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**PROGRAM:** Caucus: New Jersey with Steve Aduato

Interview: Paula Franzese, professor at Seton Hall University Law School, on New Jersey ethics rules  
STEVE ADUBATO, host:

Raising the ethical bar in New Jersey and the nation; a conversation with Professor Paula Franzese of Seton Hall University Law School coming up next.

Announcer: Funding for this edition of CAUCUS: NEW JERSEY has been provided by The Healthcare Foundation of New Jersey, founded by the Jewish Community; Johnson & Johnson, the worldwide health-care products company; New Jersey Natural Gas, proud to support education in our communities; Verizon Communications; and by QualCare Inc., a local managed care company covering 550,000 New Jersey residents.

ADUBATO: Professor Paula Franzese was appointed special ethics counsel to Governor Richard Codey and is the Peter W. Rodino professor of law at Seton Hall Law School.

Good to see you, Paula.

Professor PAULA A. FRANZESE (Peter W. Rodino Professor of Law): It's great to see you. Thank you.

ADUBATO: It's good for you to be here. You know, I'm realizing something. Do you know that you were with us in 19--come on, come on, give me the years. Early on in our career. We've been around for almost 20 years...

Prof. FRANZESE: 1988. We were babies.

ADUBATO: We were b--we were, like, 17 and 18.

Prof. FRANZESE: We were kids.

ADUBATO: I remember we were doing this show.

Prof. FRANZESE: We were with Professor John Wefing, an esteemed colleague at Seton Hall Law School. And we did a wonderful program...

ADUBATO: And we were talking about...

Prof. FRANZESE: ...on judicial activism.

ADUBATO: Wow.

Prof. FRANZESE: The appropriate province of the courts.

ADUBATO: Hey, why don't we start with that?

Prof. FRANZESE: Great.

ADUBATO: I know we're talking about ethics, but I want to do that. A lot of people just say overall, hey, the courts are too involved, it's an activist

court. What does that even mean?

Prof. FRANZESE: Ah. I disagree. I think that that sort of a mind-set, Steve, really is such a rigid one. It tends to contemplate that the separation of powers is air-tight.

ADUBATO: Right.

Prof. FRANZESE: And I've always disagreed. I clerked for Justice Handler of the New Jersey Supreme Court and he is such a mentor to me. And one of the first things that he said about the appropriate province of the judiciary is that the separation of powers really contemplates an interdependence amongst the governmental branches, that it has to be a dialogue; that the branches have to be acting in a coordinated way to the extent that appropriate mandates and the true spirit of the law, not just its form, is vindicated.

ADUBATO: So this whole idea of separation of powers--it's really an overlapping of powers?

Prof. FRANZESE: It is an overlapping. Surely the separation contemplates a certain mindfulness of introspective governmental branches' best suited role.

ADUBATO: Right.

Prof. FRANZESE: And judges, after all, are not legislators. Nor should they be legislating from the bench. However, particularly when it comes to essential civil rights, essential basic liberties, to conceive of the separation of powers as someone ironclad really misses the point and misses the opportunity to accomplish a greater good.

ADUBATO: OK. Let's shift gears and talk about ethics. And by the way, do you distinguish, Paula--I mean, Governor Codey--as we do this program, it's late in September--acting Governor Codey called you a while back and said, 'Would you serve as co-counsel?'

Prof. FRANZESE: Yes, special ethics counsel.

ADUBATO: Special ethics adviser, right.

Prof. FRANZESE: Yeah.

ADUBATO: Would you research this issue and tell us what we could do as a state to improve the ethical climate in the state? By the way, were you even s--were you surprised by that call?

Prof. FRANZESE: I was honored. I was thrilled, Steve. It was Justice Dan O'Hern, former New Jersey Supreme Court justice, and I. We received the call and we were given a very ambitious mandate. We were asked within the scope of four months time to conduct an extensive ethics audit of the whole of the executive branch.

ADUBATO: An executive--excuse me, an ethics audit? What does that mean?

Prof. FRANZESE: Yes.

ADUBATO: Sounds like an accountant or an auditor.

Prof. FRANZESE: Yeah, you know, it's interesting. It really--it had everything to do with learning more about not just which rules applied to the various state agencies and departments, but also learning a lot more about whether or not those rules are understood, what sorts of training programs and practices are the norms. What...

ADUBATO: So people even know what the rules and laws are.

Prof. FRANZESE: Precisely.

ADUBATO: Because a lot of people wind up making mistakes and someone says, 'Oh, see, they're in a conflict of interest. They broke a rule.' They don't even know what the rule is.

Prof. FRANZESE: Right. That's a great point. We, at the conclusion of this very extensive ethics audit, learned that most ethics lapses are attributable to two things. Number one, as you mentioned, is the good-faith ignorance. 'Gee, I didn't know that this was against the rules.' And then second, sadly, and it is human nature, the bad-faith quite deliberate breach.

ADUBATO: For instance?

Prof. FRANZESE: Yeah, the notion that of course you're accepting money as an exchange for awarding a particular governmental contract. That's known as bribery, commonsensibly. And you don't need a whole lot of training to know that that's against the law.

ADUBATO: But the training comes in trying to understand what the laws and rules are.

Prof. FRANZESE: Sure. The training that we've recommended--and by the way, the Executive Commission on Ethical Standards now...

ADUBATO: What is that?

Prof. FRANZESE: That's the body that oversees and essentially serves as a check upon the potential for ethics violations within the executive branch. And it operates under the auspices of two extraordinary people, really unsung heroes in my estimation. Rita Strmensky is their executive director...

ADUBATO: Right.

Prof. FRANZESE: ...and Jeanne Mayer, their deputy. So they are the overseers. And they have just put into place, as a consequence of our recommendations, a full-time ethics compliance officer as well as a full-time training officer committed to plain language, plain English ethics training from top to bottom.

ADUBATO: In that spirit, folks, I tell you what. We're going to put our Web site up throughout the program. If you log on to our Web site, our producers, who are just terrific--they're the folks behind the scenes.

Prof. FRANZESE: Yeah.

ADUBATO: They are the unsung heroes of this series.

Prof. FRANZESE: Yeah.

ADUBATO: And we are going to put the list of recommendations that Paula and her colleagues, or Justice O'Hern, came up with in terms of this plain language with respect to raising the ethical bar in the state, because it's something that people need to understand.

Prof. FRANZESE: Yeah.

ADUBATO: So we're going to have that there as well. Let me ask you. One of the other things that you've talked about a lot and we talked about with a group of people, with Chris Christie, the US attorney...

Prof. FRANZESE: Yeah.

ADUBATO: ...and Senator Tom Kean in a previous program we did--you said the transparency disclosure. You got to disclose everything, make it transparent. You can see through it and that's better. What do you mean by that?

Prof. FRANZESE: Yeah. It goes back, Steve, to an age-old wisdom. Justice Brandeis on the US Supreme Court had said, 'Sunlight is the very best disinfectant.' So that's the basic idea. Let there be sunlight, let there be transparency. So, for example, financial disclosure forms must be submitted and now, in fact, as of last week, they're also available to all of us as citizens to take a look at on the Executive Commission on Ethical Standards Web site. The notion is that the more transparent, the more accessible dealings are, the less that the norm is behind the closed door, the greater the likelihood that in fact lines will not be crossed.

ADUBATO: But how do citizens get involved? Say someone logs on to our Web site, we hook them up to the organization you just mentioned, which is a state entity.

Prof. FRANZESE: Yes.

ADUBATO: What do they do with the information?

Prof. FRANZESE: Yeah.

ADUBATO: What does the average citizen do with--oh, I want to look at so-and-so's financial disclosure form? I mean, is that what we're talking about?

Prof. FRANZESE: Take a look and then, as a very grassroots matter, not only learn something on the basis of the particular information shared but then ask the follow-up questions. This year, under Governor Codey's direction, a confidential toll-free reporting hot line was implemented so that questions can be asked anonymously, without attribution.

ADUBATO: Right.

Prof. FRANZESE: Complaints or suspicions of wrong dealings can also be reported and will be looked into. So it really is the notion that all of us as citizens have to accept some responsibility for the government that we elect; that if you're not going to be committed to being part of the solution, then you really are part of the problem.

ADUBATO: Paula, you and I have had conversations over the years and I know

that you are a very spiritual person.

Prof. FRANZESE: Yeah.

ADUBATO: Do you make a distinction between ethics and morals?

Prof. FRANZESE: They're the same. They're the same. I think so.

ADUBATO: But wait, hold on. My morals are really about my personal religious convictions.

Prof. FRANZESE: Yeah, I would...

ADUBATO: Ethics are about what I do as a journalist, what my ethical standards are. One's my moral standards--that's between me, my wife, my God, my kids. The other one is my ethical standards as a professional. How are they the same thing?

Prof. FRANZESE: I think it is possible, Steve, to secularize questions of morality.

ADUBATO: By the way, Bill Berlin, our producer, reminded me that morals don't have to derive from religion...

Prof. FRANZESE: Right.

ADUBATO: ...because you can be someone who's not "religious" and be a highly moral person. Thank you, Bill.

Prof. FRANZESE: And a highly principled person.

ADUBATO: Right.

Prof. FRANZESE: Morality is really about living a principled life. Morality, I think, is about integrity. And integrity occurs when the outside matches the inside, when all of the verbiage and all of the rhetoric is actually the message that the messenger is living.

ADUBATO: But you were not heading up the morals commission. It's like you...

Prof. FRANZESE: No. Not at all.

ADUBATO: It's the ethics.

Prof. FRANZESE: And it's too bad, Steve, because this whole notion of morality has really taken on such pejorative connotations.

ADUBATO: As soon as you say it, it's like, oh, oh, I don't want those folks telling me what to do.

Prof. FRANZESE: Because there's been too much self-righteousness, I think, to sometimes accompany this issue of morality. I think ethics as an umbrella concept contemplates principles and first principles. What are the basic set of core values upon which you wish to live your life and, for those in public office, upon which you wish to conduct yourself in a very public life.

ADUBATO: Your students at the law school, at Seton Hall--you've been

teaching for a few years.

Prof. FRANZESE: Many years. Nineteen years.

ADUBATO: Really?

Prof. FRANZESE: Yeah.

ADUBATO: This issue of integrity, ethics, morals. Does it come up in law school?

Prof. FRANZESE: Every day. Every day.

ADUBATO: How so? For instance?

Prof. FRANZESE: Well, ask--I teach contracts this semester, Steve, and I ask my students always, 'Was this case rightly decided? Was justice served? Is there a basic sense of fairness that you find vindicated on the basis of this case's outcome? Who are the people behind this case? What is their story. What more do we need to learn about their story to allow justice to triumph?

ADUBATO: But wait a minute. Very often when someone is not found guilty--I'm going to do this, and if you don't want to answer, that's fine. Going back several years in the O.J. Simpson verdict, he was found not guilty, which does not mean he was found innocent.

Prof. FRANZESE: Correct.

ADUBATO: He was found--it was found by a jury of his peers that the state did not prove beyond a reasonable doubt that he committed these murders.

Prof. FRANZESE: Yes.

ADUBATO: The question of right, wrong, morals, was justice done is not the same as what the verdict was for some; meaning if you start saying, well, I really think that he did this and justice wasn't done because an innocent man and an innocent woman were killed. Is that the kind of conversation we're talking about in law school?

Prof. FRANZESE: Always. Always, Steve. We can never divorce a sense of right or wrong, a sense of principle from the causes and the clients that we're representing. And I think that most lawyers would tend to agree. We're very zealous advocates on behalf of our clients, but we also, I think, tend to believe in the promise of the craft, the nobility of the craft. I think those few lawyers who have succumbed to the temptation to become hired guns or automatons have actually been in the business of losing their souls along the way.

ADUBATO: Time out. There are lawyers who represent people whom they know could be guilty and are zealous advocates to ensure that they get off. I'm talking about murderers, people who steal money, people who hurt innocent children...

Prof. FRANZESE: And it's really to ensure that the system works.

ADUBATO: But wait a minute. Isn't there a moral question here for that attorney who is representing someone whom they know to be guilty but they're

working really hard to ensure that they don't get convicted?

Prof. FRANZESE: That attorney must not suborn perjury. That attorney must not be complicit in the commission of any lies in the presentation of the defense. But that attorney had better make sure, for all of our sake, that the prosecution does its job and is able, as you spoke to earlier, to prove guilt beyond a reasonable doubt.

ADUBATO: Which is on the government?

Prof. FRANZESE: Absolutely, yes.

ADUBATO: But as we go to the break, Paula, you know lawyers and I know lawyers who have gotten people off who are guilty of heinous crimes. Just a question: Should they be facing a moral dilemma?

Prof. FRANZESE: The attorneys themselves?

ADUBATO: Yes. They believe the person to have killed a child, killed their spouse...

Prof. FRANZESE: Oh, God forbid, the most horrible...

ADUBATO: ...but they got the person off.

Prof. FRANZESE: The most...

ADUBATO: They did their job. The state did not do their job well enough. The jury said, eh, not enough evidence beyond a reasonable doubt. The person walks. A person is walking on the streets who murdered their child or some innocent child or a loved one, whomever...

Prof. FRANZESE: Oh...

ADUBATO: ...or a stranger. Is that a moral dilemma?

Prof. FRANZESE: Absolutely, yes. And the most horrible of dilemmas. Personalized, internalized. It should cause a good person who's a good attorney sleepless nights and months, months, if not a lifetime, of agony in the process of reflecting. But nonetheless, the point persists. The prosecution must do its job.

ADUBATO: On that note we're going to go out to a break and I promise we'll continue doing our job talking with Paula about a whole range of ethical issues in government, in the legal profession. This is a very interesting conversation and you don't want to miss it. Stay with us.

Announcer: If you would like more information on this program, or if you'd like to express an opinion, e-mail us at [info@caucusnj.org](mailto:info@caucusnj.org), and visit us on the Web at [www.caucusnj.org](http://www.caucusnj.org).

ADUBATO: Welcome back, folks. We are talking with Professor Paula Franzese of Seton Hall University Law School. Governor Codey, at the time of this program, put you in a very important position to come up with these ethics recommendations. Before we go a little bit more into these recommendations, how did you get to be where you are? Who told you that you were supposed to be this important professor of law and do these things? Where'd you get

that...

Prof. FRANZESE: Oh, so--that's so sweet of you. That's my dad. That's Luigi Franzese, Steve. That was my dad, who wanted to be a lawyer, who immigrated to this country from Naples, Italy, who didn't have the benefit of more than a third-grade education, who worked as a longshoreman on the docks and then as a waiter and then as a chef and then as a restaurateur to make a better way for his four kids.

ADUBATO: What did he tell you?

Prof. FRANZESE: Always believe in your dreams, and never allow anyone to make you feel small. We grew up with a lot of Nablidan proverbs, Steve, and my father's favorite...

ADUBATO: These are proverbs from Naples.

Prof. FRANZESE: From Naples, yes.

ADUBATO: Just translating. Go ahead.

Prof. FRANZESE: And my dad at the Sunday dinner table would invariably ask about the events of the week. And sometimes, you know, life can demoralize you and we would show up, the four of us--I'm the oldest--and tell a particular tale of woe. And 'Daddy, somebody laughed at me,' or 'I tried to raise dollars, but it wasn't enough dollars for a cause I thought was worthy and they made fun.' Whatever it happened to be. And my dad invariably had a metaphor, a proverb, a parable to share. And my favorite that I have up above my bulletin board at work is: If you think you're too small to be effective, you've never been in bed with a mosquito. And that's it. That each and every one of us can be that mosquito, peskily trying to make a point, to make a change, one would hope for the better.

ADUBATO: Did you think that on some level when Governor Codey called and said, 'I need you to do this job'?

Prof. FRANZESE: Oh, I was, you know, Steve, I was beside myself. I was initially a bit daunted by the magnitude of the project.

ADUBATO: Right.

Prof. FRANZESE: But then so heartened to think that a governor was so sincerely committed to doing everything that he could possibly could with the short time that he had to make a change for the better. The governor's office committed the full extent of their resources to the success of the project. Justice O'Hern, whom I now am privileged to consider a colleague, has always been an idol of mine.

ADUBATO: Right.

Prof. FRANZESE: He is a majestic, brilliant person. We met tremendously fine people in government along the way. It was a great experience.

ADUBATO: And some of these recommendations, beyond the issue of transparency, full disclosure. Dual office holding?

Prof. FRANZESE: Yeah...

ADUBATO: What did you say? Did you say dual office holding is wrong?

Prof. FRANZESE: I think it is, Steve. Now that was beyond the scope of our mandate. The governor charged us with making recommendations for executive branch reform.

ADUBATO: Not legislative branch reform?

Prof. FRANZESE: No, no, no, that was outside of the scope of our purview or mandate. However, Justice O'Hern and I remain convinced of a number of things, including the premise that the ethics laws that we drafted ought to be made binding and applicable upon the local governments, and also that dual office holding invariably poses too much of the potential for a conflict of interest.

ADUBATO: OK, and again, not involved in the legislative side. But a legislator could sit on a committee overseeing an industry that he or she actually works in. Wrong?

Prof. FRANZESE: There's the potential, Steve--in the context of dual office holding, for really as a public official ascending to the role of career politician, which is...

ADUBATO: What's wrong with that?

Prof. FRANZESE: Yeah, you know, Steve, politics, I tend to think, and this is personal, really is about service and it's a calling that ought to...

ADUBATO: Not a way to make money?

Prof. FRANZESE: It should not be. It ought to be...

ADUBATO: Then why don't we pay our legislators more and say--how about if a legis--how about if someone says--I forget where--legislators--when I was in the legislature, I think it was \$35,000. No, it was 25, and then it went up to 35 when I got dis-elected. And I was like, wait, that's 10 grand more. Because I was a full-time legislator. I was very young at the time, so it wasn't that big a deal. But I don't know. Someone get me the number. I think it's in the \$45,000 range now. It might be something like that.

Why not say, 'We'll pay you \$100,000 to be a state legislator, but won't have to be a law--you don't have to be a lawyer. You don't have to be a doctor. You don't have to be a dentist. You don't have to be a developer. You could be a legislator full time, 100 grand.' What's wrong with that?

Prof. FRANZESE: Right. Nothing is wrong with that and states have embraced that model. I really tend to be less cynical, perhaps, than some. I think that the vast majority of people who seek public office are not doing it for the money in the first place. I think they are doing it because of the promise to do good, not the promise to do well from a purely pecuniary or financial point of view. I just don't think that's the case.

ADUBATO: What do you think most people think?

Prof. FRANZESE: Yeah, I think sadly the public's trust has been betrayed. I think it's possible to reclaim the promise of this state because we are a

great state. I think that the public quite legitimately would not have reason to know of the very fine people who are serving, from the trenches on up, in government because they perceive their life's work as noble, as something bigger than themselves, as something that has everything to do with service. The people that you read about, the people that you hear about in the press and in the tabloids, those stories tend to, for better or worse--I think worse--appeal more to the lowest common denominator, the more salacious.

ADUBATO: Let me ask you this. Could you see yourself, given what you've seen, given the work that you did--you've done on this ethics--special ethics panel, could you see yourself--relatively young woman who've accomplished--you've accomplished a lot. Could you see yourself saying, 'You know, one day I'm going to run for office? I'm going to run for office and I'm going to go out there and I'm going to take the things I've learned as a professor, as a person who has a lot to contribute--whose dad taught you a lot--I'm going to go do this'? Could you see yourself running for public office?

Prof. FRANZESE: Steve, if I said no, I would be a hypocrite only because I tell my students, 'Wise up. Ascend. Seek public office.' The most powerful point remains that good people must seek higher office, so...

ADUBATO: If not?

Prof. FRANZESE: Because if not, and we can all fill in the blank, Steve. If not. I also believe and I tell my students this, that it's imperative that we follow the calling. I believe that we come into this world with certain gifts and it's up to us to be using those gifts, to be giving away those gifts and service...

ADUBATO: What's your calling?

Prof. FRANZESE: ...to the world. I'm a teacher. I'm a teacher. That's my passion. I thank God that I'm able to do it. I love doing it and it has been--to be at Seton Hall Law School--the greatest privilege of my life.

ADUBATO: By the way, we just found out from our great team in the control room that legislators make \$48,000.

Prof. FRANZESE: Oh, there we go.

ADUBATO: Just clarifying that for you.

Prof. FRANZESE: All right.

ADUBATO: But it's not--again, so those who serve in the legislature have other employment because it's virtually impossible to--I mean, it's going to be tough for someone here who's making 48 grand saying, 'I'm pulling it off for my family.' But most legislators, in fact, have other employment.

But going back to this--one other recommendation that you and Justice O'Hern made that you really feel is important for people to understand. What is it?

Prof. FRANZESE: Yeah. I think certainly, Steve, first and foremost, simplicity, plain language. The ethics rules we found were a morass. They were this seamless web. They were inscrutable more often than not.

ADUBATO: Hard to interpret?

Prof. FRANZESE: Very, very difficult to interpret, to reconcile, to understand.

ADUBATO: Written in legalese?

Prof. FRANZESE: More often than not. But also, sometimes written in patently contradictory ways. So we endeavored to streamline these statutes into one uniform ethics code. It's accessible. It's drafted in plain language. It's available on the governor's Web site. It's a document that we think works and that, in the best of all worlds, will be made binding upon local governments as well. Knowledge is power. And the premise is, if you know the rules and you are committed to doing the right thing, you will.

ADUBATO: By the way, folks, when you log onto our Web site, we'll connect to the governor's office and you will in fact get that information. We'll go out to a quick break and one more minute with Paula Franzese. We'll be right back.

Good job...

Announcer: The preceding program has been a production of the Caucus Educational Corporation, NJN Public Television, and Thirteen WNET New York.

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ADUBATO: Welcome back, folks. Paula, let me ask you this. You talked about loving your work as a teacher. Because?

Prof. FRANZESE: A teacher affects eternity, Steve. And I think that's true. We don't know where our influence stops. For better or worse, we never forget out teachers. Think back. Who was your first-grade teacher?

ADUBATO: Mrs. Hoffman.

Prof. FRANZESE: Exactly. You never forget. You--we have these...

ADUBATO: I don't think she's forgot me either.

Prof. FRANZESE: You see, Steve.

ADUBATO: Not for all the right reasons. But go ahead.

Prof. FRANZESE: No, I believe it.

ADUBATO: At Rich Street School in Newark, New Jersey.

Prof. FRANZESE: You're memorable. Oh.

ADUBATO: By the way, why do we remember our first-grade teacher?

Prof. FRANZESE: At that point--and there's so much in the cognitive sciences and the neuroscience to tell us that our precious brains are just forming, and that imprints are, in fact, left. Profoundly so, for better or for worse.

ADUBATO: So you meet your students all over the place, right?

Prof. FRANZESE: All over the place. In 19 years--my students now are judges. My students are legislators. My students are esteemed partners. My students are the US attorney, sim...

ADUBATO: Chris Christie was one of your students?

Prof. FRANZESE: Chris predates me. Actually, I began teaching the year that Chris graduated. But we're so proud of him.

ADUBATO: What do they say to you?

Prof. FRANZESE: My students...

ADUBATO: Yeah, what do they say to you?

Prof. FRANZESE: ...themselves?

ADUBATO: You've got 30 seconds left. What do they say to you?

Prof. FRANZESE: Oh, Steve, the greatest gift that I receive is when they say thank you.

ADUBATO: For?

Prof. FRANZESE: Thank you for affording me an opportunity, a mind-set, a paradigm to believe that...

ADUBATO: A way of thinking about things, no?

Prof. FRANZESE: ...to believe that great things are possible.

ADUBATO: That's interesting. We've had a lot of conversations off the air. It's been a long time since we've talked on the air, and you have not disappointed me. But more importantly, you haven't disappointed the folks out there.

Prof. FRANZESE: Oh, that means a lot to me, Steve.

ADUBATO: We learned a lot.

Prof. FRANZESE: Thank you for the opportunity.

ADUBATO: Thank you. Good work.

Prof. FRANZESE: Thank you. Thank you.

ADUBATO: Excellent.

Announcer: Don't miss Steve Adubato and co-host Rafael Pi Roman each week on "Inside Trenton," Saturdays at 8:30 AM on Thirteen WNET New York and Sundays at 7:30 AM on NJN Public Television.

