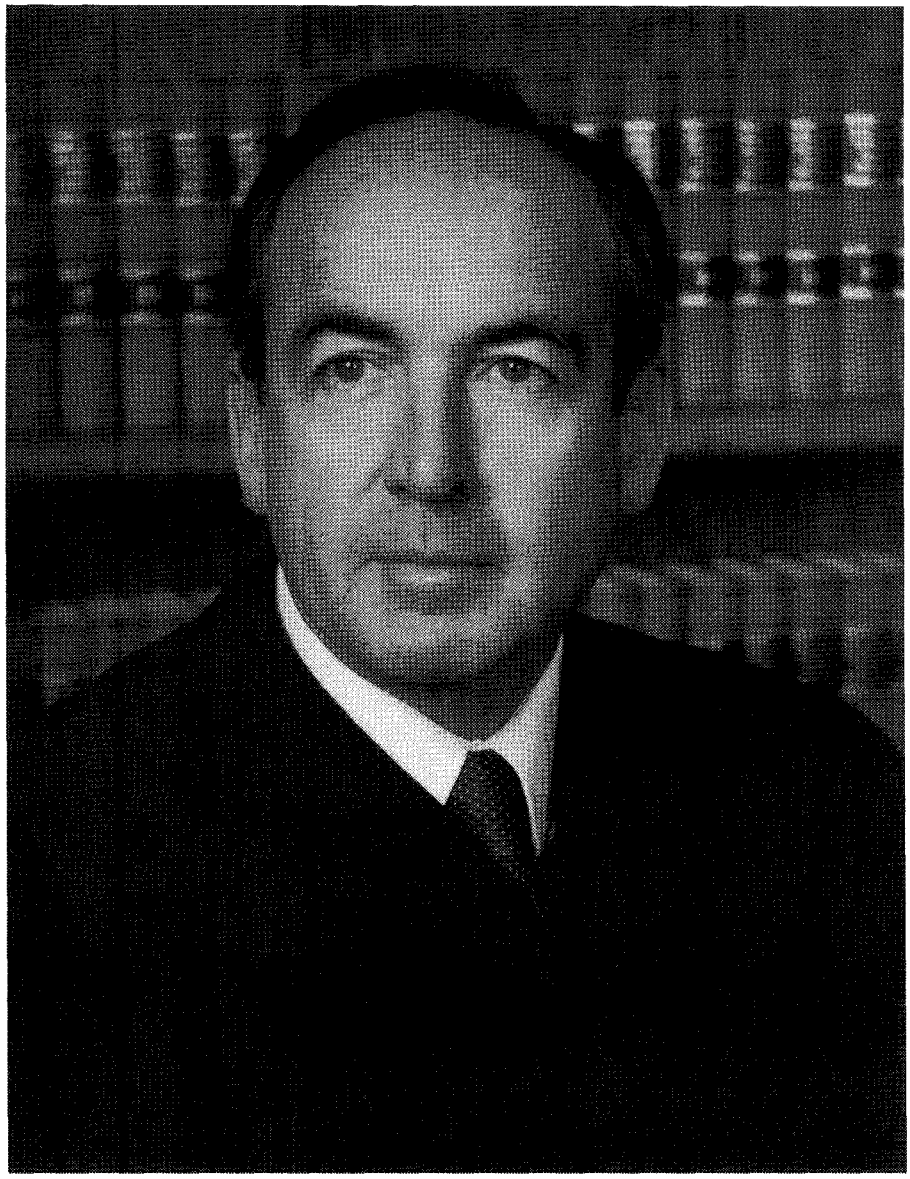

Justice Daniel J. O'Hern
Supreme Court of New Jersey, 1981-2000

Justice Daniel J. O'Hern: The "Little Guy's" Justice

The Hon. Gary S. Stein *

In his biography of former Supreme Court Justice Byron White entitled *The Man Who Once Was Whizzer White,* author Dennis Hutchinson attributed to Justice White the observation that "[e]very time a new justice arrives on the Court, the Court's a different [institution]."[2] The retirement on May 23, 2000 of Justice Daniel J. O'Hern, my colleague on the Court for more than fifteen years, prompts me to revisit Justice White's thesis.

Dan O'Hern brought a unique perspective to our Court. He had a full appreciation of our institutional role as New Jersey's court of last resort, and as a national leader in such areas as judicial administration and lawyer discipline. Complementing his institutional perspective, however, was a keen awareness that invariably there was a human face behind the names of the litigants before our Court.

Justice O'Hern will leave an enduring and indelible imprint on our Court conferences, where perhaps the Court's most important work is done. Addressing his colleagues, the Justice often would identify and emphasize personal aspects of a controversy that had been glossed over in the briefs and oral argument. Although Justice O'Hern's views did not necessarily dictate the outcome of an appeal, rare indeed was the case in which the Court's ultimate disposition was not influenced significantly by his unique ability to illuminate compelling legal issues by reference to simple truths and common experiences. The strong values that infused his personal life with his beloved Barbara, and the close-knit O'Hern children and grandchildren, were rarely, if ever, irrelevant to his decisional deliberations.

Justice O'Hern placed a high premium on collegiality and the value of unanimity in high-profile cases, but he was never reluctant to stand alone to vindicate important principles. His was a strongly

---

* Associate Justice, New Jersey Supreme Court.

[2] DENNIS HUTCHINSON, THE MAN WHO ONCE WAS WHIZZER WHITE: A PORTRAIT OF JUSTICE BYRON R. WHITE 408 (1998).

unifying voice on the Court, even though the Justice authored many separate opinions.

Justice O'Hern's published opinions eloquently reflect his personal values and judicial philosophy. Even the formality of judicial opinion writing, however, cannot obscure Justice O'Hern's humanity and common decency. The result is that the Justice's opinions also provide a window for those who seek a fuller understanding of his significant behind-the-scenes role on the Court.

A revealing snapshot of Justice O'Hern's uniquely personal and pragmatic approach to judging is afforded by a trilogy of opinions concerning Department of Human Services regulations purporting to end benefits provided to needy families and individuals. Of the three, two opinions were signed by Justice O'Hern: *Williams v. Department of Human Services*[3] and *L.T. v. Department of Human Services*.[4] I also include references to the earliest of the three, *Franklin v. Department of Human Services*,[5] an unsigned opinion, in the interest of completeness.

In *Franklin*, the Public Advocate and homeless families challenged a Department of Human Services (DHS) regulation establishing a five-month maximum period for a form of Emergency Assistance (EA) benefits established under the Aid to Families with Dependent Children (AFDC) program. The opinion's author took pains to personalize the plight of some of the families affected by the regulation's termination date before considering the legal issue presented:

> This case concerns a small group of unfortunate families for whom emergency accommodations may be the last stop before the street. They are not the familiar single urban dwellers who seek shelter in bus or train stations when the street is inhospitable. Rather, they are drawn from that larger group of relatively intact families in cities and suburbs who receive some public assistance but not enough both to sustain decent housing and to meet their other basic needs. . . . For purposes of this appeal, we will refer to but a few lives of the original plaintiffs that demonstrate the "pulse of life" beneath the official version of events. The names of the people, but not the facts of their lives, have been changed. . . .
>
> Helen Heath was evicted from her Toms River apartment in 1987 when her husband failed to pay rent for two months while

---

[3] 116 N.J. 102, 561 A.2d 244 (1989).
[4] 134 N.J. 304, 633 A.2d 964 (1993).
[5] 111 N.J. 1, 543 A.2d 1 (1988).

she was in the hospital. She is forty-four years old. Her parents are aged and cannot care for her. Her husband has since left her and her two teenage sons. She receives AFDC benefits for the two children. She wants a permanent home for them: "I search for housing every day. I constantly check the newspaper ads for rentals." To be sure, there is housing available, but the rents are usually between $550 and $650 per month. She receives $424 a month under the AFDC program. She is temporarily housed in an Ocean County hotel.

Mary Elmer had to leave an apartment to avoid exposing her two pre-school children to drugs in that environment. She searches for permanent housing in Newark, Linden, Orange, West Orange, and other urban areas. "I have been unable to locate safe and decent permanent housing I can afford." She is about to be evicted from a motel in Monmouth County. Rentals in Monmouth County "begin at $900 for a three-bedroom apartment." Elsewhere she finds nothing less than $500. Her AFDC grant is $389 a month. She receives $150 in food stamps.

Antoinette Ellis is twenty-one years old; she lives in a Monmouth County motel. She may have herself to blame for many of her problems in that she was drug- and alcohol-dependent and "often moved from place to place." But her two children under two years of age must find shelter, clothing, and some incidentals out of $425 a month. Rents in the Elizabeth area where she wants to reside average between $450 and $500 per month. She receives $132 in food stamps.

Colleen Johnson is thirty-one years of age; she has three children. She lived in a barely habitable apartment in Newark. She could not stand to see her children exposed any longer to substandard housing conditions, but she could not find housing on her own. Her county agency placed her in a highway hotel in Monmouth County, New Jersey. She has no way to get around; there is no public transportation. Her children are taunted in their school district for being homeless. She sees no apartments for rent that are less than $600 per month. She receives $485 a month in AFDC benefits and $186 per month in food stamps.

These claimants do not want to perpetuate this system and live in one room in a highway hotel; the last thing in the world they want is to be isolated from family and friends. "Homelessness functions not as a freely chosen option but as a tragic, inexorable destiny." . . . The problem arises primarily from the inexorable

> stress of a housing market that has outpaced their budgets. Everyone agrees on this point.[6]

The Court observed that the average EA cost of $1200 per month per family was "a most inefficient method of providing shelter for the homeless" and that "of all the solutions to the problem of housing the homeless, the welfare hotel is probably the worst."[7] The Court also took note of representations by the DHS Commissioner concerning new legislative funding for the homeless and new DHS programs to assist counties in placing homeless families currently housed in welfare hotels.[8] Transforming the Commissioner's representations concerning new programs into a guarantee of a safety net, the Court declined to invalidate the five-month limitation on EA benefits in view of the Commissioner's "assurance" that shelter would be provided:

> Everyone agrees that the spectacle of housing a family in a hotel room offends even the most callous of us. N.J.S.A. 44:10-1(a)(1) states as the purpose of AFDC the care of children "in their own homes or in the homes of relatives," not in hotels. The Commissioner's plans seek to get these children out of hotels sooner and not later.
>
> The Commissioner has not abandoned these children; he has expressed before us an intent to exercise a supervising responsibility with respect to identifying funding and coordinating solutions to the problem of housing homeless families. For him, the impetus to set a termination date for EA stems from a desire to find better housing solutions. In sum, then, the question that we have been presented with is whether it is legal to terminate the emergency aid to the homeless families of dependent children after five months, if other programs, formal and informal, are in place to make reasonably certain that the families previously housed in motels will find shelter and eventually housing elsewhere. The answer to that question is obviously yes.[9]

In *Williams*, the issue was the legality of a DHS regulation terminating emergency shelter assistance benefits to homeless individuals, as distinguished from the families and children affected by the termination of AFDC benefits in *Franklin*. Once again,

---

[6] *Id.* at 4-6, 543 A.2d 2-3 (quoting John C. Connell, *A Right to Emergency Shelter for the Homeless Under the New Jersey Constitution*, 18 RUTGERS L.J. 765, 769 (1987) (footnote omitted)).

[7] *Id.* at 15-16, 543 A.2d at 7-8.

[8] *See id.* at 13-14, 543 A.2d at 7.

[9] *Id.* at 19-20, 543 A.2d at 9.

quoting from the brief of Legal Services of New Jersey, Justice O'Hern personalized the legal issue confronting the Court:

> GA recipients are not families. They do not have the sympathetic appeal of children, and do not receive the same attention from the other branches of government and the media. Indeed they are almost the forgotten homeless. Yet they are elderly, sick, disabled, needy, down and out. They need declaratory relief from this court to declare their rights, and to bring the necessity of a resolution of their plight to the forefront. If this branch of government does not react, petitioner's plight will go ignored; their rights will be lost.[10]

Responding to representations in the record about the myriad of state, county, and municipal programs intended to provide assistance for the homeless, the Court sought "clarification of which agency has the responsibility to provide shelter of last resort."[11] Justice O'Hern insisted that the State identify the agency with ultimate responsibility to provide shelter for the homeless:

> Society has no interest in a process that shuffles the claimant from agency to agency in search of the bureaucratic official who is finally charged with responsibility to fulfill the commitment in the Prevention of Homelessness Act [N.J. STAT. ANN. § 52:27D-280 to 52:27D-287 (West 1984)], that "[i]t is the longstanding policy of this State that no person should suffer unnecessarily from cold or hunger, or be deprived of shelter."
>
> We realize that government cannot achieve the impossible and that despite the best of efforts, some people will indeed slip through the net. But it should not be because there has been an administrative misunderstanding about the respective roles of the agencies of government and the programs that they administer. The danger that we face with the depersonalization of government is that program manuals, and not people, will decide when government can do no more.[12]

Writing for a unanimous Court, Justice O'Hern rejected the DHS' central argument "that the EA program is essentially a discretionary program and that, therefore, it does not lie in the Court's province to tell the Commissioner how to exercise his discretion."[13] Instead, as the Court did in *Franklin*, Justice O'Hern

---

[10] *See* Williams v. Department of Human Servs., 116 N.J. 102, 105, 561 A.2d 244, 246 (1989).

[11] *Id.* at 121, 561 A.2d at 254.

[12] *Id.* at 123, 561 A.2d at 255 (quoting N.J. STAT. ANN. 52:27D-281(a) (West 1984)).

[13] *Id.* at 118, 561 A.2d at 253.

construed the Commissioner's representations about added funding and new programs as a safety-net guarantee. The Court extended the effectiveness of the regulations for four additional months, and then upheld their expiration on condition that "DHS shall have set in place by December 1, 1989, through proper administrative procedures, the new programs that it believes will make reasonably certain that the individuals previously housed in motels will find shelter and eventually housing elsewhere."[14] As in *Franklin*, the DHS' protestations that existing programs made Court intervention unnecessary were accepted by the Court as an assurance that standby shelter would be provided for the homeless.

In *L.T.*, the issue was the validity of a twelve-month limit on benefits to homeless citizens provided through the State's temporary rental assistance program. In an effort to again personalize the plight of those affected by the termination of benefits, Justice O'Hern provided thumbnail sketches of each of the five plaintiffs[15] and also quoted from Commissioner Waldman's Special Report to the Legislature on General Assistance in order to provide a description of the affected population:

> "[s]tereotypes of [General Assistance (GA)] recipients are ill-founded and incorrect. Those who stereotype recipients as generally men in their 20's and 30's who have trouble keeping a job ignore those individuals who are chronically unemployed or underemployed and those with chronic health problems who have barriers that prevent them from maintaining employment.
>
> The [GA] population is very diverse. It ranges from the 18 year old high school drop out with virtually no work history who is unable to find a job in the current economy; to the 40 year old former factory worker who was laid off as a result of down sizing, has now exhausted his/her unemployment benefits and finds his/her 20 years of assembly line experience to be in little demand; to the 50 year old with a graduate degree who is unable to find work; to the 63 year old alcoholic who is too ill to work but not considered to be disabled by the Social Security Administration. For these people and thousands of others with somewhat different stories, the GA program represents their last hope, the final shred of the safety net."[16]

---

[14] *Id.* at 121, 561 A.2d at 254.

[15] *See* L.T. v. New Jersey Dep't of Human Servs., 134 N.J. 304, 308-10, 633 A.2d 964, 966-67 (1993).

[16] *Id.* at 307, 633 A.2d at 966 (quoting William Waldman, Commissioner of Department of Human Services, A SPECIAL REPORT TO THE LEGISLATURE ON GENERAL ASSISTANCE 1, 7 (1993)).

Justice O'Hern focused on the devastating effects of homelessness:

> We are aware of the great demands that are made on an agency of government like DHS. Undoubtedly, DHS wishes that it had more funds in order to supervise the far-flung operations of the [Municipal Works Departments] that shelter the homeless, as well as more funds to feed the hungry, care for the children and elderly, and heal the sick, because all needy people are deserving of the agency's attention. However, although there are no rankings in the "catalog of human suffering," . . . surely homelessness represents something uniquely devastating to the human spirit. As a society, we may be offended by the presence of homeless people among us; they are a silent rebuke to our way of life. "Once pitied, [the homeless are] now censured." . . . But the consequences of their status cannot be denied. "Reports abound documenting the gradual but inexorable disintegration of body and mind wrought by homelessness." . . . [John C. Connell] described the condition of homeless persons:
>
> > The human costs of homeless living are unconscionable. Food is often acquired only from charity or from public trash. Public restrooms offer rare opportunities for practicing personal hygiene and cleanliness. Days are expended in aimless attempts to seek out minimal sustenance through jobs, welfare, and various means of self-help. Moments of rest are stolen in the most public places. Criminal and sexual victimization is common; companionship is rare. The indignities are insufferable, at least in the eyes of those not homeless.[17]

The Justice concluded that although an expiration period for benefits may be a bureaucratic necessity, the legislation should not be understood to mean that

> at the end of the year, EA recipients shall be returned to the streets even though they have made every effort to turn their lives around. To be told by the Agency chosen to provide shelter of last resort that your time is up and you must return to the streets is especially ironic.[18]

Writing for a unanimous Court, Justice O'Hern concluded that the legislature did not intend to mandate homelessness by terminating all benefits. The Court ordered continuation of benefits

---

[17] *Id.* at 324, 633 A.2d at 975 (quoting Jill Smolowe, *Giving the Cold Shoulder*, TIME, Dec. 6, 1993, at 28, 30; Connell, *supra* note 6, at 785-86).

[18] *Id.* at 323, 633 A.2d at 974.

for qualified claimants unless DHS shall designate another governmental agency to provide shelter of last resort:

> We cannot help but believe that our lawmakers do not intend to bring about such results and do not intend that their general appropriations for human services not attend to such needs.
>
> If the time comes when our society can no longer afford to shelter the homeless, the Legislature will undoubtedly make that clear. . . . In the absence of such a mandate, we believe that the Legislature intends that the GA program be administered in such a way as to provide temporary shelter for the most needy of our citizens. A regulation that terminates TRA without a fall-back provision for shelter conflicts with that purpose.[19]

In *In re Petitions for Rulemaking, N.J.A.C. 10:1.2 and 1085-4.1*,[20] the Court was required to determine whether it was mandatory for DHS to calculate the necessary benefit levels for recipients of the AFDC and General Assistance Programs administered by that agency.[21] Justice O'Hern described the critical issue succinctly:

> The issues in this case are narrow. The questions are not whether there is a constitutional or a statutory entitlement to a certain level of benefits, but only whether the agency must establish, by a proper administrative process, what level of benefits would be required to maintain the recipients in the measure of dignity that the enabling legislation contemplates. . . .
>
> . . . [W]e recognize the unavoidable circularity in the process. The agency contends that such a process is futile because in the long run the standard of need will provide benefits only on paper; the actual level of benefits will be those that the Legislature establishes in the annual Appropriations Act.[22]

The Court's opinion, relying on a collaborative report concerning child poverty, explained the context for the issue on appeal:

> The report concludes that in New Jersey today, children represent 40% of the poor. Non-white children are four times more likely to live in poverty than are white children. Although children represent only 27% of the total population, they represent close to half—277,000—of the people living in poverty in New Jersey. Contrary to popular belief, most poor families do not have large numbers of children. In New Jersey, the average family size is 3-1/3 people. The average size of a poor family is 3-

---

[19] *Id.* at 324-25, 633 A.2d at 975.

[20] 117 N.J. 311, 566 A.2d 1154 (1989).

[21] *See id.* at 314, 566 A.2d at 1155.

[22] *Id.*

> 1/2 people. Minority families with children in New Jersey are over four times more likely than white families with children to be poor. Almost 30% of all black families and 21% of all Hispanic families with children live in poverty.
>
> A family of four receiving the maximum AFDC grant gets $443 a month. Even with a full food stamp allotment of $183, this family has less than 60% of the minimum cost of living in New Jersey. While the cost of living in New Jersey increased by over 130% between 1975 and 1985, AFDC payments increased by only 33% during the same period.
>
> We recognize that these data are not entirely current but they represent the background against which the petitioners sought this relief.[23]

Justice O'Hern offered a simple but compelling rationale for mandating that the agency determine the necessary level of benefits:

> [I]t is a simple fact of human experience needing no empirical demonstration that not until we see the face of poverty do we react to it. The plight of the poor in places such as Appalachia and Ethiopia would have escaped attention were their suffering children not seen.
>
> In short, there is every reason to believe that an informed society will react more humanely than an uninformed. Dickens' fables may represent the reality of human experience. We are not given visions of the future to guide our decisionmaking. We ought at least have a clear vision of the present.
>
> . . . .
>
> In a society of government under law, it remains the province of courts, under their traditional review powers, to determine what are the express or implied legislative policies in an enactment. Naturally, the choice of programs or measures that will implement the policies is for the agencies. We have consistently held that the agencies have the broadest power in determining how to allocate available resources. . . .
>
> But this is a case involving not the level of benefits or the determination of what benefits will be awarded, but rather what benefits are needed.[24]

Writing for an unanimous Court, Justice O'Hern concluded that DHS must calculate the necessary level of benefits:

---

[23] *Id.* at 316-17, 566 A.2d at 1156.

[24] *Id.* at 322, 325-26, 566 A.2d at 1160, 1161 (citing Barone v. New Jersey Dep't of Human Servs., 107 N.J. 355, 370, 526 A.2d 1055, 1063 (1987)).

> We have no "illusion that a court by judicial fiat can enforce the idealism of poets." Like that Court, we do not sit here as a super legislature, nor do we concern ourselves with the wisdom of the administrative choices. Rather, we view this matter as within our proper role of deciding questions of legislative intent.
>
> . . . .
>
> We agree with DHS that the Legislature does not need DHS' advice about issues so obvious as the ever-increasing cost of subsistence in our society. At the same time, the past agency acquiescence in the overarching authority of the Legislature to establish the level of public-assistance grants does not obviate the conclusion that the enabling legislation reasonably calls for further agency definition of the broad-based statutory standards of the two programs. We do not believe that the Legislature intends that this regulatory process be suspended because it cannot always be implemented. . . . It is hard to conceive how this obligation can be met until the needs are known.[25]

Among Justice O'Hern's many majority opinions in the field of criminal law, two that stand out are *State v. Roth*[26] and *State v. Hodge*,[27] cases in which the Court set standards for appellate review of criminal sentencing decisions under the newly enacted Code of Criminal Justice (Code).[28] In *Roth*, the defendant pled guilty to aggravated sexual assault, a first-degree crime. Because of defendant's severe alcohol dependence, as well as numerous letters of support urging that defendant's conduct was aberrational and resulted from his alcohol and drug addiction, the sentencing court imposed a five-year probationary term conditioned on defendant enrolling in an in-patient rehabilitation program. Writing for a unanimous Court, Justice O'Hern meticulously reviewed the evolution of changes in sentencing philosophy throughout the country and in New Jersey.[29] The Justice also reviewed the structure of the Code and, in detail, summarized the Code's sentencing provisions.[30] In language frequently quoted by reviewing courts, Justice O'Hern also set forth the standards governing appellate review of criminal sentencing:

---

[25] *Id.* at 326-28, 566 A.2d at 1161-62 (quoting Avant v. Clifford, 67 N.J. 496, 517, 341 A.2d 629, 640 (1975)).

[26] 95 N.J. 334, 471 A.2d 370 (1984).

[27] 95 N.J. 369, 471 A.2d 389 (1984).

[28] N.J. STAT. ANN. 2c:1-1 to 98-4 (West 1983).

[29] *See Roth*, 95 N.J. at 345-55, 471 A.2d at 375-81.

[30] *See id.* at 354-55, 356-61, 471 A.2d at 375-81, 382-385.

> First, we will always require that an exercise of discretion be based upon findings of fact that are grounded in competent, reasonably credible evidence. . . .
>
> Second, we will always require that the factfinder apply correct legal principles in exercising its discretion. . . .
>
> Third, we will exercise that reserve of judicial power to modify sentences when the application of the facts to the law is such a clear error of judgment that it shocks the judicial conscience. . . . We anticipate that we will not be required to invoke this judicial power frequently.
>
> . . . .
>
> We must avoid the substitution of appellate judgment for trial court judgment. What we seek by our review is not a difference in judgment, but only a judgment that reasonable people may not reasonably make on the basis of the evidence presented[.]
>
> . . . .
>
> Pronouncement of judgment of sentence is among the most solemn and serious responsibilities of a trial court. No word formula will ever eliminate this requirement that justice be done. There is no room for trial or appellate courts to consider the public perceptions of sentences: "Judicial recognition of or action upon public opinion against a particular defendant cannot be tolerated in our criminal justice system." . . . We are confident that our judges are people of "fortitude, able to thrive in a hardy climate." . . . Our new Code reflects a delicate balance between discretion and fixed sentencing. An independent judiciary is its fulcrum. When conscientious trial judges exercise discretion in accordance with the principles set forth in the Code and defined by us today, they need fear no second-guessing.[31]

Finally, Justice O'Hern concluded that the failure to sentence the defendant within the authorized sentencing range for first-degree offenses constituted an unauthorized departure from the Code's sentencing guidelines, requiring a remand for re-sentencing.

In *Hodge*, the defendant admitted committing acts of sexual intercourse with his thirteen-year-old stepdaughter and pled guilty to aggravated sexual assault. The trial judge sentenced defendant to sixty-three days in prison, five years probation, and mandatory psychiatric treatment because defendant was a first offender and regularly employed, and because of the severe effect that imprisonment would have on his family. Justice O'Hern carefully

---

[31] *Id.* at 363-65, 471 A.2d at 386-87 (quoting State v. Humphreys, 89 N.J. 4, 15, 444 A.2d 569 (1982); Craig v. Harney, 331 U.S. 367 (1947)).

reviewed the presumptive sentencing structure of the Code and concluded that the trial court's failure to focus on the severity of the crime, rather than on factors personal to the defendant, required that the sentence imposed be set aside:

> We conclude that the trial court relied on pre-Code sentencing guidelines. This approach balanced the defendant's capacity for rehabilitation with the other purposes of punishment, rather than following the offense-oriented analysis of the Code. The trial court tended to view the crime itself as only one factor among many to consider at sentencing, whereas the severity of the crime is now the single most important factor in the sentencing process.
>
> . . . We realize there is no calculus that will guide the pen to the perfect sentence. Indeed, these few years following adoption of the Code have been a period of adjustment and transition, resulting at times in a confusion of philosophies. In various places, the Code itself gives conflicting signals about the philosophical justification for punishment. . . . Front line judges need not be faulted for their judgments in these circumstances.
>
> Because of the view that we take of the offense-oriented sentencing standards of the Code as it stood even before passage of the 1981 amendments, we believe that the sentence imposed must be set aside.[32]

The opinions in *Roth* and *Hodge* remain to this day as the sources of the definitive standards for reviewing criminal sentences imposed under the Code. In the same vein, Justice O'Hern's landmark opinion in *State v. Yarbough*,[33] although partially overridden by legislation,[34] remains the guiding standard for trial courts in deciding whether to impose consecutive or concurrent sentences. Similarly, Justice O'Hern's opinion in *State v. Dunbar*[35] sets forth the standards that continue to guide sentencing judges in the imposition of extended terms.

Justice O'Hern authored more than 230 majority opinions during his nineteen-year tenure on the Court. Neither time nor space permit a detailed analysis of those opinions except to observe their common thread. They are pragmatic, scholarly, humane, and fair. The following are among my personal favorites: *Butler v. Acme Markets*,[36] which upheld the duty of a store owner to provide warnings

---

[32] *See Hodge*, 95 N.J. at 378-79, 394-95.
[33] 100 N.J. 627, 498 A.2d 1239 (1985).
[34] N.J. STAT. ANN. 2c:44-5 (West 1984).
[35] 108 N.J. 80, 527 A.2d 1346 (1987).
[36] 89 N.J. 270, 445 A.2d 1141 (1982).

or adequate protection for patrons when risk of harm from criminal assault is prevalent;[37] *Boss v. Rockland Electric Co.*,[38] which held that where resolution of a dispute involves the determination of issues within the special competence of an administrative agency, the court should refer those issues to the agency for resolution;[39] *Wunschel v. Jersey City*,[40] which held that procedures in the Division of Workers' Compensation and in the Law Division should be molded to avoid conflicting decisions on the issue of a worker's employment status at the time of his death;[41] *Loigman v. Kimmelman*,[42] which adopted a balancing test to determine a citizen's right of access to sensitive public documents;[43] *Carteret Savings & Loan Ass'n v. Davis*,[44] which observed that "we have some difficulty in picking out the 'little guy' in the group that attends . . . a foreclosure sale;"[45] *Ostrowski v. Azara*,[46] which applied the doctrine of avoidable consequences in holding that a jury may be instructed to consider the post-treatment conduct of a diabetic, cigarette-smoking patient when apportioning damages on the patient's medical malpractice claim;[47] *Lebel v. Everglades Marina, Inc.*,[48] which concluded that the Florida seller of a luxury boat to a New Jersey resident had sufficient minimum contacts to be subjected to suit in New Jersey courts;[49] *In re Determination of Executive Committee on Ethical Standards*,[50] which held that a Rutgers Law professor conducting a clinical teaching program seeking to represent a client before a state agency could not be regarded as a "State employee" for the purposes of New Jersey Conflicts of Interest Law;[51] *Phillips v. Curiale*,[52] which held that a 1987 statute that restored immunity to fellow National Guard members and made applicable to "all actions and proceedings that accrue, are pending or are filed after June 1, 1986" did not apply retroactively to bar the plaintiff's

---

[37] *See id.* at 273, 445 A.2d at 1142.
[38] 95 N.J. 33, 468 A.2d 1055 (1983).
[39] *See id.* at 36, 468 A.2d at 1056-57.
[40] 96 N.J. 651, 477 A.2d 329 (1984).
[41] *See id.* at 656, 477 A.2d at 331.
[42] 102 N.J. 98, 505 A.2d 958 (1986).
[43] *See id.* at 101, 505 A.2d at 960.
[44] 105 N.J. 344, 521 A.2d 831 (1987).
[45] *Id.* at 350, 521 A.2d at 834.
[46] 111 N.J. 429, 545 A.2d 148 (1988).
[47] *See id.* at 431-31, 545 A.2d at 149.
[48] 115 N.J. 317, 558 A.2d 1252 (1989).
[49] *See id.* at 329-30, 558 A.2d at 1258.
[50] 116 N.J. 216, 561 A.2d 542 (1989).
[51] *See id.* at 218, 561 A.2d at 543.
[52] 128 N.J. 608, 608 A.2d 895 (1992).

suit filed in 1980;[53] *North Jersey Newspapers Co. v. Passaic County*,[54] which concluded that the Right-To-Know law does not provide an unqualified right of access to telephone toll records of a public body that would disclose the identity of the persons called;[55] *Instructional Systems, Inc. v. Computer Curriculum Corp.*,[56] which held that evidence concerning the relationship between a producer of a computerized educational learning system and the producer's exclusive regional distributor was sufficient to establish a community of interest, thereby constituting a franchise entitled to protection under New Jersey Franchise Practices Act;[57] *D'Agostino v. Johnson & Johnson, Inc.*,[58] which concluded that New Jersey rather than Swiss law governed the claim in New Jersey court of the plaintiff, a United States citizen, Swiss resident, and employee of the Swiss subsidiary of a New Jersey corporation seeking damages for wrongful discharge allegedly based on the plaintiff's refusal to participate in the illegal bribing of Swiss licensing authorities;[59] *Owens-Illinois, Inc. v. United Insurance Co.*,[60] which adopted the "continuous-trigger" theory of liability, holding that when a progressive indivisible injury or damage results from exposure to injurious conditions, courts may treat such injury or damage as an occurrence within each year of the Comprehensive General Liability policy;[61] *Perez v. Wyeth Laboratories*,[62] which held that drug manufacturers that directly market prescription drugs to consumers are not insulated from liability for injuries caused by a failure to warn the patient of harmful side effects.[63]

No review of Justice O'Hern's judicial work-product could be complete without reference to his separate opinions, which reflect some of his most deeply felt views. For example, in *State v. Hempele*,[64] the Court held that pursuant to Article 1, paragraph 7 of the New Jersey Constitution, a police search of a citizen's garbage bags without probable cause was unconstitutional.[65] Justice O'Hern, concurring in

---

[53] *See id.* at 612, 608 A.2d at 897.
[54] 127 N.J. 9, 601 A.2d 693 (1992).
[55] *See id.* at 11, 601 A.2d at 694 (citing N.J. STAT. ANN. 47:1A-1 to -4 (West 1992)).
[56] 130 N.J. 324, 614 A.2d 124 (1992).
[57] *See id.* at 328, 614 A.2d at 126.
[58] 133 N.J. 516, 628 A.2d 305 (1993).
[59] *See id.* at 519, 628 A.2d at 307.
[60] 138 N.J. 437, 650 A.2d 974 (1994).
[61] *See id.* at 478-80, 650 A.2d at 995-96.
[62] 161 N.J. 1, 734 A.2d 1245 (1999).
[63] *See id.* at 5, 734 A.2d at 1247.
[64] 120 N.J. 182, 576 A.2d 793 (1990).
[65] *See id.* at 188, 576 A.2d at 796.

part and dissenting in part, eloquently expressed his strong belief that our Court generally should adhere to United States Supreme Court decisions in interpreting counterpart constitutional guarantees. The Justice wrote:

> This case is not about garbage. This case is about the values of federalism. Were I a member of the United States Supreme Court, I might well have voted differently from the majority in *California v. Greenwood*. . . . Justice Clifford's painstaking analysis of the issues is quite persuasive and it convincingly demonstrates that the United States Supreme Court may have drawn the line a bit too far in that case.
>
> But that is not the real issue in this case. The issue is the basis on which we shall depart from Supreme Court precedent in interpreting counterpart guarantees of our Constitution. On that score, I quite agree with Justice Garibaldi that this case falls convincingly short of standards that the Court has been developing. . . .
>
> For me, it is not enough to say that because we disagree with a majority opinion of the Supreme Court, we should invoke our State Constitution to achieve a contrary result. It sounds plausible, but one of the unanticipated consequences of that supposedly benign doctrine of state-constitutional rights is an inevitable shadowing of the moral authority of the United States Supreme Court. Throughout our history, we have maintained a resolute trust in that Court as the guardian of our liberties.
>
> . . . .
>
> Respect for law flows from a belief in its objectivity. To the extent possible, we ought not personalize constitutional doctrine. When we do otherwise, we vindicate the worst fears of the critics of judicial activism. The fourth amendment is the fourth amendment. It ought not mean one thing in Trenton and another across the Delaware River in Morrisville, Pennsylvania.
>
> In truth, the constitutional vision that we have shared as a people is not one of state-constitutional guarantees of freedom. Whether God-given or the result of social compact, the content of our freedom under law is drawn from the Bill of Rights. I rather doubt that most Americans think otherwise. One need only recall that it was the Supreme Court, not state courts, that guaranteed freedom of religion. . . . For good or ill, this unique American vision of freedom has been nurtured by the United States Supreme Court. There may come a time when the Supreme Court might abdicate its responsibility and we would have to act, but this is surely not it. Where that Court has drawn the line in

> this case does not significantly endanger our freedoms. I would abide by its judgment. If there is a New Jersey view on this issue, the Legislature can vindicate it in time.
>
> . . . .
>
> Like most Americans, I don't like people snooping around in my garbage and I doubt that most police officers will want to do that. But we certainly need more reason than this to discard the vision of one nation under law.
>
> The Appellate Division made a measured disposition of the issues that fairly took into account the state and federal interests. It would have recognized a limited privacy interest in discarded materials and balanced that with a requirement for reasonably based police action. That disposition would serve our state needs. I would affirm both of its dispositions.[66]

Justice O'Hern also has written separately in numerous death penalty appeals to reflect his view that that ultimate penalty not be imposed unless a defendant's right to a fair trial has been scrupulously honored. In *State v. Marshall*,[67] the Justice expressed the view that prosecutorial misconduct mandated reversal of defendant's death penalty:

> [N]othing can excuse, justify, or undo the State's attempt to disparage Marshall's exercise of his right to call witnesses on his behalf, guaranteed by the sixth amendment to the Constitution. In summation, the prosecutor stated:
>
> > And he has the audacity to bring in his three boys to testify. That's obscene. And I'm not being critical of them because I would probably do the same thing. To put his boys on that witness stand is obscene, and for that there's a place in hell for him. He will use anybody, he will say anything and he will do anything, including his own family, to get out from under, and that's Robert Oakley Marshall. Make no mistake about it.
>
> When did it become "obscene" for a man presumed to be innocent under our system of law to call witnesses on his own behalf?
>
> The dry curative instructions given by the trial court hardly sufficed to dispel the visual image of a place in hell for defendant that the prosecutor planted in the jurors' minds. Those remarks were neither accidental nor the result of the passion of a heated

---

[66] *Id.* at 225-28, 576 A.2d at 815-16 (O'Hern, J., concurring in part and dissenting in part) (citations omitted).

[67] 123 N.J. 1, 586 A.2d 85 (1991).

> trial. They were planned. Contemporary statements by the prosecution to the press set forth in the record demonstrate that.
> . . .
>
> But deciding whether a man shall live or die is not the product of building blocks of evidence. "Jurors [in capital sentencing] are not mere fact finders, but the ultimate determiners of whether the defendant shall live or die." Even under today's structure the jury's function surely remains what Chief Justice Weintraub described as "a moral judgment upon a consideration of the evidence."
>
> . . . .
>
> Whether there will be "a place in hell" for this defendant remains for a greater judge than any of us. What we must decide is whether the sentence of death was imposed in accordance with law. A sentence of death is not imposed in accordance with law when a jury has been influenced by repeated instances of constitutional error and governmental misconduct.[68]

This Court's "right-to-die" cases presented Justice O'Hern with difficult moral and jurisprudential choices. In *In re Peter by Johanning*,[69] the Justice expressed with profound feeling his views of the difficult value judgments posed by such cases:

> In this case, unlike that of Kathleen Farrell, there is no moral, medical, or ethical consensus that a surrogate decisionmaker may elect to discontinue the nurture of an incompetent patient deemed incapable of regaining any semblance of her former life. None of us would want to experience the anguish of choice that families in this situation must suffer. The question is, what is our role as a court in shaping or reflecting that societal consensus?
>
> Why exactly are we asked to intervene at all? As the majority has correctly noted, death and dying are not strangers to our history. We are asked to intervene now because science has forced medical choices upon us that we have yet fully to resolve in the context of our values. . . .
>
> What then should be the role of law in resolving these choices? All agree that within appropriate confines self-determination is a value held paramount in our culture and law. We each should have the right to face inevitable and imminent death in the manner that is most consistent with our beliefs in our dignity as humans and perhaps more. But it is another thing to determine for others how and when they shall meet death. There are many

---

[68] *Id.* at 212-14, 586 A.2d at 198-99 (O'Hern, J., concurring in part and dissenting in part) (citations omitted).

[69] 108 N.J. 365, 529 A.2d 419 (1987).

> lives that some consider not worth living. Whom shall we entrust to make that judgment for another, and by what standards?
>
> . . . .
>
> Our understanding of human consciousness is limited by the extent of our own knowledge. We are informed that the only thing known with certainty about severely brain-damaged patients is that the patient cannot communicate with the outer world. It is not known what communications the patient can receive. I am not prepared to accept the description cited to us of one expert that the patient "is a plant." Has anyone ever seen a nursing professional who did not treat a comatose patient with the deepest respect? Why do we speak to, comfort, and hold such patients? Because we realize that they are no less human than we, even though they are unable in any way to express that humanity. They are not the people that we knew, but they remain the people that we love. In the cases before us, it is undoubtedly that love that deeply moves the parties.
>
> . . . .
>
> We cannot, however, as I have said, fail to recognize when we set standards. When a court "allows such [life-ending] decisions," and "circumscribes the practice (to safeguard well-being)," and "shapes social institutions," . . . it makes a profound statement. The Court wishes that it were not so. It believes: "[I]n this as in every case, the ultimate decision is not for the Court. The decision is primarily that of the patient, competent or incompetent, and the patient's family or guardian and physician." . . . I respect the fact that the Court wishes not to intrude in this area of intense personal privacy and suffering. It is not possible, however, to adopt neutral principles. Implicit in every such decision of this Court is a statement that transcends not only the case before the Court, but the boundaries of this jurisdiction. It is only two terms since we decided Claire Conroy's case. It is sometimes forgotten that on a record in that case similar to the one at bar, we concurred in the reversal of the judgment that would have discontinued feeding her. Therefore, I respectfully dissent.[70]

Similarly, in *In re Jobes*,[71] the Justice thoughtfully expressed his disagreement with a disposition that required health care providers to participate unwillingly in the life-terminating process:

---

[70] *Id.* at 386-89, 393-94, 529 A.2d at 430-31, 433 (O'Hern, J., dissenting) (citations omitted).

[71] 108 N.J. 394, 529 A.2d 434 (1987).

> While I dissent from the disposition in this case primarily for the reasons stated in the companion case of *In re Peter*, . . . I reiterate my respect for the aggrieved family and their conscientious decision. I ask them only to consider that the restraints of the law that seem so cruel to them may reflect an equally profound respect for patients not surrounded by a family as loving as theirs. It is not possible for us to construct a substantive principle of law based upon the intact family status. We must construct a substantive principle of law that will endure in all circumstances.
>
> I add only, with respect to the discussion of this case, a concern about a court compelling a health care provider to furnish treatment that is contrary to its own medical standards. I find it difficult to understand how we can order nursing professionals with an abiding respect for their patients to cease to furnish the most basic of human needs to a patient in their care. I do not believe that such an order is essential to the Court's decision, and it may impinge upon the privacy rights of those nursing professionals. This is not a case in which the physical facilities of a licensed health care provider are being denied to professionals who disagree with the provider's policy, it is a case in which the health care providers firmly believe the treatment is adverse to the patient. I believe a proper balance could be obtained by adhering to the procedure adopted in *In re Quinlan* [70 N.J. 10, 355 A.2d 647 (1976)], that would have allowed the nonconsenting physician not to participate in the life-terminating process. This was essentially the approach taken by the conscientious treating physician in Kathleen Farrell's case.[72]

On rare occasions during his judicial tenure, Justice O'Hern was moved to write not only separately, but bluntly, to underscore his disagreement with the Court. One such instance was in *Self v. Board of Review*,[73] where the Court held that the claimants had quit their jobs and thus were banned from receiving unemployment benefits. Justice O'Hern observed:

> There is a difference between quitting and being fired from a job. Only in the regulatory world do the concepts get confused.
>
> The fact is that these two claimants didn't quit their jobs. They were fired after they couldn't get to work for two days because they had lost their ride. No reading of this record will disclose evidence to support a contrary finding. . . .

---

[72] *Id.* at 453-54, 529 A.2d at 464-65 (O'Hern, J., dissenting) (citing *In re Peter*, 108 N.J. 365, 529 A.2d 419 (1987); *In re Quinlan*, 70 N.J. 10, 355 A.2d 647 (1976)).

[73] 91 N.J. 453, 453 A.2d 170 (1982).

. . . .

> The supervisor knew he had fired the claimants. In fact, they testified that he was the one who told them to apply for unemployment insurance. These claimants were hardworking building maintenance employees. They wanted work, not a handout. Had they been given a few days to arrange transportation, they might have been able to return to work. Under these circumstances, only a legal fiction of Kafkaesque subtlety can convert their discharge into a voluntary quit.[74]

More recently, in *Baird v. American Medical Optics*,[75] Justice O'Hern strongly expressed his disagreement with the Court's holding that plaintiff's lack-of-informed-consent claim accrued at the same time as her malpractice claim. The Justice observed:

> Only one such as Anatole France could adequately capture the irony in the Court's judgment. A sight-impaired woman has lost her claim that she was the unwitting subject of experimental eye surgery in part because she should have more carefully read the release form that she signed before undergoing the surgery. In order to reach that result the Court has improperly fused the accrual of two separate claims and thereby avoids resolution of a factual dispute whether plaintiff was informed of the experimental nature of the eye surgery.
>
> . . . .
>
> It is shattering to think that a person who was essentially a guinea pig should be deprived of her cause of action based on absence of informed consent because she knew something was wrong with her eyes after the surgery. The majority reasons that "diligence requires an injured party, once he or she knows of one claim against the defendant, to investigate all other related claims." The proposition may be valid in other contexts, but its relevance to this case rests shakily on the unstated premise that plaintiff's malpractice and informed consent claims are inextricably related. I cannot accept that premise because the two claims share neither a legal nor a factual relationship. . . . It is one thing to draw an inept surgeon. It is another thing to be treated as a human guinea pig.
>
> . . . .
>
> Because plaintiff's informed consent claim is distinct from her treatment claim, plaintiff is entitled to a factual hearing on whether her doctor was reasonably diligent in determining whether plaintiff understood that she was to be a laboratory

---

[74] *Id.* at 460-61, 453 A.2d at 174 (O'Hern, J., dissenting).

[75] 155 N.J. 54, 713 A.2d 1019 (1998).

> animal in the service of medical science—whether she understood that the development of the [intraocular lens] was still in the "anything can happen" stage. Her signature on the consent form would serve as evidence at that hearing. It might in fact prevent her from prevailing. But at the summary judgment stage, her signature should not serve to deny her the opportunity to prove her case, as the majority suggests it would. Her entitlement to a hearing seems elementary to me and is not too much to ask for a woman who has lost her eyesight in a case of experimental surgery.[76]

Only last term in *Konzelman v. Konzelman*,[77] Justice O'Hern expressed his strongly held belief that property settlement agreements terminating alimony in the event of the wife's co-habitation with an unrelated male are contrary to public policy. The Justice wrote:

> The private lives of divorced women are no business of the law. We have enough to do without inquiring into such matters. However, the economic needs of divorced women are the business of the law. . . .
>
> Today, the Court turns back the clock on years of efforts to improve the economic and social status of divorced women. In a long series of cases, we had come to recognize that marriage is both an affair of the heart and a form of an economic partnership. . . . Often the woman has taken the subordinate economic role in the marital partnership, assuming child-rearing or other non-income-generating roles. Thus, as society is presently structured, the divorced woman will often have the greater economic need. That should not mean that a woman's personal life after divorce should be a matter of judicial supervision.
>
> . . . .
>
> When viewed through the Gaussian filter employed by the Court, the anti-cohabitation clause appears as a pleasant piece of bargaining between equals. Although the Court properly declines to presume that all women are passive players in this arena, it fails to afford proper weight to the uneven economic playing field upon which the contest takes place.
>
> . . . .
>
> The Court repeats the reasoning of the Appellate Division that "there are no considerations of public policy which should

---

[76] *Id.* at 77, 79, 82, 713 A.2d at 1030-31, 1033 (O'Hern, J., dissenting) (citations and footnote omitted).

[77] 158 N.J. 185, 729 A.2d 7 (1999).

> prevent competent parties to a divorce from freely agreeing [to an anti-cohabitation clause]. . . ." In other words, a deal is a deal. Not so long ago in the *Baby M.* decision, Chief Justice Wilentz dispatched such reasoning in a single sentence. He wrote: "There are, in a civilized society, some things that money cannot buy." In a civilized society, money cannot buy a woman's right to choose her companions. A husband should not be able to demand an exchange of that freedom as a bargaining tool.[78]

Two recurring themes underlying Justice O'Hern's jurisprudential views were his profound belief in the sanctity of jury verdicts and his deep respect for lawyers and the values of the legal professions. Those themes coalesced when the Justice dissented from the Court's disciplinary disposition in *In re Rigolosi.*[79] Justice O'Hern observed:

> But here we do more than depart from precedent. We disbar an attorney exonerated by a jury of any criminal involvement in the corrupt scheme detailed in *In re Conway.* I recognize that a criminal acquittal does not of itself preclude the imposition of an ethical sanction when the totality of the circumstances plainly manifests an unethical, although not criminal, violation. But when the central issue of ethical failure is so closely intertwined with the jury's finding of innocence on a single, crucial factual issue, respect for the meaning of trial by jury compels me not to impeach the jury's verdict.
>
> . . . .
>
> Hence, discipline is in order—but what discipline? Even respondent's most troubling statement to Lazaro on the way home after the August 19th dinner—"was that handled clean enough, that ah, you know?"—evokes the ethical ambiguity that our cases have sought to dispel. Does that ambiguity demonstrate the total failure of character that is the premise for disbarment in the absence of conviction of serious crime? It is not possible to read the transcript of these proceedings or of the trial without some sense of doubt in reaching the conclusion that respondent must be disbarred. There is no unerring evidence that demonstrates that defendant has an utterly "unsalvageable professional character," or is "beyond the pale of professional rehabilitation." . . .
>
> . . . .

---

[78] *Id.* at 204-06, 729 A.2d 17-18 (quoting *In re* Baby M., 109 N.J. 396, 440, 537 A.2d 1227, 1332 (1988) (citations omitted).

[79] 107 N.J. 192, 526 A.2d 670 (1987).

> As I explained in *Conway*, I have arrived at this judgment by a different route from that of the other members of the Court. But even if I approached this question as does the majority, I would assign a pre-eminent value to the meaning of trial by jury. In cases like this, when the State has candidly acknowledged its use of State officials to engage others in the commission of crime (and I imply no criticism of that regrettably necessary means of law enforcement), it may be better to err on the side of the jury on the crucial question of whether respondent joined in the corrupt scheme.[80]

Although Justice O'Hern did not often write separately in disciplinary matters, his profound respect for lawyers and his steadfast insistence that no discipline be imposed without clear and convincing evidence of misconduct often shaped the Court's conference deliberations in disciplinary matters. To Justice O'Hern, every lawyer's license and livelihood were of great consequence, and he never overlooked the human element in disciplinary cases. Those unique characteristics were never more evident than in his eloquent and moving separate opinion in *In re Valentin*.[81] He wrote:

> We have ordinarily disbarred attorneys who have sold drugs. This case requires special concern.
>
> On July 6, 1969, Frank Valentin was drafted into the United States Army. His service took him to a combat unit in the central highlands of Vietnam. He received the Purple Heart and other commendations for his service. Unfortunately, like so many other veterans of that war, he became addicted to drugs and suffered a profound mental disorder from the loss of close comrades.
>
> He resolved to live a life in emulation of one of his fallen comrades. He returned to his community in the Bronx. He worked full-time at night as a uniformed court officer while putting himself through Seton Hall Law School and raising a family. In 1986, he was admitted to the New York bar and opened up a law practice in the Bronx.
>
> Unfortunately, he could never shed his addiction to heroin. He led a double life. At once an admired member of his community rendering counsel to others and at the same time living a life of drug dependency. He has pled guilty in New York to a third-degree criminal sale of drugs charge involving the sale of a pound of cocaine for $11,500. There are overtones of greater involvement. These are disputed. Were we to premise discipline

---

[80] *Id.* at 211-13, 216, 526 A.2d at 682-83, 684 (citing *In re* Conway, 107 N.J. 168, 526 A.2d 658 (1987)) (citations omitted).

[81] 147 N.J. 499, 688 A.2d 602 (1997).

on disputed facts, we would have to conduct a hearing to establish the predicate for discipline. . . .

On the occasion of respondent's sentencing, the court described him thus:

> He was a court officer for a number of years, highly respected, received commendations, went to law school, became an attorney, and became a successful practitioner, and has appeared before me on many occasions and has done well for his clients. Apparently has a drug problem which goes back many years. He has a psychiatric history which also goes back many years [for] which he has received treatments as a result of the Vietnam War, at different veterans' hospitals. He has a family, a wife, children. He's worked hard all his life and done the good things that were supposed to be done by the people who represent defendants, and people in public office and public life. I can't go into the motives in this matter because I really don't know what the motives were.

Valentin's motives to make the drug sale were clouded by a dispute with an undercover agent over the sale of a car. We have the case on a motion for reciprocal discipline pursuant to Rule 1:20-14(a)(4). Under that Rule we would ordinarily impose the identical action or discipline taken by the other jurisdiction unless "the misconduct established warrants substantially different discipline." Under New York practice, a disbarred attorney may seek reinstatement seven years after the effective date of disbarment. New Jersey disbarment is final.

We have therefore ordinarily not disbarred attorneys unless the attorney's conduct is so "immoral, venal, corrupt or criminal as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession." We thus reasoned in *In re Farr* . . . that when the cause of ethical transgressions seem to be "some mental, emotional, or psychological state or medical condition that is not obvious and . . . could be corrected through treatment," the respondent "need not be disbarred to preserve confidence in the bar or to protect the public." In this case, the circumstances do not unerringly point to a conclusion that Frank Valentin has an utterly "unsalvageable professional character," or is utterly "beyond the pale of professional rehabilitation," the traits that call for disbarment.

Most of us can only learn second-hand how Valentin's service experience in Vietnam could have affected his life. Were we to offer him the hope of redemption through restoration to practice

> upon a showing of a drug-free life for seven years, we might not just salvage a lawyer, we might salvage a life. Is it wrong to suggest that we might just owe him this?[82]

For a Justice retiring from our Court it is perhaps better to avoid looking back. So much effort, contemplation, and soul-searching are invested in the Court's work that it is impossible to recapture the experience by retracing one's steps. For a colleague and friend to do so, however, is an easier and less painful process. Nevertheless, retracing some of Justice O'Hern's steps is, for me, a poignant task because it underscores his humanity, his intellectual strength, and the aggregate impact of his influence on the Court. We shall not soon see his like again.

---

[82] *Id.* 147 N.J. at 504-06, 688 A.2d at 605-06 (quoting *In re* Farr, 115 N.J. 231, 237, 557 A.2d 1373, 1377 (1989)) (citations omitted).