

**ROUND TABLE DISCUSSION:
CHIEF JUSTICE JOSEPH WEINTRAUB
OCTOBER 2, 2018**

Pollock: This roundtable discussion is part of a project of the New Jersey Supreme Court Historical Advisory Board to give the public a better understanding of the New Jersey Judiciary.

I'm Stewart Pollock. I had the honor of serving on the Court from 1979 to 1999. We're at the offices of Riker, Danzig in Morristown. It's October 2, 2018, and with me today is retired Judge Amy Chambers, who's part of the historical project.

Today, our focus is on the second Chief Justice under the 1947 Constitution, Joseph Weintraub, who first served on the Superior Court for a few months in 1956, then as an Associate Justice from 1956 to '57 and from 1957 to 1973 as the Chief Justice. As the second Chief Justice, he followed the first Chief Justice under the 1947 Constitution, Arthur T. Vanderbilt. And I think it's fair to say that New Jersey has been blessed with its Chief Justices and I think it's also fair to say that Chief Justice Vanderbilt, Chief Justice Weintraub were superstars.

Three of the Chief Justices' clerks are here today to share their clerkship experiences and to provide some insight into Chief Justice Weintraub, not only as a jurist, but as a person. All three members of the panel today have had distinguished careers following their clerkships and all served as judges of the Superior Court. Judge James Petrella clerked with Chief Justice Weintraub from 1962 to 1963, Judge Gene Serpentelli clerked from 1963 to '64 and Judge Peter Buchsbaum from 1970 to '71.

Apart from the oral arguments, most of the work that a Supreme Court Justice does is done in the privacy of the chambers. So today we're going to somewhat lift the veil and see what goes on inside the chambers of a Chief Justice. And I think it'd be a good idea if we started with each panelist, indicating how it was that he came to clerk with Chief Justice Weintraub. Let's do it in order of seniority and Jim, we'll start with you.

Petrella: Thank you, Justice. Well, I was at NYU Law School, and he was recruiting. Gene was also available for that year, too. Gene went someplace and I got a call, did I want to interview with the Chief Justice. I went over and he offered me the job, sort of on the spot. So it was as simple as that, actually.

Pollock: And what happened when you met him?

Petrella: Well, I was very impressed. He was, he sort of looked austere at the beginning, but I got to know the real man as well as the Chief Justice. And we had many experiences, which I can tell you a couple, a few, that I remember, if you want me to.

Pollock: Well, why don't we ... I think that's the reason we're here, but why don't hear from Judge Serpentelli and Judge Buchsbaum first, how they came to clerk with Chief Justice Weintraub.

Serpentelli: Mine was not quite that simple. I was at Cornell Law School and came out of a classroom very near the Dean's Office. The Dean came out of his office and said, "I've been looking for you." And he grabbed me and this, by the way, is one of the most embarrassing episodes of my life, but I'll put it on tape anyhow. And he immediately drags me in the room and he says to the gentleman who's sitting there, Joe, this is Gene Serpentelli. And he just walks out. I had never seen Chief Justice Weintraub, never met him in any setting. He was at Cornell, I guess, occasionally but I never saw him then. And he reached out his hand and I reached back and said "hello, Joe." And we talked for about ten minutes and he was very gracious and we talked about, a little bit about me. Then he finally said to me, "so you're interested in a judicial clerkship?" And I was about to say, you know, I really hadn't thought about that, because I hadn't. And then it hit me. And I said to him, "you're not Chief Justice Weintraub, are you?" And he said, "who'd you think I was?" From there on in, for the rest of the interview, I babbled, I'm quite sure, but he was really quite gracious about backing me off my embarrassment and ultimately saying I'd like to have you come to work for me. By the way, what Jim referred to, then, to show the limits on the power of the Chief Justice, I told him that I had a military obligation and that I really had to go into the National Guard for six months at least. And he said, "I'll apply for a deferment for you." And they turned him down. And that you ended up taking that year and I took the next year.

Pollock: That's a pretty good story.

Serpentelli: It wasn't good at the time, Justice.

Buchsbaum: My story's a little odd, because having a Jewish background, my career was totally determined by a Jesuit priest. When I was third-year law student, I got friendly with Dan Degnan, who later became President of Saint Peter's, Dean of Seton Hall and a teacher at Georgetown. And one day Dan says to me, "do you (know) anyone who'd like to clerk for Weintraub or Francis?" Now, at that point in law school, we read Henningsen. (*Henningsen v Bloomfield Motors, Inc.* 32 N.J. 538 (1960)). We read a number of the Chief's opinions and you know, these justices, even though they were state court, were gods as far as we were concerned, even without having met any of them. So I said, yes, I would. So that's how I ended up here. I just was on a panel with Chief Justice Zazzali, so he said if the Jesuits have that much of an influence over you, how come you didn't convert? So I managed to mangle some Latin and I said, see, I wasn't in any position to convert. But I actually interviewed with Justice Francis, because Justice, the Chief was away somewhere and given Dan's relation, Degnan's relationship with Francis, I think he was Francis' first clerk. All I had to do was not babble too much and I avoided babbling too much and he kept me, he hired me and then it turns out that his clerk, John Degnan, decided to stay a second year, so I ended up with the Chief. And I finally met the Chief after I was hired by him. And I remember walking out a very cordial conversation and Joe Hayden and Stan said, that was a



longer conversation than we usually have with him; this may not happen again in your clerkship. So I'll deal with that later.

Pollock: So your trade from Justice Francis to Chief Justice Weintraub. That was a straight player deal.

Buchsbaum: I didn't even have to throw in any sneakers, no cash, nothing.

Pollock: Jim, let's get back to your point if we may. What was it like to work with him?

Petrella: Well, I found him to be one of the most insightful people in the law that I ever met. He was very quick, very sharp. We had two clerks at the time; myself and Arnold Mitelka. And we had divided assignments between the two of us. I was the so-called assignment clerk. I would assign the other clerks all the memos. So I would get some grief sometimes from some of them and so forth.

Pollock: Would you assign the memos to the clerks of the other Justices as well?

Petrella: Yes, everybody. All, eight of us at the time, because there were at that point, the Chief Justice had two clerks, each other justice had only one. Not like today, when everybody has multiple clerks. I'm not sure of the exact number, but I think the Chief may have five or six, depending on how you count and the Associate Justices, at least three, I suppose. I'm not sure how it runs today. And Arnold preferred the library duty any heck, because he was the bookworm in the group. And we would sit down from time to time with him on various cases and we would be in the library. Sometimes he would come out. Usually the other Justice would come out, because at that point we were on the Mutual, in the Mutual Benefit Life Building.

Pollock: Then there was Chief, and there was Justice Francis and Justice Jacobs?

Petrella: Jacobs and Justice Schettino; there were four, including the Chief. So there were four. So I ... when everybody says the Chief, he's the Chief that I think of, because probably my contact with him and my experiences with him. And I found that we tried to anticipate everything he was going to ask, but we never got it right completely. Because he always would cut right to the heart of the case and he believed in writing short opinions, that attorneys would understand and that would make good law. He was not interested in writing really lengthy opinions. Some of our memos would be extreme. I can remember one case in which he, he ended up writing the opinion that I assigned to a clerk who wrote a 144-page memo, which was fantastic at that time, because we didn't have computers in those days.

Pollock: Who, who did the typing?

Petrella: The secretaries did. The Chief had one secretary who was, as far as I'm concerned, phenomenal. It was Dot Ziegler. She had been with him a long time.

Somehow she had worked or was related to Judge Baccus, way back, way back when and she was experienced. She is in the photograph that I've made available and somebody else has made available, I think Peter has made available. And she is the only woman in the picture, because at that point, of course, it was more men than women going to law school, although I did go to law school at NYU with a woman who became the Chief Judge of the New York of Appeals.

Pollock: Judith Kaye.

Petrella: Judith Kaye, yes. And we were great friends in those days. She got a note at one point, she said, I finally found out where you were hiding. But that was it. But he ... we had a conversation about the McNaughton Rule at one point, because he had written an article, which we discovered about the McNaughton Rule. Is that ... have I got the right one? I think that's the state of mind for the death penalty? And he was explaining to us how he, as a lawyer, was fighting to change the rule. He didn't agree with it, because you know, it was depending on this case. But he said once he became a judge, he realized that that was, at that point, the right and the best rule and he kept with it. So he did not ...

Pollock: I think he felt that the issue of insanity related to sentencing, more than to culpability.

Petrella: I think that's right, yes. But in any event, he would like to talk with the clerks from time to time on things of that nature. I think one of the more interesting things is, we had a case that involved a woman who killed her husband. It was a provocation defense raised from, I think for the first time. It was *State v. Adele Guido* [*State v. Guido*, 40 N.J. 191, 191 A.2d 45 (1963)], if I have the name correctly. And the question is whether that was a good defense or not. And he turns and he said, looks at me, and he says, Jim, He says, you know, I've just been married a couple of years. I think he got married in 1960. He said, marriage changed my life, he said. I now have a red car and a number 1 license plate. Never had that before. And so I guess he, he got into that. So he said, so I'm newly married, you're single and here we're trying to discuss what's in the marital situation here and what's in the mind of the wife, who reached the stage that she had felt so angry and compelled and that she had to kill her husband. So that was his insight into it. We sort of got a laugh out of that. And we had similar cases. We also, on a personal level, the clerks in our years, we called ourselves the committee of eight. We met, all the clerks at a Supreme Court, every year since then, up until maybe four or five years ago when things started to go, just before Frank Lario died, I think was one of them. He clerked for Justice Haneman at the time. And we got the idea that we liked getting together, so during the year that I clerked, we took the Justices from time to time to the Roost Restaurant for lunch, that we're in Hackensack ... slipped my mind. In Newark. The four justices; Chief Justice, Justice Jacobs, Justice Francis, Justice Schettino. And we went to lunch, I would say three or four times during the year. And they frankly loved it. They really enjoyed it. And we got to speak very openly and you know, among, as a family, so to speak, off-the-record type of thing. And we became, very more cohesive, I think as a result of that. And the Chief Justice at one

point, he threw a party for all of his former clerks at his country club. And I forget the name, but it was out in the Oranges, as I recall. The name escapes me at this point. And we have a picture of it, it was showing 29 out of his 31 clerks. I believe he had 31 clerks in total; 29 were in that picture by my count, plus his secretary, Dorothy Ziegler, who could do more work in more time than any secretary I've known, with the possible exception of one when I was at Pitney, who could type about 140 words a minute. So it was interesting. I remember the times we got together at that meeting and others, the clerks would all like to listen, while we talked about the various cases that he wanted to, you know, talk about and he would do that. And it was all, of course, within the room and it was very enjoyable.

Pollock: Great. Gene, how about you?

Serpentelli: I think Jim has captured so much of it. I had frequently thought about the fact that he was so awesome, so impressive, so brilliant. His ability to write and capture what would take me pages, in a sentence or two. By the time I was finished with the clerkship, I was beginning to wonder about my own capacity, really whether I was as competent as I thought I was coming out of law school. As an example, his ability to ... to back up a minute. His normal routine with us at least, in the morning was, he would simply race through the secretarial room where the clerks sat and there was two clerks at that point, when I was there as well. And Dottie sat. Say good morning. Then at 12:00, he would come out and meet Justice Francis or somebody for lunch, go back in his room and many days, he was just simply buried in his work. He was super-efficient. One day I went into him and I think I disturbed him, but I was very upset about a ... I was doing a bench memo for the Court and I had Jim's responsibility, too, by the way, so I shared that.

Buchsbaum: So did I. It must have been something on how we got picked.

Serpentelli: And this trial judge had written an opinion. Here I am, you know, brand new lawyer. And I thought it was downright stupid. So I said to him, Chief. And his head was down in the book. I said, can I interrupt you for a second? And he had the case to write and I had written the memo, whatever the name of the case was. I said, am I wrong, but how could a trial judge reach such a stupid result? And he just simply looked up and said, Gene, judges come in all sizes. And then he put his head down. And then he picked his head up again and considering my dimensions, he said, and I'm not talking about height. [Laughter] And you know what? You know, I became the Assignment Judge for 22 years and the longest serving Assignment Judge in the history of the Judiciary, which says something about my sanity. But I used that term so many times when lawyers came to me and were complaining about one of the judges in our vicinage. I also remember an instance in which I had written a bench memo on another case and a tremendous amount of law in it. And he called me and he said, I want you to find a case that says, in all of those cases, exactly this, expresses it this way. And so, I said to him, Chief, there're a lot of cases, I'll pull them, you know. And I had Harris Silver working with me at the time and we pulled off 50, 60 cases from the shelf and had them all piled up. And after 20 minutes he came out and he said, you got it? And I

said, no. And he said, bring the books into me. And Harris and I lugged them all into his office, put them on the right side of his desk and in about, I don't know, about 45 minutes later, he buzzes me and he said, you can take them away now; here it is. And a good half of the books were on the other side of the desk now and he had [throat clearing noise by another] the third one. And all of this was in evidence of his efficiency, his brilliance, his capacity to get to the heart of it, as Jim said. Let me see if I get this right. He basically had read my bench memo and he was beginning to draft the opinion. And he said, on this issue, I want you to give me a more expansive memo, but not more than three pages. And my bench memo was longer than that. And so I worked at it and worked at it, to get it down, you know, to two-and-a-half pages or whatever. And then when he addressed that issue in the opinion, it was in two sentences, which encompassed everything that was in my memo, plus. So that, those were sort of things that made me begin to wonder, gee, am I going to be a good lawyer? He was simply brilliant.

Pollock: Peter?

Buchsbaum: Well, research was a little different then. I had to do one issue on service of an absent defendant with insurance. I had to go through the general digest, all 40 or 50 volumes to find the cases. Fortunately, he did not come after me and say, give me the cases in ten minutes, because it took a little longer than that. But things were a little different then. He was very intense. He would come into chambers, a mile a minute and sometimes I would say, good morning, Chief. And he would like pull to a full stop, turn around and say good morning. And sometimes that was our interaction. The most famous case he had when I was there was the State versus Shack case [*State v. Shack*, 58 N.J. 297, 277 A.2d 369 (1971)], involving property rights serve human values, they recognized to that end and it limited by it. Well, this one day he comes in, he says, [speaks Latin]. Don't they teach you fellows any Latin anymore in law school? And of course, my co-clerk, Bob Westright and I are like, what is he talking about? Not what they don't teach us any Latin. And that's the phrase, by the way, I just mangled, with Justice Zazzali a few days ago. But that case, I remember writing to one of my law profs, property rights serve human values, I wrote this prof at Harvard. You never taught me that. And it was a milestone for me, because I've used that as a ... in my career. I just did an article on climate change, property rights serve human values. I mean, it made a tremendous difference and made a tremendous difference to the farm workers, too.

Pollock: I think it's in the, Cardozo used it in the nature of the judicial process.

Buchsbaum: It was an amazing, it was an amazing opinion. Jim or Gene, I think, mentioned the, I think it was Jim, mentioned the concluding dinner we had with him, after we retired. One thing that came out with this dinner. Now the Chief was an extreme conservative on the criminal law. He hated *Mapp versus Ohio* [*Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961)], he had no particular use for *Miranda* [*Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)]. His view was that the criminal should not go free, because the constable has blundered,

which I think comes from a Brandeis, Cordozo opinion from the '30s. And he thought the idea of importing fairness into constitutional law, I remember him once pointing to *CJS*. He said, is all this going to be constitutional law? So he had a very strong reputation as a liberal in a case like *Shack* and others on similar law, but very conservative when it came to the criminal law. And there's a wonderful article by Justice O'Hern from 1994 as part of the Weintraub lecture series. I think I sent it out. It's worth, it's worth reading as to how he and Brennan, who had such similar backgrounds, became so different on the view of the criminal law.

Pollock: Yes, they both had grown up in Newark at the same time.

Buchsbaum: And they were both not rich, you know, they had ... any rate, at this last dinner he said and we sort of knew it, he had been asked to replace Archibald Cox as Watergate prosecutor, because of his ... you know, he was a Democrat. He had a conservative criminal law reputation and obviously a reputation for brilliance. And he turned it down and that's how Jaworski got the job. Apparently Richardson called him one day and he thought it over and he said no. And his comment was, my wife said you have a chance for a place in history. So he asked Rhoda, who prosecuted Teapot Dome? And of course, she didn't know. What I think the Chief missed was the '70s are different than the '20s and he would have been famous. A couple of other vignettes. When I was sworn into the Bar, he came out and helped us all get sworn in. He turned, then he turned around and said, we're busy now. My parents were frightened. You know, he came up, all five, six of them, very determined. Then [whoosh], he was gone. So my parents said that was really something. Similar to Jim and Gene, he was always two, three, two or three steps ahead of me. You know, I worked at once for Ralph Nader. There are very few people who can do that and he was absolutely brilliant. I mean, he was stunningly brilliant. You try to raise an issue with him and he'd already have the whole issue resolved. It was, it was, it was ... for a 25-year old, just out of law school, it was overwhelming, working for him.

Serpentelli: On a conservative issue, I remember, you just jogged my mind. We had a case where a fellow was in jail in New York. He requested a speedy trial in New Jersey and Union County Prosecutor put it in a drawer somewhere and three years later found it. And they brought him, they brought him for trial and the trial just didn't know and the Appellate Division said no. And the case got to the Supreme Court, don't ask me how it got there or why. And the Chief had it. So he told me he was going to write the opinion. I said, well, that's going to be an easy one. And he said, why is that? And I said, well, you can't, you can't reverse the Appellate Division on it. And he first said to me, Gene, today I'm the Chief Justice. But he then said, this guy's guilty as sin; we're not going to let him get away. And I thought, is that how it works? Now I'm sure he found a good reason for it, but they reversed and the guy got tried.

Buchsbaum: I remember once we asked him, we had the audacity to ask him what's his authority for a certain proposition? He pointed down to the draft and said, that's my

authority. But that was unusual. He was usually very careful about making sure he addressed every point and cited, cited case law.

Petrella: And I think at the end, I think he retired probably a few years early, as I recall. And he was working on a project about medical malpractice, because some of the members of the bar and insurance companies, all were very concerned about the malpractice costs and so forth. And he asked me to do some work on it and send him all the material that I, you know, could find, to put together, because I had some. And I did that. And so, he was then, went to Florida and my recollection is, and I may off on this, that he met untimely death after surgery for a hernia.

Serpentelli: Well, I thought it was ...

Petrella: Well, it might have been something else.

Serpentelli: I think he had a heart attack while he was playing golf.

Petrella: Well, he'd like that, too.

Serpentelli: And they didn't, didn't catch it very quickly. But in any event.

Petrella: But it's a shame, because he did leave this world a little faster than he should have. He had some funny remarks that he would make about cases, that he had some disagreement with, but one was the Sports Authority case. He was, he was not too happy with that. I think he was the fourth ... he made some remark, which I won't repeat about ping-pong reference in the trial court decision. By a justice, who he was very friendly and close with, later became a justice, I should add. And I think it was a, he was in the minority. Wasn't that four to three, Peter?

Buchsbaum: I don't know. There was one case involving you, the Sports Authority or one of the other authorities in the Meadowlands. And the story he gave was, the Court was in the middle of writing an opinion, that was going to throw it out, because the tax scheme was improper. And he got a call and he said, whoever called him, the Governor's office, he said, I can't tell you what we're going to do, but if you do such-and-such, it'll come out better for you.

Serpentelli: On a personal thing, he was in control of everything and this is why it sort of shook me. And as, you know, a longtime bachelor, Mrs. Weintraub walked in one day and she said to him, Joe, your tie is falling. And he ... so there was somebody who could tell him what to do.

Pollock: What was his relationship like with the other justices? That was an extraordinary group. When you look at Justice Jacobs, Justice Francis, Justice Schettino.

Petrella: I think he had a very good relationship with all of the justices. He had a certain rapport with them. I never saw him get angry or say anything he disagreed with. You know, he wrote very few dissents in total. I think he wrote like 232 majority signed opinions. He did a lot of others beside, a lot of disciplinary ones that don't have his name. He might have had, oh, I think I probably have the number someplace even, but I think he had like 14 dissents, but I'm not positive of that. And maybe just a couple of concurring. But he was very friendly with Justice Francis, I think.

Serpentelli: Yes, I think particularly.

Petrella: Justice Jacobs also, but Justice Jacobs was also a very brilliant justice. And he got along well with all of them, as far as I could see. I never saw anything that indicated the contrary. And he did run the AOC with him and Ed McConnell and nothing like what's today. He had, I think it was Miller, Phil Miller or something like that who did the municipal? Very few staff in the AOC and everything ran smoothly. He ruled very strongly when he ruled. Ed McConnell got a lot of flack for following orders, he did the job. And he always said ... one day I got a call from somebody who identified himself as judge so-and-so. And I'm saying, I don't think this is really a judge, because his instructions to us were, he will always speak to any judge that calls. And so I said to him, Chief, I got a call from so-and-so, who says he's a judge. Oh, he says. I know him, he's not a judge. He used to be a municipal court judge, many, many years ago, but I'll take the call.

Buchsbaum: That reminds you of one day he came out and said, get me the Governor. And I completely ... I ran, running into Dottie, could you get him the Governor, please? I have no idea how to do this. I don't know what the issue was, but it was over my head at that point.

Pollock: Well, he had an extremely close relationship with Meyner.

Petrella: Yes, very close. And also with Brendan Byrne, who was, I believe, one of his clerks at the McGlynn firm.

Pollock: Brendan Revered Joe Weintraub.

Serpentelli: But he tells a story, Brendan Byrne had told this story, I heard a couple times, that he argued a case before him. And the Chief was wrapping him around his finger. And Brendan Byrne, out of exasperation says, but Chief, you taught me everything I know. And Chief said, yes, but I didn't teach you everything I know.

[Laughter]

Serpentelli: Which is true; he didn't teach anybody everything he knew. It was too much for us.

Petrella: Well, we could never absorb it.

Serpentelli: Exactly.

Buchsbaum: I don't know if it's appropriate. I could mention my last discussion with him. I, unlike Gene, I managed to last through the year, subject to a reserve duty. For some reason, they didn't call me up. I was in the reserves, attending the meetings, but they didn't call me up until July, so I got basically done with it. Although I had two weeks where I was the best paid private in the Army. And he calls me into his chambers and we're having a chat. He's asking me this, about this case or that case. And then I'm, of course, coming fumbling up with suggestions and he's batting them aside. And finally he said, it's been good having you as a clerk. He was not prone to making that kind of comment. So obviously many years later, I still treasure it.

Pollock: You should.

Buchsbaum: I do, you know.

Petrella: I have to say that the military service didn't interfere with me, because I went into the military, I think before, before I went to law school.

Pollock: I had heard that somewhere that he handled all emergent motions?

Buchsbaum: Yeah.

Pollock: Because that's a different practice from the one we have, had on the Court in which I served.

Petrella: Fewer lawyers in those days. When I, I think I was admitted, I remember, figured it had to be 12 or 18,000 lawyers in the state.

Buchsbaum: We all had fully signed bar certificates.

Petrella: Yeah, I have a picture of the entire Court, signed. We all went down to Trenton to get, when we were sworn in, he called up ... I was the first clerk, first lawyer, new lawyer, to be called up to be given my certificate and so on, because they did it individually in those days. And so everything was different, but it was a smaller world. It was a more professional world, I have to say, too.

Pollock: I remember when I was sworn in, we used ... you shook hands with the, each Justice in the old courtroom. Do they still do that when, when you went through?

Buchsbaum: No, I don't recall that.

Petrella: I think I was in the War Memorial when this happened, because there were more ...

Serpentelli: I think that's right.

Petrella: And it's hard to believe. I can't believe how many years I've been admitted. It's got to be, it's got to be 55 to 60, somewhere.

Pollock: Now did he, how did he handle petitions for certification?

Petrella: He put them in his briefcase and he would take them home.

Buchsbaum: We had no role, absolutely none.

Petrella: Clerks didn't touch him; we didn't at all.

Pollock: I wonder how it worked with the other justices?

Buchsbaum: I think their mores were, they decided them. I would be surprised if any ... it's possible Schettino let his clerk look at them, but I don't think that we ...

Petrella: No, I know. No, that was Rich Rebeck in my year and rich did not look at them.

Buchsbaum: So then no one. I mean, everybody wrote their own opinion and they all decided on their own cert petitions. Going back to your inquiry about the emergent, Chief loved it. I mean, an attorney, if I were an attorney at that point, I would have been scared out of my mind, but it gave him a chance to interact with live lawyers in a give-and-take setting, rather than the formality of the Supreme Court Courtroom.

Pollock: But he actually handled them all?

Buchsbaum: If he was around, yeah.

Petrella: He did the yeoman's work on disciplinary matters.

Serpentelli: Yes, that, yes, I do remember that. I don't remember that he handled all of his certifications, but it may be I just wasn't ...

Buchsbaum: No, no, emergent.

Serpentelli: Yeah, emergent certifications. I just don't remember that.

Pollock: Because on the, on the Court on which I served, and I think it's still true now, the petitions are divided up among three teams, consisting of two justices and then the Chief sits in on the conference when they're discussed, but the Chief does not preliminary review them, except in an exceptional case.

Serpentelli: Once again, it's probably a volume issue somewhat. I mean, things have changed dramatically.

Pollock: And the same thing is true on emergent matters, that they'll, they're allocated, each one of us was responsible for one or more counties.

Buchsbaum: There were far fewer petitions and emergent matters.

Pollock: Did you ever have chances to sit down and talk with him about some of the issues in which he, I know he had very strong feelings, criminal law. And he used to talk about how the first right of a citizen is the right to be free from crime, in his home, in his car and so forth. Or separation ... I know he had very strong feelings about separation of powers and the role of the Legislature, the role of the Judiciary. Did that come out at all in your clerkships?

Petrella: We discussed, the same thing that gene referred to, his thoughts about the various federal cases that he disagreed with and his belief that there should be some result for a bad act committed by a perpetrator.

Buchsbaum: When he decided the concurrent, *In Re: E., the Adoption of a Child [In re Adoption of E., 59 N.J. 36, 279 A.2d 785 (1971)]*, which was the other very moving opinion. The Supreme Court as a whole, decided that atheism was not a disqualifying factor in an adoption. He said it should be no factor at all. And his opinion in, *In Re: E.* is just a marvel. And he said something about time has interred many fighting faiths I know of, lost a few of mine, so I had the guts at that point to ask him, so what about the first right of the individual? And he said, that one's still kicking around.

Pollock: Well, what was the biggest lesson that you learned from him?

Serpentelli: I just admired his writing and the more I read, the more I just thought this, the ability to do this is just perhaps beyond me, but as a trial judge, I wrote a lot of opinions. And I remember I wrote an opinion, first opinion on the establishing of fair share housing formula for every municipality in the State. And when it got up to the 155 pages, I thought, what would he think? I see how he described his writing style, you know, he called it "bouncy", but it was, it was almost abrupt, his sentence structures, but they were, they captured everything they had to, in a few words. So I think I remember that most in terms what it taught me and what it made me strive for.

Petrella: Well, I concur on that and also, I took away that the important thing was to always be prepared, always have full candor with the Court, never mislead the Court and to do your homework, so that you could at least be aware of which way the Court was going and what you should be anticipating.

Buchsbaum: I think for me it was the sense of integrity that he projected. He was such an honest ... honest doesn't even begin to describe what he was. But he was such an upright, righteous justice. And if anything has stayed with me over the years, it's how he

approached things from the standpoint of what's, what's right and true and just. And his steadfast inherence to that, that principle, to that idea.

Serpentelli: If, if you want an example of that, when I was near the end of the term, he asked me where I was going to go practice. And I told him I was going down to Ocean County, Pleasant Beach. And he said to me, Gene, you're going to starve to death down there. And I said, Chief, you know, I worked for the firm for two summers, I really like the men, they're highly professional and I like the way they balance their life between their profession and their family. And he said to me, where do you live? And I said, well, right now I'm living temporarily in Whippany. So he said, there's a firm in Morristown. You better go interview with them. I didn't. And I end up in Ocean County and about six months later he came down to cut a ribbon on the courthouse addition. And I decided to go down and see him and so I jumped in my 11-year old Plymouth and it wouldn't start. I go back in and the senior partner in our firm had a car fetish. He had a new car every year. And so, he said take my car. So I go down there and as you mentioned, Jim, he had a red and white Buick Riviera. And as I'm pulling in the lot, I see his car and now I'm driving this 1964 Oldsmobile Toronado, which is about as long as this room. And he catches my eye in the car and gets out. And he said, my God, he said. Six months. So I said, oh, you like that? I said, that's my wife's car. And he said, and what are you driving? And I said, not Maserati or Mercedes, I can't remember exactly, but some expensive car. And he was, for a moment lost for words, you know, because he wanted to say, how'd you get that? And so, and I thought I'd play him along a little further. So we walked over to the courthouse together and I'm sort of parrying his questions, while he's trying to get me to talk about that, I'm telling him, how's Dottie and so forth. And sure enough, we got to the courthouse without him being able to ask me that question. And I'm sure he was really concerned about how did I suddenly become, you know, affluent enough to do that. The next morning at 8:00 o'clock, I'm in the office and the phone rings and it's Dottie. She says, Gene, the Chief wants to talk to you. He seems upset about something. I thought, well, I'm going to play with a little more. I shouldn't have, but that was I. And so he gets on, he said, Gene, what are you doing? And I said, well, I always get in the office early, I try to ... and he cut me off. He said, cut that out. He said, where did you get that money? [Laughter] So I figured I'd try a little bit longer and I said, you know, Chief, have you been reading about the fact that Mafia's been burying bodies out in Jackson Township? And he said, yeah, I've heard of that. And I said, you know, they're really good clients.

Petrella: Oh, my God.

Serpentelli: And he said, you didn't? And I said, no, I didn't. That would have destroyed him. I mean, that one of his clerks would do something like that. He was extraordinarily ethical and he held the profession to a standard that it should be held and some days we have a tough time maintaining.

Buchsbaum: I guess the other thing that occurs to me is he made sure the points raised by the parties were covered, so he would look at the brief and go back over it, that I'd respond, did my opinion cover that point or does it some way address in the opinions.

So he made sure he was doing justice to all the, all the points that the parties had raised. And that stuck with me, too.

Pollock: What, what comes through from hearing you today and from reading his opinions, is that he had complete confidence in his own judgement and with just cause.

Serpentelli: Totally. That's why the tie-up is so that I mentioned to you, is the only time I saw anybody else really tell him what to do. He knew exactly what needed to be done.

Pollock: Did you ever talk, talk to him about how quickly he made up his mind on a case or at what point he made, he made the...

Petrella: I never had any, because we knew that he would come to the conclusion, we all accepted it.

Serpentelli: Not precisely your question, but I once asked him how do you decide cases? And where do you start? And interesting answer was, I start with my stomach. And he says, you know, if you've got a good legal mind and you're a reasonable person, you're probably going to initially say, you know, this is the way the case should be decided. And chances are, you're going to find that the law supports you, because the law should reflect, you know, a reasonable result. That's as far as I ever got with him.

Buchsbaum: We had a discussion of *Shack* [*State v. Shack*, 58 N.J. 297, 277 A.2d 369 (1971)] and he did say to us clerks, they're not employees, the farm workers, they're not tenants. They're something different and we can't put them in a, in an artificial category. And that was as much as we got into him, in with him about, you know, his thought process, in deciding that particular case and really most of the others.

Serpentelli: I guess that was, that was the second lesson he taught me, because that's the way I judged. And I used to tell my law clerks that and in terms of analyzing how successful you're going to be, you really think about it. You're going to sell an argument like that, does it feel right? Does it, does your stomach tell you that makes sense? That's what apparently formed initially, his approach. Now maybe as he went further to think, you know, as he got into the case, maybe the stomach felt differently.

Petrella: Commonsense is what he had and actually, I think I carried with me when I went from wherever I went, the Law Division, the Chancery Division to the Appellate Division, I tried to, you know, write the same way that he was writing, short opinions, not really long ones and ones that people could understand. And doing what I thought was the commonsense thing to do, in light of the law, of course.

Pollock: I remember talking with Justice Jacobs once, who, about how he went about deciding a case. And his point was somewhat similar was, that was if the law doesn't permit you to reach a just and reasonable result, then change the law.

Buchsbaum: Well, I read him a couple times, the "nature of the judicial process" by Cardozo and his fourth method of social policy, I think kind of describes what the Supreme Court was doing then, what's the, you know, within reason, what's the right result from a social policy standpoint? Like, like Holmes, he said a lot of judges were hiding their reasoning with a lot of elaborate syllogisms. And he said no, that's not the way you should judge. The way you should judge is you look at the facts of the case and there are tough cases out there and in those tough cases, you ought to weigh the interests at stake and that's what Joseph Weintraub did. It's certainly what Francis and Justice Francis and Proctor and Jacobs all did. It was characteristic of the Court and that's why the Court as a whole is so great.

Pollock: Well, is there anything else you would, any of you would like to add? This is your opportunity?

Petrella: I think in sum we've encapsulated what we know and what we've gleaned from our time, short as it was, unfortunately, with Joseph Weintraub.

Pollock: Well, thank you. This has been enlightening and I hope somebody else finds it as interesting as I have.

Buchsbaum: Thank you, Justice.

Petrella: Thank you.