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ORAL HISTORY PROGRAM

Honorable Joseph W. Bellacosa



Found on exterior entrance to New York Court of Appeals

**THE HISTORICAL SOCIETY
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ORAL HISTORY

**Subject: Hon. Joseph W. Bellacosa
New York State Court of Appeals**

An Interview Conducted by: Peter S. Cane

Date of Interview: August 5, 2009

**Location of interview: OCA Studio
25 Beaver Street, New York City, New York**

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THE HISTORICAL SOCIETY OF THE NEW YORK COURTS**Oral History Project**

INTERVIEWEE: **Hon. Joseph W. Bellacosa**

INTERVIEWER: **Peter S. Cane**

DATE: **August 5, 2009**

[00:00:00]

PC: My name is Peter Cane and about 20 years ago I had the highlight of my legal career when I clerked for Judge Joseph W. Bellacosa on the New York Court of Appeals. And happily he's sitting here to my left, and your right this morning. We're here as a part of the program of the Office of Court Administration of the State of New York, the history project of the New York Court of Appeals. And good morning, Judge.

JB: Good morning, Peter. Great to see you again.

PC: Same here. We're here to talk a little bit about you and your role on the Court and how you got there, what you did when you were there, and what you've been doing since. And in this sort of situation I think it's always best to start at the beginning.

JB: Great.

PC: And the beginning for you was Bedford-Stuyvesant, is that right?

JB: That's where I was born. Just about a hundred years ago, my grandfather, after whom I'm named, he was Giuseppe, and my grandmother, Giacomina, Jacqueline, carried my one-year-old father Frank from Italy in the Bari section, down in the Italian heel of the boot, into New York and into Bedford-Stuyvesant,

Brooklyn, where my father and mother were married and where I was born. And my first eight years of life were right there on the corner of Gates and Stuyvesant Avenues.

And I still go back there, fairly regularly. I'm sure my grandparents and my father and mother are scratching their heads in heaven wondering, "What are you doing back here? We gave you an education to get going." There's a Bread and Life, Saint John's soup kitchen, which is a misnomer now because it's a beautiful dining facility on Lexington Avenue in Bedford-Stuyvesant where I'm on the Board of and serve meals at, 500,000 a year [600,000 in 2012]. So, it's one of those giving back and going back pieces of my life, which is an extraordinary opportunity.

My early education was there. We moved along and ended up in Bushwick, in Ridgewood, and gravitated towards the neighborhood of the person who became my dear wife Mary (Nirrengarten) Bellacosa who lived in Glendale, Queens, just across the border of Brooklyn into Queens.

[00:02:02]

We married, had three children, lived in Woodhaven Queens and ended up in Long Island. Then up in Guilderland, New York, which is a suburb of Albany, in connection with my Court of Appeals work in several different capacities. But I'll leave that to you to draw me out. It was a very rich growing up in family and in values. And Brooklyn remains very, very close to my heart, as the Brooklyn Dodgers did.

PC: Sure.

JB: Many, many years. The education also dovetailed. I went to parochial schools. I went to a preparatory seminary in Brooklyn on Atlantic Avenue, which is where my lifelong friend, my brother-in-law who just passed away, Andrew Nirrengarten, who became a priest, introduced me to his sister and he went on to be a priest and I went on to chase after his sister and marry her.

PC: You chased her and you caught her.

JB: Yes, I caught her, or vice versa or a bit of both. And I went to Saint John's University and its law school after that. Also at that time still in Brooklyn.

PC: Mm-hmm.

JB: So Brooklyn is a very, very significant part and parcel, always will be, of my life, upbringing, education, and all of those tie-ins.

PC: How do you think your life in Brooklyn, your young life in Brooklyn, affected your life on the bench?

JB: It was a wonderful, enriching experience, actually. That place affected me deeply in the sense of understanding people better and inculcating tolerance. I got that from my parents, but also most significantly from my paternal grandmother because my grandfather died when I was only two years old. My grandmother raised seven children, including my father, who only got to the third grade. And he obviously worked from a very, very early age to help her raise his brothers and sisters on the corner of Gates and Stuyvesant Avenues. My grandmother was a very, very tolerant woman, who when she cooked a meal, everybody sat down and ate together.

[00:04:03]

So at a very early age I was sitting having meals with -- at that time, African American Black guys who were working in the ice business that my grandfather founded that my father worked in, carrying ice into tenements. They sat with us as equals. It was a tremendous value piece that has affected everything in my life. And I'm very grateful to her for giving me that.

PC: I remember you used to keep behind your desk in your chambers, mounted on a piece of beautiful wood, a pair of ice tongs.

JB: Yes. It's interesting you bring that up here, Peter, because when Mario Cuomo¹ appointed me to the Court of Appeals on January 5th in 1987, one of the things I talked about was where I came from, and how I got to that extraordinary position. And here I was the only son of a man who only got to the third grade and I was now going to be sitting on the highest Court of the State of New York, with an extraordinary education as the backdrop that led to that. And I talked about those origins that I just referred to and the values that came from it. And I mentioned that my grandfather and my father were icemen. A lot of people who came from that region of Italy, for some reason or other, the Baresi, as they called them, from Bari, Apulia region on the Adriatic, became icemen when they came to New York in the late 1800s and the early 1900s.

So at the very next Saint John's alumni function, a luncheon in connection with the New York State Bar Association, the alumni association, including Mario Cuomo, the Governor, presented me with a bronze set of ice tongs and an ice pick so that I should never forget where I came from. And you're quite right. I was so

¹ Mario M. Cuomo, Governor of the State of New York, 1983-1994.

proud of that. I put it on the windowsill behind my right shoulder in my chambers at the Court of Appeals in Albany. And to this day I can see lawyers coming into my chambers, sitting down, and eyes just moving slightly to the side wondering, “What is that all about?” (Laughs) It’s not a gavel. It’s ice tongs and an ice pick. So it’s a great enriching symbolic reminder of some of what we were talking about.

[00:06:22]

PC: Mm-hmm, mm-hmm. And after -- Well, you went to college at Saint John’s.

JB: I did.

PC: And did you go directly from college to law school?

JB: I did. The first two years of college were still in the preparatory seminary until I decided to leave and chase after Mary, fortunately. And when I transferred to Saint John’s I had so many credits stored up I was able to finish my college degree program in a year and a half. So college was three and a half. And I decided in those days, which was late ’50s, to go immediately to law school at midyear so that I could do it in two and a half years and really get a job and get going.

PC: Mm-hmm.

JB: Unlike the present days when people seem to extend education, I was compressing them. The law school at that time was in downtown Brooklyn on Schermerhorn Street and there I was met not only by one of my first wonderful mentors in the law, Dean Harold McNiece,² but also classmates who were very,

² Dr. Harold Francis McNiece, Dean, St. John's University School of Law, 1960-1970.

very special in my life and still are. One was the former Police Commissioner of the City of New York, Robert McGuire,³ a very distinguished lawyer and public servant in New York. Another was Joe Hynes,⁴ who's the District Attorney of Brooklyn. We all ended up not only as friends and classmates but lifelong friends and companions, including being in one another's wedding parties and being godparents to one another's children. So the law school experience for me, from Saint John's, was also very, very enriching in a permanent way for all of my life until this very day.

[00:08:00]

PC: What do you attribute that to? I mean, you take a bunch of guys from Brooklyn or Queens and you get from them district attorneys, distinguished jurists, governors, police commissioners. Was there something in the water?

JB: (Laughs) I doubt it. Maybe some of it is Brooklyn, although Bob McGuire came from the Bronx, he'd be quick to say, Throggs Neck. But we all came, I think, from families who were deeply committed to the education of their children and the values of their children and the sense of community and public service, as well as doing something that was good for your life in terms of a way of paying the bills because classmates and people before me and after me also from Saint John's went into the private sector to great successes. But that was a period when I think coming out of the World War II Depression era, the parents instilled in so many of us -- that's the quality I think that you were searching for that I'm trying to put my finger on. It gave us a sense of tremendous purpose about ourselves

³ Robert J. McGuire, Police Commissioner of the City of New York, 1978-1983.

⁴ Charles Joseph Hynes, District Attorney of Kings County, 1990-2013.

growing as individuals but being a part of a community, whether it was the Saint John's alumni group or whether it was the neighborhood we came from or the larger community of the City of New York or State of New York, which was a great devotion to paying back, serving other people. Why else do you go to law school? I can remember the first time somebody asked me, "Why'd you go to law school?" I said, "Well, I was going to be a priest and serve people and I figured since I wasn't going to be a priest, so I'll go into a profession that serves people." And it's as simple as that as to why I became a lawyer. And all the rest of it in terms of private work or the academic part of my career, and certainly the largest portion of all, the public section of my career, was one of the most satisfying motivations.

[00:10:06]

And some of it was serendipitous. It just kind of happened. It's not like I had a game plan to get to the Court of Appeals. Wonderful relationships, which you were just asking about, came together in concentric circles of relationships where people were coming to new positions of authority and what do you do when you do that? People remember well somebody who influenced them or seemed like a good guy.

And some of that goes back to the Mario Cuomo piece. I mean, he was in Saint John's Law School five years before me and I only knew him as a young student. I was on the Law Review and one day Bob McGuire, who was the Editor-in-Chief, and I was the Associate Editor for articles, we got a manuscript from a fellow by the name of Mario Cuomo, who was practicing law on Court Street in

Brooklyn. And he wanted to write about his two years as a clerk in the Court of Appeals to Judge Adrian Burke.⁵ We looked at the article and we said, “This is interesting. We haven’t seen anything like this.” And we called him up and said, “We’re going to publish the article.” And he said, “What are you going to do with it?” I said, “Well, we have to edit it and source check it and cite check it.” And he said, “Don’t ruin my article.” And some of the other members of the Law Review and I tease about the fact that we really made him famous by publishing his article before anybody knew who he was. And he complains that we ruined his article by editing it. (Laughs)

But that formed a relationship. It’s light-hearted, but it’s also very serious and that relationship came to fruition many years later when I was on the law school faculty. Not that many years later when you think about it. We were editing his article in 1960, ’61, and along came 1974 with a lot of different alumni becoming movers and shakers, and those kinds of relationships and encounters during those years came to new light and some key crossroads.

[00:12:02]

Came 1974 and another alum who came out of World War II, Hugh Carey,⁶ a congressman on the Ways and Means Committee, decided to run for Governor of the State of New York. Nelson Rockefeller⁷ had left for Washington. Hugh Carey won as a Democrat and he asked Mario Cuomo to leave private practice and

⁵ Adrian Paul Burke, Associate Judge of the New York State Court of Appeals, 1954-1973.

⁶ Hugh L. Carey, Governor of the State of New York, 1975-1982; Member of the United States House of Representatives, 1961-1974.

⁷ Nelson A. Rockefeller, Governor of the State of New York, 1959-1973; Vice-President of the United States, 1974-1977.

become his Secretary of State. And we used to tease him that that job was not the one down under in Washington, it was the one that filed barber shop licenses and notary public authorizations, and he was concerned about that range of authority. I was asked at the same time to leave my faculty position, because by that time I had become a faculty member at Saint John's University School of Law, as well as the Associate Dean for academic affairs. And the then Chief Judge of the Court of Appeals, Charles Breitel,⁸ invited me in that same time period, the end of 1974, to come up to the Court of Appeals as Chief Clerk and Counsel to the Court, a new role that he had fashioned and envisioned. And my wife and I were very doubtful about doing that because it meant I would have to move our three young children and our family to the Albany area for a full-time job, give up a lot of other things and taking on this new job.

And I can remember sitting in my faculty office one Saturday with Adjunct Professor Mario Cuomo. And the two of us had a conversation much like the one we're having right now, asking, "Should we do this? Should we accept these respective invitations?" One from the State's newly elected Chief Executive and one from a relatively new Chief Judge. And we were very doubtful. He wrote me a note at the end of the day when he got home, which I had saved thanks to my wife. And it was a note that was dated, I think, December 21, 1974 in his own hand. "Dear Joe, did it ever occur to you we're both making a big mistake going to Albany? Maybe we should just go into private practice. Mario."

[00:14:08]

⁸ Charles D. Breitel, Chief Judge of the New York State Court of Appeals, 1974-1978; Associate Judge, 1967-1973.

Fortunately, 1974, now fast forward again to 1987. He's now the Governor and he's appointing me as a Judge of the Court of Appeals. The letter came out of my pocket with the new robe covering my jacket, sitting on the bench in the junior Judge's seat on the far left by the window. They always give the window seat to the junior Judge. And I read the letter as part of my remarks, having just been sworn in. And I said, "Obviously, Governor Cuomo's rhetorical question in 1974 has now found its answer. Neither one of us made a mistake. He's the Governor, and I'm a Judge of the Court of Appeals." (Laughs) He loved it. I framed it. And it was in the entryway to my chambers the whole time I was on the Court of Appeals. A very special connection, Peter, going back to the question you asked about Saint John's, relationships, and how they mature into just wondrous opportunities.

PC: Absolutely. And there's a lot of ground you covered in that that I want to get back to.

JB: Sure.

PC: But when you talk -- And, Judge, you were talking about community and how important that was to you and I know that for you one of the most important roles that you play, and you certainly played in my life, is as a mentor. And I know early in your career, Justice Christ⁹ played a very important role in your life. Can you tell us a little bit about that?

JB: Sure, Peter. You know it because you sat about 15 feet from me the years that you were my law clerk. And one of the first jobs that I got -- After I got out of law

⁹ Marcus G. Christ, Presiding Justice of the Appellate Division of the Supreme Court, Second Judicial Department, 1970; Associate Justice, 1959-1969, 1971-1976.

school I got a high-paying job at New York Life Insurance Company in the General Counsel's office and it paid Wall Street rates and it helped for the fact that we had just been married, Mary and I, and had our first child.

[00:16:00]

And when I came home two years into that job and told her that I was going to leave and Dean Harold McNiece, one of my mentors, had suggested I go down and have an interview at the Appellate Division, Second Department at 45 Monroe Place in Brooklyn, and talk to a couple of judges about a clerkship because he thought a clerkship and eventually teaching law was something that he had in mind for me and my career.

I had this wonderful interview with a Judge, Marcus Christ from Long Island, and another Judge, Henry Ughetta¹⁰ from Brooklyn. They were the two Senior Associate Justices of the Appellate Division at that time, around 1963. And they offered me the job to become a law clerk in that court. And with great trepidation I went home and told Mary I was leaving New York Life Insurance Company, which she thought was going to be a career, and would have been, you know, well-paying and interesting private sector work. And lo and behold, again, this leap of faith that came about. In accepting that offer, becoming a law assistant and then ultimately law secretary to Judge Christ for six, seven years, was a transformative career position because it turned me pretty much for the rest of my career into a public sector person and a public interest person. And I think that

¹⁰ Henry L. Ughetta, Associate Justice of the Appellate Division of the Supreme Court, Second Judicial Department, 1955-1967.

actually harkens back to the origins of why I became a lawyer, why I originally was in the seminary. It all kind of came together.

Presiding Justice Marcus Christ was a very, very special man, as well as being an extraordinary judge. Very thoughtful, very skillful, highly, highly regarded, not only in the court itself but in the outside communities. And he gave to me not only the education, the continuing education after law school, of what the court system was like and what it was about. One of the most significant lessons among thousands that you and your fellow law clerks over the years had to listen to, because I always felt it was an obligation to pass along the gifts that he had given me in his lessons on life and the law --

[00:18:11]

One of the most important ones that he and I exchanged because I eventually moved to Long Island -- I would drive to his house in New Hyde Park and we would drive in on the conference and on the argument days together. So we talked about the cases, we talked about our lives, we talked about our families. And one of the things he consistently came back to, how important the institution was, preeminently over individual advancement. And I think the collegial spirit of what you do as part of any kind of an institution or entity came through consistently and it has stayed with me. And it was something that I think is so important in what I've been able to maybe occasionally hopefully pass along as a mentor, as well. It was a tremendous gift he gave me for which I'm, of course, very, very grateful in the professional sense but also in the personal sense. He was a very special man and a very special judge.

He became the Presiding Justice of the Appellate Division Second Department and ultimately was influential, I know, in recommending me, along with Judge Hopkins,¹¹ who was another outstanding appellate Judge of that Second Judicial Department, to Chief Judge Breitel, a few years later after I had gone to a teaching life, which I thought at the time was going to be the rest of my career, as well.

But after five years of teaching, I got a call out of the blue from the Chief Judge of the State of New York to his residential chambers at Trinity Place, in New York City, and he kind of lectured me on my responsibilities as a lawyer. He was that way. He became another mentor, by the way. And he was an extraordinary Judge, a leader in the Appellate Division First Department, Counsel to Governor Dewey¹² for many years. And then ultimately a Judge and Chief Judge of the Court of Appeals, the last one elected to that post, as we shall discuss shortly.

[00:20:05]

But when he asked me to take on the new job, out of the blue as far as I was concerned, because I wasn't pursuing a change in career, I was taken aback. I was very happy teaching, writing the Practice Commentaries for the Criminal Procedure Law each year, and doing an occasional appeal. And it was a wonderful professional life and our children were 9, 11 and 13. We had a nice little house in Syosset, Long Island. My life was pretty well settled and seemed to like where we were as a growing family and in my career, and seemed like it was

¹¹ James D. Hopkins, Associate Justice of the Appellate Division of the Supreme Court, Second Judicial Department, 1962-1981.

¹² Thomas E. Dewey, Governor of the State of New York, 1943-1954.

on a course that was almost as settled as when I was at New York Life. And lo and behold, this call came from Albany. And I know it was instigated in part with the kindest recommendation from Judge Christ and Judge Hopkins to Judge Breitel, as I said, to the effect: “That if you want to have someone run the non-judicial side of the Court of Appeals as Chief Clerk,” the chief non-judicial officer for all practical purposes, “you ought to take a look at this fellow who worked for our court for so many years.” And lo and behold, he offered me the job on behalf of the Court of Appeals and I again had to go home and explain to my wife, “We’re moving.” “Where?” “To Albany.” She was not happy. Nor were our children, particularly our dear daughter whose birthday was yesterday [August 4, 1965].

I remember Barbara at age nine walking with me as I was explaining this change in career and change in location and uprooting of their school and friends. And she said, “Daddy, I don’t understand. You were a clerk to Judge Christ. Now you’re a professor of law at Saint John’s and now you’re becoming a clerk again.” (Laughs) It was very difficult to explain to a nine-year-old that this was somehow an upward trajectory. It didn’t sound that way to her. But I took the job and a lot of other things then fell into place, which we’ll probably have some conversation about.

[00:21:57]

PC: Well, not only Barbara, but some of our listeners, reviewers, may be confused, as well. Can you explain? Because there’s a twist here. The job was one thing before

you took it and I think it became something quite different once you had it. Can you give us a little bit of background on that?

JB: Yes, Peter. I viewed initially, when Judge Breitel extended this invitation, the job as being a non-lawyer's job. You were going to be a manager of the Court. That's what clerks in most of the courts that I knew and worked in, and including the history at the Court of Appeals were. And I explained to the Chief Judge that I was very happy being a "lawyer lawyer" and I had evolved from the law clerkship years to teaching law, professional responsibility and criminal law, writing the Practice Commentaries for the Bench and Bar, and the lawyer, quintessential lawyer role and function was very, very important to me. Breitel was a genius in a lot of ways. He was a transformative Chief Judge in ways that we may touch on if the opportunity presents itself. And he was creative in dealing with obstacles that would be thrown in his path. And he viewed the obstacle of my wanting to be a lawyer-lawyer as something he had to overcome. The way he overcame it was to suggest to me that, "If you come and take this job and run the case management operation and the personnel of the Court of Appeals, I also want you to be at the same time the counsel to the Court of Appeals." I said, "Well, what's that? That's an unknown title. It certainly doesn't exist in the Constitution." He says, "It's a functional role that I and the Court will confer upon you." I said, "Functionally how?" He says, "You will be in the conference room with us, the first clerk to be in the conference room when we discuss the cases on the day after oral argument." "And when we invite you, young man, to offer an opinion or ask your opinion, you will be able to tell us what your opinion is on a matter."

[00:24:03]

That was very, very inviting as a “lawyer lawyer,” to be told that the specifications of the job were very, very different from the usual conception of a clerk-administrator in that setting. It was very inviting and exciting. And it really did the trick. I had no way to say no to that because it was to be a professional groundbreaking role. That opportunity was new, different, and I knew would be something I would enjoy tremendously and be able to make, I hoped, a significant contribution.

Therefore, I went home and told my wife the second time, after having earlier said no to the Chief Judge on the job, that we’re now ready to say yes. And being the wonderful person that Mary is -- we’ve been married for 49 years [12-26-60], by then with three wonderful children and now great, pretty, wonderful grandchildren. A marvelous family! But Mary’s a very, very special person. She has just zigged and zagged with me throughout this unusual career path and has always been very understanding, very direct in changing and challenging, too; she’s a strong and smart person, in where are the practical pluses, minuses, and benefits are for our joint interests and our family. And I think ultimately she saw that the leap of faith on that move made sense, although I should add this footnote, although you know I don’t like footnotes particularly. You remember as a law clerk. I used to tell the law clerks, “Get those footnotes out of here.”

[00:25:48]

But the footnote is that Chief Judge Breitel said, “I’m going to be Chief Judge for four years. If you come up and do this for three or four years, we can transform

the way the business is managed at the Court of Appeals all to the good, on the quality side.” He says, “And then you can go back to your life.” And I think I sold it to Mary on that representation. It may be an admission of a misrepresentation to my wife on that basis because our families were all still in New York City and Long Island. And the thought of us going up for a limited period of time ultimately I think carried the day with her. Of course, it turned into 25 years and at the end of which, in the year 2000, because we first went up there in 1975 -- In the year 2000 she said, “Well, maybe -- since the children are all down in the metropolitan area and our grandchildren are down there and our mothers are down there. Maybe it’s time to go back.” She says, “It’s a little longer than three or four years, isn’t it, Joe?” So she didn’t hold me to it in the fullest sense of the term, but that’s how that turned out.

PC: Just on the footnote question. You used to quote a great legal scholar, was it Noël Coward about footnotes or --?

JB: (Laughs) Your entertainment law background is coming to the fore, Peter. One of my instructions, as you recall, to the clerks was to keep footnotes out of my opinions. And I was an oddball, I suppose, in that respect compared to some of my colleagues who were comfortable with ample footnotes. They toted mine up at the end of my 14 years on the Court of Appeals and said that there were only about five or six, in total, that made it through in all of my published opinions. And they were all because other Judges urged a footnote here or there for a particular qualification -- so in order to reach consensus I would give in occasionally, very rarely.

[00:27:45]

But the quote that I used for instructional purposes and guidance purposes and direction purposes to all the clerks at the orientation was that footnotes were a little bit like, as Noël Coward¹³ said, not me -- we'll give full attribution here for all of the implications -- "Footnotes are like the doorbell ringing downstairs when you're making great headway upstairs. You never quite get back to where you were before the interruption." It's a great way, I think, in terms of legal writing, which, of course, I was very aware of in my academic career. Trying to convey to students and then ultimately young lawyers and then even mature lawyers that -- you should know your audience. What is this document you're writing? What is its purpose? And it's not in writing opinions and deciding cases in my view. And I know I'm an exception. Some judges are prolix, particularly federal judges, by the way. They're worse than the state judges. Prolix in footnotes, numbers of them and length of them. And to me they are a distraction from the responsibility to articulate the reasons why you're deciding this case and what the particular issue is. It's not an academic exercise. It's not a law review article for the purposes of entertaining or impressing the bench and the bar.

And I'm afraid, and I'm frank to say it -- I said it all the years while I was a Judge, so I guess I shouldn't be, you know, limited now that I'm a free spirit. I'm frank to say I think judges have lost sight of that, in terms of what the purpose of their opinion is. It's not to impress and do an academic piece that professors are going to cite and quote. It's to explain to the public, and obviously to the lawyers

¹³ Sir Noël Peirce Coward, English playwright, actor, and composer, 1899-1973.

and the litigants in the particular case, what the reasons are for this decision coming out as it has. And you don't need, you know, 50 footnotes. And some that we found in briefs that were longer than the page of text. That was shocking to me when I would read the thousands of briefs that I had to read in all the years that I was at the Court of Appeals in different capacities, that lawyers would think that that would impress me as the person -- They were trying to get into my head and they would do things of that nature.

[00:30:19]

PC: Judge Bellacosa, you were given this new role that Chief Judge Breitel had told you about, that you were going to become Counsel to the Court, which had never existed before. And as you said, significantly, you were going to be present at the conferences. And, of course, the conferences are where the Judges discuss the cases that they're going to decide and it's, you know, very obviously highly confidential what takes place in there, etc. What was it like the first day when you walked in to the conference the first time? Nobody quite knew what to do. It was all brand new. How did it feel?

JB: Awesome. First of all, it was a tremendous privilege, and I recognized what the Chief Judge, in getting the rest of the Court to agree to this, because for them it was also new and different. And for me to be just an observer was tremendous. To be asked questions occasionally -- I don't want to overstate, you know, this. It was still the seven Judges having the conversations, the discussions, the voting, the deciding. But on the occasions when either for jurisdictional purposes because I was deemed as the Clerk of the Court to be an advisor on the jurisdictional

predicates of what cases get to the Court and how they get to the Court as well as the merits and resolution of the appeals themselves -- That evolved into a very significant part of the role of Clerk: that we would initiate a process to evaluate promptly whether a case was properly in the Court of Appeals.

[00:32:06]

There were at that time two tracks to get to the Court: the civil and the criminal. On the criminal side of the docket, each Judge would have an assignment of several hundred over the course of a year, what they called criminal leave applications. And that's the only way a criminal case, other than a death penalty case, which didn't exist at that time, would get to the Court. On the civil side, the motions for leave to appeal, what in Supreme Court of the United States parlance is called *certiorari*, there the Judges were reviewing, with their chambers law clerks, motions for leave, the briefs and the submissions of the lawyers, and deciding that five percent of them qualified as grants, that they should come on a full merits review of the Court. Again, at that time in the mid-'70s, the Court of Appeals had approximately 700 argued appeals each year on the criminal and civil docket. It was enormous, and it was one of the major, major problems we were confronting from a management standpoint. There were tremendous delays and one of my responsibilities coming out of the conference directions of the Judges was, you know, "Help us to find a way and methods that can deal with this."

Behind the 700 appeals were several thousand criminal leave applications and civil motions for leave to appeal. They also were the threshold to get in the front

door and had to be dealt with. One of the directions that I got was to try as a pilot the creation of a Central Legal Research Staff, which would be law assistants, not in chambers as you were with me, Peter. Each Judge had two at that time. But, this was to be a group that would work on the screening, evaluation, research, and writing of reports on the civil motions for leave to appeal. Always for one Judge at first, who would review it and put the personal responsibility of that judicial officer, on the work product. And then the report would be sent to the entire Court. Judge Breitel was, as Chief Judge, very skeptical about this process because he was a great believer in doing your own work. He was a man who came out of the Depression. He was a prosecutor in the Murder, Incorporated cases in the Special Prosecutor late 1930 years with Thomas Dewey. He was then Governor Dewey's Chief Counsel. As an appellate judge in Manhattan and then ultimately in the Court of Appeals, he was an indefatigable worker and he believed in doing his own work and always instructed other people, "Do your own work." He was afraid that creating a Central Staff would move the decision-making process and power away from the discipline of personal judging. So in creating the Central Staff I knew that the rest of the Court wanted this as a method and mechanism for dealing with this gigantic workload below the waterline. It couldn't be seen. Above the waterline you'd see only the full appeals. Below the waterline would be thousands of motions and applications, and they wanted mechanisms to deal with them.

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He went along with that, which shows another quality. He was the Chief Judge and he was willing to listen and move with the consensus and majority of his own, some very young in the professional maturity sense, newer Judges. And we started with three and it ended up -- Now, my understanding is there might be as many as 15 or 18. It was so successful in breaking the back of the workload, the monumental workload, and allowing the Judges, and this was the key, to concentrate and allocate more of their time on the relatively more important ultimate merits of the appeals that were being argued. But we still had this 700 full appeal cases above the waterline.

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There, in order to break away from what the culture of the Court was at that time, which was basically *laissez-faire*. Let the lawyers do whatever they do whenever they want to do it was the attitude. And therefore, many, many matters were long delayed. They'd be in the basement. The lawyers would get around to it when they want. And Chief Judge Breitel's instruction and the whole Court's backing to me was: "Find a way for us to take responsibility, control, hands on management. Take away the *laissez-faire* attitude." How did we do it? We started with the Court's approval and without legislation. We did it on the Court's own rule making authority. We established screening mechanisms for jurisdictional defects, which cleared out hundreds of cases that weren't supposed to be there and were just dragging down with time and effort and work. We did screening mechanisms on merits of appeals that were relatively less important and more predictable on outcome because they got to the Court by appeals filed as of right sometimes in

the old system, which we'll talk about in a minute. We put in place time mechanisms that held the lawyers' feet to the fire. They had to file certain things on certain dates with very small extensions and all of a sudden the Bar woke up, that the Court has awakened. The giant is demanding these things of us on time. They're screening and reviewing at the earliest possible stage. The first time we file a piece of paper they look at it and they respond to it and they tell us, "Do this, do that, or go away." It was an amazingly transformative time in terms of just case management.

[00:38:13]

And what Judge Breitel was doing with the Court, of course, the seven Judges, they were also changing in tune with that. The Breitel influence, when he became Chief Judge in 1973, was to shake things up from the way everything was done before -- He used a wonderful phrase. He said, "We want to have the oral arguments in the afternoon. And the very next morning at conference," the conference that you asked me about earlier, "we're going to orally discuss and preliminarily state votes and positions for those cases. We're not going to have advanced assignments that one of the seven knows, 'Oh, it's my case.'" He said, "It's all of our cases. We each have an individual responsibility for each case, not a delegation to one or another among the Judges. So I want to take away pre-assignment," which he did. "I want to take away written reports," because he said, "otherwise you know what it is. We fall in love with our words and then we can't break away from them. But if we talk it through, we might be open to the wisdom and experience of one another." An ingenious psychological contribution as well

as a dynamic that made for more intelligent and I think fairer and better collegial institutional results.

So having done all of that, he's now looking at 700 argued appeals. At that time the Court of seven were sitting from 2:00, usually until 6:00 or 6:30 in the afternoon. All, as you remember, and for those who need to understand the dynamic of the Court of Appeals, it sat for two weeks out of every five or two weeks out of every month in Albany. And the entire Court was non-resident. No one lived there. There was no resident Judge. I had to move to Albany to be at the Court full-time. I moved with my family to a suburb called Guilderland, as we discussed.

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In that two-week period, Monday to Friday, 2:00 to almost 6:30 were sitting times and days. It was exhausting because at the end of that day there was a random selection of assignment for reporting the case the next morning. I mean, the Judges literally came off the bench not knowing and therefore paying very close attention to one another's questions and to the lawyers because they didn't know if this is going to be "my case" to report the next morning.

At the end of the argument day, with index cards with the name and number of each case face down on a beautiful table beside their robing room, the Judges, each of them, found out which was their case to report. They could get the most significant case, *Brown against Board of Education*, *Marbury against Madison*. You could be the junior Judge. If you drew that case, you had to report it. One of the first cases that I drew as a Judge of the Court in my first year was a Rule

Against Perpetuities case in property, which was not my area of expertise (we were all expected to be generalists for the entire docket of subject areas). In fact, it gives most law students and some professors sweaty palms to this day. Well, you had to that night re-prepare whatever you did in preparation for the oral argument for all of the cases. You now had to re-prepare with a greater focus because the next morning you were called by the Chief Judge to report on case number one. "Judge Bellacosa, Joe, what do you say about this case?" Well, you had to say three things. That was the ritual that everybody agreed to as the rubric of presentation. You had to give your result, affirm, reverse, modify, dismiss, whatever. You had to give a rationale or reason why you came to that result. And you had to give whether it would be written in a full opinion or a memorandum or some other dispositional formula. And at that point the Court would vote in junior order, all around to the Chief Judge. Unless the Chief Judge was the reporting Judge, the Chief Judge spoke last. So, the discussion and voting moved from junior Judge all the way around the table to the Chief.

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But the big problem in the mid-'70s was this 700, you know, pound gorilla every year. We started working on a number of reforms during that era and I'll only concentrate on the one that I'm going to address and then we can talk about some others that Breitel led. And we asked -- Through the great leadership of one of the Associate Judges, who was a different kind of mentor, Judge Hugh R. Jones,¹⁴ from Utica -- Judge Jones had been the President of the State Bar Association,

¹⁴ Hugh R. Jones, Associate Judge of the New York State Court of Appeals, 1972-1984.

had not been a Judge before he ran for the Court of Appeals in the early '70s and won. And with his leadership as a Judge who had responsibility for the committee on relations with the bar, and Judge Gabrielli,¹⁵ who had responsibility for the docket -- We asked the American Judicature Society, we meaning the Court through my voice as Clerk and Counsel -- We asked the American Judicature Society to do an independent study on what would be the best mechanism to cut the docket.

And ultimately in 1985, I'm fast forwarding, it took that long, ten years, we were able to persuade the Legislature and reluctantly the bar, to some extent, that chapter 300 of the Laws of 1985 -- I was Chief Administrative Judge by that time -- should pass. What that did was gave the Court greater control of its docket on the civil side so that it was able to reduce from 700 argued appeals each year down to about 200, fewer than 200 in some years. And the key to persuading the Legislature and the Bench and Bar that this was a wise move was not that it was less work for the Judges but that it was a reallocation of valuable judicial time concentrating on the relatively most important cases for the Court of last resort. And it was a tremendous improvement in the way the Court functioned in relation to its function, its intended purpose, its *raison d'être*.

[00:44:33]

PC: Mm-hmm. Now, there were some other reforms that came in during your term as Clerk and Counsel to the Court. The sua sponte dismissals and the sua sponte

¹⁵ Domenick L. Gabrielli, Associate Judge of the New York State Court of Appeals, 1972-1982.

merits reviews. Can you tell us a little bit about those and how they affected the Court's workload?

JB: Yes. They were the screening mechanisms that we employed at the earliest moment of a piece of paper coming to the Court's attention, that a piece of business was coming through our door. And, again, in taking this proactive role, what we did with every piece of paper is I would review it and I would give it to an assistant deputy clerk or one of the lawyers on staff to review it. "Is there anything in this piece of paper from this lawyer that would suggest that this doesn't belong here? How can we examine this?" Invite the lawyers, by the way, so that there's participation in the process. It wasn't done in summary fashion, so that it was doctrinaire from our standpoint. The lawyers were invited to participate by sending them a letter saying, "There's a problem here. Why don't you address it?" And we'd be quite specific. And the lawyers would try to persuade us the case belonged there on behalf of their clients, obviously.

PC: Sure.

[00:45:41]

JB: And what we were able to do, by that screening mechanism, is identify cases that had a jurisdictional defect, a review defect, a merits, you know, evaluation that made it relatively less important than the more important cases that should get the Court's full attention. And we were able to screen out, again, hundreds of cases each year by that mechanism. So between chapter 300 dealing directly with how cases got to the Court of Appeals and screening mechanisms, you made it, and it's a key word in terms of administration of justice, manageable. And manageable in

the sense that, you know, you were allocating a finite judicial time to the relatively -- I always use the word relatively more important because I remember in the negotiations with the Legislature that the then-Speaker, who was a friend but who we had to work with from the Assembly leadership, Stanley Fink¹⁶ said, "I know what you're doing here. You're just cutting down on the number of cases and cutting down on the cases that my lawyer friends want to bring to the Court of Appeals." And we tried to persuade him with smiles on both of our faces that, yes, that was true. That was going to be a consequence. You had to be honest in those kinds of negotiations. But at the same time, the value, the quality, is going to improve because the courts are going to work on the most important. The Court of Appeals is going to work on the most important matters that have statewide significance rather than some of relatively lesser parochial significance, best and expediently left to the reviews of the four Appellate Division Departments.

PC: And how do you think history has played out on that point in the last 30 or so years since those reforms were instituted?

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JB: Well, from my standpoint, having, you know, been an instrumentality for bringing them about, I think they've been wonderful and very successful. At the same time, I'm very, very aware from my involvement with the American Bar Association and the state bar and lawyers and going back to, you know, the academic world of professors that some criticisms linger. That what it's done is shut down access to

¹⁶ Stanley Fink, Member of the New York State Assembly, 1969-1986.

a category or a volume of cases that otherwise would have come to the Court's attention and there's a deprivation felt by some, a perception that what it did was -- It did make less work for Judges and therefore sacrificed what some of the practitioners think are relatively more important. And coming back to that phrase, what I think is relatively more important or what the Court thought was relatively more important isn't necessarily what's important to a segment of the bar or particular litigants. They view, as we often talked about in chambers, their case as the most important case on the planet.

And, you know, that reminds me, as long as I mention that, of another one of those wonderful lessons from Judge Christ and that I always tried to impart to my law clerks and my students. And that is the importance of being a judge or a lawyer is to remember that to that individual you are helping or serving, that is the most important matter and therefore no one can lose sight in the numbers and in the management and in the administration. No one can lose sight of the fact that behind every case, however relatively less significant it might be statewide -- Behind every case is some human being who's in conflict, who's in suffering. And it can be over property or it could be over family, it could be over your liberty. And I think the important thing about a place like the Court of Appeals and, frankly, the New York State court system, which I am so proud of, to have been such a part of for so many years, 25 of them, 1975 to 2000 at the Court of Appeals. The wonderful thing about it is almost to a person there is that sense, Judges, staff, professionals, the people who take care of the buildings, there is that sense that we're serving a public and individuals in that public, not just some

mass entity. And that's just such an important quality about justice in its purest sense as to anyone who would be part of the system.

[00:50:20]

PC: OK. And I have a note here that just says, "Heaven" in quotation marks. You want to talk about that for a second?

JB: Well, as you know, we touched for a moment on some of the classmates and at the same time in 1974 when Hugh Carey became Governor, Mario Cuomo became Secretary of State and eventually Lieutenant Governor and ultimately Governor, I became Clerk and Counsel to the Court of Appeals, Joe Hynes, one of the classmates, was asked by Governor Carey at that very time to become the Special Prosecutor for the nursing homes scandal that was just raging at that time. And Joe Hynes was bringing cases to many courts as the Special Prosecutor and making a tremendous difference in an area that is so important to people, individuals. He eventually stayed in the prosecutor role and has been the five-time District Attorney of Brooklyn. Brooklyn again!

But Joe Hynes is where that little word comes from. When I got the call that I would be appointed to the Court of Appeals, and obviously informed my family with great glee and pride and happiness, I also told a few very, very intimate friends. Joe Hynes, having been my classmate and knowing Mario Cuomo because of the Special Prosecutor's role at that earlier time -- When I called him to tell him that Mario was going to appoint me to the Court of Appeals he said, "You have died and gone to heaven, and I'm going to tell everybody who now will not be able to talk to you regularly as a Judge because you have to take

yourself out of the usual hustle and bustle of social circulation and conflicts of interest.

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That whenever they ask me, I'm going to say, 'Don't ask about Joe. He died and went to heaven.'" And it was a heaven. I mean, as a professional, a lawyer, what could be more marvelous than serving in a Court you loved, doing things you loved, and doing something that is so important in our society? Here is an institution that has such a tremendous impact not seen very directly and often, and not probably fully appreciated. But I happen to know because I was there for 25 years.

PC: Terrific. You stayed as a Clerk and Counsel to the Court for how many years?

JB: Nineteen seventy-five to 1983. And I should allude to this because it's a tip of the hat and a tribute to judicial administration in a very different way. Judge Breitel, as the, at the time, elected Chief Judge, had resolved that coming off a contested election for Chief Judge, which he detested -- He was a sitting Judge who had to run state wide. He vowed to himself and publicly that no one should ever have to be subjected to this again. Institutionally it's bad. From a public standpoint and public policy, it's bad. And one of the reforms that he undertook as Chief Judge of the State, a second role that he of course occupied as Chief Judge of the Court of Appeals, that wasn't sufficiently understood then, it's a little better now. Maybe that's where he got the idea of Clerk and Counsel serving two roles. But as Chief Judge of the State he took a public initiative to Governor Carey and the Legislature to change the method of selection and appointment of Judges of the

Court of Appeals from elective to appointment through a Commission on Judicial Nominations, through a State Senate confirmation, and a gubernatorial appointment.

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And he was successful in doing that. He was successful in centralizing judicial administration, which he felt was important with the contribution of the four Presiding Justices of the Appellate Divisions around the State. They sat as an Administrative Board, the five of them. He brought about the centralization of the state budget so that the judicial branch of government should be funded through the state operations budget instead of little localities with various inequalities and differentiations throughout the state. And, he spear-headed the creation of the Commission on Judicial Conduct by constitutional amendment.

When you think about those four external reforms, not just to the Court of Appeals itself but to the whole operation, those four were also transformative. They occurred in 1977 by constitutional amendment. We had to get two Legislatures to agree to it and the people in a referendum to agree to it. But he was a dynamo and in addition to presiding over those 700 cases argued a year and doing all the other things that a Judge of the Court of Appeals, as I know and as you know having been my law clerk, has to do, he found the time in leadership and in initiative and the cooperative persuasions and effort to get that done.

Tremendous accomplishments! He drew me in in a very special way to be an advisor, a counsel, if you will. "Come to the Administrative Board meetings. Help us draft legislation and the implementing court rules."

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So in addition to my duties as running the Court of Appeals as a non-judicial officer, I was being drawn into statewide reform efforts, which of course I suppose came to the attention of Governor Carey, later Governor Cuomo, and other leaders and that's what probably transformed my three- or four-year stint in Albany into a 25-year stint, much to Mary's amazement, and maybe mine, too.

PC: But these changes you were making in the system were almost tectonic shifts in the legal landscape in New York State. Thus, Judges of the Court of Appeals were no longer to be elected. A monumental change in the way that cases got to the Court of Appeals was also achieved. Well, did you ever feel like you were Don Quixote, that you were tilting at windmills trying to get these reforms implemented?

JB: I guess you could say it that way, Peter, and it's got a graphic image, you know, and has a nice literary kick to it. Maybe I thought I was more Sancho Panza to Don Quixote. I thought the Chief Judge was tilting at the windmills and I was just carrying, you know, the lance.

PC: Fair enough.

JB: But, I mean, when you think about just chapter 300, just one of the illustrations. It took ten years. So, I must say, just so that we don't, you know, applaud and compliment oneself too much, that there were other things that were sought and weren't attained and still haven't been attained. I mean, the appointive system worked very well. I became a beneficiary of it. I mean, we got the reform and then, you know, ten years later I got appointed to the Court of Appeals. I mean,

what could be better than that. But we couldn't get the appointive system for the trial courts, which several Chief Judges -- Breitel started. It started even before him with Cyrus Vance¹⁷ back in the '50s when he led a Commission to do a study. He later became U. S. Secretary of State. But, these efforts carried through all the way to the most immediate former Chief Judge, Judge Kaye,¹⁸ and Judge Wachtler¹⁹ before her.

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Judge Cooke,²⁰ too. All tried to do some of these other reforms to what we thought, those of us who were working on it, not in the personal we, thought would improve the administration of justice in the State of New York. Some of those things have not come to pass and there are many others I could illustrate that -- It wasn't all gravy, cherries, cream, and success. There's that balance, of course, that one must recognize in human affairs and in public institutions. You have to be a realist and one of the great lines that a lot of people quote that came out of Breitel is that court reform is not for the short-winded. And he didn't mean long speeches, he meant it takes time and effort and special acknowledgement and drawing in of the different constituencies to become invested and become part of what you're trying to do. And unless you do it that way it doesn't happen. And even when you do it that way sometimes it doesn't happen.

¹⁷ Cyrus R. Vance, United States Secretary of State, 1977-1980.

¹⁸ Judith S. Kaye, Chief Judge of the New York State Court of Appeals, 1993-2008; Associate Judge, 1983-1993.

¹⁹ Sol Wachtler, Chief Judge of the New York State Court of Appeals, 1985-1992; Associate Judge, 1973-1984.

²⁰ Lawrence H. Cooke, Chief Judge of the New York State Court of Appeals, 1979-1984; Associate Judge, 1974-1979.

PC: And so your term as Clerk and Counselor to the Court ended. What came next?

JB: What came next was a brief return to the academic life in Albany, at the Albany Law School as Director of the Governmental Law Center, and teaching again, which I always loved. I really considered actually being a Judge part of being a teacher, as well, as you could relate to. And I think everything we do in life is teaching. In fact, when I did the Cardozo Lecture for the Association of the Bar of the State of New York, which is one of the preeminent lectures, I entitled it Cardozo the Teacher. Not Cardozo the Judge because teaching is so fundamental in the example and in the imparting of wisdom that's been handed to us by mentors. But I did that only for about a year and a half because a different kind of tectonic change was about to occur.

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Mario Cuomo had become governor. He decided, as the first major appointment in the judicial branch for him, to appoint Sol Wachtler as the Chief Judge in end of 1984, beginning of 1985. They both called me up and said, "We'd like you to quickly come back into service." I said, "What kind of service?" Answer: "Chief Administrative Judge of the State of New York," which was an appointment actually by the Chief Judge with the approval of the Presiding Justices. Mario Cuomo wanted to be part of it, he said, and therefore, he says, "I'll have an appointment, as well. I'm appointing the Chief Judge who will appoint you, and I'm then going to appoint you Court of Claims Judge so you're Chief Administrative Judge." So it was an interesting confluence of people who I had

crisscrossed over the years. Obviously Judge Wachtler was a Judge of the Court of Appeals while I was Clerk and Counsel, one of my seven bosses then. So all of a sudden I was very quickly back in the judicial system as Chief Administrative Judge from 1985 to about 1987. That's when we negotiated a lot of things, including chapter 300. But one of the, again, somewhat lighthearted but fascinating pieces of that story is when Governor Cuomo appointed me to the Court of Appeals, I was still the Chief Administrative Judge. And for Wachtler and Cuomo too, there was no replacement quickly on the horizon. This transition was a rather quick move as it turned out. There were a lot of people who didn't think Mario Cuomo, the Democratic Governor, would appoint Sol Wachtler, a fairly renowned Republican, as the Chief Judge of the State of New York. It was remarkable for the non-partisan appreciation of what the Judiciary was about from two people who had such enormous leadership responsibilities of two branches of government.

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I admired them and the institutional primacy motivation enormously, obviously. And the two of them had a good time at my expense in one respect because here I was sworn in on January 5, 1987 as the newest Judge of the Court of Appeals, the seventh member, and it was pretty busy. And at the same time, I was Chief Administrative Judge. And along about the spring I was still doing both jobs and Mario Cuomo was quite delighted about the fact that I was doing two major jobs for one salary and reminded me this can go on for a long time. And I told the

Chief Judge, “We have got to get a new Chief Administrative Judge because this two big jobs operation is pretty exhausting.”

But, in mentioning these two individuals, how important personal relationships and professional and institutional relationships are, which we’ve touched on, it’s so significant in one other respect that I would like to share with you. When I got the call at my home in Guilderland, New York -- I should say Mary got the call on the evening of January 4, 1987, having made the list from the Commission on Judicial Nominations in December -- that the next morning I would be appointed to the Court of Appeals I, of course, was jubilant and went to the press conference. As it turned out, there was a narrow window of appointment where it took effect immediately. So I was announced at 10:00 o’clock. I was sworn in at 12:00 o’clock. We walked down to the Court of Appeals. And at 2:00 o’clock I sat for the arguments, not having read a single brief. And when we had the press conference, Governor Cuomo said to me, as we were walking out, “They’re going to ask: what are you?” I said, “What do you mean?” He said, “What are you?”

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So I said, “Well, I’m an Independent.” He said, “Oh, that’s wonderful. I’ve appointed three Democrats and three Republicans. Now I’m appointing one Independent. How non-partisan can you get?” And so help me, the first question from Fred Dicker²¹ was, “What is he?” And Governor Cuomo said, “Tell him.” And that’s the way the press conference went.

²¹ Fredric Uberall Dicker, New York Post columnist; state editor, 1982-2016.

PC: Now, Judge, we're not going to get into specifics on any particular case obviously. But there are a couple of cases that I'd like to talk to you about because they were so significant and they were so important to the people of the State of New York and in some cases the people of the United States in their reverberations.

JB: Sure.

PC: Having grown up on Long Island, the word Shoreham really resonates to me.

JB: Yes.

PC: Can you talk a little bit about the *Shoreham* case²² and what happened with that?

JB: Wow. That's interesting you should pick that one out, Peter, to talk about. I also had some time on Long Island. I'm back there now in Garden City. But in the period we're talking about, the '80s and early '90s, the Long Island Lighting Company during that period had invested about two billion, with a B, dollars in building the nuclear power plant in Shoreham, Long Island on Long Island Sound out in Suffolk County on the North Shore. And it was a tremendous public debate and one of the biggest questions coming out of Chernobyl and Three Mile Island was, you know, what if there's a problem? What are you going to do? The place hadn't been opened up yet. It was not chartered or licensed to open or operate. But they built it and the federal energy people, as well as State, kept looking at revised updated plans on what's the evacuation plan if something happens. How do you get two and a half million people off Long Island? And it was becoming increasingly difficult with problems in the Legislature and with the Governor,

²² *Matter of Citizens For An Orderly Energy Policy v Cuomo*, 78 NY2d 398 (1991).

with the public energy, you know, people, and utilities. And finally it got into, as most things do in our culture -- I don't know whether that's a compliment or a criticism -- into litigation, as de Tocqueville²³ long ago observed about democracy in America.

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And when the Governor approved the closing of Shoreham before it opened, there was a tremendous outcry that this was going to ruin the company, the investors. It's a white elephant that's going to waste two billion dollars. What are we going to do with this thing that was built and is this gigantic eyesore sitting on Long Island Sound. And as it worked its way through the courts, it became increasingly clear that our Court, because it was purely a state issue, was going to have the final say as the Court of last resort in New York. It wasn't going to the federal courts. We were going to have to bite the bullet ourselves and decide this question. When it came, as you can imagine, a matter of such tremendous impact from a public policy standpoint, from a fiscal standpoint, even from a private investor standpoint, had enormous interest.

The basic legal question, without getting into a lot of detail, was should the Court approve the legislation and the governor's delegation or action in closing Shoreham. No legal finery to my statement of the issue here. It would have to be done differently in conference and at the Court and in the extended opinions that ensued. We split. The Court was split right down the middle, four to three. I got the assignment as the reporting Judge to write the majority opinion. The case was

²³ Alexis de Tocqueville, French sociologist and political theorist, 1805-1859.

very, very difficult to write. My recollection is that Judge Hancock²⁴ wrote the dissent.

[01:08:01]

We had to justify the judicial role in making the final call. For those who think that the executive makes the final call, he did. It was his executive decision to say, "Close it," but he needed the imprimatur in this litigation of the Court saying, "You were correct in directing that it be closed and the creation of a new public entity that was going to take over the service of energy in Long Island." LIPA, the Long Island Power Authority was created. All kinds of regulatory, governmental creations were put in place in order to soften the blow of such a major transformation.

And the thing about it is -- I was thinking about it only recently because my daughter and one of my sons live in Connecticut where, from Garden City, we go to visit our grandchildren regularly and where Mary and I will be moving to be near them in a month or so, in Ridgefield, Connecticut. But in crossing the Throggs Neck and Whitestone Bridges over the past several weeks, I have realized that looking back now 15, 16 years when we decided that case, the evaluations as to evacuation were right on. There would be no way to get two and a half million people off Long Island if there was a major mishap of the Chernobyl level with an operation like Shoreham Nuclear Plant. There was a little fire under the Throggs Neck Bridge which has created, in ripple effect, logjams

²⁴ Stewart F. Hancock, Jr., Associate Judge of the New York State Court of Appeals, 1986 - 1993.

for hours and hours and hours, for weeks and weeks and weeks, and it's not over yet.

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That little, you know, modern day recent reminder drew me back to what was one of the central practical problems that Governor Cuomo was facing in making the decision, other than the legal authority under the legislation given to him by the legislature that we upheld but that three other Judges thought wasn't there. It wasn't enough. He doesn't have the unilateral power to do this even though delegated by the legislature. So there's our Court, razor thin, approving executive judicial action and yet reasonable minds disagree.

PC: Mm-hmm.

JB: And there were three who said no and would have disallowed the closing. So it's a fascinating illustration of the exercise of separation of powers, the interplay of the separation of powers among our three branches. And I love the case, not because I got to write the majority -- I got to write enough dissents, as well. But I love the case for its lessons in government and public policy.

PC: Again, getting back to the teaching aspect of the job. Interesting.

JB: Yes.

PC: Do you see that a lot, I mean, in your day-to-day life? The practical impact that decisions of the Court when you were there, or as a Judge or as the Clerk and Counselor? Do you see the practical effects of some of the cases as you live your life day to day now as a free spirit, as you like to say?

JB: I do, Peter, and it's interesting. Because when I've been back teaching on and off and lecturing on and off with some regularity -- The number of students, professors, or young lawyers who talk to me about a particular case and how it has impacted their practice or what they're doing in another particular area --

[01:12:05]

PC: Mm-hmm.

JB: I think one of the most dramatic ones came with one of my granddaughters, the one who lives in Manhattan. Juliette is now 14 [21, born on May 31, 1995], my son Peter's daughter. And one of the first cases I had in 1987 involved the City of New York and zoning and light and air rights and, again, not to get into too much of the legal jargon, but it involved a developer on the east side of Manhattan adding 12 stories to an existing 19-story building. And as it turned out, they had permits, but the permits were not proper. And the litigation finally gets to us. *Matter of Parkside*²⁵ I think was the name of it, located up around 96th Street and Park Avenue, the elite upper Eastside. And it turned out that the objectors, the surrounding property owners, were right. And I said in a unanimous opinion for the Court's ruling, "Well, the 12 stories are illegal without valid permits, and violate the surrounding owners' light and air rights. Take them down." The most dramatic impact for me of the power of those three little words -- ordered, decreed, adjudged -- occurred one time when I was coming down to Manhattan from Guilderland and Albany with my wife and I was driving down Park Avenue and I said, "My goodness, Mary, I think that's the building that was the subject of

²⁵ *Matter of Parkview Assoc. v City of New York*, 71 NY2d 274 (1988).

that case. They've actually taken the 12 stories off." She said, "I can't believe it." I said, "Yes." So we checked it out. And, you know, we don't usually follow up cases. You decide them and you move on, bang, bang the gavel, next case, because you're busy with the docket.

[01:13:41]

Well, that was very, very dramatic and a couple weeks later we were having dinner with my son and my grand -- actually, a few years later with my son and granddaughter and I was walking ahead holding her hand in the evening. And they live up that area. And she looked up and she said, "Grandpa, Daddy said that you had a case when you were on the Court that involves one of these buildings. Is it that one?" And I said, "Yes." She said, "What happened in that case?" I said, "Well, they had to take down the 12 stories that they built on top of the original height of the building." She said, "You were able to make them take 12 stories off the top of a building?" I said, "Yes, and there were lots of bankruptcies after that." So, dramatic effect of the power and authority, not to be exercised lightly, to be sure, of the judicial writ and the responsibility that goes with it is surely exhibited in that case.

PC: Mm-hmm.

JB: It was a pretty dramatic reminder.

PC: Yeah.

JB: And the case ends up in, as I found out from some of my academic colleagues, in the land use planning casebooks throughout the country because I had professors who would come to me at the ABA, say, "That case is absolutely incredible. We

understand that they came back and asked for a variance.” I said, “Yes, and the response was ‘We understand variances to be 12 inches or 12 feet but not 12 stories.’”

PC: One of the other cases that springs to mind was the *Angela T.* case. Do you recall that one? Do you recall that one?

JB: Well, that was a criminal case. As you know, the Court of Appeals docket is about roughly two-thirds civil and one-third criminal. *People against Angela Thompson*²⁶ came out of Manhattan. It was a drug case coming out of the Rockefeller Drug Laws. She was a 17-year-old who was a packager for her uncle, who was the czar, the drug czar. He got 15 years to life for being the drug czar. Angela Thompson, for packaging a little piece, and went to trial, got 15 years to life or should have under the Rockefeller Drug Laws. The trial judge, who had been a former law counsel to me in a different capacity, Sentencing Guidelines Commission, Juanita Bing Newton²⁷ --

[01:15:58]

Judge Newton as the trial judge said, “There’s a special exception to the Rockefeller Drug Laws that the Court of Appeals had written into Breitel’s opinion in *People against Broadie*²⁸ that upheld the constitutionality of the Rockefeller Drug Laws on a facial challenge, adding the rare case exception on an as applied basis. Well, Judge Juanita Bing Newton took that language of the *Broadie* case by the Court of Appeals, Judge Breitel, and said, “I’m applying it in

²⁶ *People v Thompson*, 83 NY2d 477 (1994).

²⁷ Juanita Bing Newton, Judge of the New York State Court of Claims, 1987 - 2013.

²⁸ *People v Broadie*, 37 NY2d 100 (1975).

this case. I'm not going to apply the mandatory minimums of the Rockefeller draconian drug laws. I've tried this case with this 17-year-old. She's relatively less culpable than her uncle who she was packaging the drugs for at home and therefore I'm going to give her some break. Eight years to life." "The minimum to be served is eight years instead of the mandatory 15-year minimum". Well, the Manhattan District Attorney appealed and said that that was an illegal sentence. His appeal argument: The trial judge had no authority or discretion to depart from the Rockefeller Drug Laws. If the Legislature set an absolute minimum of 15 years, then an absolute minimum of 15 years, it must be.

The case got to the Court of Appeals and I drew, I guess one could call it the short straw, but I drew the index card that said I was the reporting Judge. I reported the case fairly confidently that we could affirm the discretion of the trial judge to put the minimum at eight and that they'd fit it into our jurisprudence as far as a precedent that gave that judge that authority to do it. To my amazement, the Court went the other way. Four Judges, Judge Levine writing the majority, said that -- and, by the way, I should tell you when the conference was reporting that case I reported it. And the first judge to vote was the junior Judge. It happened to be Judge Ciparick,²⁹ who's still on the Court, my colleague, and she voted with me very confidently as a former trial judge herself that we should sustain the trial judge's exercise of sentencing discretion not to apply the draconian Rockefeller Drug Laws' mandatory minimum regimen, blindly, absolutely and without any exceptions.

²⁹ Carmen B. Ciparick, Associate Judge of the New York State Court of Appeals, 1994-2012.

[01:18:04]

This is about 1994. And the rest of the Court, one was recused or Judge Titone³⁰ was out ill, so there were only six of us at that time. Judge Levine, Judge George Bundy Smith,³¹ Judge Kaye, to my surprise, and one other, Judge Simons³² voted as a bare majority of four to uphold the District Attorney's appeal, apply the Rockefeller Drug Laws strictly and absolutely and not allow any judicial discretion, and that that was a matter that only the Legislature could provide an exception for by new legislation.

Well, 15 years later the legislature has been monkeying around with the Rockefeller Drug Laws and has come 'round to their senses, it seems to me, as I said in the dissent. I was very proud in the dissent because -- As it turned out, a year later the new governor, Governor Pataki,³³ received an application by a retired judge, I believe it was Justice Marks from Manhattan, was doing a pro bono assignment for Angela Thompson and went for clemency, citing the dissent. And Governor Pataki, on Christmas Eve of the following year granted her clemency. So she got out at eight years anyway. So, so there, to the majority at the Court! (Laughs)

PC: (Laughs) Talk about practical impact on people's lives.

JB: Well, the practical impact has another kick I'll quickly add, Peter. About a year later I was in Buffalo and Sister Elaine Roulet was the chaplain at the Bedford

³⁰ Vito J. Titone, Associate Judge of the New York State Court of Appeals, 1985-1998.

³¹ George Bundy Smith, Associate Judge of the New York State Court of Appeals, 1992-2006.

³² Richard D. Simons, Associate Judge of the New York State Court of Appeals, 1993-1997, 1983-1992; Acting Chief Judge, 1992-1993.

³³ George E. Pataki, Governor of the State of New York, 1995-2006.

Hills Correctional Facility for Women, the state prison for women. And she was sitting on a podium with me at Niagara University and she said, "Judge, I'd like you to come to Bedford Hills and talk to Angela Thompson."

[01:20:01]

I said, "I can't." She said, "Why?" She said, "You know, we've talked about your dissent in her case." I said, "That's precisely why I can't come." And I have a nun who's in the family, my sister-in-law, Mary's sister. So nuns are very creative, too, just like former Chief Judges, like Charles Breitell. And Sister Elaine called me up a few weeks later. She said, "Well, I understand the ethical restriction against you coming and doing a one on one with Angela Thompson. But what if you were to come and do a workshop for 25 inmates?" She says, "One of them could be Angela Thompson," she said, "but we'd like you to come." I went. And Sister Elaine Roulet sat Angela Thompson to my right and another inmate to my left and we had a whole oval table of inmate-students.

It was a two-hour experience as a sitting Judge, which was also very illuminating because it allowed me to explain the system to 25 people, almost probably 90% of them there under the Rockefeller Drug Laws, almost all of them under 25, almost all of them Black and Latina. And it's an eye opener to directly experience something like that other than reading briefs about people's lives and the legal issues that impact their lives. And to this day I think back to that visit. And it was hard. There were times when, you know, some very difficult questions were put to me. And I tried to be as candid with my inability to help them get out. And when we went to the warden, the superintendent's office afterwards with Sister Elaine,

we sat down and the superintendent said, “Well, how did it go, Judge?” And I said, “Well, why don’t you ask Sister Elaine? I don’t judge myself.” And Sister Elaine, with a smile on her face, a saintly smile of a nun, said, “Don’t worry, Superintendent Lord. Judge Bellacosa didn’t raise anyone’s expectations that they were getting out any sooner than it was designated they should.” (Laughs) So, I mean, I think she was afraid I might incite some unrest or a jailbreak. But in any event -- So, there’s small sample of the cases that have been fascinating to me and others, with direct impacts on the civil and on the criminal side.

[01:22:09]

PC: Absolutely.

JB: Yes.

PC: And personal impact on the Court itself? When you were appointed, Sol Wachtler was the Chief Judge of the State of New York, and then you served under Judith Kaye as Chief Judge of the State of New York.

JB: Right.

PC: Can you talk about your experience working with and under both of those individuals? Chief Judge Wachtler first.

JB: Yes, sure. I think that there’s an old story about the Supreme Court of the United States. It says Associate Justices of the Supreme Court always make the point that they don’t serve *under* the Chief Justice, but *with* the Chief Justice -- equals with the first. Probably the same thing applies here in a way, although I accept the *under*, too, because of the leadership, center-chair responsibility of the post. Both are wonderful friends to this day, always have been. Tremendous collegial

relationships, too! Somewhat different styles of leadership personality in the way they approached the leadership responsibility. But the sameness part was their commitment to the institutional integrity and honesty of the system that they were involved with and led. We always used to point out, even as Clerk, the 25 years -- You know, you think about the last quarter of the last century I spent at the Court of Appeals. And that's a big chunk of a person's career and life. And it was so enriching. And to be able to have seen Breitel's leadership and then Judge Cooke's leadership in a different way. Judge Wachtler, first as an Associate Judge of the Court with him and the other colleagues, and then Judge Kaye's for all of the years that I served with her, as well. What it gave me, again for emphasis, and I've always tried to convey this to people directly, is that I've had abiding relationships with these colleagues and friends, and with the broader means of communication gifts that are given to us to educate the wider public of this key feature of the judicial process.

[01:24:03]

I've always tried to convey the confidence in the integrity of the system, that it serves people, you know, in a way that is so gratifying. Consistent with the purpose for which it exists. And Judge Wachtler's leadership was very, very collegial, very warm, very smart, right to the jugular of things. And I know I've said a lot about Judge Breitel. But Judge Wachtler having served under Breitel for his early and first years in the Court of Appeals learned a lot from him about trying to pull the Court together as much as possible. And he exercised that center chair responsibility. Because it's so important for people, you know,

outside the Court , when you take the veils down and give a glimpse inside the Court as to what's going on, to understand that, unlike the Chief Justice of the United States or the practices in the Supreme Court of the United States, the Chief Judge in the State of New York and of the Court of Appeals does not assign cases for report, responsibility or opinion. And that again was one of the Breitel innovations, that there should be an equality of responsibility, a randomness of responsibility so that each of the seven feels invested in the whole docket and in all of the cases. And that evenhandedness was carried through in the years of Judge Wachtler's leadership on the Court, in the jurisprudential work of the Court, as well as in the executive administrative leadership and particularly in court facilities, particularly his innovations were in the area of assignment of trial case materials, the one judge, one case principle.

[01:26:15]

So that he was picking up on that dual role, that dual responsibility as Chief Judge of the Court, the Court's work, its decisional work, its precedents, what we think of mostly as the Cardozoan tradition, which is so wonderful, and "The Nature of the Judicial Process" from Chief Judge Benjamin Cardozo's Yale Law School Storrs Lectures.³⁴

And then Judge Kaye, when she assumed the responsibility after Judge Wachtler left, unfortunately with a major personal problem, and what happened is we found that the Court as an institution had great strengths in the institution itself that could even survive different kinds of problems and challenges of the kind in 1992

³⁴ Benjamin Nathan Cardozo, Chief Judge of the New York State Court of Appeals, 1927-1932; Associate Judge, 1914-1926.

that the Court had to confront. Judge Kaye picked it up beautifully and effectively. She had served from 1983 as the first woman appointed to the Court of Appeals. I remember well as Clerk of the Court when she was appointed. Mario Cuomo called me up in August and no one was at the Court except me and some staff and no one was in Albany, for all I knew they were all in Saratoga. And he said, "I'm sending over the newest nominated Judge of the Court of Appeals. Welcome her, treat her well, and show her the inner sanctum, the *sanctum sanctorum*, everything that no one else sees." And I took soon-to-be Judge Kaye into the robing room and then through the beautiful wooden door to stand on the bench for the first time looking out with her husband, Stephen, of happy memory.

[01:28:02]

And they stood there in awe as I as the Clerk of the Court was showing them. And I noticed Judge Kaye's eyes go from looking around the beautiful courtroom down below the bench. And below the bench are the polished bronze spittoons that were there from the 1800s. And, as she looked down at them -- And I barely knew her at that time. I mean, we had a relationship professionally but I didn't know her well as I know her now and came to know her, such a dear friend. As I noticed her looking down at them I said, "You do realize that as the newest Judge of the Court of Appeals you'll have to learn to chew and spit." (Laughs) When Stephen picked himself up off the floor from laughing and Judge Kaye realized I had an unusual sense of humor, we became very, very quick and fast friends.

But let me come back to her leadership. She had a warm, human but strong, intelligent leadership style. She moved in to different kinds of reform on the statewide leadership, jury reforms that she's known throughout the country for, and others in the commercial divisions and things of that kind. But her leadership of the seven members of the Court of Appeals, which I was privileged to be part of as one of the members of "her Court" from '93 through the year 2000 when I left, was just spectacular. I mean, she also was trying always to keep in her mind's eye and all of our minds' eyes on the central purpose and quality, *raison d'être*, which is the institutional voice of the Court, settling the law statewide, doing it as clearly as possible. She had a gift for editing, which some people didn't view necessarily as a gift to them because it was a lot of editing. But she had great style and the contributions in style and in substance, and editing improvements, were enormous as she tried to bring the Court together to as much unanimity as is possible for a clearer more reliable set of principles as guideposts.

[01:30:01]

I remember a time doing a Moot Court at Columbia Law School with Ruth Bader Ginsburg.³⁵ That particular year she was very proud to proclaim to the audience and the students that the Supreme Court had been unanimous in result 41% of the time that year. And I was very proud to be able to say in response, "And the Court of Appeals was unanimous in a single opinion 92% of the time this particular year." That's a contribution to the Bench and the Bar and the public when the Court is able to speak, even when there are differences that have to be held in

³⁵ Ruth Bader Ginsburg, Associate Justice of the Supreme Court of the United States, 1993- _.

principle or conscience and in the development of the law where there are dissents. But the greater part of the Court's work has to be that clear settlement of the legal issue and precedent and policy that helps guide the lawyers in guiding people in their dealings with one another. So it's been an enormously satisfying ride and privilege to have served with, under, around, alongside of these various folks that we have touched upon in today's conversation.

PC: Could you speak briefly -- although you weren't a Judge of the Court then but you were the Clerk and Counsel to the Court -- Chief Judge Cooke.

JB: Interesting. That was the first change under the new system, the appointive system, that Chief Judge Breitel brought about. And it wasn't necessarily the personnel change that he wanted. He favored, believe it or not, the Senior Associate Judge (Matthew Jasen³⁶) as his successor, who had served alongside of him for many years. Matthew Jasen at that time had been a Judge of the Court for over ten years. When Breitel completed his services as Chief Judge, 1978, he thought that the new system he had helped bring about of appointing would bring a successor who was the Senior Associate Judge. Of course, it did not play out that way under the doctrine of unintended consequences.

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There was a tradition about that over the many decades in the Court of Appeals. Well, as it turned out, the new system was such a tectonic change and so transformative that Governor Carey, getting a list of seven names to be the next Chief Judge, decided to do something that startled a lot of people. He appointed

³⁶ Matthew Joseph Jasen, Associate Judge of the Court of Appeals, 1968 -1985.

the junior Judge of the Court of Appeals to be the new Chief Judge. And it was quite remarkable. And I can remember, Peter, that you asked me about sitting in the conference room. The first day that he was Chief Judge, when I was sitting in my chair in the conference room, when he moved from his junior chair, as No. 7, to his Chief Judge chair, No. 1, was very symbolically powerful for everybody in the room among the other Judges, including two more senior Associate Judges, who were heirs apparent in their minds and who would have liked to have been the one selected for that responsibility.

Now, Judge Cooke had an entirely different style from Breitel, each one being a person unto themselves. His was more into attention being paid to the administration side of the Chief Judge statewide judicial leadership role, and he was still a very fine Judge of the Court in its jurisprudential role and wrote some excellent opinions. And I was pleased to continue to serve under him as Clerk for some years. But I had one task as Clerk which has, a bittersweet quality to it in the precedential side, as well as in the policy side of the Court's work. When Chief Judge Cooke established a particular policy to move Judges all around the State for efficiency reasons -- and I say this with great affection for the man's memory because he was a good friend also. He came from Monticello. I say all this with affection. The trial judges around the state mockingly dubbed that particular policy "Cooke's Tours," when judges were re-assigned from Long Island to Malone, New York on the Canadian border and a lot of shuffling going on all over the State.

[01:34:03]

But that aside, there were some serious consequences to it, including one in Manhattan where the then local official, the District Attorney of New York County, thought that this was improper and had not been done according to the book, the book meaning the new consultative administrative process that required checks and balances. So Mr. Morgenthau,³⁷ the District Attorney, sued the Chief Judge of the State of New York. Now, he was a regular litigant in our Court with all his criminal appeal cases, so it took gumption and chutzpah to sue and the case name is *Matter of Morgenthau against Cooke*.³⁸ And he challenged the constitutionality of the administrative policy that Chief Judge Cooke had put into play. And it got all the way to the Court of Appeals. Again, a little bit of a sticky wicket of a problem since the defendant was the Chief Judge of the Court. Clearly, he was disqualified and had to leave the bench. But there was another complication involving the remaining six Judges. What was at issue was their role in consulting and ultimately approving all policy as a kind of ultra board of directors, board of trustees. So the “rule of necessity” had to come into play because it was purely a state question, under the State Constitution. The case couldn’t go to federal court. Someone jocularly said, “Well, why don’t we send it to Rhode Island or Pennsylvania?” and I said, “Well, I don’t think they’re going to want to be bothered with this.” So the Court had to hear a case from the District Attorney of New York against its own Chief Judge involving his powers and their powers. And they decided it in favor of the District Attorney of New York County. And as I sat in the conference room with the six Judges and listened to

³⁷ Robert M. Morgenthau, District Attorney of New York County, 1975-2009.

³⁸ *Matter of Morgenthau v Cooke*, 56 NY2d 24 (1982).

the unfolding of the conference votes and the decision, I started to get that sweaty palms feeling again like the “rule against perpetuities” case I mentioned because I sensed what was going to happen next.

[01:36:10]

The Judges turned to me and said, “Go in and tell the Chief that he lost.” So in I went to the Chief Judge’s chambers across the hall, and he was standing at his desk. I can see him now. And I said, “Chief, the Court asked me to come in and inform you that the decision has been made in the case that and they’re declaring unconstitutional your policy because it did not comply with the checks and balances, the consultation and approval process that involves the Presiding Justices and the final approval of the Court itself.” I took a deep breath and was ready to run when he said, “Is that all?”

One of the tasks that I remember rather vividly as Clerk of the Court, delivering bad news. He didn’t talk to me for several weeks, actually. So much for collegiality during that period. He didn’t have dinner, as was the long custom, with the rest of the Court for a couple of weeks either. But, everybody eventually dealt with it as mature adults and institutional people who took an oath that didn’t go to the Chief Judge or to the person, as such but to the Constitution of the State of New York. And it’s, again, another one of those compliments to the integrity of our process, that Judges can be tough enough, as well as smart enough, to do something that involves even ruling against the guy you sit and work with every day, who happens even to be your Chief Judge.

PC: Yes.

JB: Tremendous lessons.

PC: And in the year 2000, you made a decision. Well, I don't know if you made the decision in the year 2000 --

JB: Yes.

PC: -- but it became public in that year.

JB: Yes.

PC: To leave the Court. Can you talk a little bit about that, Judge?

[01:37:58]

JB: Yes. You know, in 1999, the year before, Mary and I started thinking about lots of things. I was 61. And our two mothers were ill, in various stages of difficulty. I was an only son. Mary had siblings. Our children had gone to school and had not come back to Guilderland and weren't coming back because they were making their lives, their marriages, their careers in and around the metropolitan area. I was just about to complete 25 years in Guilderland, Albany, having promised to be there three or four. And we talked very seriously about what the rest of our life should be, not just in my professional career sense, but our life.

And we happened to be in Rome, Italy at a Board of Trustees meeting of Saint John's University, because by that time I had gone on the Board. And there was a Law School Dean search going on. The President and several members of the Board who were dear friends, and remain dear friends, said, "Well, you know, you're the Chairman of the Board's Search Committee. Have you looked in the mirror?" And I said, "Oh, my." I said, "No." I said, "Mary and I are thinking about leaving the Guilderland, Albany area and we've pretty well resolved that I

would not leave and stay on the Court and do as many of the Judges do, and that is travel from place to place and have a resident chambers. We didn't want to live our life that way together, having been together in Albany as the resident Judge for 25 years. Well, for the 14 that I was on the Court but 25 years in the Albany area at the Court. That's not a way we chose to live our personal married life.

That being so, I couldn't be on the Court if we were going to move to where our children, grandchildren, and mothers were.

[01:39:58]

So we made the decision first that I would leave and I was going to leave in 2000 because it seemed tidy. The year 2000, and service of 25 years – nice round numbers. I even said at one point, "I'm waiting for a sign," and a good friend of mine, a priest friend said, "Did it ever occur to you the sign might be that there's no sign?" And I thought that was kind of profound and it threw me for another loop. Made the decision to leave before making the decision to accept the invitation of the Board to then become the Dean of the school that I went to, taught in, was an alum with so many wonderful people and that ultimate tie-ins. There are two institutions other than family who, of course, as you can tell have been paramount in my life: Saint John's and the Court of Appeals. And, I consider myself so blessed in those regards. That, you'll remember this, Peter, because we've talked so many times about other things. I sometimes feel like the great Negro league baseball pitcher and player Satchel Paige. There's a saying attributed to him, that he was always looking over his shoulder saying, "I'm watching because they seem to be catching up to me." I borrowed that because I

have the same feeling sometimes. I watch over my shoulder because I've been so blessed with these institutional relationships, but with the people who populate those institutions that are such a part of the fabric of my wonderful life. So the decision was made. I would be leaving and become the Dean of the Law School for four years. That's all I would commit to the President and to the Board because I told them that I voted for and believed in term limits and I thought that coming off the Court of Appeals four years would be enough to do some significant things and then hand off the baton to a successor for the law school's development.

[01:42:05]

And I can remember a bit of the wrenching separation of leaving a place that I had been such a part of and love so much still to this day. But, at the same time feeling very comfortable that I had closed a completed book. The fulfillment of the various services and things that we've talked about, that I constitute and I know so many others do, and I don't mean that in a self-congratulatory way, as accomplishments. That was a closed book and a very satisfying book and it was OK to move on to a next chapter, a next book, and to this next phase of our lives back at Saint John's. One of the best lines I was able to get off over the first year was whenever anyone would come and say, "Well, what's the biggest difference between being a Judge of the Court of Appeals and being the Dean of the Law School, pulling together tenured faculty, students, alumni, and university administration?" I said, "The biggest difference is not one person has come up to me and said, 'May it please Your Deanship.'" Humbling!

PC: Well, Judge, I think the time's about up. Thank you very much for taking the time. And on behalf of everyone here and the people of the State of New York, and myself, deeply, personally, thank you very much for your service.

JB: You're very welcome, Peter, and thank you for sharing this time with me and resuming our relationship for this task, a relationship which really never ended, and that's the other point that I'll close on. Those relationships we've talked about for me are lifelong relationships. They may have different passages but they pick up as if they were never interrupted and I feel the same way about you, and I thank you for coming from California to spend this time with us, to contribute to the Historical Society Program that will save some of these nuggets for somebody else to be able to savor and maybe be taught by, coming back to the teaching lessons.

[01:44:12]