



Interview with Daniel J. O'Hern

Under the Auspices of the
Monmouth County Library Headquarters
125 Symmes Drive, Manalapan, N.J.
Flora T. Higgins, Project Coordinator

Date of Interview: August 4, 2000
Names of Interviewers: James M. McGovern, Jr. and Robert Honecker
Premises of Interview: Red Bank, NJ
Birthdate of subject: May 23, 1930



Justice Daniel J. O'Hern

Mr. McGovern: Good morning, Justice. It's nice to be here in your Chambers overlooking the Navesink River. As both of us have great ties to Red Bank, I would just like to ask you to start with, where were you born? Where did you grow up, and where did you go to Law School? Tell us something about your early career, please.

Justice O'Hern: I was born here in Red Bank, New Jersey. I was actually one of the first born in the Riverview Hospital. I went to Harvard Law School. My first summer job was with the firm of Quinn, Doremus, McCue and Russell on Broad Street in the summer of 1955. Among the partners were Ernie Fasano and Ben Nicosia.

Mr. McGovern: Ernie Fasano I know graduated from Harvard, but this was his father?

Justice O'Hern: Yes. Well, the Ernie Fasano I am speaking of would be in his eighties now. He went to Harvard in the 1930s.

Mr. McGovern: He was partners with Ben Nicosia at one point. Yes, I knew him. He practiced along with the Ansells, when I was a young lawyer.

Justice O'Hern: That's correct. He was one of the best brief writers who ever practiced.

Mr. McGovern: Yes, he was. He was one of the classic inside lawyers who never went to court, but could certainly write some briefs. So excuse me for interrupting you. You worked each summer during law school?

Justice O'Hern: The second summer I went to Dewey Ballantine in New York. I had an experience there that discouraged me from returning. I had a very long assignment...some issue about arbitration. I went to the partner and told him my opinion. I must have written a memo, or something like that. And he told me I had to keep looking, and he sent me back. I thought to myself, I don't want to spend my life going over the same subjects over and over. In any event, I was not terribly attracted to the Wall Street practice.

Mr. McGovern: That summer, did you live in New York or did you commute from Red Bank?

Justice O'Hern: I commuted.

Mr. McGovern: How long did that take?

Justice O'Hern: Well, it took about an hour and ten minutes.

Mr. McGovern: And the trains at those times would go into Jersey City, and then you would take a ferry across?

Justice O'Hern: When I first started in high school, the nicest part of the day was the ferry ride. I always loved that ferry ride.

Mr. McGovern: That was between what is now Liberty State Park and downtown.

Justice O'Hern: Liberty Street, New York.

Mr. McGovern: When you graduated from Harvard, you were privileged to take a clerkship with Justice Brennan in the Supreme Court. Can you tell us about that?

Justice O'Hern: Well, this is a long story. I was standing on a street in Cambridge, Massachusetts when I met one of my teachers who said to me, "You must be very thrilled that your New Jersey Judge was appointed to the Supreme Court." I said, "Well, I'm happy for him. But I'm disappointed. I wanted to clerk for him in New Jersey. I live in the same town that he had set up his chambers in." Justice Brennan was one of five Essex County members of the Supreme Court, maybe six. They decided that someone should be outside of Essex County, and he came down here. He lived in Rumson and had his chambers in Red Bank.

Mr. McGovern: I think his chambers were at 103 East Front Street.

Justice O'Hern: He had just moved in that office the day that Attorney General, I think it was Brownell or Bill Rogers, one of them, called him up. He was unpacking the books then. In any event, I told this story to my teacher. And the teacher asked me if I was still interested. I told him I was interested, but I didn't think I had much of a chance. And then he looked at me and said, "I pick his clerks." That was Professor Paul Freund, and he picked me. And so I got that opportunity.

Mr. McGovern: His chambers, of course, were in Washington. Did he have local chambers?

Justice O'Hern: No. He continued to live in Rumson for perhaps maybe six months, but he very soon resettled in Washington. He had a wonderful home in Georgetown that he rented, that was decorated by The China and Glass Shop of Red Bank. They had gone down to decorate it for him.

Mr. McGovern: Is that the store that is now in Rumson?

Justice O'Hern: Yes.

Mr. McGovern: Was that a two-year clerkship?

Justice O'Hern: One year.

Mr. McGovern: Can you recall any decisions that you worked on that have become famous or infamous?

Justice O'Hern: There are two cases that Justice Brennan wrote that endured a long time. One is Byrd vs. Blue Ridge Power. It has to do with this Erie Tompkin's question of, "What is substance and what is procedure?" In a diversity case, you are supposed to apply the law of the State, and the question was whether Federal procedures were different. That case is still in the law books. Another case he wrote is Speiser vs. Randall. It had to do with Loyalty Oaths, which were the big things in those days. This was the end of the McCarthy era of 1957. The court was very ginger about taking this issue head on. That case said that no one should have to prove loyalty. If you could prove they were disloyal, they could be barred from employment. So it was a Burden of Proof case. It didn't seem like much, but that case has lasted a long time. In retrospect, the issues of 1957 were not cosmic issues. The great changes in the criminal law didn't take place until a new majority got to the court, I think under Goldberg.

Mr. McGovern: That was after the Eisenhower Administration and into the Kennedy/Johnson Administration. Did you remain very friendly and keep in touch with Justice Brennan through his life?

Justice O'Hern: Justice Brennan was one of the most remarkable people you would ever want to meet. I have many friends who had this experience: they would go up to him somewhere and tell him where they were from and that they knew Dan O'Hern. He would just gush over them. People made such an impression on him. For many years we had an Annual Clerk's Dinner in Washington, during which he would regale us with stories of the court and what was going on. He gave a party on Sunday of that weekend, and I wrote this in an article once...he made the best Bloody Mary that I have ever had!

Mr. McGovern: I wish I had known him then! (laughter)

Justice O'Hern: It just tasted better.

Mr. McGovern: Did he remain tied to New Jersey in his mind, if not physically?

Justice O'Hern: He always read The Star Ledger every day. So he was very conversant with the New Jersey politics and the work of the court and so forth.

Mr. McGovern: When you came back to Red Bank, what firm did you work for?

Justice O'Hern: Well, I didn't come to Red Bank first. In fact, I asked Justice Brennan where to go. Of course he commended his firm, the Pitney Firm, but Clyde Szuch had just gone there the previous year. I interviewed with Lowenstein, Allen Lowenstein. But Allen had just left Riker Danzig and started his own firm. Well, the long and short of it is, I ended up working with fellows named Roy Collins and Ed Toner, and it was called Collins and Toner. It was a small firm. We had about two or three very good clients. But I still had this desire to come to Monmouth County. Vince McCue had separated from his firm, so he was looking for somebody. And I went with them in 1962.

Mr. McGovern: Where was his office?

Justice O'Hern: 60 Broad Street, in Red Bank.

Mr. McGovern: And how many lawyers were with him?

Justice O'Hern: Just the two of us, and one secretary. It was one hundred twenty-five a week for rent and sixty-five dollars a week for the secretary. Vince always told me not to buy any books. He didn't want to have a big overhead. (laughter)

Mr. McGovern: And what kind of law did you practice with him?

Justice O'Hern: Vince at that time represented an insurance company. So it was very fortunate that in my very first year, I was able to try four or five cases. You know, no one gets to try cases any more!

Mr. McGovern: It's a lament that I have training young lawyers now that nobody tries cases.

Justice O'Hern: So it was a wonderful experience for me, and I stayed there for four years. We had some interesting cases. Do you remember George Snuffy Stirnweiss, the baseball player? He was on a Central Railroad of New Jersey train that went off the bridge in Bayville.

Mr. McGovern: I remember that. I grew up right over here in Middletown. My father was on the train after that, and I recall vividly him coming home that night and my mother crying and crying. Because it's not like today, where you can pick up a cell phone and call somebody. And she didn't know what had happened to my father. That wreck made some Red Bank lawyers very famous.

Justice O'Hern: It's the earlier case that you're thinking of, the Woodbridge Train Wreck in 1951.

Mr. McGovern: The Central Jersey one was in the mid 1950s.

Justice O'Hern: Correct. And it was a little later train, so there weren't too many people on it.

Mr. McGovern: The earlier case is the one that made Lou Drazin famous. When you started practicing in Red Bank, who were the other there?

Justice O'Hern: The leading firm was the Parsons firm. They had a very strong plaintiff's practice. The Reussille Firm was a bit of a 'silk stocking' firm. Sam Carotenuto and Milton Mausner were sort of post-World War II guys. And Milton was very shrewd about seeing this opportunity for regionalization of sewer services, and so they got to represent the regional sewer service. That was a big boost to their practice. The Parsons firm was the dominant firm, as I say, had all the municipalities and school boards, it seemed. The Roberts firm across the river had almost all the Bayshore towns at that time.

Mr. McGovern: That was Howard Roberts?

Justice O'Hern: Howard Roberts.

Mr. McGovern: And he was a politician.

Justice O'Hern: Roberts, Pillsbury and Carton. Howard Roberts was, I think, County Clerk. But he was definitely a power...

Mr. McGovern: Was there a lawyer named Barnicle with him, as well?

Justice O'Hern: Barnicle was in that firm, yes. Jimmy Minogue, the Cartons, young Larry, and Bud Saling were in that firm.

Mr. McGovern: Bud Saling was from Highlands, I think.

Justice O'Hern: That is correct.

Mr. McGovern: You were in Democratic politics. Was the Roberts firm in Republican politics?

Justice O'Hern: Larry Carton once tried to persuade John Pillsbury to hire me, and Pillsbury told him I was too Democratic! (laughter) So they were definitely...but I shouldn't describe them as a political firm because they were terrific lawyers and had a great practice. But they were associated with the Republican Party.

Mr. McGovern: Were you involved at all in the development or any real estate or development practice as Middletown developed?

Justice O'Hern: We didn't do any of what you would call the 'tract work' in Middletown. There was a fellow by the name of Lefferts, who was the great builder of the firm.

Mr. McGovern: It was Jake Lefferts.

Justice O'Hern: Yes, Jake Lefferts and Sev Sorrenson. An Atlantic Highlands lawyer was Lefferts' attorney.

Mr. McGovern: One of our mutual great friends, Norman Peer, tells stories of clerking for Sorrenson.

Justice O'Hern: Did he tell you the one about the time he took a year off? Sev said that he was sick of the practice and was taking a year off. And it was a true story. He got on a boat, and he left for a year. But he must have had some money in the bank.

Mr. McGovern: His son is a lawyer now.

Justice O'Hern: Yes.

Mr. McGovern: They call him King Sorenson. In Red Bank, how was the practice of law on a day-to-day basis? Today, as you know, we work a lot of hours, and we eat at our desks, and we don't spend much leisure time.

Justice O'Hern: You know this business of eating at the desk, frankly, it's barbaric. One of the things I loved about the practice of law was we went out to

lunch every day. Of course Milton represented every Greek restaurateur in Red Bank, so we had a series of places that we would go. But the point is, we always took at least an hour a day for lunch. And often I would go to the Root Beer & Checkers Club, and that was a wonderful Red Bank luncheon club. Mr. Parsons was there, and Ted Labrecque Sr. was there before he became a Judge. So the pace was entirely different. The pace that I saw that summer of 1954. I would go in the morning, and about 10:30 a.m. we would go out for a cup of coffee. Then about noon, everybody would go for lunch. And sometimes the partners wouldn't come back until 2:00 p.m. About 3:30 p.m. we'd take another stroll down Broad Street. And this was not useless, because very often they would meet clients and pick up business out on the street. But it was an entirely different pace! Court did not begin until 10:00 a.m. You could go into the office and read the morning mail, and this was a wonderful thing! (Laughter) You could get in the car at 9:20 a.m., and there weren't a million lights, so you'd be in Freehold in time for a 10:00 a.m. court date.

Mr. McGovern: How did you get to Freehold?

Justice O'Hern: I knew every back road that's possible. Vince McCue had come from a farm family, and knew lots of back roads. I couldn't even tell you how to do it now. We went through all kinds of back roads to get there.

Mr. McGovern: I would imagine the traffic was not where as it is today?

Justice O'Hern: No. It was literally farmland from here to there, in the 1960s.

Mr. McGovern: When you first started practicing, was court still held in the Hall of Records as well as in the Courthouse?

Justice O'Hern: The only thing in the Hall of Records was the Chancery Court. We always had a Chancellor from Atlantic County, or at least when I started. And I had no idea why that was. It grew out of the fact that I think at one time, lawyers had to go to Atlantic City to appear in the Chancery Court. This was at the turn of the century, 1910s and 1920s. Too bad Judge Ted Labrecque is not still with us, but he could tell you those stories. One of the stories I heard was that you were always taken in the order of seniority, the senior lawyer's cases were taken first. So Leon Leonard and Judge Herb Horn were the Chancellors. And they did, of course, the matrimonial work and the general equity work.

Mr. McGovern: Did they handle Chancery from the Raritan River South?

Justice O'Hern: I don't think Middlesex.

Mr. McGovern: How often did they come to Monmouth County?

Justice O'Hern: They were here every day.

Mr. McGovern: They didn't live here, did they?

Justice O'Hern: No.

Mr. McGovern: Because both of those men's firms are synonymous with Atlantic City.

Justice O'Hern: Right.

Mr. McGovern: How many Judges were there in Monmouth County?

Justice O'Hern: I would say there were about six. There was Judge Edward Knight, Judge Giordano, Judge Asher, Judge Evans, and there may be a couple I am missing. But that was the basic....

Mr. McGovern: Was Judge Smith, Tom Smith's father?

Justice O'Hern: He didn't come until maybe the middle 1960s.

Mr. McGovern: How long did you spend with Vince McCue?

Justice O'Hern: Four years.

Mr. McGovern: Was it from Vince McCue that you went and joined Milton Abramoff?

Justice O'Hern: Correct.

Mr. McGovern: How did you come to go with Milton?

Justice O'Hern: Actually Chet Apy came to me. You know Chet was a good businessman. He knew that there was opportunity here, and so he invited me to join with him. It was a wonderful experience. In all the years we practiced together, we never had a single, major disagreement over fees, or clients, or anything.

Mr. McGovern: When you said Chet, that's Chet Apy, who is now a Worker's Compensation Judge?

Justice O'Hern: Right.

Mr. McGovern: And Milt Abramoff, who is one of the finest men I have ever met in my life. I had the pleasure of practicing law with him.

Justice O'Hern: Milton, as you know, is an exceptional lawyer. He was a graduate of Harvard Law School and then worked with a Newark firm. And he practiced with Larry Carton for a period of time, right after World War II.

Mr. McGovern: And wasn't he, at some point, with Lou Drazin?

Justice O'Hern: That's true. That's often forgotten. I don't remember the details of that, but I think that's right.

Mr. McGovern: When did you start with the firm of Abramoff, Apy and....

Justice O'Hern: That was in 1966.

Mr. McGovern: And that is the firm you stayed with until you went into government service.

Justice O'Hern: Yes.

Mr. McGovern: How did you get involved in the politics of Red Bank?

Justice O'Hern: Well, the politics grew out of my mother's association with Jack Quinn. He was the leading Democrat in Monmouth County, and I recently saw a story about his appointment as Prosecutor of the County. They gave a big party, and it was a social event. People came from all sides. But in any event, my aunt was his legal secretary. She idolized Jack Quinn. So my mother and my aunt were involved in Democratic politics, and it was just sort of natural that I would be expected to be involved, too. Shortly after I came here in 1960, when I joined up with Vince McCue, was the Kennedy election. That was a very galvanizing event for a young Democrat, especially an Irish Catholic. It was a very exciting night. We had a number of very fine people in the Democratic Party in Red Bank, like Katherine Elkus White, who later became Ambassador to Denmark under President Johnson. There was John Petillo and Ben Nicosia. And Ben became the leader of the Party from the 1960s on.

Mr. McGovern: Was Monmouth County as Republican as it is today?

Justice O'Hern: They seemed invincible at the time. In Red Bank, for example, when we started running, no Democrat had won an election since the Great Depression.

Mr. McGovern: Was J. Victor Carton the Prosecutor at that time?

Justice O'Hern: Correct.

Mr. McGovern: And he was essentially the Republican leader in the County, I guess.

Justice O'Hern: The Republican powers in the County were the Stouts, from Neptune. You see Ocean Grove was such a solid, voting block that it was really the base of Republican power.

Mr. McGovern: How did you manage to get elected here in Red Bank, as a Democrat?

Justice O'Hern: The first time I was elected was in 1962. Ben ran in 1960. And he came very close to a man named George Gray. You may have practiced before George?

Mr. McGovern: Absolutely.

Justice O'Hern: I loved George. Not everybody loved him, but he was a wonderful man. But he did not suffer fools. Vince told me that George had learned from a lawyer named Lester Leonard, who was one of these people that thought he was a King. So George was sort of imperious, and he nearly lost the election in 1960. In 1962, we had a little bit of a leg up there with George not being terribly popular. And a feud erupted in the fire department, of which I was the beneficiary. I defeated a guy who was a fireman, because he forgot that he was Councilman and wanted to be Fire Chief. (Laughter) So that was how we won that first election.

Mr. McGovern: Were you the only Democratic Councilman when you first when on the Council?

Justice O'Hern: Correct.

Mr. McGovern: Like our friend Ed McKenna, one person got in, and then you eventually got more and more in until...

Justice O'Hern: We got a big boost in 1964 from the Johnson election. We got two seats that year.

Mr. McGovern: Was Judge Gray still on the Council then, or had he been appointed to the Bench?

Justice O'Hern: I can't remember. He must have been appointed to the Bench around 1963, shortly after that election. Because a fellow named Dick Gale ran in 1964.

Mr. McGovern: Was Judge McGann a political power in Red Bank at that time?

Justice O'Hern: I wouldn't describe him as a political power in Red Bank as much as in the county. Pat got elected to the Assembly, if I'm not mistaken, in 1965 in the great Richard Hughes sweep. And Hughes, if we recall, made one of

the biggest mistakes in history by paying off a political debt. He agreed that the strikers would get paid unemployment benefits. This drove people berserk! And it was a combination of other things that led to the Republican landslide in 1966, and eventually the 1969 election of Cahill. I'm not criticizing Hughes, it's just a matter of history.

Mr. McGovern: Who was the Mayor of Red Bank when you first went on the Council?

Justice O'Hern: Ben Nicosia. Ben was elected in 1962. He and I were elected together in 1962. In 1965, we ran with Hughes. Let's see if I get these years right. It was a two-year term for Mayor. He ran in 1964 in the Johnson election. I ran again in 1965 with Ted Labrecque. And that was the high tide of Dick Hughes' career.

Mr. McGovern: How did the politics affect the practice of law?

Justice O'Hern: Frankly, I never made any money out of politics, so to speak. We were pretty successful in avoiding being characterized as 'political' lawyers. We didn't have a lot of towns. Milton had the Eatontown Planning Board, and Chet had Little Silver, I believe. We didn't think we were identified as a political firm. Chet, for example, was in the Assembly through most of the 1960s and 1970s.

Mr. McGovern: Chet was a Republican and you were a Democrat. Did you ever have any friction over that?

Justice O'Hern: No. That was strange, but we never had the slightest bit of friction over that. I guess it was to some extent because at the office we divorced ourselves from it. You know, you can keep the problems out of the office. I was, at various times, the Mayor of Red Bank. We had an office right on Broad Street, and people would walk right in during the day.

Mr. McGovern: When did you become Mayor?

Justice O'Hern: 1968. Ben Nicosia became Assistant Prosecutor in 1966, probably the spring of 1966. So I ran against John Arnone in 1966, and I lost to him that year. And that was Cliff Case who ran, and he demolished his opponent. He was a Senate candidate. John had a terrific plurality and won. In 1968, we had a reevaluation, which was one of John's biggest mistakes. They respected the law and agreed to reevaluate the properties in Red Bank, and that hurt very much. Then of course, I had the benefit of a presidential election. You get more votes.



Daniel O'Hern (second from left) with his wife (far left), pictured with Mr. and Mrs. Art Kamin

Mr. McGovern: More people vote then.

Justice O'Hern: Yes.

Mr. McGovern: To digress a little bit, one of the most interesting things we were talking about in the Bar Association is, who was the oldest lawyer that you remember when you were a young lawyer?

Justice O'Hern: If I'm not mistaken, Jonas Tumen is the name that I remember. He was a lawyer in Asbury Park. Harry Tumen, he practiced all through the 1970s, and I think this was Harry's father, if I'm not mistaken. But there was a whole generation of older lawyers like Ed Fary up in Keyport. Keyport actually had been a great legal center. It was a shipping town off Red Bank. So there were some older lawyers up there. Mr. Roberts, of course, probably was in his seventies in those days. Leon Reussille was probably in his seventies.

Mr. McGovern: And they had practiced in the 1800s, I would assume. Or early 1900s.

Justice O'Hern: Early 1900s, yes. I remember asking Ted Labrecque this. I asked him how he used to get to court. And he said he took the train to Matawan, and then he took the train from Matawan to Freehold. That's how they got to court.

Mr. McGovern: Wow, that must have been an all-day excursion!

Justice O'Hern: Remember, court only sat for certain sessions. Vince McCue told me this. He said the thing to do was to get your case adjourned, and it went to the bottom of the list. You might not see it again for years! So that was the trick.

Mr. McGovern: There were no 'calendar calls' or things of that nature.

Justice O'Hern: Well the 'calendar call' had come in by the time I started, but not at the time they are talking about. But the 'calendar call' was a rather pleasurable thing. I never forget 'calendar calls' in Ocean County. They used to have 'monthly call,' where the cases would be assigned months in advance.

Mr. McGovern: Back in those days and throughout your practice, did you always make enough money to live comfortably?

Justice O'Hern: No, I never made enough to live comfortably. But I'd like to finish that story about 'monthly calls.' I'll never forget my first appearance in Ocean County. Lawyers got up, and they would be projecting calendars quite a way in advance. And the Judge would say, "What about April 10th?" And he'd say, "Well, I think that's duck hunting season." "Ok," Judge Larrabie would say.

Anything connected with duck hunting merited a postponement. (Laughter) Well, money! You see the thing about money is, you didn't need as much money then as you need today. I told you I practiced in Red Bank, and I was quite impressed with the way these people lived. Allaire Cornwall, Shake Cornwall, I don't know why they called him Shake, but his habit or hobby was posting a weather forecast on the first floor of their building. They were on the second floor at 34 Broad Street. He had a lovely place in Fair Haven. Bill Blair, the Parsons lawyer, had a beautiful home on the river. So I thought you could make enough money here to live very comfortably. But inflation started to set in the 1970s, and I watched these homes go from fifty thousand dollars a year to two million for the kind of home that we thought a suburban lawyer should deserve.

Mr. McGovern: That is absolutely true today, that a lawyer makes a comfortable living but it is not...

Justice O'Hern: Lawyers in the 1960s dabbled in real estate. A name that comes to mind is Bill Throckmorton, we'll call him Throcky. He was a very good investor, and he bought a lot of real estate.

Mr. McGovern: He practiced in Long Branch?

Justice O'Hern: Yes. Stokes and Throckmorton.

Mr. McGovern: Who would be a good friend of yours, in the practice of law that you have known for many, many years, that you consider to be someone very close to you?

Justice O'Hern: Aside from my partners, I'm actually closest to Ben Nicosia. Although we were not in the same firm, we were political allies. Milton and I have remained very close friends through the years. And there's Chet Apy. These would be my three principal friends from the practice years. Ted Labrecque and I were very close, but he moved to Holmdel. In those days, when somebody left Red Bank, we couldn't understand it. It seemed like he had gone to the other end of the world! I always tell my clerks this story. Across the river you see a white house, and it's shadowed by the trees. But I was born and raised just around the bend in the river, and when my friend moved there, we wondered how anybody could move that far. (Laughter) But it's all different now, everything is different. Phil Auerbach and I have maintained a friendship from the 1960s.

Mr. Honecker: When you were first practicing, did you recall any particular judges that you wanted to appear before?

Justice O'Hern: Judge Edward Knight, you could talk to. He was a wonderful man. I was telling Jay, I started off with Vince McCue. Vince had a lot of sickness, and I was trying to get these cases adjourned. Finally Judge Knight said to me, "Look Danny, you're going to have to try these cases. You can do it."

But he was so helpful. He was a really wonderful man in those days. But calm, I can never forget the way he presided over a trial. He just twirled the gavel.

Mr. McGovern: I would assume back then you tried jury trials. How was picking a jury back then?

Justice O'Hern: Well, of course, you were permitted to question the jurors yourself.

Mr. McGovern: And then the Supreme Court changed that, and we need to get it back a little bit, I think.

Justice O'Hern: A little bit. But there were great heroes in doing that. Jim Norton, I am sure you have heard this story about him. Jim could memorize the names of the jurors so that he could look them in the eye and say, "Mrs. Smith...." He'd go through the fourteen names! But it was always a twelve-person jury, and he could memorize their names. And Justice Clifford could do that, too.

Mr. McGovern: Do you think it was a drawback to stop that procedure?

Justice O'Hern: Yes, I do, definitely. I am retired now, so I can say this. First of all, nobody made a production out of it. It was maybe an hour at most, but it was much simpler, it seemed to me. You had a simple sheet of paper, and I don't know if they still do this. You had a piece of cardboard that was printed in advance with the names of the jurors on it. But I'll tell you two stories about picking juries. I was picking a jury with Vince McCue one day, and I turned to Vince. I was looking at this juror that was sitting in front. I said, "Vince, I don't know about that woman there, I'm not sure about her." And he said, "Dan, leave her on." And at the break he went up to the Judge and said, "Can you imagine that he was going to strike this woman?" Because she was exquisitely beautiful, and they thought that would be the dumbest thing in the world. (Conversation and laughter between people here) Of course people hired Jury Consultants. But I was trying a case with a man named John Toolan. You may have heard of him, Senator Toolan, from Middlesex County. Terrific trial lawyer. I was sitting second chair with him, and we had given him the case to try. And I said to him, "Well Mr. Toolan, how do you decide who to strike and not to strike?" And he said, "I look at their faces, Dan." And I thought, oh my goodness. But I'm sure that's as good as any system.

Mr. McGovern: Yes, I happen to agree with that. Bob and I have tried cases against each other, and we know that. I guess we got to the point where you were Mayor of Red Bank. At some point, you decided in politics to support Brendan Byrne.

Justice O'Hern: Correct.

Mr. McGovern: And that turned out, I guess, to be a life-changing decision. Could you tell us about it?

Justice O'Hern: Absolutely. I recently had a farewell luncheon by the young lawyers in my office. I told again the story of the day the letter came. I was in Red Bank, doing door-to-door campaigning. And I knew that the thing people were troubled the most by was real estate taxes. They had no control over them. There were retired people, and their income wasn't going up. So I wrote the Governor a letter and told him he was on the right track. I told him to stay the course, that we needed tax reform, we've got to do this, and that people would support him. And the letter came in February, on a dark, rainy day, and it made a striking impression on him, and it changed my life.

Mr. McGovern: At that point, Governor Byrne was in some political trouble.

Justice O'Hern: No one thought he had a chance to win either the primary or the general elections.

Mr. McGovern: And they called him 'One Term Byrne' at that point. And your support really made an impression on him.

Justice O'Hern: Correct.

Mr. Honecker: He gave a speech one time and said he would walk down the street, and half of the people wouldn't waste the time to walk across and spit in his face, and the other half would. (Laughter)

Justice O'Hern: His other story was about how he used to march in the Princeton Memorial Day Parades. He knew things were changing when people raised more than one finger when they waved at him! (Laughter)

Mr. McGovern: Then you became Chief Counsel?

Justice O'Hern: I became Chief Counsel. I went to the DEP first in 1978. He was elected in November 1977. About February I started to get calls from people in Trenton. I knew Justice Handler who was then Counsel to Byrne. So I came down and become Commissioner of the Department of Environmental Protection.

Mr. McGovern: Did you do that with some reluctance?

Justice O'Hern: I thought I was unqualified for the job. But Byrne did have an idea for the job. He thought much of it was legal, where you would have to analyze the laws and decide the permits and so forth. In retrospect, it was one of the happiest years of my life. A wonderful job! I loved it!

Mr. McGovern: That's a great time frame there, because it's probably the verging of the environmental unit. You had *Silent Spring*, written by Rachel Carson and then you have the establishment of the DEP in New Jersey.

Justice O'Hern: In 1971, I think, Commissioner Sullivan became the first Commissioner. He had been the Health Commissioner. And I used to say to the staff, "What did Sullivan do?" And they said, "He used to sit in there and write speeches!" Well, I wasn't much for that. I loved going to the parks, and I used to have a bunch of pictures in here of Liberty State Park, and places like that.

Mr. McGovern: How long did you stay as the Commissioner?

Justice O'Hern: Just one year.

Mr. McGovern: And the Governor then asked you to be his Council.

Justice O'Hern: Justice Pollock had been his Counsel, and he went on to Court.

Mr. McGovern: What type of issues did you deal with during your time as Governor's Counsel?

Justice O'Hern: Well, Byrne had a tremendous legislative program. The thing that really hurt Byrne's second term was Abscam, which you may not remember. But this crippled us for quite a period of time. But he got through the Pinelands Preservation Act, which was his proudest personal achievement. The creation of New Jersey Transit turned out to be a wonderful thing for the State of New Jersey. The improved train service, in my opinion, to Monmouth County has increased property values here tremendously. And bus service through other parts of the State. Those are great accomplishments.

Mr. Honecker: In regard to Abscam, Harrison Williams was the United States Senator from New Jersey, a Democratic Senator. He was caught up in that whole thing. That must have had an impact not only on you personally, but also the Democratic Party in New Jersey at the time.

Justice O'Hern: Yes, very much so. Tommy Thompson, I think they called him. He was a very powerful Congressman from Mercer County, he went down.

Mr. McGovern: Did you ever consider running for a higher office like Freeholder, Congressman or Senator?

Justice O'Hern: In Monmouth County since 1964, there wasn't much...For example, you couldn't run for Congress because Jim Howard was truly entrenched and extremely popular. I did think about it.

Mr. McGovern: And he beat Auchincloss. And they said he couldn't win, either.

Justice O'Hern: Well, when they picked Howard, he was a schoolteacher from Wall Township. But I don't think he had ever run for anything. He never gave up on it, if you know what I mean. I remember that campaign. So I just never had an opportunity to find another spot to run for. It was very hard to get elected to the Assembly in those days. Gene Bedell and Richy VanWagner caught the Watergate tide, and got that boost.

Mr. McGovern: That was during the few times that the Freeholders were Democratic here and had Democratic Legislators.

Justice O'Hern: We were proud to say that once elected, they did manage to survive a number of elections...the two Lynches...Skinny Lynch and the other Lynch. (Laughter)

Mr. McGovern: What was the decision of the Governor to name you to the Court? How was that communicated to you?

Justice O'Hern: We were sitting just the way we are sitting here, and he said to me, "Dan, do you ever think about going on the Court?" And I thought he was talking about the Superior Court. I said, "Well, I certainly thought about it." And then the conversation went on and on, and I realized that he was talking about the Supreme Court. I don't remember him actually saying that he was going to nominate me. I mean that's just the way he was, sort of casual-like.

Mr. Honecker: And the confirmation process?

Justice O'Hern: I was caught up in a little bit of internal politics here. A fellow named John Fiorino was the County Chairman. He was sort of on the outs with the Administration in Trenton, and I somehow got caught in the middle of that. Senator Bedell at first exercised Senatorial Courtesy on the basis that it was time for a woman to be on the Supreme Court. Well, that was true, but eventually it got worked out.

Mr. McGovern: Do any particular decisions that you participated in during the many years that you were on the Court stick out?

Justice O'Hern: I have said the case that struck me the most was the Baby M Case. It had everything to it...human drama, publicity, etc. But when it was over, everybody seemed universally to accept the result. It was Solomonic; you split the child between two parents. The tensions were so high when this case started, and there was a lot of popular anger at Mrs. Whitehead. She was viewed somewhat as the villain, but she managed to put her life back together. A great judge, Judge Sween, took over that family, and he really worked on it. He ordered Counsel and so forth. They have done pretty well.

Mr. McGovern: I have always thought that the Roth Decision about criminal sentencing was an important case because it really...

Justice O'Hern: I'm extremely proud of those sentencing decisions. I remember that term very clearly. We are talking about sentencing decisions. I had two wonderful clerks that year, and I stumbled on an intern. Somebody came in, and he had a full six months to get...The point is, we worked on that opinion for a long period of time. We studied the history of sentencing, why the Model Penal Code had been structured the way it was, and we are obviously proud that it's still pretty much the law.

Mr. McGovern: You were very close with Chief Justice Wilentz.

Justice O'Hern: Very. I wouldn't say close, but I would say extremely fond of and a great admirer of Chief Justice Wilentz. You didn't get close to Chief Justice Wilentz.

Mr. McGovern: Can you describe how it was working with him?

Justice O'Hern: I said this to him once: "You are very lucky, Chief. People think you are a pain in the tail." He had a very austere look. He wore those steel-rimmed glasses, and he was with most people extremely austere. With us, the members of the Court, it was the extreme opposite. He could do the greatest pantomime of a lawyer that you would ever see. He was amazing! He would come off the Bench and all the little idiosyncrasies that the lawyer exhibited were there! Not that this had anything to do with our decision. He had a great, great sense of humor. One of his interesting characteristics was if you were taking a trip, you told him you were going to Italy or somewhere, he would write you a long letter and tell you where to go and what to do. I collected some of these letters, and I hope to publish them some day. He would say, "Now Stewart [Pollock], I know you think you have to go to these museums, but just sit at a café, have a cup of coffee or some wine and enjoy yourself." As everybody says, he was extremely intelligent. We used to stand on what we called the 'gangway' before an oral argument, and he had so many pressures in his life. His wife was very sick. And he put a lot of time in on the administrative work, and he'd say, "I'm not too well prepared. I can't ask too many questions." And I would always say, "Don't worry, Chief. You'll get this case in thirty seconds." And he was extraordinarily quick. Without a doubt, he was the most penetrating questioner, just a fabulous questioner from the bench.

Mr. Honecker: He oversaw the tremendous growth of the Administrative Office of the Courts during his tenure as Chief Justice. And you, too, have seen it. What do you think about that?

Justice O'Hern: Well, it's very hard for me to respond to that because I never saw the way that it affected lawyers' lives. I can tell you that. When I started out,

Wientraub and before him Vanderbilt, were not very popular. Ed McConnell was the Administrative Director of the Courts. And there was the same hostility of lawyers towards Ed McConnell, as later came to be displayed towards Lipscher. To me, they were just doing their jobs. I get the impression that over time, well first of all, we have a much better management structure now, and I'm sure you can sense that. The committees were appointed on management to make the Courts more business-like. So there was never an intent to monopolize anything. I, for example, did a lot of work with Family Court matters over the years. It was just a matter of training judges. You all know Ray Rainville? He was the king of Probation. And he would come into us with these ideas of appointing standing masters, hearing officers, and we always thought that was crazy. But apparently it works, and it has worked very well. So I don't think it's anything other than this. People don't want to pay a lot of money in taxes. They don't want judges doing what non-judges can do, and that has created the so-called bureaucracy. As I understand it now, non-lawyers manage the calendar for the most part.

Mr. McGovern: That's correct. You were involved in the Ethics System. Can you tell us more about that?

Justice O'Hern: This, of course, was one of Robert Wilentz's signatures. When he first came in the Court, he decided the Wilson case, which says essentially if you steal money from a client, you get disbarred. But more importantly, he could see the Ethics System was backed up, slow, and so forth. So he spearheaded the various reforms that led to the so-called Michaels Committee, and the creation of the Office of Attorney Ethics. We are still finishing that job. The question is to what extent will the in-house prosecutors replace the pro-bono attorney's prosecuting cases. But that was an abiding interest of his. Robert Wilentz had a single, dominant theme, which was public confidence in the Judiciary and the practice of law. If you look at everything he did, that was the single, dominant theme, to make sure the public had confidence in the system. And that was the Wilson Rule, and that is what's behind ethics reforms and to some extent, court reforms as well. Also of course, there came "Women in the Courts" and trailblazing things like "Minorities in the Courts;" which were one of the first states to do those kinds of things.

Mr. McGovern: The Court, during the years and also recently, is well-known nationally for their scholarly opinions.

Justice O'Hern: You don't have to say that.

Mr. McGovern: I am just parroting what other people say. Do you agree with that?

Justice O'Hern: Oh, well I am prejudiced! I have said this to people. You know, we have a tremendous luxury of taking a hundred cases per year. You divide that by seven, and it's twelve and a half or thirteen opinions, which is a very

manageable caseload. Robert Wilentz wrote maybe three or four opinions per year, and Chief Justice Poritz writes more. And certain members of the Court tend to be workhorses. But the point is, you can really put the time in on the cases here.

Mr. McGovern: This is maybe an improper question, but I have noticed that there have been more dissents recently, in the last year, than there have been in the prior years.

Justice O'Hern: I was accused of that. I asked a person to count them up, but I don't know. I think you saw the *Star Ledger* recently. They did a piece, the essence of which was the philosophy of this Court is not much different from the philosophy of Wilentz's Court. We'll have to see on that one.

Mr. McGovern: It is ever-changing as new members come on, it changes.

Justice O'Hern: Right.

Mr. Honecker: My perception is that it is not changing dramatically. It is just that individual justices have certain opinions, and that in the last month or two there have been a number of dissents. Now we have several women on the Supreme Court, which definitely is a distinct change from when you first came on the Court. We see more Assistant Prosecutors are women, more Public Defenders are women, etc. What type of impact do you think that has had?

Justice O'Hern: I think women, as you know, and forgive me for saying this, are very good at the verbal skills of the law. They write well and are extremely articulate. You are still in the trenches, so you will have to judge for yourselves how well this connects with juries. But certainly at the Appellate level, women are every bit as good as men in presenting Appellate cases. If I look at the Attorney General's Office, the Division of Criminal Appeals, you've got five, six, or seven women on the top cases. In the Attorney General's Office itself, Andrea Silkowitz is an excellent lawyer. And so is Mary Jacobsen.

Mr. McGovern: There was an article in *The Law Journal* this week that stated the Chief Justice has appointed more women as presiding judges, assignment judges, and to the Appellate Division.

Justice O'Hern: I'm not defending Robert Wilentz, but at the time that he started in 1979, there were simply not that many women judges with experience. The whole movement of women into law didn't start until the 1970s.

Mr. McGovern: To get more local, did you have any input into the decisions as to who would be the Assignment Judge in Monmouth County?

Justice O'Hern: No. Oh, do you mean as a Justice?

Mr. McGovern: Yes.

Justice O'Hern: Oh, of course the Chief would always ask us that. But these decisions and the Appellate Division appointments were cherished prerogatives, so to speak. He definitely made those decisions himself. I know for a fact, from talking to lawyers, that he consulted endlessly with people before making his appointments.

Mr. McGovern: I had the privilege of meeting with him and the late John Manna at his home in Deal for breakfast. He asked our opinion on who should be the Assignment Judge.

Justice O'Hern: He was tremendous for reaching out to people.

Mr. McGovern: I met with him half a dozen times during the time when I was in the hierarchy of the Bar Association. He did consult, and we would go to his Chambers in Ocean Township or to his house in Deal. Chief Justice, as I understand it from people in the State Bar, seems to share her views more with the Court and seems to be more involved.

Justice O'Hern: I can't say that we have been more involved in Assignment Judge, or Chancery decisions. In each of those cases, that's really the Chief's decision, and they make those decisions themselves. Chief Justice is obviously less autocratic than Robert Wilentz was. And of course there is something which I am not sure he would have approved, and it is the Judicial Council. If you recall the way this works, it's like a board of directors for the Court system. Their recommendations come to the Court, but the Judicial Council is extremely reliable there. A lot of the management, the day-to-day management, is handled by that group.

Mr. Honecker: From my perspective as Assistant Prosecutor, probably the most significant change I have seen is this: When I first became Assistant Prosecutor, legislature re-instituted the death penalty in New Jersey, and that's eighteen years ago. Initially the Court was criticized from several fronts in regard to its review of the Statute and its application. Where do you see it progressing?

Justice O'Hern: I'm not going to "talk out of school," so to speak. I think I wrote a case called State vs. Dixon, and about the twenty-seventh or twenty-eighth straight reversal.

Mr. McGovern: Who is counting?

Justice O'Hern: We were counting and the public was counting. But the opinion says that. But we said, essentially we said, "What can we do?" We started with a new system, and we had that problem with the burden of proof. The Statute didn't clearly say that proof had to be beyond a reasonable doubt on the State. You

had six or seven reversed for that. And then the proportionality issue that is finally played out with what I regard as "returning to square one," namely that serious bodily injury...is that killing that you think the person is going to die...and then you inflict the injury. But in any event, I would say that in the first thirty-two or thirty-three cases, pretty much those were the issues. Those issues are gone, and I don't think we have reversed many lately. I wrote Nelson last term, and the Brady issue is the only issue in the case. In fact, we were stunned, and I'm not telling any secrets, there were only four point headings in the Supreme Court brief. So the issues are really reduced. Pretrial publicity is difficult in the big cases. But I would say the benefit of our exhaustive study is that the United States District Court has nothing to do. It didn't even grant a hearing to Marshall, in the case in which Marshall had 500 post-conviction relief points at stake. So I think that the clock has run out.

Mr. Honecker: And another probably significant thing is the establishment of DNA as either an investigative tool or an exclusionary tool.

Justice O'Hern: I think it offers wonderful potential. We had the Harvey case maybe three or four terms ago, and none of us was intimately familiar with DNA. And two members of the Court wrote exhaustive opinions about it. There is no doubt that it is scientifically sound, if the lab isn't cheating or something like that. Remember that from the OJ Simpson case? I think it has tremendous potential. Was it in Essex County today or yesterday that alleged rapists were released?

Mr. McGovern: There is another area of law that you have written extensively on, and that's the law against discrimination. Some of the recent cases involving Continental Airlines and E-mail were fascinating. It looked as though, when you wrote the opinion, that you immersed yourself in learning about that area.

Justice O'Hern: I love the electronic stuff. We had an unlimited contract. That meant you could sit on the machine as long as you wanted. So I got very much used to it and eventually learned the Internet. You know that sort of foolish man who put out the ad on the Internet that said, "Whites Only May Apply"? I mean what a fool to think that wouldn't be treated as any other form of communication. And that was the whole point of the Continental Airlines cases. It's no big mystery about this. The idea that the Internet is something that we can't cope with is worse, and law enforcement is going to have to deal with it.

Mr. Honecker: When you first started out, you had probably just pen and pencils. Now you have the vast knowledge of the world at your fingertips.

Justice O'Hern: My secretary started doing opinions on a mimeograph. And she said they didn't change them. If you have ever seen a corrected mimeograph, they would take a stylus maybe and put two or three little things on it. But you couldn't afford the luxury of changing it.

Mr. Honecker: It does improve the quality of one's writing.

Justice O'Hern: You think it does?

Mr. Honecker: Well, not my writing, but my wife's writing. My wife is an incredible writer.

Mr. McGovern: Does it help us think better? We would sit down and research and read the books, and now it is synopsized in some instant form on the Internet.

Justice O'Hern: A lot of people of my generation say, "I never read stuff off the Internet." But I think you can get a lot off the screen that's good. Ultimately, you know, you have to read the whole thing.

Mr. McGovern: When you started practicing, there were very dramatic distinctions between when states had jurisdiction and where you could file lawsuits and what county and everything. I tend to think now that it is very blurred because of Internet commerce. The opinion you refer to gave the illustration of a guy flying in a plane, making a deal affecting property someplace. Did you come up with that example?

Justice O'Hern: No, I got it probably off the Internet! I had a wonderful clerk this term, and she got something called the *Webopedia*, which is an encyclopedia of Web terms. It's amazing! But you know the fundamental skill of lawyers is still communication. And it's the same in our courts. People think oral argument doesn't count. But I found it tremendously helpful. I loved it.

Mr. Honecker: So you went from mimeograph to Internet. We are talking about long-distance learning and long-distance advocacy from different courtrooms from around the country. Do you have a projection as to where we might be?

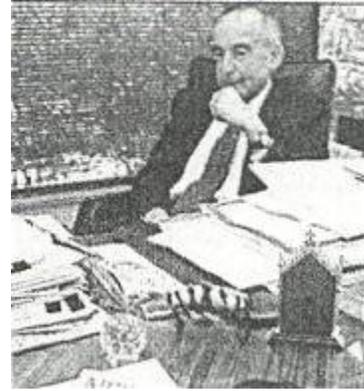
Justice O'Hern: I can't possibly predict where we will be. I still think that this person-to-person thing is still crucial in big decisions.

Mr. McGovern: I tried a case in London last year or two years ago, and we actually took..

Justice O'Hern: Is that the one you went by yourself on?

Mr. McGovern: Yes. We took live testimony, and the witness was in California, by videoconference. There were all Courts of Justice with barristers and their wigs, and this man was in California, and they were taking his testimony live by video. I think that will happen here very soon.

Mr. McGovern: This is the project Remembering the Twentieth Century for the Library, so you will be one of the featured subjects. We are going to interview a number of people for the Bar Association.



**New Jersey Supreme Court
Justice Daniel J. O'Hern in
his Red Bank Office**

Justice O'Hern: Someone has asked me what I see in the future. It's pretty obvious that Monmouth County is one of the fastest growing counties in the State. But I think it is going to be able to retain its character. One of the great things we have here is, regardless of politics, I think, is The Board of Chosen Freeholders. The Freeholders have run a very fine county. The park system is wonderful, and the public transportation...the trains...are excellent. The practice of law is very hard for me to assess where it will be. I participated in the Centennial History of Red Bank, and the Bicentennial in 1976. The thing that is important is that people have to have confidence. Red Bank could have gone down the chute like lots of other towns, but the people here always had confidence in the town and in themselves. And I think that is generally true of Monmouth County. There are just a few little pockets that could be improved on, but the County is always proud of itself. And I think it will do very well.

Mr. McGovern: Well, you came back, and I never left.

Mr. Honecker: And it is the best move I ever made, coming to Monmouth County. My children have grown up here, and I can say it's probably the most wonderful place in the world to live in and bring up a family.

Flora Higgins: If you had one thing you would like people who are reading or hearing this in seventy-five or 100 years, what sort of advice or commentary would you offer future generations?



**Justice Daniel J. O'Hern in
his Red Bank office**

Justice O'Hern: The main thing is that the human being is the central piece of the universe, as we know it. That sounds so old! I am not suggesting that there is not a God, but the point is, you have to have institutions that still serve human needs. I used to be the Mayor of Red Bank, as you have heard. I have given this advice to people elected to the highest office. What people really want is their streets cleaned, the snow plowed, and things like that. So you can never lose sight of the fact that it's families. People want to live here because they want to share this experience. We are very fortunate at this minute to look out at this beautiful river. But this has been part of the Red Bank community since it started. The very spot that we are at, Oyster Point, is where the Indians came in the summer. And there

are tons of oyster shells up on the bank up here. So it's the way people want to live...they want to be connected to the community. Now you got me started on this, and I'm going to have to tell you this. You see out in front of this nice grass: this is open to the public. One of the things I resent the most about the United States Supreme Court is they have taken this very dogmatic position on 'what is a taking.' So you deprive the owner of the absolute control of the property. But this property is dedicated to the public because it was waterfront property. And very often we see people fishing out here and crabbing. It hasn't been the slightest interruption of our work. In fact, it makes it more pleasurable. So that's all that I could say. Try to make a society such that people are able to enjoy their lives.

Mr. McGovern: Thank you Justice. We really appreciate you taking your time.