

In The Matter Of:

In Re: William J. Brennan Jr. Award

Transcript of Proceedings
June 21, 2011

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<p>L*4949*L*</p> <p>Page 1</p> <p>1 2 3 4 THE ASSOCIATION OF THE FEDERAL BAR OF NEW JERSEY 5 6 7 Commemorating 8 THE WILLIAM J. BRENNAN, JR. AWARD 9 10 11 12 13 14 Mayfair Farms 15 West Orange, New Jersey June 21, 2011 16 17 18 19 20 Reported by: Howard A. Rappaport, C.S.R. 21 22 23 24 25</p>	<p>Page 3</p> <p>1 Newark, Andrew Gimigliano. 2 Congratulations, Andrew. 3 (Applause.) 4 MR. LACEY: And from Seton Hall 5 University School of Law, Mr. Mark Keddis. 6 Congratulations to you, Mark. 7 (Applause.) 8 MR. LACEY: Before I hand the reins over 9 to our incoming president, I just want to say thank 10 you to a number of folks. 11 First to the judges of this District and 12 the magistrate judges on behalf of the organization, 13 and on behalf of myself personally, I just want to 14 thank you for the support that you all have given to 15 our organization and to me. It has been a terrific 16 almost two years. 17 One of the phone calls I made in the 18 spring exemplifies the support that I have gotten. 19 It happened to be to one of our honorees. And one of 20 our programs was coming up, and she got on the phone 21 quickly and said, what is my assignment? 22 It is that type of response that makes 23 it easy to hold this position and to get done many of 24 the things that we have gotten done over the last two 25 years. So, again, thank you very much.</p>
<p>Page 2</p> <p>1 MR. LACEY: Thank you all, folks. 2 I want to welcome all of you to the 3 35th Annual Justice William J. Brennan Award Dinner. 4 First of all, I want to congratulate 5 our honorees tonight and their families and loved 6 ones who are here with them tonight, Judge Hayden and 7 Tom Curtin. 8 (Applause.) 9 MR. LACEY: You both honor us by letting 10 us honor you. We thank you for all of the work that 11 you have done on behalf of the Federal Bar over these 12 many years. 13 I also want to congratulate our incoming 14 president, Lisa Rodriguez. 15 (Applause.) 16 MR. LACEY: And before we get started 17 with the main part of the program, I want to 18 congratulate three honorees for being awarded the 19 John J. Barry Memorial Scholarship. 20 First, from Rutgers School of Law 21 Camden, Courtney Raphael. 22 Are you here, Courtney? Would you 23 please stand? 24 (Applause.) 25 MR. LACEY: From Rutgers School of Law</p>	<p>Page 4</p> <p>1 Chief Judge Brown, I especially want to 2 thank you for the support you've given to the 3 organization and to me personally. Thank you all. 4 (Applause.) 5 MR. LACEY: I have heard over many, many 6 years, as people stood here and thanked Ginny Whipple 7 for the assistance she has given them 8 during the course of our tenure. I never knew what 9 that meant until I had that experience. It has been 10 a terrific relationship. As the two of us 11 were laughing, we still like each other at the end of 12 the two years. 13 She just makes it a heck of a lot easier 14 getting things done that have to be done, including 15 last minute things, and doing it with grace and 16 dignity. 17 So, again, Ginny, I want to thank you. 18 (Applause.) 19 MR. LACEY: Lastly, I want to thank Lisa 20 for her support during this last two years, and I 21 want to congratulate you. So at this time I call 22 upon Lisa Rodriguez to please come forward to take 23 the oath of office, and I call upon the Honorable 24 Joseph H. Rodriguez to come forward to administer the 25 oath.</p>

<p style="text-align: right;">Page 5</p> <p>1 (Applause.)</p> <p>2 MS. RODRIGUEZ: John, one second before</p> <p>3 you go.</p> <p>4 On behalf of myself and the</p> <p>5 organization, I would like to present you with this</p> <p>6 resolution and thank you for your almost two years of</p> <p>7 stalwart leadership of the Association. I have some</p> <p>8 big shoes to fill, and I mean that figuratively.</p> <p>9 (Applause.)</p> <p>10 JUDGE RODRIGUEZ: Last year there was a</p> <p>11 father and son, and this year there is a father and</p> <p>12 daughter. It is an extreme privilege for me to have</p> <p>13 this honor in swearing in my daughter to this very</p> <p>14 important Association.</p> <p>15 I do want to take this opportunity to</p> <p>16 personally congratulate Katherine Hayden, we have</p> <p>17 been friends for a long time, and certainly deserving</p> <p>18 of this award.</p> <p>19 Tonight when I came in, Tom Curtin spoke</p> <p>20 to me and said: This is the time for you to put at</p> <p>21 rest the rumors that have been going around about my</p> <p>22 retirement.</p> <p>23 I said: I'm not going to retire.</p> <p>24 He said: The rumor is, according to our</p> <p>25 discussion, that we were going to start a law firm.</p>	<p style="text-align: right;">Page 7</p> <p>1 husband, Brian Jacobs, who is the balance of my life,</p> <p>2 my wonderful supportive parents, who, those of you</p> <p>3 who know them that they are not only wonderfully</p> <p>4 supportive parents but wonderfully supportive</p> <p>5 grandparents who help make my life easy.</p> <p>6 My partner, who gave up his passport and</p> <p>7 came over the Ben Franklin Bridge to come to</p> <p>8 New Jersey, and my friend and colleague, Nicole</p> <p>9 Acchione who also made the trek from South Jersey.</p> <p>10 I also want to welcome Carl and Eleanor</p> <p>11 Poplar who have been long-term friends.</p> <p>12 Carl, as I've always told you, you are</p> <p>13 like an uncle to me.</p> <p>14 It's an honor to stand here as the</p> <p>15 Association's president, and it is especially an</p> <p>16 honor to have my swearing in occur at the 35th dinner</p> <p>17 commemorating William J. Brennan, Jr.</p> <p>18 I'm presently in the third week of a</p> <p>19 trial before Judge Irenas with co-counsel from Missouri.</p> <p>20 Yesterday, at a late lunch, because we</p> <p>21 don't get lunch in cases before Judge Irenas, I</p> <p>22 mentioned to them that I would be attending our</p> <p>23 Federal Bar Association's annual dinner held in</p> <p>24 recognition and honor of Justice Brennan.</p> <p>25 They lamented that Missouri could not</p>
<p style="text-align: right;">Page 6</p> <p>1 I said: But I want to stay on the bench</p> <p>2 and continue to confuse the Third Circuit.</p> <p>3 But we did have the name and I did give</p> <p>4 it some thought. It was going to be The Curtin</p> <p>5 Rods. The name might have already been taken.</p> <p>6 It is a privilege for me, and I am</p> <p>7 honored in the swearing in of my daughter.</p> <p>8 Raise your right hand.</p> <p>9 Do you solemnly swear that you will</p> <p>10 support the Constitution of the United States and the</p> <p>11 goals and missions of the Association of the Federal</p> <p>12 Bar of New Jersey, and you will faithfully,</p> <p>13 impartially and justly perform all the duties of the</p> <p>14 office according to the best of your ability?</p> <p>15 MS. RODRIGUEZ: I do.</p> <p>16 (Applause.)</p> <p>17 MS. RODRIGUEZ: Good evening, everyone.</p> <p>18 Thank you, Dad.</p> <p>19 You really don't need to be the</p> <p>20 offspring of a federal judge to make it to president</p> <p>21 of this organization.</p> <p>22 I want to welcome you all practitioners,</p> <p>23 magistrate judges, judges, thank you for coming</p> <p>24 tonight.</p> <p>25 I also want to particularly welcome my</p>	<p style="text-align: right;">Page 8</p> <p>1 lay claim to a U.S. Supreme Court Justice.</p> <p>2 I went home to check this out and found</p> <p>3 out that they were in fact wrong.</p> <p>4 Charles Evans Whitaker, though born in</p> <p>5 Kansas, moved to Missouri and practiced law there for</p> <p>6 30 years before being appointed to the U.S. District</p> <p>7 Court for the Western District of Missouri, and after</p> <p>8 that the Eighth Circuit Court of Appeals.</p> <p>9 He was then appointed by President</p> <p>10 Eisenhower to the Supreme Court in 1957, one year</p> <p>11 after Justice Brennan's appointment, also by</p> <p>12 President Eisenhower.</p> <p>13 On that Court, Justice Whitaker was</p> <p>14 known as a great facilitating judge who spoke</p> <p>15 generally up in the air and ultimately went to the</p> <p>16 group of justices who made the last, not best</p> <p>17 argument to him.</p> <p>18 He retired from the Supreme Court in</p> <p>19 1962 and became a resolute critic, both of the Warren</p> <p>20 court and the civil rights movement.</p> <p>21 It became instantly clear to me why my</p> <p>22 friends from Missouri were not claiming Justice</p> <p>23 Whitaker as their favorite son.</p> <p>24 Justice William J. Brennan, Jr.,</p> <p>25 however, stands in stark contrast to Justice</p>

<p style="text-align: right;">Page 9</p> <p>1 Whitaker. He distinguished himself as a champion of 2 individual rights and believed in a living 3 constitution recognizing the law cannot stand aside 4 from the social changes around it. 5 We are truly fortunate to claim Justice 6 Brennan as our own, and it is in the spirit of 7 Justice Brennan and his ideals that we give the 8 Brennan Award in his name each year. 9 This year's honorees exemplify that 10 wonderful tradition established by Justice Brennan. 11 Congratulations Judge Hayden and Tom 12 Curtin. 13 (Applause.) 14 MS. RODRIGUEZ: I promised those that I 15 spoke to beforehand that I would be brief tonight, 16 but before I close I will pause for one commercial 17 announcement. 18 I ask each of you to go back to your 19 offices, large and small, public or private, and 20 encourage the younger members of your offices 21 to come out and give the Association a try. It's 22 with a broad diverse membership that the Association 23 can continue to grow as a representative group of 24 federal practitioners who strive for excellence 25 within the profession through timely educational</p>	<p style="text-align: right;">Page 11</p> <p>1 And if that wasn't enough pressure, I 2 found out that I would be sharing the stage with Joe 3 Hayden and Judge Hayden. 4 Let's think for just a moment, me, Tom 5 Curtin, Judge Hayden, Joe Hayden, a little like 6 asking a lounge singer from Atlantic City to open for 7 the Beatles. You know he won't say no, but everybody 8 in Shea Stadium is wondering, what's this guy doing 9 here? 10 All joking aside, I am deeply honored 11 and deeply humbled to introduce my father-in-law, Tom 12 Curtin, as one of this year's recipients of the 13 William J. Brennan, Jr. Award. 14 Before I introduce Tom, I would be 15 remiss if I did not congratulate Judge Hayden. I had 16 the privilege of getting to know Judge Hayden when I 17 clerked for Judge Greenaway. 18 Judge Hayden invited our chambers to 19 participate in a field trip to, of all places, 20 Lewisberg Federal Prison in Pennsylvania. The reason 21 for the trip, as I understood it, was to stress to 22 the clerks and interns that the decisions made every 23 day in the chambers of a federal judge are much more 24 than words and the pages of opinions. A criminal 25 sentence of six months may not seem severe, until you</p>
<p style="text-align: right;">Page 10</p> <p>1 programs, events such as this dinner that recognize 2 our rich traditions, and professional events that 3 foster camaraderie within the federal bar. 4 So I would ask each of you to go back 5 tonight and try to get one or two people from your 6 firms or organizations to sign up. 7 Now, without further ado, please join me 8 in welcoming our first presenter, John Pini. 9 (Applause.) 10 MR. PINI: Now that I'm standing up 11 here, you all can tell the difference between me and 12 my brother-in-law, Frank Euvino. Everyone has been 13 staring at the table, is it that one or is it this 14 one? 15 Esteemed judges, officers and members of 16 the Association, Judge Hayden, Tom, family and 17 friends. 18 I must begin by admitting when my 19 father-in-law asked me to speak tonight, I had to 20 wonder whether it was a test of my family loyalty. 21 Not only was Tom asking me, a young attorney, to 22 speak to a room full of the legal giants of 23 New Jersey, but he was asking me to open for him, Tom 24 Curtin, the unofficial MC for every legal banquet, 25 benefit and meeting in the State of New Jersey.</p>	<p style="text-align: right;">Page 12</p> <p>1 have seen what one day of that six months looks like. 2 That trip with Judge Hayden further 3 enriched the most enlightening and satisfying year of 4 my young career. If anybody could appreciate this, 5 I'm sure it would be Justice Brennan. 6 Congratulations, Judge Hayden, and thank 7 you. 8 (Applause.) 9 MR. PINI: Now, Tom Curtin has received 10 countless awards and honors from his peers. But you 11 have to know this one is particularly special for 12 Tom. Not just because it comes from you, his federal 13 court family, but because of who Justice Brennan was; 14 an esteemed New Jersey attorney, to say the least, 15 who also happens to be Irish Catholic, who also 16 happens to be a Democrat, and who also happens to 17 come from humble beginnings. 18 I think the only way we can get Tom more 19 excited than being compared to Justice Brennan would 20 be to go back in time and convince the Justice to 21 play football and quarterback for Knute Rockne. 22 The similarities between Tom and Justice 23 Brennan run deeper than their upbringings. All you 24 really need to know about Tom to know that he 25 deserves this award is that Tom, like Justice</p>

<p>† Page 13</p> <p>1 Brennan, is a compassionate and decent family man, as 2 well as an excellent attorney. 3 Like Justice Brennan, Tom is successful 4 in our profession, but he never traded success as an 5 attorney for success as a son, brother, husband, 6 father and grandfather. Tom was able to find that 7 beautiful balance that we all seek. 8 He managed to become a founding member of 9 what is now Graham Curtin, served as president of the 10 Morris County and State Bar Associations, and State 11 Delegate to the American Bar Association, all while 12 raising three phenomenal children, Amy, Alison and 13 Paul. His children will tell you that when a 14 volunteer was needed to camp out in the rain with the 15 Girl Scouts, or when a car full of teenagers needed a 16 ride to a concert, he inevitably was the first parent 17 to step up. And it was his privilege, not his 18 burden, to be the one to drive his kids cross-country 19 to and from college, even though the coffee at the 20 rest stops, which Tom doggedly refused to give up on, 21 was unfit for human consumption. 22 While Amy and I were undergraduates at 23 Notre Dame, Tom made frequent visits to campus, 24 usually to attend meetings of the Law School Advisory 25 Council, and occasionally he would make it to a</p>	<p>Page 15</p> <p>1 about Tom for some time. 2 Tom, if I end up being half the attorney 3 you are and a quarter of the family man, I'll have 4 done all right. 5 It is my pleasure and honor to present 6 Tom Curtin as one of this year's recipients of the 7 William J. Brennan, Jr. Award. 8 (Applause.) 9 MR. CURTIN: It's a wonderful night to 10 start the night off with an honoree crying. There is 11 an Irish component to this. 12 So you have to know that my son-in-law 13 Josh, who I love dearly, that that's the first time 14 I've heard him speak publicly. I know he's a 15 wonderful lawyer at the McElroy firm. 16 But I think about Josh the night that he 17 planned to propose to Amy. He was a senior at Notre 18 Dame and so is Amy. I'm out there to bring her out 19 from school. 20 He shows up in the room I was at in the 21 hotel. He has his baseball cap on, his running 22 shoes. He's 21 or 22 years old. He has his baseball 23 cap in his hand. He's wringing it back and forth. 24 It reminds me of the paper boy who wanted to ask you 25 for overdue money.</p>
<p>Page 14</p> <p>1 football game or four football games or five. Tom 2 always took time out of his busy weekends to speak 3 with me about law school and introduce me to 4 attorneys and law school faculty, and that was even 5 before I was family. Tom's eagerness to expose a 6 young person to the profession he was so passionate 7 about helped inspire me to become an attorney. It 8 also didn't hurt that I was naive enough to believe 9 that all attorneys got to hang out with Tommy 10 Hilfiger, former Notre Dame quarterback, and Senator 11 Bill Bradley. 12 Not only does Tom make being an attorney 13 look fun, he makes it look easy. On weekday 14 mornings, Tom argues before many of you on behalf of 15 Fortune 500 companies, but you may not know that 16 before Tom heads to court, he's already taken my son 17 Matthew for a walk and my son Josh to breakfast. 18 Even after he spent a full day at work, 19 he's able to attend a Bar Association function, and 20 still has energy to babysit for my three nephews, 21 Dylan, Collin and Ryan, and wake up early the next 22 morning to take all of the grandchildren on an 23 educational hike through Jockey Hollow National Park. 24 I will end with a line that until today 25 I've reserved for my father, although I thought this</p>	<p>Page 16</p> <p>1 He says at the end: I would like your 2 permission to marry Amy. 3 And I said: When? 4 He said: At six o'clock. 5 I said it's about 20 to six. 6 No, I'm going to ask her at six o'clock. 7 So, Josh, I can tell you, I'm glad I 8 said yes then, I'm glad that Amy said yes. And I 9 love you and thank you for your wonderful remarks 10 about me. 11 I have known Katherine since our early careers, 12 although I'm much older than she is, as she reminds me on a 13 regular basis, I saw her as a young lawyer law clerk working 14 for Justice Clifford in Morristown and played some small 15 role in encouraging her to get involved in Bar 16 Association activities. I actually presided over 17 her swearing in as the president of the Morris County 18 Bar Association. 19 Katherine and I are the 56th and 57th 20 honorees at this dinner since it began in 1977. 21 Katherine, I believe, is the fourth woman to be so 22 honored. 23 I am the first to use Judge Jack Gerry's 24 line and always echoed by Steve Orlofsky: "I am the 25 first to win this award in the category of Irish song</p>

<p style="text-align: right;">Page 17</p> <p>1 and dance man with limited ability." But I'll take the 2 prize under any circumstances. 3 Justice Brennan's most famous 4 quotation on his nomination to the court was that he 5 said: "Today I feel a lot like the mule entered in 6 the Kentucky Derby. I don't expect to win, but I 7 expect to benefit from the Association." 8 If I can continue the analogy, I am the 9 turtle on top of the fence post in the field. I 10 don't know how I got here, I don't know how long I'm 11 going to be up here, I don't know why or what I'm 12 doing here, but I do know I didn't get here alone. 13 Like that turtle, like that turtle, I 14 had four supports for me, four F's. First, my law 15 firm, Graham Curtin, led by Jerry Graham, and my 16 partners who are here have been wonderful 17 professional lawyers to work with throughout my 18 entire career. I owe them a great, great deal, 19 because they encouraged me to be the kind of lawyer 20 that Justice Brennan wants all lawyers to be. 21 The second is my faith. I have a deep 22 belief, as Justice Brennan did, in the Almighty and 23 the good that exists in this world and in the obligation 24 that each of us has every day to try to make sure 25 that people know about the good that we do and the</p>	<p style="text-align: right;">Page 19</p> <p>1 So I decided maybe I should say 2 something about Justice Brennan in this little talk. 3 And I decided, what should I tell you? You know, he 4 was a recess appointment? Sounds like a bad term, 5 recess appointment. 6 The first night he got there at the 7 court with Justice Warren, the World Series was going 8 on. In 1956 the Dodgers and Yankees were playing. 9 He walked into a conference room. The other guys 10 said: Sit down, turn the light off, watch the game 11 with us. That's the kind of guy Justice Brennan was. 12 We remember him 21 years after he 13 retired, 14 years after he died, because of the kind 14 of person that he was, not the kind of lawyer he was, 15 not the kind of judge he was, but the kind of person 16 he was. 17 I wondered why? Why does 18 somebody who has the talent that most of us have and 19 the skill that most of us have and the beliefs and 20 the hard work ethic and everything else, why was he 21 different and why are we honoring him so far down the 22 line? 23 I couldn't help but think back to one of 24 my earlier families, my family in the State Bar 25 Association, when, as the State Bar president 18 or</p>
<p style="text-align: right;">Page 18</p> <p>1 good that we are. 2 The third is for my family. No one is 3 more blessed than I; three wonderful children, two 4 wonderful sons-in-law, my daughter Alison, my 5 son-in-law Frank, my daughter Amy, my son-in-law 6 Josh, my son Paul, and five absolutely 7 wonderful grandchildren who, as we speak, five 8 boys -- we are still in the market, you know what I 9 mean -- they are working out tonight with the 10 New Jersey Nets. But I'm delighted to 11 have my family here. 12 I can't complete my family without 13 talking about my sweetheart Sandy, who, at a time in 14 my life I was a little bit lost and there were 15 difficult times in our family, came along and saved 16 me. I am eternally grateful to you, Sandy, my 17 sweetheart. I love you. 18 (Applause.) 19 MR. CURTIN: Finally, to my friends, my 20 friends, professional and personal, many of you are 21 here tonight, you made my life a song. I have loved 22 being a lawyer since day one. Well, that's about me. 23 Maddie Arleo told me if I ever won this 24 award, if I didn't talk about Justice Brennan, I 25 never would get another ruling ever from her.</p>	<p style="text-align: right;">Page 20</p> <p>1 so years ago, I was given the opportunity to speak to 2 the young lawyers of New Jersey when we were sworn 3 in. And this was like comedy night at the State Bar, 4 because it was Jack Gerry, Chief Justice Wilentz was 5 not feeling well, so Justice Clifford was there. And 6 I thought: Clifford, Gerry, Curtin, all we needed 7 was Joel Rosen and we would have had standing room 8 only. 9 And De Miller, the 10 extraordinary leader of Legal Services, then and now, 11 gave a speech. He told the young lawyers three 12 things that I think Justice Brennan knew and 13 followed. He said: In your life as a lawyer and in 14 your life as a person, do three things; do your best, 15 do well, and do good. 16 Somehow Justice Brennan in his work and 17 in his personal life did all three of those things. 18 He did well. He was successful lawyer, successful 19 judge as a Supreme Court judge in New Jersey and on 20 the Supreme Court. 21 He was an extraordinary family man. He 22 was an extraordinary person. So he did well in his 23 family life, he did good in all the things that he 24 did to make our society a better place. He cared 25 every single day about making this country a country</p>

1 where justice was on the daily menu for everyone. As his
2 son, Bill said, after his dad's death:

3 "His was a unique combination of
4 principled intelligence, capacity for hard work and
5 charm informed by an overarching humanity which made
6 his other traits all the more potent. We should
7 forever be grateful for him."

8 Judge Mikva, one of his colleagues at
9 one point, said that he was a Brennanist. A Brennanist is
10 someone who makes their colleagues better than they are.

11 I like the Josh Groban song, "You raised
12 me up to more than I can be." One thing that Justice
13 Brennan did was to raise his colleagues and raise the
14 profession and raise this country to more than it
15 could be.

16 So some day a way long time from now,
17 Katherine and I and those who precede us and those
18 who follow us, when someone says, you know,
19 "they have a little Brennan in them," I can claim
20 something a little different, because William Brennan
21 was my grandfather. Not this William Brennan.

22 So I think I can say at some point, when my our
23 children and grandchildren and great-grandchildren ask us
24 about what we do for a living, I can say, somehow, someone in
25 the Association of the Federal Bar thought in some small

1 way I had a little Justice Brennan in me.

2 Thank you, and God bless you all.

3 (Applause.)

4 MS. RODRIGUEZ: Thank you, Tom.

5 Our next presenter, Joe Hayden.

6 (Applause.)

7 MR. HAYDEN: Now, this is pressure. So
8 Katherine says to me, I want you to introduce me, I
9 want you to do a good job, and by the way, this is
10 not a roast.

11 Well, the last statement was really
12 unfortunate, because I have some wonderful stories.
13 I see my friend Al DeCotiis here, I see my friend
14 Maryanne Barry here. They know some of the stories
15 because they are right in the middle of them.

16 But I have an ace in the hole, and the
17 ace in the hole is what every trial lawyer dreams up,
18 and that's good facts, very good facts. And what I
19 intend to do is share some of those facts with you
20 and the answer can speak for itself.

21 Katherine has a very interesting legal
22 career. After graduating from Marymount, she got her
23 master's in English at Bowling Green and then went to
24 what was her, she says, her favorite job in the
25 world, being an editor for a magazine in New York.

1 She moved over to New Jersey, had a few
2 children, Matt and Greg, and it wasn't until her
3 thirties, after teaching English at Seton Hall
4 University as an adjunct, that she decided to go to
5 law school.

6 She clerked for Justice Clifford. She
7 worked in the United States Attorney's office where
8 she became close friends with Maryanne Barry. And in
9 1991 she became a Superior Court judge in New Jersey.

10 You know, it wasn't until Katherine
11 became a judge that I gained an appreciation for how
12 seriously judges take their job and how important it
13 is for them to do the right thing.

14 I remember early on, after she was a
15 judge and she was assigned to her specialty, Family,
16 coming down once a week, and at 5 a.m. seeing her
17 spread out on the floor with two plastic milk cases
18 of about 50 files and furiously writing on top of
19 each file the names of the participants.

20 I said to her: What are you doing?

21 What is this all about?

22 And she said: We are going to go for
23 DYFS custody review. There is going to be a DYFS
24 worker and a court appointed guardian, and I want
25 them to know as to each file, I know the names of the

1 people. I care about the file, so they will care
2 about the file.

3 I recall as she was sitting in

4 Essex County with Judge Burrell Ives Humphreys, who
5 kind of motivated her to go for the bench and brought
6 her in Essex for Family, that she was exposed to
7 names and cultures that she was not familiar with.

8 And I remember calling Ray Brown, another friend, and
9 asking about the origin of the names and asking about
10 the cultures so she could be sensitive to the
11 cultures and the backgrounds of the people who came
12 in front of her so she would have a better chance of
13 doing it right.

14 In October of 1995 she was very
15 fortunate to be in the right place and have a great
16 honor. The New York Times did a 10,000 word piece
17 article in its magazine section about the difficulty
18 of being the judge and the solomon-like judgments that
19 a judge makes, and they asked her to be the person
20 they were with. But it was risky, because they
21 wanted uninhibited access to her chambers for 30
22 days. And with the exception of privileged material,
23 they would hear discussions and conversations with
24 law clerks.

25 Now, those of you who know Katherine

<p style="text-align: right;">Page 25</p> <p>1 know she can be somewhat uninhibited around her 2 chambers, and she decided to take the risk and she 3 decided she would do it because she thought the 4 article was noteworthy. 5 She went to the Times and she said there 6 is a deal breaker, and the deal breaker was, she said 7 she would not do it unless her colleagues in the 8 Family Court, Judge Zampino, Judge Glickman and Dick 9 Camp, were mentioned in the article and were pictured 10 in the article, because everybody in the Family part 11 that she was in did the same work and she wasn't 12 going to have it only about her. And because she 13 made that insistence, all of her fellow judges were 14 in the article, mentioned in the article and pictured 15 in the article. 16 Late in her State Court judgeship she 17 took a risk and accepted a transfer to Criminal. 18 They would have let her stay in Family. Within about 19 six months she became the first drug court judge in 20 Essex County. The drug court was just starting, and 21 one of the things that would happen is in lieu of 22 incarceration, they would place people in residential 23 treatment. 24 Katherine immediately demanded to go to 25 the rehabs. She demanded to meet with the people.</p>	<p style="text-align: right;">Page 27</p> <p>1 The technology was just coming in with 2 respect to the computer and the other technological 3 advances. Katherine didn't know it, but she learned 4 it. She didn't learn it because she liked it. She 5 learned it because she thought for her, she had to 6 know it if she was going to be effective. 7 This actually put a lot of pressure on 8 me, because she immediately began to say, when are 9 you going to learn it? If I have to learn it, how 10 come you don't know it? Well, I held out for a 11 decade. Actually, she just grimaced. Let me correct 12 the record, I held out for at least a decade. 13 Ultimately, by the power of example, she is leading 14 myself and Justin to get with the digital age. 15 Katherine really appreciated, as a 16 Federal Judge, and at times was struck by the awesome 17 responsibility of sentencing. She was struck by the 18 importance and solomon-like decision of depriving 19 somebody of their liberty. 20 So as Josh mentioned, one of the things 21 she did from the beginning of the time she went on 22 the bench, she felt obligated to go to prison. Once 23 a year Katherine and Judge Greenaway would lead a 24 trip for anybody else, some of the other judges went, 25 some of the interns went, and go to a federal prison</p>
<p style="text-align: right;">Page 26</p> <p>1 She asked questions like: By the way, what is your 2 success rate here? How do people do here? 3 And they said: Nobody asked us 4 questions like that. What do you mean? 5 And she said: Well, I'll ask questions 6 like that or else I won't send the people here. 7 She went to each and every place, and as 8 a matter of fact, for a number of years Integrity 9 House in Newark had a five-mile run and Katherine 10 would go down and run it, and all of the inhabitants 11 of the rehab were so happy that the judge is coming 12 down to do the run. 13 She then was appointed in 1997 to the 14 Federal Court. That was also risky. Her background 15 was in state practice. Her background was really in 16 Family. She had done one year of criminal. But she 17 decided to do it and tried to do a good job and, you 18 know, the inside I got, I always thought trial 19 lawyers worked hard, without exaggeration, because of 20 the complexity of the subject matter and the volume 21 of the caseload. Katherine worked every day, every 22 holiday for at least three years in connection with 23 her new duties in the Federal Court. And the steely 24 determination was, this is hard, but if I'm going to 25 do it right, I'm going to put the time in.</p>	<p style="text-align: right;">Page 28</p> <p>1 to see the conditions and to see the conditions and 2 to see what these facilities are. It went to twice a 3 year. It has gone to the state prison. It has gone 4 to the institutions which hold gang members in administrative 5 segregation. When she gets a habeas corpus or she receives 6 the information, she knows whereof she speaks. 7 In 2007, on the basis of a motion and a 8 record brought before her by the office of the Public 9 Defender in the Sutton case, she made a ruling in 10 connection with the Passaic County Jail, where she 11 said that the overcrowded conditions in the Passaic 12 County Jail, where there were 200 percent prisoners 13 held to the capacity, were shameful and disgraceful 14 and constituted grounds for a variance. It was that 15 opinion and that notoriety that a short time after 16 that the Federal Judges met, and every single federal 17 prisoner was taken out of the Passaic County Jail. 18 Not by coincidence, about four weeks ago 19 the United States Supreme Court in Brown versus 20 blade, decided in a class action suit that the 21 overcrowded conditions in the California prisons 22 constitute cruel and unusual punishment. And as to 23 certain classes and in a dramatic remedy, the 24 United States Supreme Court ordered a 30 percent 25 reduction of the population in two years. A</p>

1 different procedural context, but the same reasoning,
2 that overcrowded conditions constitute cruel and
3 unusual punishment and at some point in time the
4 courts can't back away.

5 I have no doubt in my mind which side of
6 this issue Justice Brennan would have been on and
7 which side of this issue he would have applauded.

8 But Katherine is a people person. When
9 she went to the prison, she didn't believe it was
10 good guys or bad guys. The prisoners were the good
11 guys. And she got to talk and know some of the
12 officials and wardens of the prisons, and became
13 friends with some of the wardens in the prisons.

14 With us this evening and staying at our
15 home this night is Warden Kumar Dammu, a warden from
16 Glenville Federal Prison in West Virginia who
17 Katherine became a friend with when she started to
18 investigate what incarceration was all about.

19 Last year Kumar came up, and Katherine
20 and Kumma went to the retirement dinner of Warden
21 Paul Schultz, who was the warden in Fairton, on a
22 Saturday night, and two months later Warden Schultz
23 came to Seton Hall Law School where Katherine teaches
24 and taught for her at her course in sentencing.

25 These people skills are very consistent

1 year, because I don't want it to end. You've made it
2 such a happy life, and I thank you all so much.

3 On the summer solstice you usually talk
4 about comfort and joy, but I would like to, because
5 of this time in my life, which is just a wee bit past
6 the solstice, I am able to see more clearly than
7 before the need we have as lawyers to give comfort
8 and the need we have to take joy in what we do.

9 Living and working that way are with the
10 signature qualities of Justice Brennan, who by
11 example taught us much about the human side of our
12 prickly profession.

13 Did you know that Justice Brennan didn't
14 take constitutional law when he was at Harvard? When
15 he joined the Supreme Court of the United States in
16 1957, his practice experience, as Tom said, had
17 focused on representing corporations, followed by
18 about eight years as a State Court Judge, during
19 which he rocketed to the New Jersey Supreme Court.
20 He was 50 years old, and up until then had no need to
21 apply federal constitutional law to his practice or
22 his judging.

23 Justice Brennan was eloquent in an
24 interview in 1990, some 30 years later, about how
25 arduous and long was the process of learning his job.

1 with what you read about Justice Brennan. He was
2 caring. He was kind. He had a love of people, but
3 the word you keep hearing is "kind."

4 This is an exciting night for Katherine
5 to win this prestigious award. But last night was
6 equally as exciting, because last night was her
7 law clerks dinner. I can guarantee you that
8 Katherine remembered the name of every former law
9 clerk, the name of the spouse or significant other of
10 every former law clerk, the name of the children, if
11 any, of any former law clerk, and where they were
12 working and how they were doing last year, because
13 she has an interest in people, and it is her interest
14 in people and her kindness which informs and elevates
15 her judging.

16 So, Katherine, it's time to come up and
17 get your award, and on a personal basis, allow me to
18 say I am very proud and very blessed to be your
19 husband.

20 (Applause.)

21 JUDGE HAYDEN: What a lovely evening.
22 Thank you so much.

23 You may not remember, all of you, but
24 today is the summer solstice, the longest day of the
25 year, and lucky for me it is the longest day of the

1 Quote: "One enters a new and wholly unfamiliar world
2 when he enters the Supreme Court of the
3 United States." And this is as true of a justice who
4 comes from the Federal Court of Appeals as it is of a
5 justice like me who came from the State Supreme
6 Court.

7 I state categorically that no prior
8 experience prepares one for the work of the Supreme
9 Court. It takes a while before you can even become
10 calm about approaching a job like this. And yet, as
11 we know, within a short time his landmark opinions
12 began and they never stopped coming.

13 Justice Brennan's energy and confidence
14 as he became a force on the court was fueled, I
15 believe, by a passionate interest in all matters
16 human; the human dignity he fought for and the human
17 connections he made with his colleagues and those who
18 he came in contact with.

19 So it is fair to share with you on a
20 night when we remember Justice Brennan a poem that I
21 loved to teach in my earlier life as an adjunct in
22 the English department at Seton Hall. It is very
23 much about being human, and like much great poetry,
24 it is about love. Denise Levertov, an American poet
25 born in 1923, died in 1997, wrote it.

1 "Bedtime. We are a meadow where the
2 bees hum, mind and body are almost one, as the fire
3 snaps in the stove and our eyes close and mouth to
4 mouth, the covers pulled over our shoulders, we
5 drowse as horses drowse a field, in accord;
6 though the fall cold surrounds our warm bed, and
7 though by day we are singular and often lonely."

8 I am so taken with that haunting thought
9 that the closeness of the night is followed by days
10 when inevitably we are singular and often lonely. In
11 class long ago, my students and I would agree that
12 this bittersweet contrast is the essence of the human
13 condition.

14 After I became a lawyer, I came to
15 believe that more than most, we lawyers swing hard
16 between abundant contentedness and the perfectionist
17 drive. I should know. I am a lawyer's daughter. My
18 father practiced in New York City in a firm where he
19 was a rising associate. He met my mother, who was
20 the best legal secretary in the firm and, I always
21 say, the best who ever lived. They married.

22 My brother and sister, who are both here
23 tonight, know very well how children of lawyers grow
24 up. That jealous mistress, the law, is ageless and
25 relentless. And so we were used to the ring of the

1 telephone early in the evening when my father would
2 be calling to say he would be late, and my mother
3 would put his dinner over the pilot light to keep
4 warm -- remember pilot lights -- and if we woke up
5 when he came in, we would hear their voices low and
6 the clink of the dinnerware.

7 When I was little, I would go with him
8 to the office or law library on Sundays and draw on
9 yellow pads while he worked, and I believed well past
10 the eighth grade the kids went to school only five
11 days a week because we were young, and when we grew
12 up we were at work six days a week, just as we saw him
13 doing, and just as the stores were open.

14 He and my mother were bears, terrible,
15 ferocious bears about our grades. That's not
16 deprivation in my book. Working lawyers' kids have a
17 great object lesson always before them, which is that
18 if you were going to be good at something, you have
19 to work at it. Nothing comes easy. As Joe would put
20 it, nobody slides. Grades are important, because
21 going to school gets you somewhere in life that you
22 can't get to any other way. Living with someone who
23 works at a job that is meaningful and demanding makes
24 it clear to a kid that work is important and toil is
25 never trivial.

1 And it is entirely compatible with
2 something a dear friend told me many years ago: A
3 life well lived is one in which you love your work
4 and work at your love, a life in which you tame the
5 tyranny of professional obligations that threaten to
6 keep you singular and often lonely longer than is
7 good for you, a life in which you are open to those
8 you love so that you can exist even for a little
9 while in the meadow where the bees hum.

10 I am blessed with friends whom I deeply
11 admire who are role models for such lives, who love
12 their work and work at their love and who honor me by
13 coming to this dinner.

14 And I am blessed with sons, Greg, who is
15 out in L.A., and Matt, whose passion for their music is
16 as strong as was their father and mother's dedication
17 to his work and to us. And as their father, John
18 Sweeney, said, as long as his teaching career is.

19 I am blessed, too, through my marriage
20 to Joe that hits the 25th year next month, to have
21 watched his son, Patrick, and his daughter,
22 Katherine -- where are you, there you go -- grow up,
23 each demonstrating a talent for analysis and writing
24 that is better than they know, and, Katherine, we
25 should tell you and Patrick that more often than we

1 do.

2 And I'm so blessed with a brother,
3 Peter, and sister, Pamela, whom I, the eldest, rely
4 on for comfort and practical knowledge, so that I
5 have learned far more from them than I ever taught
6 them.

7 And how blessed I am with the four women
8 who figure so large in my work life, Patty, Lynn,
9 Rosemary and Judge Barry.

10 And you know from what you heard tonight
11 that I live with a man, Joe Hayden, who loves his
12 work and who, with me, works at our love and who is a
13 great husband, a great husband.

14 These dear ones in my life, and so many
15 of you are here tonight, you know, the singular and
16 appropriately lonely life that a judge leads.

17 When I became a federal judge, the
18 lawyers of this Association eased my way by being
19 patient as I learned the ropes. And through the
20 years since you have taught me about professionalism,
21 as you argued motions and engaged in settlement
22 discussions and presented arguments in your briefs
23 and negotiate filing deadlines and dealt with
24 unexpected bumps and motion practice, and when we
25 work together through the tough hours and days and

1 weeks of trial. Through all of these contacts I've
 2 seen the good and great lawyers of this Association
 3 conquering fear and being brave, dealing with
 4 adversity, keeping secrets, mentoring, not taking
 5 shortcuts, caring about colleagues, being
 6 trustworthy, respecting tradition, managing life
 7 outside the comfort zone, and demonstrating to me and
 8 my judicial colleagues I'm so grateful and honored to
 9 have with me tonight, that in truth, life is better
 10 outside the comfort zone.

11 That last is really critical. As you
 12 park your car, you attorneys, and grab your
 13 briefcase, or when you cross the street from the
 14 Rodino building and you march into the courthouse,
 15 you are leaving the comfort zone. And I don't care
 16 how much you tell me it's fun or a great experience,
 17 it's demanding and sometimes punishing, and the
 18 better you are, usually the harder it is because more
 19 is at stake. You will often know more about the law
 20 of your case than your judge will, and you will know
 21 a lot more about the facts than your judge should,
 22 and it is a heavy load to carry as you labor for your
 23 client.

24 Our response as judges is to match your
 25 being good with our being right. That's also a heavy

1 load to carry.

2 And so you see why the aspiration to
 3 great lawyering that I have witnessed over the years,
 4 from the attorneys in this room, and the attorneys
 5 that you have trained, is so valuable and necessary.
 6 We judges can't be right without it.

7 The trick for me in the singular life a
 8 judge leads is to turn the lonely into alone, a state
 9 that is okay. To enjoy those moments during the day
 10 when we, the lawyers and I, actually become in accord
 11 because we can laugh at something, or talk about a
 12 wonderful movie or a life altering sports event like
 13 when Eli Manning threw that pass in the 2002 Super
 14 Bowl, or when, most thrilling of all, something
 15 happened in the courtroom or someone writes a
 16 terrific brief in a case and my heart turns over.

17 Participating as a judge when great
 18 lawyering is happening is the connection that snaps
 19 the judge out of our singular state the way great
 20 music and great art began, and that's a fact.

21 And all of you zealous advocates think
 22 what lawyers can do with the judge's discernment.
 23 Justice Brennan said that he arrives at his
 24 unswerving belief in the unconstitutionality of the
 25 death penalty after having starting out with no short

1 convictions, because, as he put it, "I have been
 2 persuaded that the death penalty is unconstitutional
 3 by the arguments of lawyers who made the better
 4 case." Isn't that a powerful line? "Persuaded by
 5 the arguments of lawyers who made the better case."

6 I can tell you that there is such sweet
 7 drama when that happens in my courtroom, when a
 8 lawyer makes the better case than I have constructed
 9 in my own thoughts and wins my mind and heart.

10 You attorneys who have done that know who you
 11 are. And all that you can do with your skill, what a
 12 meadow where the bees hum you can make in the world.
 13 25 years ago in a speech to the ABA

14 section on individual rights and responsibilities,
 15 Justice Brennan said: "We do not yet have justice
 16 equal and practical to the core for the criminally
 17 accused, for the displaced person, for the
 18 technological revolution, for alienated youth, for
 19 the urban masses, for the unrepresented consumer, for
 20 all, in short, who do not partake of the abundance of
 21 American life." True then, true now.

22 But I have seen lawyering by people here
 23 tonight that achieved case by case, client by client,
 24 equal and practical justice for some of lives
 25 forgotten once.

1 So what I leave you with is as simple
 2 and strong as the poem I shared. The singular and
 3 lonely moments of our days will always be there. We
 4 are competitive, anxious lives. But we can still be
 5 in accord and we can still connect. As humans we
 6 need to. As champions you must. That connection is,
 7 after all, what a night like this is all about.

8 Thank you, thank you for honoring me on
 9 this night, and thank you for the many ways you are
 10 constantly making me a better judge.

11 (Applause.)

12 MS. RODRIGUEZ: Again, thank you for
 13 coming tonight. Congratulations to both our
 14 honorees. Enjoy your dinner. Have a safe trip home.

15 - - -

A	ago (5) 20:1;28:18;33:11; 35:2;39:13	appreciate (1) 12:4	39:10	33:2;35:9;39:12
	agree (1) 33:11	appreciated (1) 27:15	Attorney's (1) 23:7	beforehand (1) 9:15
ABA (1) 39:13	air (1) 8:15	appreciation (1) 23:11	Award (10) 2:3;5:18;9:8;11:13; 12:25;15:7;16:25; 18:24;30:5,17	began (4) 16:20;27:8;32:12; 38:20
ability (2) 6:14;17:1	Al (1) 22:13	approaching (1) 32:10	awarded (1) 2:18	begin (1) 10:18
able (3) 13:6;14:19;31:6	alienated (1) 39:18	appropriately (1) 36:16	awards (1) 12:10	beginning (1) 27:21
absolutely (1) 18:6	Alison (2) 13:12;18:4	arduous (1) 31:25	away (1) 29:4	beginnings (1) 12:17
abundance (1) 39:20	allow (1) 30:17	argued (1) 36:21	awesome (1) 27:16	behalf (5) 2:11;3:12,13;5:4; 14:14
abundant (1) 33:16	Almighty (1) 17:22	argues (1) 14:14	B	belief (2) 17:22;38:24
accepted (1) 25:17	almost (3) 3:16;5:6;33:2	argument (1) 8:17		beliefs (1) 19:19
access (1) 24:21	alone (2) 17:12;38:8	arguments (3) 36:22;39:3,5	babysit (1) 14:20	Ben (1) 7:7
Acchione (1) 7:9	along (1) 18:15	Arleo (1) 18:23	back (6) 9:18;10:4;12:20; 15:23;19:23;29:4	bench (3) 6:1;24:5;27:22
accord (3) 33:5;38:10;40:5	altering (1) 38:12	around (3) 5:21;9:4;25:1	background (2) 26:14,15	benefit (2) 10:25;17:7
according (2) 5:24;6:14	although (2) 14:25;16:12	arrives (1) 38:23	backgrounds (1) 24:11	best (5) 6:14;8:16;20:14; 33:20,21
accused (1) 39:17	always (7) 7:12;14:2;16:24; 26:18;33:20;34:17; 40:3	art (1) 38:20	bad (2) 19:4;29:10	better (10) 20:24;21:10;24:12; 35:24;37:9,18;39:3,5, 8;40:10
ace (2) 22:16,17	American (3) 13:11;32:24;39:21	article (7) 24:17;25:4,9,10,14, 14,15	banquet (1) 10:24	big (1) 5:8
achieved (1) 39:23	Amy (7) 13:12,22;15:17,18; 16:2,8;18:5	aside (2) 9:3;11:10	Bar (13) 2:11;6:12;7:23;10:3; 13:10,11;14:19;16:15, 18;19:24,25;20:3; 21:25	Bill (2) 14:11;21:2
action (1) 28:20	analogy (1) 17:8	aspiration (1) 38:2	Barry (4) 2:19;22:14;23:8; 36:9	bit (2) 18:14;31:5
activities (1) 16:16	analysis (1) 35:23	assigned (1) 23:15	baseball (2) 15:21,22	bittersweet (1) 33:12
actually (4) 16:16;27:7,11;38:10	Andrew (2) 3:1,2	assignment (1) 3:21	basis (3) 16:13;28:7;30:17	blade (1) 28:20
adjunct (2) 23:4;32:21	announcement (1) 9:17	assistance (1) 4:7	basis (3) 16:13;28:7;30:17	bless (1) 22:2
administer (1) 4:24	Annual (2) 2:3;7:23	associate (1) 33:19	bears (2) 34:14,15	blessed (7) 18:3;30:18;35:10,14, 19;36:2,7
administrative (1) 28:4	anxious (1) 40:4	Association (15) 5:7,14;6:11;9:21,22; 10:16;13:11;14:19; 16:16,18;17:7;19:25; 21:25;36:18;37:2	Beatles (1) 11:7	body (1) 33:2
admire (1) 35:11	Appeals (2) 8:8;32:4	Associations (1) 13:10	beautiful (1) 13:7	book (1) 34:16
admitting (1) 10:18	applauded (1) 29:7	Association's (2) 7:15,23	became (11) 8:19,21;23:8,9,11; 25:19;29:12,17;32:14; 33:14;36:17	born (2) 8:4;32:25
ado (1) 10:7	Applause (19) 2:8,15,24;3:3,7,4,4; 18;5:1,9;6:16;9:13; 10:9;12:8;15:8;18:18; 22:3,6;30:20;40:11	Atlantic (1) 11:6	become (4) 13:8;14:7;32:9; 38:10	both (4) 2:9;8:19;33:22; 40:13
advances (1) 27:3	apply (1) 31:21	attend (2) 13:24;14:19	bed (1) 33:6	Bowl (1) 38:14
adversity (1) 37:4	appointed (4) 8:6,9;23:24;26:13	attending (1) 7:22	Bedtime (1) 33:1	Bowling (1) 22:23
Advisory (1) 13:24	appointment (3) 8:11;19:4,5	attorney (7) 10:21;12:14;13:2,5; 14:7,12;15:2	bees (3)	boy (1) 15:24
advocates (1) 38:21		attorneys (6) 14:4,9;37:12;38:4,4;		boys (1)
again (3) 3:25;4:17;40:12				
age (1) 27:14				
ageless (1) 33:24				

18:8 Bradley (1) 14:11 brave (1) 37:3 breaker (2) 25:6,6 breakfast (1) 14:17 Brennan (36) 2:3;7:17,24;8:24;9:6, 7,8,10;11:13;12:5,13, 19,23;13:1,3;15:7; 17:20,22;18:24;19:2, 11;20:12,16;21:13,19, 20,21;22:1;29:6;30:1; 31:10,13,23;32:20; 38:23;39:15 Brennanist (2) 21:9,9 Brennan's (3) 8:11;17:3;32:13 Brian (1) 7:1 Bridge (1) 7:7 brief (2) 9:15;38:16 briefcase (1) 37:13 briefs (1) 36:22 bring (1) 15:18 broad (1) 9:22 brother (3) 13:5;33:22;36:2 brother-in-law (1) 10:12 brought (2) 24:5;28:8 Brown (3) 4:1;24:8;28:19 building (1) 37:14 bumps (1) 36:24 burden (1) 13:18 Burrell (1) 24:4 busy (1) 14:2	calls (1) 3:17 calm (1) 32:10 camaraderie (1) 10:3 Camden (1) 2:21 came (10) 5:19;7:7;18:15; 24:11;29:19,23;32:5, 18;33:14;34:5 camp (2) 13:14;25:9 campus (1) 13:23 can (21) 9:23;10:11;12:18; 16:7;17:8;21:12,19,22, 24;22:20;25:1;30:7; 32:9;35:8;38:11,22; 39:6,11,12;40:4,5 cap (2) 15:21,23 capacity (2) 21:4;28:13 car (2) 13:15;37:12 care (3) 24:1,1;37:15 cared (1) 20:24 career (4) 12:4;17:18;22:22; 35:18 careers (1) 16:11 caring (2) 30:2;37:5 Carl (2) 7:10,12 carry (2) 37:22;38:1 case (8) 28:9;37:20;38:16; 39:4,5,8,23,23 caseload (1) 26:21 cases (2) 7:21;23:17 categorically (1) 32:7 category (1) 16:25 Catholic (1) 12:15 certain (1) 28:23 certainly (1) 5:17 chambers (4) 11:18,23;24:21;25:2 champion (1)	9:1 champions (1) 40:6 chance (1) 24:12 changes (1) 9:4 Charles (1) 8:4 charm (1) 21:5 check (1) 8:2 Chief (2) 4:1;20:4 children (7) 13:12,13;18:3;21:23; 23:2;30:10;33:23 Circuit (2) 6:2;8:8 circumstances (1) 17:2 City (2) 11:6;33:18 civil (1) 8:20 claim (3) 8:1;9:5;21:19 claiming (1) 8:22 class (2) 28:20;33:11 classes (1) 28:23 clear (2) 8:21;34:24 clearly (1) 31:6 clerk (4) 16:13;30:9,10,11 clerked (2) 11:17;23:6 clerks (3) 11:22;24:24;30:7 client (3) 37:23;39:23,23 Clifford (4) 16:14;20:5,6;23:6 clink (1) 34:6 close (3) 9:16;23:8;33:3 closeness (1) 33:9 co-counsel (1) 7:19 coffee (1) 13:19 coincidence (1) 28:18 cold (1) 33:6 colleague (1)	7:8 colleagues (7) 21:8,10,13;25:7; 32:17;37:5,8 college (1) 13:19 Collin (1) 14:21 combination (1) 21:3 comedy (1) 20:3 comfort (6) 31:4,7;36:4;37:7,10, 15 coming (8) 3:20;6:23;23:16; 26:11;27:1;32:12; 35:13;40:13 commemorating (1) 7:17 commercial (1) 9:16 companies (1) 14:15 compared (1) 12:19 compassionate (1) 13:1 compatible (1) 35:1 competitive (1) 40:4 complete (1) 18:12 complexity (1) 26:20 component (1) 15:11 computer (1) 27:2 concert (1) 13:16 condition (1) 33:13 conditions (5) 28:1,1,11,21;29:2 conference (1) 19:9 confidence (1) 32:13 confuse (1) 6:2 congratulate (6) 2:4,13,18;4:21;5:16; 11:15 Congratulations (5) 3:2,6;9:11;12:6; 40:13 connect (1) 40:5 connection (4) 26:22;28:10;38:18;	40:6 connections (1) 32:17 conquering (1) 37:3 consistent (1) 29:25 constantly (1) 40:10 constitute (2) 28:22;29:2 constituted (1) 28:14 Constitution (2) 6:10;9:3 constitutional (2) 31:14,21 constructed (1) 39:8 consumer (1) 39:19 consumption (1) 13:21 contact (1) 32:18 contacts (1) 37:1 contentedness (1) 33:16 context (1) 29:1 continue (3) 6:2;9:23;17:8 contrast (2) 8:25;33:12 conversations (1) 24:23 convictions (1) 39:1 convince (1) 12:20 core (1) 39:16 corporations (1) 31:17 corpus (1) 28:5 Council (1) 13:25 countless (1) 12:10 country (3) 20:25,25;21:14 County (7) 13:10;16:17;24:4; 25:20;28:10,12,17 course (2) 4:8;29:24 Court (31) 8:1,7,8,10,13,18,20; 12:13;14:16;17:4;19:7; 20:19,20;23:9,24;25:8, 16,19,20;26:14,23;
C				
California (1) 28:21 call (2) 4:21,23 calling (2) 24:8;34:2				

28:19,24;31:15,18,19; 32:2,4,6,9,14 courthouse (1) 37:14 Courtney (2) 2:21,22 courtroom (2) 38:15;39:7 courts (1) 29:4 covers (1) 33:4 criminal (3) 11:24;25:17;26:16 criminally (1) 39:16 critic (1) 8:19 critical (1) 37:11 cross (1) 37:13 cross-country (1) 13:18 cruel (2) 28:22;29:2 crying (1) 15:10 cultures (3) 24:7,10,11 Curtin (14) 2:7;5:19;6:4;9:12; 10:24;11:5,12;12:9; 13:9;15:6,9;17:15; 18:19;20:6 custody (1) 23:23	De (1) 20:9 deadlines (1) 36:23 deal (3) 17:18;25:6,6 dealing (1) 37:3 dealt (1) 36:23 dear (2) 35:2;36:14 dearly (1) 15:13 death (3) 21:2;38:25;39:2 decade (2) 27:11,12 decent (1) 13:1 decided (7) 19:1,3;23:4;25:2,3; 26:17;28:20 decision (1) 27:18 decisions (1) 11:22 DeCotiis (1) 22:13 dedication (1) 35:16 deep (1) 17:21 deeper (1) 12:23 deeply (3) 11:10,11;35:10 Defender (1) 28:9 Delegate (1) 13:11 delighted (1) 18:10 demand (2) 25:24,25 demanding (2) 34:23;37:17 Democrat (1) 12:16 demonstrating (2) 35:23;37:7 Denise (1) 32:24 department (1) 32:22 deprivation (1) 34:16 depriving (1) 27:18 Derby (1) 17:6 deserves (1) 12:25	deserving (1) 5:17 determination (1) 26:24 Dick (1) 25:8 died (2) 19:13;32:25 difference (1) 10:11 different (3) 19:21;21:20;29:1 difficult (1) 18:15 difficulty (1) 24:17 digital (1) 27:14 dignity (2) 4:16;32:16 Dinner (10) 2:3;7:16,23;10:1; 16:20;29:20;30:7;34:3; 35:13;40:14 dinnerware (1) 34:6 discernment (1) 38:22 discussion (1) 5:25 discussions (2) 24:23;36:22 disgraceful (1) 28:13 displaced (1) 39:17 distinguished (1) 9:1 District (3) 3:11;8:6,7 diverse (1) 9:22 Dodgers (1) 19:8 doggedly (1) 13:20 done (8) 2:11;3:23,24;4:14, 14:15;4:26;16;39:10 doubt (1) 29:5 down (5) 19:10,21;23:16; 26:10,12 drama (1) 39:7 dramatic (1) 28:23 draw (1) 34:8 dreams (1) 22:17 drive (2)	13:18;33:17 drowse (2) 33:5,5 drug (2) 25:19,20 during (4) 4:8,20;31:18;38:9 duties (2) 6:13;26:23 DYFS (2) 23:23,23 Dylan (1) 14:21	4:11;14:24;15:2; 16:1;31:1 energy (2) 14:20;32:13 engaged (1) 36:21 English (3) 22:23;23:3;32:22 enjoy (2) 38:9;40:14 enlightening (1) 12:3 enough (2) 11:1;14:8 enriched (1) 12:3 entered (1) 17:5 enters (2) 32:1,2 entire (1) 17:18 entirely (1) 35:1 equal (2) 39:16,24 equally (1) 30:6 especially (2) 4:1;7:15 essence (1) 33:12 Essex (3) 24:4,6;25:20 established (1) 9:10 Esteemed (2) 10:15;12:14 eternally (1) 18:16 ethic (1) 19:20 Euvinio (1) 10:12 Evans (1) 8:4 even (5) 13:19;14:4,18;32:9; 35:8 evening (4) 6:17;29:14;30:21; 34:1 event (1) 38:12 events (2) 10:1,2 everybody (2) 11:7;25:10 everyone (3) 6:17;10:12;21:1 exaggeration (1) 26:19 example (2)
D			E	
Dad (1) 6:18 dad's (1) 21:2 daily (1) 21:1 Dame (3) 13:23;14:10;15:18 Dammu (1) 29:15 dance (1) 17:1 daughter (7) 5:12,13;6:7;18:4,5; 33:17;35:21 day (12) 11:23;12:1;14:18; 17:24;18:22;20:25; 21:16;26:21;30:24,25; 33:7;38:9 days (6) 24:22;33:9;34:11,12; 36:25;40:3			eagerness (1) 14:5 earlier (2) 19:24;32:21 early (4) 14:21;16:11;23:14; 34:1 eased (1) 36:18 easier (1) 4:13 easy (4) 3:23;7:5;14:13; 34:19 echoed (1) 16:24 editor (1) 22:25 educational (2) 9:25;14:23 effective (1) 27:6 eight (1) 31:18 Eighth (2) 8:8;34:10 Eisenhower (2) 8:10,12 eldest (1) 36:3 Eleanor (1) 7:10 elevates (1) 30:14 Eli (1) 38:13 eloquent (1) 31:23 else (3) 19:20;26:6;27:24 encourage (1) 9:20 encouraged (1) 17:19 encouraging (1) 16:15 end (5)	

27:13;31:11 excellence (1) 9:24 excellent (1) 13:2 exception (1) 24:22 excited (1) 12:19 exciting (2) 30:4,6 exemplifies (1) 3:18 exemplify (1) 9:9 exist (1) 35:8 exists (1) 17:23 expect (2) 17:6,7 experience (4) 4:9;31:16;32:8; 37:16 expose (1) 14:5 exposed (1) 24:6 extraordinary (3) 20:10,21,22 extreme (1) 5:12 eyes (1) 33:3	14:5;15:3;18:2,11,12, 15:19;24:20;21,23; 23:15;24:6;25:8,10,18; 26:16 famous (1) 17:3 far (2) 19:21;36:5 father (8) 5:11,11;13:6;14:25; 33:18;34:1;35:16,17 father-in-law (2) 10:19;11:11 favorite (2) 8:23;22:24 fear (1) 37:3 Federal (20) 2:11;6:11,20;7:23; 9:24;10:3;11:20,23; 12:12;21:25;26:14,23; 27:16,25;28:16,16; 29:16;31:21;32:4; 36:17 feel (1) 17:5 feeling (1) 20:5 fellow (1) 25:13 felt (1) 27:22 fence (1) 17:9 ferocious (1) 34:15 few (1) 23:1 field (3) 11:19;17:9;33:5 figuratively (1) 5:8 figure (1) 36:8 file (4) 23:19,25;24:1,2 files (1) 23:18 filing (1) 36:23 fill (1) 5:8 Finally (1) 18:19 find (1) 13:6 fire (1) 33:2 firm (5) 5:25;15:15;17:15; 33:18,20 firms (1) 10:6	First (11) 2:4,20;3:11;10:8; 13:16;15:13;16:23,25; 17:14;19:6;25:19 five (4) 14:1;18:6,7;34:10 five-mile (1) 26:9 floor (1) 23:17 focused (1) 31:17 folks (2) 2:1;3:10 follow (1) 21:18 followed (3) 20:13;31:17;33:9 football (3) 12:21;14:1,1 force (1) 32:14 forever (1) 21:7 forgotten (1) 39:25 former (4) 14:10;30:8,10,11 forth (1) 15:23 fortunate (2) 9:5;24:15 Fortune (1) 14:15 forward (2) 4:22,24 foster (1) 10:3 fought (1) 32:16 found (2) 8:2;11:2 founding (1) 13:8 four (5) 14:1;17:14,14;28:18; 36:7 fourth (1) 16:21 Frank (2) 10:12;18:5 Franklin (1) 7:7 frequent (1) 13:23 friend (6) 7:8;22:13,13;24:8; 29:17;35:2 friends (9) 5:17;7:11;8:22; 10:17;18:19,20;23:8; 29:13;35:10 front (1)	24:12 F's (1) 17:14 fueled (1) 32:14 full (3) 10:22;13:15;14:18 fun (2) 14:13;37:16 function (1) 14:19 furiously (1) 23:18 further (2) 10:7;12:2	grace (1) 4:15 grade (1) 34:10 grades (2) 34:15,20 graduating (1) 22:22 Graham (3) 13:9;17:15,15 grandchildren (3) 14:22;18:7;21:23 grandfather (2) 13:6;21:21 grandparents (1) 7:5 grateful (3) 18:16;21:7;37:8 great (14) 8:14;17:18,18;24:15; 32:23;34:17;36:13,13; 37:2,16;38:3,17,19,20 great-grandchildren (1) 21:23 Green (1) 22:23 Greenaway (2) 11:17;27:23 Greg (2) 23:2;35:14 grew (1) 34:11 grimaced (1) 27:11 Groban (1) 21:11 grounds (1) 28:14 group (2) 8:16;9:23 grow (3) 9:23;33:23;35:22 guarantee (1) 30:7 guardian (1) 23:24 guy (2) 11:8;19:11 guys (4) 19:9;29:10,10,11
F			G	
facilitating (1) 8:14 facilities (1) 28:2 fact (3) 8:3;26:8;38:20 facts (4) 22:18,18,19;37:21 faculty (1) 14:4 fair (1) 32:19 Fairton (1) 29:21 faith (1) 17:21 faithfully (1) 6:12 fall (1) 33:6 familiar (1) 24:7 families (2) 2:5;19:24 family (19) 10:16,20;12:13;13:1;			gained (1) 23:11 game (2) 14:1;19:10 games (1) 14:1 gang (1) 28:4 gave (2) 7:6;20:11 generally (1) 8:15 Gerry (2) 20:4,6 Gerry's (1) 16:23 gets (2) 28:5;34:21 giants (1) 10:22 Gimigliano (1) 3:1 Ginny (2) 4:6,17 Girl (1) 13:15 given (4) 3:14;4:2,7;20:1 glad (2) 16:7,8 Glenville (1) 29:16 Glickman (1) 25:8 goals (1) 6:11 God (1) 22:2 Good (16) 6:17;17:23,25;18:1; 20:15,23;22:9,18,18; 26:17;29:10,10;34:18; 35:7;37:2,25 grab (1) 37:12	grace (1) 4:15 grade (1) 34:10 grades (2) 34:15,20 graduating (1) 22:22 Graham (3) 13:9;17:15,15 grandchildren (3) 14:22;18:7;21:23 grandfather (2) 13:6;21:21 grandparents (1) 7:5 grateful (3) 18:16;21:7;37:8 great (14) 8:14;17:18,18;24:15; 32:23;34:17;36:13,13; 37:2,16;38:3,17,19,20 great-grandchildren (1) 21:23 Green (1) 22:23 Greenaway (2) 11:17;27:23 Greg (2) 23:2;35:14 grew (1) 34:11 grimaced (1) 27:11 Groban (1) 21:11 grounds (1) 28:14 group (2) 8:16;9:23 grow (3) 9:23;33:23;35:22 guarantee (1) 30:7 guardian (1) 23:24 guy (2) 11:8;19:11 guys (4) 19:9;29:10,10,11
				H
				habeas (1) 28:5 half (1) 15:2 Hall (4) 3:4;23:3;29:23; 32:22 hand (3) 3:8;6:8;15:23 hang (1)

14:9 happen (1) 25:21 happened (2) 3:19;38:15 happening (1) 38:18 happens (4) 12:15,16,16;39:7 happy (2) 26:11;31:2 hard (5) 19:20;21:4;26:19,24; 33:15 harder (1) 37:18 Harvard (1) 31:14 haunting (1) 33:8 Hayden (17) 2:6;5:16;9:11;10:16; 11:3,3,5,5,15,16,18; 12:2,6;22:5,7;30:21; 36:11 heads (1) 14:16 hear (2) 24:23;34:5 heard (3) 4:5;15:14;36:10 hearing (1) 30:3 heart (2) 38:16;39:9 heavy (2) 37:22,25 heck (1) 4:13 held (4) 7:23;27:10,12;28:13 help (2) 7:5;19:23 helped (1) 14:7 hike (1) 14:23 Hilfiger (1) 14:10 himself (1) 9:1 hits (1) 35:20 hold (2) 3:23;28:4 hole (2) 22:16,17 holiday (1) 26:22 Hollow (1) 14:23 home (3) 8:2;29:15;40:14	honor (9) 2:9,10;5:13;7:14,16, 24;15:5;24:16;35:12 Honorable (1) 4:23 honored (4) 6:7;11:10;16:22; 37:8 honoree (1) 15:10 honorees (6) 2:5,18;3:19;9:9; 16:20;40:14 honoring (2) 19:21;40:8 honors (1) 12:10 horses (1) 33:5 hotel (1) 15:21 hours (1) 36:25 House (1) 26:9 hum (3) 33:2;35:9;39:12 human (7) 13:21;31:11;32:16, 16,16,23;33:12 humanity (1) 21:5 humans (1) 40:5 humble (1) 12:17 humbled (1) 11:11 Humphreys (1) 24:4 hurt (1) 14:8 husband (5) 7:1;13:5;30:19; 36:13,13	2:13;3:9 individual (2) 9:2;39:14 inevitably (2) 13:16;33:10 information (1) 28:6 informed (1) 21:5 informs (1) 30:14 inhabitants (1) 26:10 inside (1) 26:18 insistence (1) 25:13 inspire (1) 14:7 instantly (1) 8:21 institutions (1) 28:4 Integrity (1) 26:8 intelligence (1) 21:4 intend (1) 22:19 interest (3) 30:13,13;32:15 interesting (1) 22:21 interns (2) 11:22;27:25 interview (1) 31:24 into (3) 19:9;37:14;38:8 introduce (4) 11:11,14;14:3;22:8 investigate (1) 29:18 invited (1) 11:18 involved (1) 16:15 Irenas (2) 7:19,21 Irish (3) 12:15;15:11;16:25 issue (2) 29:6,7 Ives (1) 24:4	28:10,12,17 jealous (1) 33:24 Jerry (1) 17:15 Jersey (12) 6:12;7:8,9;10:23,25; 12:14;18:10;20:2,19; 23:1,9;31:19 job (7) 22:9,24;23:12;26:17; 31:25;32:10;34:23 Jockey (1) 14:23 Joe (6) 11:2,5;22:5;34:19; 35:20;36:11 Joel (1) 20:7 John (4) 2:19;5:2;10:8;35:17 join (1) 10:7 joined (1) 31:15 joking (1) 11:10 Joseph (1) 4:24 Josh (7) 14:17;15:13,16;16:7; 18:6;21:11;27:20 joy (2) 31:4,8 Jr (4) 7:17;8:24;11:13; 15:7 Judge (46) 2:6;4:1,5;10:6;20; 7:19,21;8:14;9:11; 10:16;11:3,5,15,16,17, 18,23;12:2,6;16:23; 19:15;20:19,19;21:8; 23:9,11,15;24:4,18,19; 25:8,8,19;26:11;27:16, 23;30:21;31:18;36:9, 16,17;37:20,21;38:8, 17,19;40:10 judges (11) 3:11,12;6:23,23; 10:15;23:12;25:13; 27:24;28:16;37:24; 38:6 judge's (1) 38:22 judgeship (1) 25:16 judging (2) 30:15;31:22 judgments (1) 24:18 judicial (1) 37:8	Justice (47) 2:3;7:24;8:1,11,13, 22,24,25;9:5,7,10;12:5, 13,19,20,22,25;13:3; 16:14;17:3,20,22; 18:24;19:2,7,11;20:4,5, 12,16;21:1,12,22:1; 23:6;29:6;30:1;31:10, 13,23;32:3,5,13,20; 38:23;39:15,15,24 justices (1) 8:16 Justin (1) 27:14 justly (1) 6:13
K				
Kansas (1) 8:5 Katherine (24) 5:16;16:11,19,21; 21:17;22:8,21;23:10; 24:25;25:24;26:9,21; 27:3,15,23;29:8,17,19, 23;30:4,8,16;35:22,24 Keddis (1) 3:5 keep (3) 30:3;34:3;35:6 keeping (1) 37:4 Kentucky (1) 17:6 kid (1) 34:24 kids (3) 13:18;34:10,16 kind (9) 17:19;19:11,13,14, 15,15;24:5;30:2,3 kindness (1) 30:14 knew (2) 4:8;20:12 knowledge (1) 36:4 known (2) 8:14;16:11 knows (1) 28:6 Knute (1) 12:21 Kumar (2) 29:15,19 Kumma (1) 29:20				
L				
LA (1) 35:15				

labor (1) 37:22 LACEY (8) 2:1,9,16,25;3:4,8; 4:5,19 lamented (1) 7:25 landmark (1) 32:11 large (2) 9:19;36:8 last (11) 3:24;4:15,20;5:10; 8:16;22:11;29:19;30:5, 6,12;37:11 Lastly (1) 4:19 late (3) 7:20;25:16;34:2 later (2) 29:22;31:24 laugh (1) 38:11 laughing (1) 4:11 Law (23) 2:20,25;3:5,5;25; 8:5;9:3;13:24;14:3,4; 16:13;17:14;23:5; 24:24;29:23;30:7,8,10, 11;31:14,21;33:24; 34:8;37:19 lawyer (10) 15:15;16:13;17:19; 18:22;19:14;20:13,18; 22:17;33:14;39:8 lawyering (3) 38:3,18;39:22 lawyers (14) 17:17,20;20:2,11; 26:19;31:7;33:15,23; 36:18;37:2;38:10,22; 39:3,5 lawyers' (1) 34:16 lawyer's (1) 33:17 lay (1) 8:1 lead (1) 27:23 leader (1) 20:10 leadership (1) 5:7 leading (1) 27:13 leads (2) 36:16;38:8 learn (3) 27:4,9,9 learned (4) 27:3,5;36:5,19	learning (1) 31:25 least (3) 12:14;26:22;27:12 leave (1) 40:1 leaving (1) 37:15 led (1) 17:15 legal (5) 10:22,24;20:10; 22:21;33:20 lesson (1) 34:17 letting (1) 2:9 Levertov (1) 32:24 Lewisberg (1) 11:20 liberty (1) 27:19 library (1) 34:8 lieu (1) 25:21 life (23) 7:1,5;18:14,21; 20:13,14,17,23;31:2,5; 32:21;34:21;35:3,4,7; 36:8,14,16;37:6,9;38:7, 12;39:21 light (2) 19:10;34:3 lights (1) 34:4 liked (1) 27:4 limited (1) 17:1 line (4) 14:24;16:24;19:22; 39:4 Lisa (3) 2:14;4:19,22 little (8) 11:5;18:14;19:2; 21:19,20;22:1;34:7; 35:8 live (1) 36:11 lived (2) 33:21;35:3 lives (3) 35:11;39:24;40:4 living (4) 9:2;21:24;31:9; 34:22 load (2) 37:22;38:1 lonely (6) 33:7,10;35:6;36:16;	38:8;40:3 long (6) 5:17;17:10;21:16; 31:25;33:11;35:18 longer (1) 35:6 longest (2) 30:24,25 long-term (1) 7:11 look (2) 14:13,13 looks (1) 12:1 lost (1) 18:14 lot (4) 4:13;17:5;27:7; 37:21 lounge (1) 11:6 love (11) 15:13;16:9;18:17; 30:2;32:24;35:3,4,8,11, 12;36:12 loved (3) 2:5;18:21;32:21 lovely (1) 30:21 loves (1) 36:11 low (1) 34:5 loyalty (1) 10:20 lucky (1) 30:25 lunch (2) 7:20,21 Lynn (1) 36:8	managing (1) 37:6 Manning (1) 38:13 many (9) 2:12;3:23;4:5,5; 14:14;18:20;35:2; 36:14;40:9 march (1) 37:14 Mark (2) 3:5,6 market (1) 18:8 marriage (1) 35:19 married (1) 33:21 marry (1) 16:2 Maryanne (2) 22:14;23:8 Marymount (1) 22:22 masses (1) 39:19 master's (1) 22:23 match (1) 37:24 material (1) 24:22 Matt (2) 23:2;35:15 matter (2) 26:8,20 matters (1) 32:15 Matthew (1) 14:17 may (3) 11:25;14:15;30:23 maybe (1) 19:1 MC (1) 10:24 McElroy (1) 15:15 meadow (3) 33:1;35:9;39:12 mean (3) 5:8;18:9;26:4 meaningful (1) 34:23 meant (1) 4:9 meet (1) 25:25 meeting (1) 10:25 meetings (1) 13:24 member (1)	13:8 members (3) 9:20;10:15;28:4 membership (1) 9:22 Memorial (1) 2:19 mentioned (4) 7:22;25:9,14;27:20 mentoring (1) 37:4 menu (1) 21:1 met (2) 28:16;33:19 middle (1) 22:15 might (1) 6:5 Mikva (1) 21:8 milk (1) 23:17 Miller (1) 20:9 mind (3) 29:5;33:2;39:9 minute (1) 4:15 missions (1) 6:11 Missouri (5) 7:19,25;8:5,7,22 mistress (1) 33:24 models (1) 35:11 moment (1) 11:4 moments (2) 38:9;40:3 money (1) 15:25 month (1) 35:20 months (4) 11:25;12:1;25:19; 29:22 more (13) 11:23;12:18;18:3; 21:6,12,14;31:6;33:15; 35:25;36:5;37:18,19, 21 morning (1) 14:22 mornings (1) 14:14 Morris (2) 13:10;16:17 Morristown (1) 16:14 most (6) 12:3;17:3;19:18,19;
---	--	---	--	--

33:15;38:14 mother (3) 33:19;34:2,14 mother's (1) 35:16 motion (2) 28:7;36:24 motions (1) 36:21 motivated (1) 24:5 mouth (2) 33:3,4 moved (2) 8:5;23:1 movement (1) 8:20 movie (1) 38:12 much (9) 3:25;11:23;16:12; 30:22;31:2,11;32:23, 23:37:16 mule (1) 17:5 music (2) 35:15;38:20 must (2) 10:18;40:6 myself (3) 3:13;5:4;27:14	next (3) 14:21;22:5;35:20 Nicole (1) 7:8 night (14) 15:9,10,16;19:6; 20:3;29:15,22;30:4,5, 6;32:20;33:9;40:7,9 Nobody (2) 26:3;34:20 nomination (1) 17:4 noteworthy (1) 25:4 notoriety (1) 28:15 Notre (3) 13:23;14:10;15:17 number (2) 3:10;26:8	One (27) 3:17,19,19;5:2;8:10; 9:16;10:5,13,14;11:12; 12:1,11;13:18;15:6; 18:2,22;19:23;21:8,9, 12;25:21;26:16;27:20; 32:1,8;33:2;35:3 ones (2) 2:6;36:14 only (7) 7:3;10:21;12:18; 14:12;20:8;25:12; 34:10 open (4) 10:23;11:6;34:13; 35:7 opinion (1) 28:15 opinions (2) 11:24;32:11 opportunity (2) 5:15;20:1 ordered (1) 28:24 organization (5) 3:12,15;4:3;5:5;6:21 organizations (1) 10:6 origin (1) 24:9 Orlofsky (1) 16:24 out (17) 8:2,3;9:21;11:2; 13:14;14:2,9;15:18,18; 18:9;23:17;27:10,12; 28:17;35:15;38:19,25 outside (2) 37:7,10 over (11) 2:11;3:8,24;4:5;7:7; 16:16;23:1;33:4;34:3; 38:3,16 overarching (1) 21:5 overcrowded (3) 28:11,21;29:2 overdue (1) 15:25 owe (1) 17:18 own (2) 9:6;39:9	15:24 parent (1) 13:16 parents (2) 7:2,4 Park (2) 14:23;37:12 part (2) 2:17;25:10 partake (1) 39:20 participants (1) 23:19 participate (1) 11:19 Participating (1) 38:17 particularly (2) 6:25;12:11 partner (1) 7:6 partners (1) 17:16 pass (1) 38:13 Passaic (3) 28:10,11,17 passion (1) 35:15 passionate (2) 14:6;32:15 passport (1) 7:6 past (2) 31:5;34:9 patient (1) 36:19 Patrick (2) 35:21,25 Patty (1) 36:8 Paul (3) 13:13;18:6;29:21 pause (1) 9:16 peers (1) 12:10 penalty (2) 38:25;39:2 Pennsylvania (1) 11:20 people (15) 4:6;10:5;17:25;24:1, 11;25:22,25;26:2,6; 29:8,25;30:2,13,14; 39:22 percent (2) 28:12,24 perfectionist (1) 33:16 perform (1) 6:13 permission (1)	16:2 person (8) 14:6;19:14,15;20:14, 22;24:19;29:8;39:17 personal (3) 18:20;20:17;30:17 personally (3) 3:13;4:3;5:16 persuaded (2) 39:2,4 Peter (1) 36:3 phenomenal (1) 13:12 phone (2) 3:17,20 pictured (2) 25:9,14 piece (1) 24:16 pilot (2) 34:3,4 Pini (3) 10:8,10;12:9 place (4) 20:24;24:15;25:22; 26:7 places (1) 11:19 planned (1) 15:17 plastic (1) 23:17 play (1) 12:21 played (1) 16:14 playing (1) 19:8 please (3) 2:23;4:22;10:7 pleasure (1) 15:5 poem (2) 32:20;40:2 poet (1) 32:24 poetry (1) 32:23 point (3) 21:9,22;29:3 Poplar (1) 7:11 population (1) 28:25 position (1) 3:23 post (1) 17:9 potent (1) 21:6 power (1) 27:13
N	O			
naive (1) 14:8 name (6) 6:3,5;9:8;30:8,9,10 names (4) 23:19,25;24:7,9 National (1) 14:23 necessary (1) 38:5 need (6) 6:19;12:24;31:7,8, 20:40:6 needed (3) 13:14,15;20:6 negotiate (1) 36:23 nephews (1) 14:20 Nets (1) 18:10 New (16) 6:12;7:8;10:23,25; 12:14;18:10;20:2,19; 22:25;23:1,9;24:16; 26:23;31:19;32:1; 33:18 Newark (2) 3:1;26:9	oath (2) 4:23,25 object (1) 34:17 obligated (1) 27:22 obligation (1) 17:23 obligations (1) 35:5 occasionally (1) 13:25 occur (1) 7:16 o'clock (2) 16:4,6 October (1) 24:14 off (2) 15:10;19:10 office (5) 4:23;6:14;23:7;28:8; 34:8 officers (1) 10:15 offices (2) 9:19,20 officials (1) 29:12 offspring (1) 6:20 often (5) 33:7,10;35:6,25; 37:19 old (2) 15:22;31:20 older (1) 16:12 once (3) 23:16;27:22;39:25	P		
		pads (1) 34:9 pages (1) 11:24 Pamela (1) 36:3 paper (1)		

powerful (1) 39:4	21:14;31:12	really (6) 6:19;12:24;22:11; 26:15;27:15;37:11	25:22	20:7;38:4
practical (3) 36:4;39:16,24	professional (4) 10:2;17:17;18:20; 35:5	reason (1) 11:20	resolute (1) 8:19	ropes (1) 36:19
practice (4) 26:15;31:16,21; 36:24	professionalism (1) 36:20	reasoning (1) 29:1	resolution (1) 5:6	Rosemary (1) 36:9
practiced (2) 8:5;33:18	program (1) 2:17	recall (1) 24:3	respect (1) 27:2	Rosen (1) 20:7
practitioners (2) 6:22;9:24	programs (2) 3:20;10:1	received (1) 12:9	respecting (1) 37:6	ruling (2) 18:25;28:9
precede (1) 21:17	promised (1) 9:14	receives (1) 28:5	response (2) 3:22;37:24	rumor (1) 5:24
prepares (1) 32:8	propose (1) 15:17	recess (2) 19:4,5	responsibilities (1) 39:14	rumors (1) 5:21
present (2) 5:5;15:5	proud (1) 30:18	recipients (2) 11:12;15:6	responsibility (1) 27:17	run (4) 12:23;26:9,10,12
presented (1) 36:22	public (2) 9:19;28:8	recognition (1) 7:24	rest (2) 5:21;13:20	running (1) 15:21
presenter (2) 10:8;22:5	publicly (1) 15:14	recognize (1) 10:1	retire (1) 5:23	Rutgers (2) 2:20,25
presently (1) 7:18	pulled (1) 33:4	recognizing (1) 9:3	retired (2) 8:18;19:13	Ryan (1) 14:21
presided (1) 16:16	punishing (1) 37:17	record (2) 27:12;28:8	retirement (2) 5:22;29:20	S
president (9) 2:14;3:9;6:20;7:15; 8:9,12;13:9;16:17; 19:25	punishment (2) 28:22;29:3	reduction (1) 28:25	review (1) 23:23	
pressure (3) 11:1;22:7;27:7	put (6) 5:20;26:25;27:7; 34:3,19;39:1	refused (1) 13:20	revolution (1) 39:18	safe (1) 40:14
prestigious (1) 30:5	Q	regular (1) 16:13	rich (1) 10:2	same (2) 25:11;29:1
prickly (1) 31:12		rehab (1) 26:11	ride (1) 13:16	Sandy (2) 18:13,16
principled (1) 21:4	qualities (1) 31:10	rehab (1) 26:11	right (9) 6:8;15:4;22:15; 23:13;24:13,15;26:25; 37:25;38:6	satisfying (1) 12:3
prior (1) 32:7	quarter (1) 15:3	reins (1) 3:8	rights (3) 8:20;9:2;39:14	Saturday (1) 29:22
Prison (6) 11:20;27:22,25;28:3; 29:9,16	quarterback (2) 12:21;14:10	relationship (1) 4:10	ring (1) 33:25	saved (1) 18:15
prisoner (1) 28:17	quickly (1) 3:21	relentless (1) 33:25	rising (1) 33:19	saw (2) 16:13;34:12
prisoners (2) 28:12;29:10	quotation (1) 17:4	rely (1) 36:3	risk (2) 25:2,17	Scholarship (1) 2:19
prisons (3) 28:21;29:12,13	Quote (1) 32:1	remarks (1) 16:9	risky (2) 24:20;26:14	School (11) 2:20,25;3:5;13:24; 14:3,4;15:19;23:5; 29:23;34:10,21
private (1) 9:19	R	remedy (1) 28:23	roast (1) 22:10	Schultz (2) 29:21,22
privilege (4) 5:12;6:6;11:16; 13:17		remember (6) 19:12;23:14;24:8; 30:23;32:20;34:4	rocketed (1) 31:19	Scouts (1) 13:15
privileged (1) 24:22	rain (1) 13:14	remembered (1) 30:8	Rockne (1) 12:21	second (2) 5:2;17:21
prize (1) 17:2	Raise (4) 6:8;21:13,13,14	reminds (2) 15:24;16:12	Rodino (1) 37:14	secretary (1) 33:20
procedural (1) 29:1	raised (1) 21:11	remiss (1) 11:15	Rodriguez (10) 2:14;4:22,24;5:2,10; 6:15,17;9:14;22:4; 40:12	secrets (1) 37:4
process (1) 31:25	raising (1) 13:12	representative (1) 9:23	Rods (1) 6:5	section (2) 24:17;39:14
profession (5) 9:25;13:4;14:6;	Raphael (1) 2:21	representing (1) 31:17	role (2) 16:15;35:11	seeing (1) 23:16
	rate (1) 26:2	reserved (1) 14:25	room (5) 10:22;15:20;19:9;	seek (1) 13:7
	Ray (1) 24:8	residential (1)		seem (1) 11:25
	read (1) 30:1			segregation (1)

28:5	single (2)	speak (7)	steely (1)	Sutton (1)
Senator (1)	20:25;28:16	10:19;22;14:2;15:14;	26:23	28:9
14:10	singular (7)	18:7;20:1;22:20	step (1)	swear (1)
send (1)	33:7,10;35:6;36:15;	speaks (1)	13:17	6:9
26:6	38:7,19;40:2	28:6	Steve (1)	swearing (4)
senior (1)	sister (2)	special (1)	16:24	5:13;6:7;7:16;16:17
15:17	33:22;36:3	12:11	still (5)	Sweeney (1)
sensitive (1)	Sit (1)	specialty (1)	4:11;14:20;18:8;	35:18
24:10	19:10	23:15	40:4,5	sweet (1)
sentence (1)	sitting (1)	speech (2)	stood (1)	39:6
11:25	24:3	20:11;39:13	4:6	sweetheart (2)
sentencing (2)	six (7)	spent (1)	stopped (1)	18:13,17
27:17;29:24	11:25;12:1;16:4,5,6;	14:18	32:12	swing (1)
Series (1)	25:19;34:12	spirit (1)	stops (1)	33:15
19:7	skill (2)	9:6	13:20	sworn (1)
seriously (1)	19:19;39:11	spoke (3)	stores (1)	20:2
23:12	skills (1)	5:19;8:14;9:15	34:13	
served (1)	29:25	sports (1)	stories (2)	T
13:9	slides (1)	38:12	22:12,14	
Services (1)	34:20	spouse (1)	stove (1)	table (1)
20:10	small (3)	30:9	33:3	10:13
Seton (4)	9:19;16:14;21:25	spread (1)	street (1)	talent (2)
3:4;23:3;29:23;	snaps (2)	23:17	37:13	19:18;35:23
32:22	33:3;38:18	spring (1)	stress (1)	talk (5)
settlement (1)	social (1)	3:18	11:21	18:24;19:2;29:11;
36:21	9:4	Stadium (1)	strive (1)	31:3;38:11
severe (1)	society (1)	11:8	9:24	talking (1)
11:25	20:24	stage (1)	strong (2)	18:13
shameful (1)	solemnly (1)	11:2	35:16;40:2	tame (1)
28:13	6:9	stake (1)	struck (2)	35:4
share (2)	solomon-like (2)	37:19	27:16,17	taught (4)
22:19;32:19	24:18;27:18	stalwart (1)	students (1)	29:24;31:11;36:5,20
shared (1)	solstice (3)	5:7	33:11	teach (1)
40:2	30:24;31:3,6	stand (3)	subject (1)	32:21
sharing (1)	somebody (2)	2:23;7:14;9:3	26:20	teaches (1)
11:2	19:18;27:19	standing (2)	success (3)	29:23
Shea (1)	Somehow (2)	10:10;20:7	13:4,5;26:2	teaching (2)
11:8	20:16;21:24	stands (1)	successful (3)	23:3;35:18
shoes (2)	someone (5)	8:25	13:3;20:18,18	technological (2)
5:8;15:22	21:10,18,24;34:22;	staring (1)	suit (1)	27:2;39:18
short (4)	38:15	10:13	28:20	technology (1)
28:15;32:11;38:25;	sometimes (1)	stark (1)	summer (2)	27:1
39:20	37:17	8:25	30:24;31:3	teenagers (1)
shortcuts (1)	somewhat (1)	start (2)	Sundays (1)	13:15
37:5	25:1	5:25;15:10	34:8	telephone (1)
shoulders (1)	somewhere (1)	2:16;29:17	Super (1)	34:1
33:4	34:21	starting (2)	38:13	tenure (1)
shows (1)	son (8)	25:20;38:25	Superior (1)	4:8
15:20	5:11;8:23;13:5;	State (14)	23:9	term (1)
side (3)	14:16,17;18:6;21:2;	10:25;13:10,10;	support (5)	19:4
29:5,7;31:11	35:21	19:24,25;20:3;25:16;	3:14,18;4:2,20;6:10	terrible (1)
sign (1)	song (3)	26:15;28:3;31:18;32:5,	supportive (3)	34:14
10:6	16:25;18:21;21:11	7;38:8,19	7:2,4,4	terrific (3)
signature (1)	son-in-law (3)	statement (1)	supports (1)	3:15;4:10;38:16
31:10	15:12;18:5,5	22:11	17:14	test (1)
significant (1)	sons (1)	States (6)	Supreme (12)	10:20
30:9	35:14	6:10;23:7;28:19,24;	8:1,10,18;20:19,20;	thanked (1)
similarities (1)	sons-in-law (1)	31:15;32:3	28:19,24;31:15,19;	4:6
12:22	18:4	stay (2)	32:2,5,8	Third (3)
simple (1)	Sounds (1)	6:1;25:18	sure (2)	6:2;7:18;18:2
40:1	19:4	staying (1)	12:5;17:24	thirties (1)
singer (1)	South (1)	29:14	surrounds (1)	23:3
11:6	7:9		33:6	though (4)

8:4;13:19;33:6,7 thought (8) 6:4;14:25;20:6; 21:25;25:3;26:18;27:5; 33:8 thoughts (1) 39:9 threaten (1) 35:5 three (8) 2:18;13:12;14:20; 18:3;20:11,14,17; 26:22 threw (1) 38:13 thrilling (1) 38:14 throughout (1) 17:17 timely (1) 9:25 times (4) 18:15;24:16;25:5; 27:16 today (3) 14:24;17:5;30:24 together (1) 36:25 toil (1) 34:24 told (4) 7:12;18:23;20:11; 35:2 Tom (28) 2:7;5:19;9:11;10:16, 21,23;11:4,11,14;12:9, 12,18,22,24,25;13:3,6, 20,23;14:1,12,14,16; 15:1,2,6;22:4;31:16 Tommy (1) 14:9 Tom's (1) 14:5 tonight (15) 2:5,6;5:19;6:24; 9:15;10:5,19;18:9,21; 33:23;36:10,15;37:9; 39:23;40:13 took (2) 14:2;25:17 top (2) 17:9;23:18 tough (1) 36:25 traded (1) 13:4 tradition (2) 9:10;37:6 traditions (1) 10:2 trained (1) 38:5 traits (1)	21:6 transfer (1) 25:17 treatment (1) 25:23 trek (1) 7:9 trial (4) 7:19;22:17;26:18; 37:1 trick (1) 38:7 tried (1) 26:17 trip (5) 11:19,21;12:2;27:24; 40:14 trivial (1) 34:25 true (3) 32:3;39:21,21 truly (1) 9:5 trustworthy (1) 37:6 truth (1) 37:9 try (3) 9:21;10:5;17:24 turn (2) 19:10;38:8 turns (1) 38:16 turtle (3) 17:9,13,13 twice (1) 28:2 two (11) 3:16,24;4:10,12,20; 5:6;10:5;18:3;23:17; 28:25;29:22 type (1) 3:22 tyranny (1) 35:5	36:24 unfamiliar (1) 32:1 unfit (1) 13:21 unfortunate (1) 22:12 uninhibited (2) 24:21;25:1 unique (1) 21:3 United (6) 6:10;23:7;28:19,24; 31:15;32:3 University (2) 3:5;23:4 unless (1) 25:7 unofficial (1) 10:24 unrepresented (1) 39:19 unswerving (1) 38:24 unusual (2) 28:22;29:3 up (20) 3:20;7:6;8:15;10:6, 10;13:17,20;14:21; 15:2,20;17:11;21:12; 22:17;29:19;30:16; 31:20;33:24;34:4,12; 35:22 upbringings (1) 12:23 upon (2) 4:22,23 urban (1) 39:19 use (1) 16:23 used (1) 33:25 usually (3) 13:24;31:3;37:18	13:14 W wake (1) 14:21 walk (1) 14:17 walked (1) 19:9 wants (1) 17:20 warden (5) 29:15,15,20,21,22 wardens (2) 29:12,13 warm (2) 33:6;34:4 Warren (2) 8:19;19:7 watch (1) 19:10 watched (1) 35:21 way (9) 12:18;21:16;22:1,9; 26:1;31:9;34:22;36:18; 38:19 ways (1) 40:9 wee (1) 31:5 week (4) 7:18;23:16;34:11,12 weekday (1) 14:13 weekends (1) 14:2 weeks (2) 28:18;37:1 welcome (4) 2:2;6:22,25;7:10 welcoming (1) 10:8 West (1) 29:16 Western (1) 8:7 what's (1) 11:8 whereof (1) 28:6 Whipple (1) 4:6 Whitaker (4) 8:4,13,23;9:1 wholly (1) 32:1 whose (1) 35:15 Wilentz (1) 20:4 William (7)	2:3;7:17;8:24;11:13; 15:7;21:20,21 win (3) 16:25;17:6;30:5 wins (1) 39:9 within (4) 9:25;10:3;25:18; 32:11 without (4) 10:7;18:12;26:19; 38:6 witnessed (1) 38:3 woke (1) 34:4 woman (1) 16:21 women (1) 36:7 won (1) 18:23 wonder (1) 10:20 wondered (1) 19:17 wonderful (11) 7:2;9:10;15:9,15; 16:9;17:16;18:3,4,7; 22:12;38:12 wonderfully (2) 7:3,4 wondering (1) 11:8 word (2) 24:16;30:3 words (1) 11:24 work (19) 2:10;14:18;17:17; 19:20;20:16;21:4; 25:11;32:8;34:12,19, 24;35:3,4,12,12,17; 36:8,12,25 worked (4) 23:7;26:19,21;34:9 worker (1) 23:24 working (5) 16:13;18:9;30:12; 31:9;34:16 works (2) 34:23;36:12 world (5) 17:23;19:7;22:25; 32:1;39:12 wringing (1) 15:23 writes (1) 38:15 writing (2) 23:18;35:23 wrong (1)
	U	V		
	ultimately (2) 8:15;27:13 uncle (1) 7:13 unconstitutional (1) 39:2 unconstitutionality (1) 38:24 under (1) 17:2 undergraduates (1) 13:22 understood (1) 11:21 unexpected (1)	valuable (1) 38:5 variance (1) 28:14 versus (1) 28:19 Virginia (1) 29:16 visits (1) 13:23 voices (1) 34:5 volume (1) 26:20 volunteer (1)		

8:3 wrote (1) 32:25	31:24 1991 (1) 23:9 1995 (1) 24:14 1997 (2) 26:13;32:25			
Y				
Yankees (1) 19:8 year (13) 5:10,11;8:10;9:8; 12:3;26:16;27:23;28:3; 29:19;30:12,25;31:1; 35:20 years (22) 2:12;3:16,25;4:6,12, 20:5;6;8:6;15:22; 19:12,13;20:1;26:8,22; 28:25;31:18,20,24; 35:2;36:20;38:3;39:13 year's (3) 9:9;11:12;15:6 yellow (1) 34:9 Yesterday (1) 7:20 York (3) 22:25;24:16;33:18 young (7) 10:21;12:4;14:6; 16:13;20:2,11;34:11 younger (1) 9:20 youth (1) 39:18	2 20 (1) 16:5 200 (1) 28:12 2002 (1) 38:13 2007 (1) 28:7 21 (2) 15:22;19:12 22 (1) 15:22 25 (1) 39:13 25th (1) 35:20			
	3			
	30 (4) 8:6;24:21;28:24; 31:24 35th (2) 2:3;7:16			
Z	5			
Zampino (1) 25:8 zealous (1) 38:21 zone (3) 37:7,10,15	5 (1) 23:16 50 (2) 23:18;31:20 500 (1) 14:15 56th (1) 16:19 57th (1) 16:19			
1				
10,000 (1) 24:16 14 (1) 19:13 18 (1) 19:25 1923 (1) 32:25 1956 (1) 19:8 1957 (2) 8:10;31:16 1962 (1) 8:19 1977 (1) 16:20 1990 (1)				

