am reminded of the opening my one and only State of the Judiciary speech at Atlantic City at the bar convention in 2007: “I would like to use this opportunity as your Chief Justice to say to all of you, on a very personal level, hello and goodbye”.

* * *

Anyone who does an oral history must be mindful of the caveat that there is only so much you can say about yourself that is interesting. To paraphrase the Irish author, Edna O'Brien, if you overdo it you may lose "the best part of yourself by trying to impress the audience." I have tried to avoid that in these interviews but in response to questions one necessarily focuses on life and career. Nonetheless, I have tried to unbutton a few buttons.

* * *

Above all, my gratitude and love to my parents; to my brother and my sister who have provided me with so much support; to my children, Mara, Jim, Robert, Courtney and Kevin, who are my real legacy, eclipsing all of the above; and most of all to my wife Eileen for her sacrifices and her love. It would not have happened without her.

Appendix I

During his tenure on the New Jersey Supreme Court, as an Associate Justice from 2000 to 2006 and Chief Justice from 2006 to 2007, Chief Justice James R. Zazzali served with the following Chief & Associate Justices:

Name	Years of Service
Chief Justice	
Deborah T. Poritz	1996-2006
Associate Justices	
Barry T. Albin	2002-2022
James H. Coleman, Jr.	1994-2003
Helen E. Hoens	2006-2013
Jayne LaVecchia	2000-2021
Virginia Long	1999-2012
Roberto Rivera-Soto	2004-2011
Gary S. Stein	1985-2002
Peter Verniero	1999-2004
John E. Wallace, Jr.	2003-2010