

THE HISTORICAL SOCIETY OF THE NEW YORK COURTS

ORAL HISTORY PROGRAM

Hon. Albert M. Rosenblatt



Found on exterior entrance to New York Court of Appeals

THE HISTORICAL SOCIETY OF THE NEW YORK COURTS

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ORAL HISTORY

**Subject: Hon. Albert M. Rosenblatt
New York State Court of Appeals**

An Interview Conducted by: Lisa DellAquila and Gabriel Torres

Date of Interview: December 21, 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. Albert M. Rosenblatt

INTERVIEWER: Lisa DellAquila and Gabriel Torres

DATE: December 21, 2009

[00:00]

AR: Good morning. I'm Al Rosenblatt. And we're here on behalf of the Historical Society of the Courts of the State of New York. And this is part of a project in which retired Judges of the New York Court of Appeals and other people can go on videotape so that people in future generations can see what things were about, what life was like, what was happening during this particular era. And rather than my giving a soliloquy or some other monotone that would be inflicted on others, I've asked two of my law clerks to be here and do this with me; Lisa DellAquila, who is with me and is part of the New York contingent; Gabriel Torres, also part of the New York contingent -- two of my dearly valued clerks. And in that way they can participate in this and describe the doings of the Court and related matters so that after this comes off the shelf in some number of years -- if the technology is the same in 50 years (laughter) -- people will be able to see it. We're very organized here. As a matter of fact, there is a protocol and I think Lisa has the first question.

LD: Yes, thank you. Well Judge, we'd like to start at the beginning. Can you tell us a bit about your childhood and growing up in New York's Washington Heights -- what that was like?

AR: Uneventful but warm and endearing; quite ordinary in the sense that my childhood was solid. It was secure. Lovely parents; not people of any particular wealth -- actually, in a sense, first generation immigrants in that my father came over here from Europe -- from what was then called Austria -- in 1914. And my mother had come before that when she was five years old. So they knew life basically in America only. They raised me in this section of Washington Heights. [02:00] Went to school. Was taught conventional values by two people who I hold most dear in my memory. And they taught me good things.

LD: Good, good. And you --

AR: Education --

LD: Yes, education --

AR: High among them, as you know. That was a time when immigrant groups like that -- my father arrived on these shores and went right to night school. That was something that was done at the time and one likes to see it done all the more.

LD: So your parents were English-speaking by the time you came around?

AR: We spoke English only in the house and they spoke only English with very little Yiddish. At that time -- I think it's maybe a little different today -- but at that time, the ethos was forget the old language, forget the old country, be an American. And the way to be an American is to learn English and conform and adapt to American ways. That was the order of the day..

LD: And was it presumed growing up that you would go on to college and further education than that?

AR: I guess it was in the air, yes, in the air. They didn't put any really heavy expectations on me, but I got the sense that that was expected, yes.

GT: What kind of student were you, Judge?

AR: I would say mediocre at best. (Laughter) And I don't know -- the bell went off when I got to be at about 18 and began to take studies a little more seriously. Before that, I was interested mainly in playing stickball and seeing whether I could hit a ball, say, 2½ sewers and whatever the -- whatever one had to do those days to establish one's self on the block, you know, as a stickball player and as a regular guy. That was primary.

LD: So around age 19 then you were -- were you at Penn at that point?

AR: I got to Penn. I was at City [04:00] College before then and really wasn't happy there and wanted to move out and expand my horizons. And some trigger went off and I knew that I had to get very, very good grades in order to kind of get out from under and was successful that year. Got to the University of Pennsylvania and began what turned out to be a good academic career.

LD: And what did you study at Penn?

AR: American Civilization. It was under the tutelage of Professor Anthony Garvin who, to this day, I recall as being an extraordinary teacher and I guess the word "role model" is kind of hackneyed but he looked to me like the kind of teacher that really inspired. He was interesting, adventurous and I got an awful lot out of the class. I loved Penn. I'm still fond of the school and support it in whatever ways I can in my own financial way, you know -- modestly, of course -- and on the football field; however else one supports the alma mater, as you know. (Laughter)

GT: What is it that led you to Penn, Judge?

AR: That was one of the good schools that I applied to. My freshman year grades were not good and now that you ask that question, and they were not good at all and I -- in order to

transfer -- knew I had to do a lot better and get very, very good marks. I got pretty much all A's for the next semester. And I got back a letter from Penn saying, "We really don't know what to make of you. You've been a C student your whole life. And suddenly you've got all A's. We're not about to admit you, but if you do it once more, we'll take a look at you." That was Dean Robert Pitt. And I did it again, happily, and then the large envelope came in the mail, as, you know, we know. And we had a lovely exchange many years later when I thanked him for maybe spotting something that I was hoping they would spot. [06:00] I didn't think you knew that, did you?

GT: I don't think I did. (Laughter)

AR: OK. I have those letters.

LD: Really?

AR: I have the letter that I wrote to Robert Pitt thanking him for admitting me 30 years earlier -- I wrote it on Judge stationery at the time (laughter) as if to say, "OK, let me validate your choice. You didn't make a horrible mistake." And he wrote back a letter that -- I'll show it to you sometime -- but it's so wonderful that I kept it and framed it, saying how -- how did he put it? He said, "As Dean of Admissions, we make mistakes all the time -- some are walking around our campus and worse yet, somebody else's." (Laughter) That was how he put it. And from there went to the alma mater that you two folks recognize -- we wound up at the Harvard Law School -- where you went -- in what year?

LD: I graduated in 2002.

AR: And you, Gabe, graduated from there in --

GT: 2001.

AR: So we should understand how this works. One drifts toward the alma mater to get law clerks. I used to get them from Professor Kaufman, who would channel them our way. And I would accept them almost sight unseen. Professor Kaufman would say, "OK, here are the ones for this year. It's Lisa this year. It's Gabe that year." And I was very, very lucky. I love my clerks, as you can see. They've been fantastic. And whatever, after the dust clears, goes under my column, surely attributable in good part to the wonderful support from the law clerks like Lisa and Gabriel. And here they are today doing this interview. How about that?

LD: Thanks, Judge.

GT: How did you enjoy law school, Judge?

AR: It was a mixed environment; not quite the same cozy, comfortable environment when you got there. Let's see -- so I was there Class of '60. It was the Paper Chase as depicted in the book and movie. [08:00] [...]

So you got there almost 40 years later. And by then, the environment around the law school had changed a lot. In my era, it was still a boot camp where the dean was heard to say something like, "There will be no glee clubs at the Harvard Law School." (Laughter) And that was symbolic of his general attitude toward how the law school should conduct itself. By the time you folks got there, they had washing machines (laughter) and glee clubs.

GT: And they had a glee club. (Laughter) The dean probably participated.

AR: And the glee club. What else did they have? The dean -- was this Robert Clark at the time?

GT: Yes, yes.

AR: You could get him in plays, right? Wouldn't he --

LD: Yes, he was doing plays,

AR: Tell us about that.

LD: Oh, he would have a parody at the end of every year. And he enjoyed, you know, making a cameo appearance in the parody. (Laughter) I'm sure the dean from your era would have never, never considered doing that.

AR: The thought of Irwin Griswold performing in a stage play -- appearing in a play as a parody -- is beyond imagination.

LD: (Laughter)

AR: So by 2001, there are all sorts of extracurricular activities, fun and what else?

GT: Well it was different. I think when I went there, there was a big change because Robert Clark was the dean but then there was a transition to Dean Kagan. And she brought big changes to the law school. So it got even sort of more friendlier as she became dean -- much more so than when I was there and especially when you were there.

AR: Yes. My daughter was there -- the Class of '99. So she is much closer to your era. By then the atmosphere was pretty much the same as now. But she would report as how it was believed that one could actually have fun. That was allowed by -- maybe [10:00] by -- I think maybe the war, Vietnam, the '60s, Watergate. There was a huge cultural shift. And by then -- by the time you folks got there, people were allowed to have fun. They could actually use that word?

GT: Right.

LD: Oh definitely.

AR: Which I think was out of the vocabulary when we were there. It was not a place for fun.

GT: Right. People spend a lot of time at this place called Lincoln's Inn. Was it Lincoln's Inn there when you were in law school?

AR: Well it's funny you mention Lincoln's Inn because that was kind of a snooty club. And I don't think I could have joined even if I wanted to. But I -- I couldn't afford it. But I was associated with Lincoln's Inn. I was the bartender at Lincoln's Inn. And there were discriminatory practices at the time. We had one African American in the class -- maybe one, maybe two; 12 women out of 500 and it was a very different atmosphere. It was a male-dominated kind of WASP-y place. There were others around but that was the preeminent ethos at the time.

LD: I'm speaking of jobs, like bartending at Lincoln's Inn. How did you put yourself through law school and college, for that matter?

AR: Yes, I would earn 5 -- I'd earn maybe \$500 a year as a bartender, a loan of \$500 -- that's \$1,000. And I would make \$1,000 in the summer as a bellhop at Grossinger's Hotel. So that was \$2,000. The tuition at the time was \$2,000. So I made pretty much all of it with some help from my parents, who really couldn't afford much but they would chip in as best they could. And that's how I got by. So it was \$2,000 a year. Today it's what -- 40 -- in the \$40,000s?

LD: Yes.

AR: When you were there it was what -- in the \$30,000s?

LD: Close to that, yes

AR: After law school, I got my first job in Manhattan at a law firm. And then [12:00] thought that I didn't want to stay in that urban locale but thought that I would want to be more in

a countrified place where things were a little calmer and quieter. You know what I'm talking about, I suppose?

LD: Sure.

AR: And so I went up to Poughkeepsie where my cousin's husband Ed Kovacs had a law practice. I only went up there for a week to see what things were like because I took a little bit of time off to go skiing. I did that for part of a season. And then when I came back, I really didn't have a job and Ed invited me to join his law firm in Poughkeepsie. I guess he knew that I was in a kind of a hiatus. And so I joined him in Poughkeepsie and not long after that, there was a vacancy in the DA's Office. I liked the idea of being an Assistant DA. And I thought maybe two years, learning the rough and tumble of a courtroom. And it turned out that I really enjoyed that line of work and stayed on. The next thing you know, there were maybe seven or eight of us in the DA's Office. So I was at the bottom of the ladder, but little by little, people started retiring or leaving or retiring, and the next thing you know there it was. I'm now the Chief Assistant and candidate for District Attorney. And that's how I entered into an entirely unexpected kind of campaign into a political area that was very alien to me. I was more in the courtroom and in the books.

LD: You were quite young when you ran for DA?

AR: Yes. That would have been -- let's see -- I would have been 33 as DA. And I think I liked to say at the time that I was the youngest in the State of New York. Now I would be by far the oldest. (Laughter) And by the way, I'm glad they're doing this. They arranged for this interview while I still have hair. So this is all to the good. That's the span of time where it disappears. (Laughter)

GT: I understand that during your time [14:00] as a DA, Judge, there was -- or at least your election to the DA has a connection to Watergate in some way. Is that right?

AR: It's one of these "but for" things. You know, you can do anything with a "but for." My opponent for the nomination for District Attorney was G. Gordon Liddy.¹ We were both in the office at the same time. By tradition, the Chief Assistant would get the nomination to be DA. It had been like that for, say, 100 years. But Liddy announced that he was going to break tradition and he felt, as it was his right, that he would challenge me for the nomination. And there was a competition over that. I was engaged to my wife Julie at the time, and she jokes about those months -- asking herself, "Oh my, what am I getting into?" I eventually won the nomination and the election. He went on to other things (laughter) and acquired far greater fame than I would ever dream of. But that was my association with Liddy. And through it all, we weren't bitter enemies or anything like that. It was always civil and even a little bit good-natured. And after he got out of jail, he visited me and we chatted about things, including his life in prison. And I asked him what that was all about. And he made some interesting revelations about all that and about Judge John Sirica.² I don't know whether in 100 years any of these names are going to mean anything to anybody. But at the time, they were very, very important. And the Liddy Watergate chapter dominated the news.

LD: Oh yes.

¹ G. Gordon Liddy, a former attorney who was convicted of several crimes in connection with the 1972 burglary of the Democratic National Committee headquarters in Washington, D.C. that prompted investigations leading to the resignation of President Richard M. Nixon.

² John Sirica, Judge of the United States District Court for the District of Columbia, 1957 - 1977; Chief Judge, 1971 - 1974.

AR: So that was the stage with Gordon Liddy who was really quite a character. And then things calmed down. I served two terms as District Attorney and then quite conventionally, as was the practice for maybe dozens of DAs before me, went on to the County Court bench. That was what one did. That was the path.

LD: What is the docket like in County Court?

AR: [16:00] Well, Dutchess County was a pretty good place to be. It wasn't as huge and humongous, like New York, and yet it wasn't a totally rural county like Essex County. It was kind of a middle-sized county (Goldilocks). We had, a variety of prosecutions and different types of diversion. We began certain practices that later took on, a sort of an enlightened prosecutorial aspect. We liked to think that we were part of that. And I began and furthered what was the practice of hiring ADAs on the merits and not on political connection. That practice was really advanced by Frank Hogan³ in Manhattan where, following in Dewey's⁴ footsteps, the whole aura of a prosecutor's office got away from the smoke-filled, back room so that Assistant DA's were hired based on how good they were and how straight they were, how intelligent they were. And that's the kind of office that I tried to create. And it turned out that all of them -- virtually without exception -- became marvelous prosecutors and many -- even most of them -- went on to the bench, as I look back over all of the ADA's, including one of my closest friends -- George Marlow,⁵ served on the Appellate Division; Jerry Hayes,⁶ County Judge today, Tom

³ Frank S. Hogan, District Attorney of New York County, 1942 - 1974.

⁴ Thomas E. Dewey, District Attorney of New York County, 1938 - 1941.

⁵ George Marlow, Associate Justice of the Appellate Division of the Supreme Court, First Judicial Department, 2001 - 2008.

⁶ Gerald V. Hayes, Judge of the Dutchess County Court, 2001 - 2010.

Dolan⁷ today, Jim Brands,⁸ Supreme Court Judge today. These folks are on the bench as we speak.

LD: That's wonderful.

GT: Judge, you will no doubt be remembered as one of New York's best Judges. What was it like? Tell us what it was like when you first sat on the bench as a County Court Judge?

AR: Well the transition was [18:00] not as difficult as it might have been had I not been living in that courtroom for about seven years. So I just moved from one side of the bench to the other -- from the prosecutor, which is quasi-judicial, to the judicial. And of course, there was some getting used to it at the start but I found the transition OK. I wanted to believe that the prosecutor served somewhat of a judicial function. So it wasn't a radical change. And those were good years. County Judge -- it's a very good job. As I look back on it, I thought the county -- you folks will be wonderful in that role because you're balanced and you're solid and stable and scholarly. And it's a good place to be. And as I look back on it, it's really one of the best jobs I had -- although I was very lucky because every 5 or 10 years I got into a new job, which injected new excitement and new vistas. And after being a County Court Judge, I then was nominated for the State Supreme Court, which is, of course, the trial court. That took on a civil aspect. So the County Court was all criminal, which I knew. But then being a Supreme Court Justice -- that was a little more of an adaptation because the Supreme Court, unlike the County Court, was virtually all civil. And the only criminal trial I had as a JSC was the -- a capital case with Lemuel Smith. I had a very good law clerk, Jack Schachner, who was with me -- who's around today. He's still a pal -- we go to dinner a lot and watch football games. He lives in my

⁷ Thomas J. Dolan, Judge of the Dutchess County Court, 1993 - 2010.

⁸ James Brands, Justice of the Supreme Court, 9th Judicial District, 2003 - 2016.

hometown of Pleasant Valley. [20:00] I went on the Supreme Court in 1981. It was an election so that the County Court, which was also elected, was a county-wide election. The Supreme Court, on the other hand, was an election in five counties and about two million in population so it was a very different idea of campaigning. A candidate was allowed to campaign for the judiciary but after the campaign was over, you had to shut down all political connections and affiliations. And that's appropriate and maybe someday the judicial system will be totally divorced from any kind of campaign and Judges will be chosen the way Judges are chosen for the New York Court of Appeals, which is by a commission, and ultimately by the Governor. But I don't see that happening for a while. But this tape is going to sit on the shelf for 100 years or more. And maybe by that time something will happen.

GT: Well what do you think are some of the drawbacks, Judge, to a Judge being elected as opposed to being appointed?

AR: Good question, Gabriel. Both systems produce good Judges and lesser Judges. And I don't know that you're going to get the best Judges in one or the other. Justice, Judge Benjamin Cardozo⁹ was a product of the political election system, although he was more or less cross-endorsed. And we've had great appointed Judges, also. I can't say you get better Judges one way or the other, but the elected system has two serious drawbacks -- that New York has somehow been able to blunt a little bit; number one -- money-raising, which creates serious problems with conflicts that arise later [22:00], as when Judges have to ask for campaign funds, particularly from lawyers, that creates a possible disorder and conflict. Most of the time it turns out fine because there are ethical proscriptions. But

⁹ Benjamin Nathan Cardozo, Chief Judge of the New York State Court of Appeals, 1927 - 1932; Associate Judge, 1914 - 1926.

it could create problems and it has. The other being something that we in New York have been largely spared, and that is advertising. We saw films in some states of judicial campaigns that run into millions and millions of dollars, with ugly advertising in which the entire system is brought down. So the benefit of the appointive system is not necessarily better Judges but at least it doesn't have these two unfortunate drawbacks, which are money and ugly campaigning. That's my opinion. What do you think?

LD: Well I think you weren't involved in any ugly campaigning so --

AR: Well I was lucky.

LD: It all worked out OK.

AR: I was lucky and the Court of Appeals Judges, as you know, are chosen -- and it's been that way for the last few years -- by a commission of a number of people, some chosen by the Senate, some by the Assembly, some by the Governor, some by the Chief Judge; trying for a diverse group. They give a list of names from four or five to seven names to the Governor and the Governor chooses one nominee. The Governor cannot go off the list. And that's been very good; at least from my point of view it was fine because I was on the list. (Laughter) I'm always grateful to the Governor about that. But apart from me, I've had marvelous colleagues. I love them all. And they all came off the list, as you know. And you were in the Courthouse with some of those colleagues, and we were close with all of them. I still maintain ties with all of them. I have no expectation of appearing before them. [24:00] [...] It's hard to sit down and visit with one of the Judges on a Sunday and then appear before the Court on a Tuesday. [...] You can be friendly and chummy but it would be hard, for me anyway, to maintain that closeness and be a litigant in front of the Court at the same time. So -- I don't expect that to change. Well, maybe

some case will come along that I'll feel so constrained to do it, but I really don't think that's going to happen. I haven't appeared as an advocate in any court in New York, and I don't expect to. Now you folks are different. You could do that. You're well trained. You could go before the Court of Appeals. They will look down on you benignly and they'll say, "Ah, we remember you." That's not going to influence their decision but of course they will be most respectful.

GT: Before we get to the Court of Appeals, Judge, what was it like serving on the Appellate Division?

AR: That's a very different place from the New York Court of Appeals. There are seven Judges on the Court of Appeals but there were about 21 on the Appellate Division, Second Department, and life was very different. The analogy I use is that in Court of Appeals, you take one snowflake and you look it eight different ways and you make sure that you've got every corner of that snowflake and you come out with a ruling that is as circumspect and thorough as you possibly can. On the Appellate Division, it is a blizzard. And you're out there with -- I did ultimately about 10,000 appeals, as compared with maybe a couple of hundred on the New York Court of Appeals. So I would do -- not alone but of course in conjunction with others, and sometimes as Justice Presiding -- 20 to 25 appeals [26:00] a week; whereas in Albany, we didn't have anything like that. How many mornings were we out there until 1:00 a.m. in the morning looking at the same case, even using a blackboard, for the complex cases and we had the time. That's the way the system is designed and it's good. The Appellate Division is a court of error correction. The New York Court of Appeals does not see itself primarily that way. It sees itself as a court of policy, leave worthiness, setting rules for the others to follow -- not

there to correct errors per se. That's the job of the Appellate Division. They do it amazingly well, considering the volume. At each sitting at the Appellate Division, we would be in a panel of four and it would be a different foursome all the time; once in a while five, whereas on the Court of Appeals, as you know, each Judge sat with six others and knew each other intimately; we knew their law clerks intimately, but with 22 or so Judges, it was quite different. But all exciting -- it was a very exciting place to be; intellectually stimulating, as is the Court of Appeals.

GT: And you were also Chief Administrative Judge of New York.

AR: Yes, that came before going to the Appellate Division. And those were interesting years, also. That was from 1987 to 1989. That was, for want of a better word, being kind of the day-to-day manager of the court system. It's a little bit like, to use a corporate analogy, being the COO, the Chief Operating Officer, with the Chief Judge as CEO, Chief Executive Officer. So I was tasked with being the Chief Operating Officer and dealing with the budget, the courts, with unions, [28:00] with case management, with efficiency standards, and with the individual Judges -- about 3,000 of them -- in the overall court system. So it was a very busy time. Not an easy job. Not the most tranquil, and impossible to please everyone -- so from there the Appellate Division turned out to be a sort of haven. I loved it there. Marvelous colleagues. A couple of them are still on the Court. I was on the Court from 1988 to 1998. Do you have that written down there?

LD: I do. (Laughter) And now you were appointed to the Appellate Division by Governor Mario Cuomo,¹⁰ correct? And then you were appointed to the Court of Appeals by Governor George Pataki.¹¹

¹⁰ Mario M. Cuomo, Governor of the State of New York, 1983 - 1994.

¹¹ George E. Pataki, Governor of the State of New York, 1995 - 2006.

AR: Yes, isn't that nice -- one Democrat, one Republican. I'm glad you noticed that.

(Laughter) Very good. Yes, that made me feel good. You like to think that Governors make appointments without reference to one's political party. [...] You want to believe that the Governors often make choices without reference to that. And Mario Cuomo, to his credit, made six appointments to the Court of Appeals. And three had been Republican and three Democrat, which is very good, even though none of them were really political in that sense. And I was very gratified to be chosen by George Pataki. I liked him a lot. [30:00] A very good man. And I suppose I can say at this point, because people might be looking at this some years hence, that our Court decided some cases that I have reason to think he was not thrilled with. [...] But I'm happy to say that I have no doubt that he understood that we did what we felt we had to do. He was always a gentleman about it. [...] He had campaigned on the death penalty and I gave my vote against the statute -- I thought it unconstitutional under our State Constitution. And you were around, I think, during *LaValle*¹² or close to it.

LD: I was, yes.

AR: So you remember what we went through. What was your impression of when we got through *People against LaValle*? That was an arduous business.

LD: It was arduous. That was the word I was thinking of. And, you know, actually I don't want to divert too far, but I did want to ask you about your concurrence in *LaValle*.

AR: It was quite a brief one.

LD: It was brief, but yet I -- looking back on it, I see it as a good description of your judicial philosophy as a whole.

¹² *People v LaValle*, 3 NY3d 88 (2004).

AR: We concluded that the deadlock instruction was coercive. Of course, we could have found it constitutional if we followed federal precedent. It was OK under the Federal Constitution, we concluded, but we just didn't think it was right. And I didn't write the majority opinion but of course we all participated in it extensively. [32:00] I wasn't holding the ultimate pen, but I remember writing a concurrence because I knew that we were, in essence, speaking to the bar and to the public. I wanted to make the point that the decision was not based on preference or predilection [...] but on constitutional application. The legislature has not gone back and reinstated it, so far. I don't know that they ever will. Maybe they will someday. Frankly, I hope not. I think we can get by quite nicely without it. We had a couple of other cases where we made rulings that, I think, a Governor would not be happy with, as where we sided with the legislature. But in other instances, we made different rulings that someone else might not have been happy with. The point is that we didn't aim to please the Governor or not please him or anyone else. We did just what we had to do. But I remember my last day in office. I can reveal. I called him up and told him that this is my last day, Governor. I think he was off by then. He was -- yes, he was out of the governorship by then. And I told him that I was -- that I had served seven years on the Court, that I was extremely grateful to him for having appointed me for an unforgettable experience and that I hoped that I had lived up to his expectations even if he may on occasion not been overjoyed by our decisions or by my vote. But that I did what I thought I had to do. And he was extremely gracious about that and never was there any rancor about it. And he made me feel very good and the idea that a Judge, [34:00] once going on the bench, should feel no political fidelity toward the

appointer -- the appointer just hopes for the best and I think it more or less turned out that way.

GT: Judge -- before we start talking about specific cases that you've presided over, how would you describe your judicial philosophy?

AR: Well after all is said and done, I think the people looking back on the Court at this era would probably find that I was in the middle as often as not. And that there were seven of us and sometimes I gave the tie-breaking vote. So I guess by definition you'd have to call that a centrist. I came in with no pre-conceived ideas or agenda and I didn't adopt that role. And I didn't see it as one that enabled me to curry favor with everybody and say, "Well you'd better please Rosenblatt because that's the fourth vote." It wasn't like that at all. But it turned out that way that in some of the instances, I was the fourth vote. So centrism I suppose is a part of it. But I cannot subscribe to or ascribe myself to any particular philosophy; I suppose in a sense pragmatic rather than absolutist, not bound completely by result. I mean, it would be a lie to say that one is not result-oriented in the least. That's an abstraction. You hear people say, "Well I'm not result-oriented. I call it and I don't care what the result is." Well if anybody tells you that, I have some skepticism. Of course, we care how the thing is going to come out. Looking around the corner is a very important aspect of judicial life [36:00] and saying, "Well, what are we going to do here?" It seems OK now, but if you have the ability to look around the corner and see where that's going to take you, that's something that we tried for. Also putting out something that does not create public anomie. That's not to say that you write for the fans or that you write for the newspapers, or that you're a populist. I don't subscribe to that at all. But I don't think the judiciary should be totally oblivious to public morality or

disdainful of it. If the Judges continually and repeatedly distance themselves too far from what the public thinks on a particular issue, it affects judicial credibility. The Judges have nothing in their arsenal but confidence of the public. If they lose that, it would be unfortunate. In that way, Judges can, in a sense, lead but I think leading incrementally is probably better than repeatedly huge, radical, transformative steps. I suppose that's a little bit the conservative side of my attitude and balancing out on the other side is that there are times when you should go forward and say, "Well, that's what the situation is now. That's what the law is now. But it's not good. It's not working." So there are times when the third branch has to step out and say, "Well this law is not good, or this is not working out with fairness." People may say it smacks of elitism for Judges to say, "Well, we know better than the legislature." But since *Marbury and Madison*,¹³ we have been entrusted with judicial review. Judicial review is, after all, anti-majoritarian. In England, it doesn't happen. The Parliament cannot be overruled by a Judge, but in the United States, our courts do just that. But I think we should do it sparingly, and that is by and large how it has been done; otherwise it would just create a branch of government [38:00] that asserts itself above and beyond everyone else. That does not go down well. And would be elitism and outside of the design of the framers of the State and Federal Constitutions. But there are times when it has to be done and was done. It was done with *LaValle* and the death penalty. It was done in other instances. And I think when we look back over the course of history, we're going to find that the third branch did exercise real leadership in this Nation. We did it in *Brown against the Board*¹⁴ -- not me of course -- but the judiciary, as an entity and we did it in other instances. Same for *Griswold against*

¹³ *Marbury v Madison*, 5 US (1 Cranch) 137 (1803).

¹⁴ *Brown v Board of Educ.*, 347 US 483 (1954).

Connecticut.¹⁵ The judiciary has given life and meaning to phrases like due process and equal protection. Those were judicial functions. And it's a testament, I think, to the way in which our system has carried itself out in the last couple of hundred years. The Judges have been, for the most part, the weakest and most restrained branch, which is good. Judges should be, in a sense, gray. They shouldn't be out there as celebrities and necessarily as the primary pace setters in a democracy, but when called upon, when the Constitution demands it, then the Judges will go forward. That's about where I stand on it.

LD: Are there any cases that stand out in your mind from your time on the Court that -- you mentioned, like the death penalty. I mean, you can talk about that or any others where, the Court, as you said, kind of had to step out and really make a statement?

AR: Well, Lisa, you remember -- we had an interesting time with the *Pullman* case,¹⁶ dealing with corporate boards and co-ops. That was interesting and we didn't totally alter the landscape of landlord/tenant relationships in New York but it was a statement. It was stimulating -- I hope it was for you.

LD: It sure was. (Laughter) Why don't you just talk about that case a little bit and what it was about. [40:00]

AR: We wound up saying that a co-op board, when the contract calls for it, can provide for the ejection of someone whose behavior toward the other inhabitants is intolerable. And we were very careful, as you know, to say this is not [...] an occasion for a vendetta-ism. We don't want people to act on vendettas and just kick out people they don't like. But when someone does become intolerable and they are under a contract with the board, that

¹⁵ *Griswold v Connecticut*, 381 US 479 (1965).

¹⁶ *40 W. 67th St. v Pullman*, 100 NY2d 147 (2003).

intolerable behavior can lead to ejection and that the process can be effectuated by contract. In *Pullman*, we found intolerable and we acted. [...] You live in a co-op, right?

LD: I do.

AR: It's OK?

LD: And it's fine. And I think actually that *Pullman* probably illustrates the sort of incrementalism that you were -- you mentioned in your discussion of judicial philosophy because you build upon *Levandusky*¹⁷ which is -- Judge Kaye¹⁸ authored opinion. And it, you know, it took it a step forward -- a logical step forward, which I think is really illustrative of how you like to -- how you like to make decisions.

AR: It was good. We had a fine time writing it. And you will remember -- oh my goodness -- talk about arduous cases. I can see it in your eye. (Laughter) You want me to talk about *Sanchez* and its aftermath.

GT: If you want to, Judge. If you want to.

AR: Well I can never forget -- how can I not talk about the whole *Sanchez*,¹⁹ *Gonzales*,²⁰ *Hafeez*,²¹ *Payne*,²² *Suarez*,²³ *McPherson*,²⁴ *Policano against Herbert*,²⁵ *Feingold*²⁶ line of cases? How can I not [42:00] (laughter) -- how could I forget that trajectory? I was a DA but as a Judge never lined up with the prosecutor in a way that the defense never had a chance with me. I don't think I was pro one side or the other. But we looked at the

¹⁷ *Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d 530 (1990).

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

¹⁹ *People v Sanchez*, 98 NY2d 373 (2002).

²⁰ *People v Gonzalez*, 1 NY3d 464 (2004).

²¹ *People Hafeez*, 100 NY2d 253 (2003).

²² *People v Payne*, 3 NY3d 266 (2004).

²³ *People v Suarez*, 6 NY3d 202 (2005).

²⁴ *People v McPherson*, 6 NY3d 202 (2005).

²⁵ *Policano v Herbert*, 7 NY3d 588 (2006).

²⁶ *People v Feingold*, 7 NY3d 288 (2006).

landscape and [...] recognized that there were hosts of defendants found guilty of depraved indifference murder in a way that was never imagined. That crime was a very specialized offense dealing with homicides that are excessively brutal and where the defendant had a frame of mind -- a mens rea -- that it went beyond mere recklessness that bespoke depravity and indifference. And the case law wasn't going that way and there were what we thought -- what I thought -- were far too many routine prosecutions, in which defendants were being found guilty of D.I.M. And we tried to kind of stem the tide and wrote a dissent in the *Sanchez* case. You remember that? I remember particularly how hard we worked on the decision but it was done in a way that was collegial. At that time, we were out of the New York Court of Appeals building. We were up there on Washington Street. They were refurbishing the courthouse on Eagle Street. After drafts going back and forth for three weeks, we finally put the finishing touches on the writing [44:00] at 5:00 a.m. We had been at it all night and we left bedraggled and with bloodshot eyes and in comes Judge Howard Levine.²⁷ He was writing it up the other way. He had the majority. And I love Howard Levine. I'm just sorry we disagreed on this case. We agreed on almost everything else but my goodness, when there came a chasm, this was the one. And I remember walking down the hall arm-in-arm with Howard. We were like two punch-drunk fighters at 5:00 a.m. And we said, "Well we have to part company here on this." And he wrote it up the other way. And we wrote the dissent in *Sanchez*. And that started the path toward what I hope -- not in a conceited way -- will be seen as a reformation of depraved indifference murder. Of course, we worried about the effect --

²⁷ Howard A. Levine, Associate Judge of the New York State Court of Appeals, 1993 - 2003.

the consequence of each case and how there might be unintended results but it was kept pretty much in check.

GT: What were some of the concerns, Judge, that you had about issuing that decision?

AR: Well the most obvious was that each one of these decisions, carried the potential of releasing people who were guilty of something. And when the ultimate irony had to come down saying -- in which a defendant proclaimed, in effect, "I was wrongfully convicted on depraved indifference murder and should be let out because I did not commit depraved indifference murder. I committed intentional murder, therefore, let me out." That is an ultimate indignity that no system of justice should have to bear lightly. Judge Robert Smith²⁸ described this when writing up one of the cases that curtailed D.I.M when he said that these defendants are not the most attractive candidates. But happily those cases were very rare [46:00] and, as I say, with minimal fallout of that kind and ultimately with some help from the federal habeas corpus court in the Second Circuit, *Policano against Herbert*, in which they in essence asked us, "How far do you want this to go?" And our answer was clear: we wanted our rulings to be prophylactic. We wanted to correct what had become an extensive and unwarranted overuse of the D.I.M. -- well beyond its design. We didn't want to go back to closed cases and final judgments and we made that clear to the Second Circuit in *Policano*. So you remember that?

GT: I sure do.

AR: You were in on a few of those cases.

GT: Yes.

AR: *Sanchez*, of course.

²⁸ Robert S. Smith, Associate Judge of the New York State Court of Appeals, 2004 - 2014.

GT: Judge, on the *Sanchez* case -- the case of depraved indifference murder -- you wrote a sole dissent in that case which, based on your writings, has been pretty infrequent. What led you to decide to write a dissent and what steps did you take to try to convince your colleagues on the Court that you were right?

AR: Gabe -- that's a great question. Sole dissent -- well actually, I wrote the sole dissent meaning I wrote my own piece. Actually, Judges Smith²⁹ and Ciparick³⁰ had their own writings. But a sole dissent, as you know, is when you say, in effect, I am right and all of you folks out there -- all six of you -- are wrong. So that takes kind of a special treatment. And I was not kind of geared to do that too often -- I guess maybe once or twice a year, if that. I don't know how many sole dissents I've written. I remember I wrote one in a case called *Alami*³¹ -- that's where somebody got drunk and cracked up a Volkswagen and blamed Volkswagen because it wasn't built strong enough to withstand his drunken crash. And I said, "I'm sorry -- this is not for me. I think that person should be disabled from bringing a suit." Actually, it was his estate. That was a sole dissent. One or two other sole dissents -- [48:00] one on a lesser included crime because I thought I knew that subject pretty well, but infrequent. The *Sanchez* one was based on my having seen too many what I thought were wrongful applications of that homicide statute. There were just too many people who belonged in jail for committing some kind of homicide but not the ultimate crime because most of those convictions, I thought, should have been manslaughter convictions but they were in prison for depraved indifference murder. And while you want to see these homicide people in jail, there should be a sense of proportion

²⁹ George Bundy Smith, Associate Judge of the New York State Court of Appeals, 1992 - 2006.

³⁰ Carmen B. Ciparick, Associate Judge of the New York State Court of Appeals, 1994 - 2012.

³¹ *Alami v Volkswagen of Am.*, 97 NY2d 281 (2002).

that they get -- not 25 but something more in line with what they did, like 5 or 10 or 15 or whatever the manslaughter happened to carry. And I remember speaking with Judge Howard Levine about it, we're pals to this day. We began as DAs. We've skied together. I still speak to him all the time. And I thought initially that he might want to come along with me on *Sanchez* but, as it turned out, not only did he not do that, but he wrote a very, very good decision saying why not. What ultimately convinced him, I think, was stare decisis. Of course, I value stare decisis, but here it was not working out -- at least in my view it was not. So he wrote a fine decision. And we wrote the dissent. And little by little things turned out as they did.

GT: Which is what?

AR: And you were part of history. You were there when it happened.

GT: Was there a complete sort of [50:00] -- the way that you drafted your dissent, ultimately was that adopted by the court at some point?

AR: In *Feingold* we finally overruled *Register*,³² but even before that, in *Suarez*. And I remember you and I talked at length about the concept of mens rea. We said that's the problem with this *Register*'s premise. It's the mens rea that has been misconceived, at least in our view misconceived, and ultimately in *Feingold* we went so far as to say so and that the mens rea was that the defendant has to be acting with indifference and depravity, not mere recklessness or even heightened recklessness. To us that seemed plain, but it wasn't elemental because the cases had been going along differently under *Register* for a long time. It was in all an interesting chapter. Even though there was a lot of criticism of it from some quarters -- some of it quite harsh. [...] I think ultimately

³² *People v Register*, 60 NY2d 270 (1983).

people came to understand that it has been a correct readjustment of the homicide categories after they had gone somewhat awry. By now, except for the extremists, they have gotten used to it, [52:00] just like we got used to the exclusionary rule. We got used to *Miranda*.³³ [...] The same for *Mapp against Ohio*.³⁴ As a DA, I didn't expect that. And even wrote an article in Harper's Magazine saying *Mapp against Ohio* created too many problems and should be overruled. And I wrote it and I meant it. My wife Julie and I co-authored it. But now, 30 years later, we've come to live with *Mapp against Ohio*. The exclusionary rule has been OK. It has even been, I think, a benevolent aspect of the criminal justice system. It has really improved the police. Given *Miranda*, the police no longer rely primarily on confessions. It's shifted the playing field toward scientific proof; which is more valuable than confessions; more reliable. And *Mapp against Ohio* has provided the kind of police restraint in a free society that I think the founders -- even though they could not have predicted *Mapp against Ohio* -- I think the founders would feel pretty good about it. If they were around, I think the founders would have evolved to the point where they would say, "Yes, we can live with *Mapp against Ohio*." It wasn't in our crystal ball necessarily but it's quite fine. I think James Madison would think it's OK, don't you?

GT: Sure.

LD: Yes.

AR: Jefferson, too, although he wasn't one of the authors of the Constitution. I think some of our New York constitutional founders would have felt OK about it.

³³ *Miranda v Arizona*, 384 US 436 (1966).

³⁴ *Mapp v Ohio*, 367 US 643 (1961).

GT: Are there other cases, Judge, that as you sit here today you remember either for being extremely difficult or [54:00] cases that you are particularly proud of being a part of?

LD: Those gravestone cases.

AR: The what?

LD: The ones that you would want on your gravestone. (Laughter)

AR: Oh well I'm a tiny bit ambivalent about *CFE*.³⁵ *CFE* was maybe one of the biggest cases we ever had. And it was written up by one of my all-time favorite people, Judith Kaye. We had a marvelous rapport on the court because of the way she acted as Chief Judge. She and I have been very close, starting with our early morning breakfasts together when we were in session in Albany. Of course, we didn't always agree, but whatever differences we had were always civil and even affectionate.

LD: For posterity's sake, can you say what CFE stands for?

AR: Yeah, Campaign for Fiscal Equity. And this was a case in which people who were looking for greater financial support for New York City schools brought a lawsuit, saying that the legislature was failing the New York City school system financially; not endowing the city school system with enough financial muscle. [...]

And I looked at the record and I was satisfied that New York City was being deprived and gave the Court my vote because I wanted to be on the -- what I thought was the [56:00] right side of that. I knew that in doing that we would be trenching on the legislature because allocation of funding to the schools is, to a large degree, a legislative matter, jealously guarded. It's something that the legislature has always seen as their special prerogative: "The budget is our job as the legislature. We decide how much

³⁵ *Campaign for Fiscal Equity v State of New York*, 100 NY2d 893 (2003).

money each school district gets. It is an abysmally complicated formula but we've lived in this political arena for decades and here is how the money gets allocated. So, Judges, you stay out of this business. You have no role in this arena. We don't tell you how to decide cases. You stay off the political turf."

We were cognizant of that. I was particularly cognizant of it because I knew that we would be perceived of as entering the legislative arena and struggled with it. I wound up giving them the fourth vote, and if I had to do it all over I would do that again. But I tell you now it was not easy. It was not easy because it carried with it huge financial implications. We were talking about billions of dollars and I was sensitive to the prospect of Judges hitting taxpayers with huge amounts of money. [...] Judges sometimes do things that result ultimately in financial implications but I didn't see the Judges as doing that easily. As it turned out, it did not have those consequences as a result of our decision. A new Governor came in and he said that he would have the legislature give even more money [58:00] to the New York City schools. That was excellent; a great resolution. About a year after that I heard from Mike Rebell, a really nice guy -- enormously well-motivated -- he was the attorney arguing for CFE. And was dedicating his professional life to school funding. Well after the decision he invited me to the Columbia Graduate School of Education. Billing me, so to speak, as the poster boy for CFE. And I tell him then and on video, in front of this large audience of educators (and this wound up in a book that he just published), "Mike -- I'm not your poster boy. I went into that as a reluctant fourth vote." I gave it to them but in the back of my mind all the time -- and I was so amused to see this in the transcript of his book -- I was thinking about something that a Judge on the New York Court of Appeals used to say. That Judge would say,

“Before you do anything drastic to the taxpayers, think of what the people in the post office in Livonia are going to say.” Do you remember that?

LD: Yes, I do.

AR: And that was my pal, Judge Dick Wesley³⁶ [...]

GT: I think Judge Read³⁷ came on --

AR: -- came on and she voted the other way.

LD: Yes.

GT: Correct.

AR: And she wrote a very strong, compelling dissent and I respect that but I mentioned Judge Wesley because we were pals up on the third floor, buddies. As the new Judges on the block, so to speak. We still are good friends. And we thought a little bit [01:00:00] differently, but I was very sensitive to something that he would often bring to the table. And I told this to the people at Columbia University School of Education -- that Judges should be very careful and they should think about what the folks back in the post office in Livonia -- in my case Poughkeepsie -- it's the same post office, so to speak. It's what -- not Joe Six-Pack necessarily -- but just ordinary, you know, Joe and Mary citizens think before the Judges hit them with a huge bill. Once in a while, you have to do it but you do it with care. And so I told them that, and by coincidence, just two days ago this book arrives on my desk from Mike Rebell and the book has in it the transcript in which I talk about the Livonia Post Office. I didn't mention Judge Wesley as being the Judge from Livonia, but I guess it's fine to say it now because it's -- I think it shows wisdom. And as

³⁶ Richard C. Wesley, Associate Judge of the New York State Court of Appeals, 1997 - 2003; Judge of the United States Court of Appeals for the Second Circuit, 2003 - _.

³⁷ Susan Phillips Read, Associate Judge of the New York State Court of Appeals, 2003 - 2015.

you know, we were -- you know -- we would talk a lot. Wesley and I would talk a lot.

He's now a great Judge on the Second Circuit. I think he carries a big oar on the Circuit just as he did on our Court. You remember those sessions where we would have a lot of interaction -- sometimes late at night in our offices with Judges and the clerks. It was very -- kind of open, freewheeling sometimes.

GT: Yeah, talk about that, Judge. What's it like -- you know, the interaction between the members of the Court as they try to reach consensus on a decision, as they sit around the conference room trying to convince each other? What's that like?

AR: That is really worth talking about because I can reveal some of this without trespassing on anybody's sensibilities and well within the realm of ethics. It's not going to be for me to say, "Well on such and such case, we twisted so-and-so's arm around the table." That's not what this is about. But there had been a convention in which the Judges in the Court would never -- this was when Judge Breitel³⁸ -- Charles Breitel -- was the Chief Judge, well before I joined the Court -- and would never even discuss the case, [01:02:00] even as an aside, until all seven got into the room together. And I guess the rule then was that Judges are like juries and they shouldn't talk about it until they're all in one room. And that's largely true, even now, but not as exacting as the way he had it. We would talk about it a little bit beforehand. But when we got into the room, we had sometimes been talking about a case or cases a little bit before the formal conference. We had been with you folks -- with the law clerks -- well into the night and we kept monastic hours -- a little bit Bohemian. And we would talk about it and the other law clerks would come over to our chambers. And I see you nodding because I loved that. Didn't you?

³⁸ Charles D. Breitel, Chief Judge of the New York State Court of Appeals, 1974 - 1978; Associate Judge, 1967 - 1973.

LD: Yeah, absolutely.

AR: When they came over?

LD: Oh yeah. It was great.

AR: And we would chat. They would like to visit us and I tried to create an environment where our chambers were always open so that the law clerks from the other places came in. We would like that very much. It created a kind of a, you know, cross-breeding, which we liked. We knew what was going on elsewhere, which was helpful. We knew what other people were maybe thinking and we respected their viewpoints and we tried to accommodate. So by the time we got around the formal conference table, we had a fair idea of where we were going. And I remember I would sometimes be “launched” by you folks. I’d leave the office. I’d leave chambers, you know, with a whole bunch of books and briefs and carrying all this around and my mission was in such and such a case, well here’s where we thought we were going. In another case we thought here’s where we’re going but I am not unalterable but have some firm convictions. And in another case, I would say, “Look, I’m totally open. You folks may think differently but I just want to hear a lot about what others have to say.” And once in a while, I would say -- I think it was not too often -- “I don’t care what [01:04:00] anybody says. This is where I am, and it’s going to take a mountain to get me off of that.” Which isn’t to say it never happened but that’s the range. Well, the conference begins. And I know you folks sometimes had a lot of emotional investment in some of these cases, and I was kind of carrying the football. So how did you feel about that?

GT: I mean, the clerks spend a lot of time working on these cases. And they prepare the memos that go to the Judge telling them what the case is about, what the arguments are

like. So the clerks themselves talk about the cases and they develop certain positions that they try to, you know, convince others about, just like Judges do. But we don't sit around the conference room ultimately deciding the case, which is what ultimately matters, I think.

AR: Yes, there are you might say three layers of convincement. The first is when you read the thing yourself. The second is when the clerks are engaged. And clerks have opinions; most of the time, balanced. As you remember, I stopped asking for recommendations. I just said lay out both sides. Give me the arguments pro and con. Then we'd talk about it. We'd talk about it and talk about it and talk about it. And one can sense, of course, how law clerks felt and that was valued because a lot of it involved -- not combat but discourse and maybe differences of opinion, which is all healthy. This is going on in all the chambers.

LD: Well can we talk about our conversations in Poughkeepsie and in Albany? You know how it worked. I mean, it would start, you know, just at lunches in Poughkeepsie and we were working on our bench memos for you and drawing the pictures up on the board and, you know, describing the cases to you and, you know, your clerks debating amongst [01:06:00] themselves. We were all involved in every case, really.

GT: Including --

LD: You know, that's valuable to you. (Laughter)

GT: Including the infamous screen session, Judge. Tell us about the --

AR: Oh, the screen sessions. That is, I think, unique to us. I don't know whether anyone else will ever pick up on it. But we found it pretty good. I hope it wasn't too much of a torture chamber for you folks. But the way it would go would be -- and I do this a little bit with

my students now at the NYU Law School -- we would get a writing working together to the point where it was the best that we could do, as a first draft. And I would work with one of the law clerks on a first draft. Then we would call in the clerks who were *not* on that case. So if for example I was working with Lisa on a case, we would put out draft after draft after draft between the two of us. Then I would say, "OK, Lisa. Are you ready? We're going to now bring in the others. We're going to bring in another set of eyeballs; one or typically two more because we had three clerks for much of the time. And we would put it up on the computer screen. Who knows what devices there will be 100 years from now but in 2004 or 2005 or 2002 or 2001 we had the computer. And Lisa -- you would sit at the control or if it was a case you were working on, Gabe, you would sit at the control and we would go down one sentence at a time. (Laughter) We'd look at the first sentence and we'd look at it and we'd say, "OK. Is there anybody in this room who can improve on it? OK? Let's go onto the second sentence." And we would go sentence by sentence and somebody might say, "You know, Judge, let's switch the fourth sentence and the third sentence." Or, "You know, I'm not sure that that fourth sentence really fits where it is." Then with the blessings of modern technology, [01:08:00] we'd get the fourth sentence up to the second sentence. We'd switch paragraphs. Then we'd sit back -- typically with coffee -- and we'd look at them and we'd say, "Let's look at it now. Yes, I think that flows better. Don't you, Lisa? Do you think that flows better?"

LD: Yes. (Laughter)

AR: Do you think, Gabe, does that flow better?

GT: It sure does. (Laughter)

AR: And we went through the process. And to me, it was exhilarating. I suspect that you guys, when I wasn't around, maybe described it a little bit torture. (Laughter) You can be candid now. People 100 years from now can look at this if you want to describe the torturous process.

LD: Yeah, at the time I probably did but then as I, you know, progressed through my career, I realized how valuable a process that it was.

AR: Are you going to do the same to your baby Noah, when you get his --

LD: Oh, we already do that. (Laughter)

AR: Get him in front of the computer. He's 18 months old, everyone should know. But you are going to get Noah and you're going to teach him. Well, who knows? By the time he's 18 what kind of technology there will be.

LD: Right. It will be a computer chip in his brain, probably.

AR: Probably.

LD: (Laughter)

GT: I think --

LD: Go ahead.

GT: I think the only thing that you left out, Judge, of your description of the screen session was that these screen sessions would typically take place at one in the morning, (laughter) two in the morning, maybe three in the morning. (Laughter)

AR: Yes, but it kept us awake. I hope you appreciate how exhilarating it was for me.

GT: For us as well.

AR: I think you did give me a wide berth on that. Then we would get the thing to the point where we felt when we signed off on it, we felt OK. And it's not for us to say that this is

wise or correct. All we can say is this is the best we can do. And what gave us a very good feeling. Wisdom -- that's for someone else to say. That's for posterity to say. Whether it can be improved on, then it went to the other six Judges (laughter) at that point. And they started to put their fingerprints on it.

LD: Oh, lots of comments.

AR: And that was the next part of the process. [01:10:00] The other Judges then would mark it up -- happily, not too much -- but they would say, you know, question, "What do you mean here?" or "Would you be good enough to use this word or that word?" And they would do that to ours. We would almost always accommodate them. Our ethos was to accommodate when possible. And we would do the same with theirs and they would accommodate us when possible. That is a phenomenal process because what you had ultimately was each writing was basically one's own but with some help from the other Judges that almost invariably -- I will say invariably -- improved it. And it turns out pretty well. Then the process among all the other Judges went on with suggestions over and over and over again and as each decision went around electronically, we would put out revisions and finally say, OK speak now or forever hold your peace. [...]

OK. But once in a career -- not more than once -- you'd say -- after being on board through all the drafts -- "I cannot bring myself to sign off on this decision. I need another day because I may jump ship." Now that's something that a Judge does *not* want to do habitually. If you do it more than once, you become a gigantic problem. But everyone should be able once in a great while to say, "You know what? I've been along for this ride and I told you I wasn't happy with it. I told you I was a weak vote. I told you I'm on this team by 50.1% [01:12:00] but now I've lost too much sleep and I am out of here."

You can do that but -- and I can't recall a case in which I did -- but I've seen people do it. And if I think back, probably I've done it -- maybe not at the last second but the Judges are free to leave the majority and go to the dissent or leave the dissent and come over to the majority. You want to leave Judges with the opportunity to do that. Otherwise, people can become painted into corners and they can become stiff-necked and unreasonable. You want to give them room to say gracefully that they can cross over. It's great. I still couldn't get Howard Levine to come over. On the you know what case. (Laughter) And ultimately, it's participatory to the extent that everyone feels as though they are where they want to be. We also had, at that time -- I think it's a little less true today -- an ethos of consensus building. We liked the idea that everyone would try to reach a consensus. That was our cultural value. Today I think it's less so. I'm not saying one is better than the other. I think the law professors like the idea where there is no consensus; where everybody says their own thing. Personally, I'm no fan of that because I think it fractures too much and we would see instances where the United States Supreme Court would have five different writings and it leaves the bench and bar at sea and you have to look for a thread of a plurality. You're less likely to know the drift of what the law is or should be. We felt, right or wrong, that we'd do our best [01:14:00] when we speak with if not one voice, close to one voice. And we didn't try to please the professors by creating fault lines so that they can say, "Oh, this is what these Judges think," and create ideological wings or blocks, And I think Judith Kaye, a marvelous Chief Judge who will go down as having made advances in the judiciary as no one else before her, strongly believed that. We also had a custom of decision-making that -- the opposite of the way the United States Supreme Court decides cases. When we were in the conference room voting and

deciding, we would begin with a report of the Judge who drew the case based on a random draw. So as we --

LD: And this is how writings are assigned?

AR: Right. Exactly. And after the argument, we'd go into the red room and you'd turn over the card to see which case you picked. Let's say we had seven cases. We had seven cards down on the table. Then we'd begin. We'd left off last time with Judge X and would begin next time with the Judge next in the rotation. And a Judge might draw a case and say, "Ah, great!" Or say, "Oh my. How did I get stuck with that case?" (Laughter) A lot of laughter, a lot of jollification but you did what you had to do. We all then go out to dinner. Then we come back to our friends and law clerks. We'd be up until God knows what hour and then in the morning we'd present our report, beginning with the Judge who draws the first case. The Judge would present that case and have an unlimited amount of time to do that. And the convention was speaking without interruption, which is very hard for Judges to do, being from New York. [01:16:00] (Laughter) It's not easy. But they would speak without interruption and then finish, OK, however long it takes on the clock. And at that point, you are somewhat of an advocate because by that point you're in there saying this is where my vote is. You have to begin by saying I vote to affirm and here's why. Or I vote to reverse and here's why or you're modifying. Then we would go in order of reverse seniority. Why do you think we did that? So that the junior speaks first after the reporting Judge. You know why.

LD: So they don't feel down to follow the --

AR: Yes, the big shots. (Laughter)

LD: The senior -- right.

AR: Although, I'll tell you, I have seen no bashfulness (laughter) on the part of new people. I think you can exaggerate the so-called timidity of new people. I've seen almost none of that. But, nonetheless, you don't want the junior people to be influenced by the seniors, let alone by the Chief Judge. And then we work our way around the room and then so the junior person would say, in effect, "OK I'm with the report. I agree with the reporting Judge and here's why." And then you'd go to the next Judge and ultimately around to the Chief Judge -- who goes last. And I think it's a testament to Judge Kaye that she never tried to change that custom. And a Chief Judge who's willful and heavy-handed and maybe dictatorial might want to change that because more than once it happened that I would know how she would want to vote. And it goes around: one, two, three, four, five, six and by then I'm in effect [01:18:00] saying to Judith, "Game's over." (Laughter)

That's it. She never felt willful about that because she's a person of extraordinary generosity and leadership. Once in a great while -- a great while -- she felt the prerogative that you're saying, "Look, I know everyone is against this but here's why I feel differently." And we would listen very carefully. And I should say now that when it came to matters that somewhat fell to the realm of court administration that I or others might say, "Look -- she has to live with this and give her a wide berth on this one because she's the one who has to carry this out." And in other cases, because we just respect and admire her, as we did others on the Court, but the chair carried a special importance in part because she was Judith and goes down, I think, as one of the great Chiefs of all time because she brought innovation to a court system that was in need of it. The hour was right. And she began making changes and improvements that I think we're going to see consequentially over the next -- maybe over the next few decades or even longer.

LD: I wanted to ask you a little bit about some of your colleagues. In particular when you were at the Court, it was the advent of some strong female Judges sitting on the court. Besides Judge Kaye, we had Judge Read and Judge Graffeo³⁹ and Judge Ciparick. Can you tell us what that was like?

AR: Yes, indeed. I sat on a court in which, for the first time in the history of New York judiciary -- we were not the first in the Nation, sad to say. It would have been so great to say we were first in the Nation [01:20:00] but I think maybe the State of Minnesota and maybe the State of Washington had a court that was a majority of women -- we were 4-3 women. The Chief Judge was a woman and the men were outnumbered 4-3. So what happens? Well the first week, the Chief Judge announces that the men's rooms are being shut down (laughter) on the first floor and that we could go across the street if we wanted to. And then -- let's see what else. She has a great sense of humor, as you know, and she would joke about -- you know when you come behind the bench, there are these brass spittoons (and they're still there). What they're doing there, I don't know, she said those are going to be filled with begonias. (Laughter) So that was very cool. And then as far as decisions went -- I detected no gender coloration at all. After the initial visual superficiality of it all, to me the notion that somebody is a woman speaking or a man never entered into it. There were two instances when the breakdown happened to be men and women; 4 and 3; that the guys lined up one way and the gals the other way. And you might ask yourself whether in those two instances there might have been some issue that maybe in the mind of a writer like Katherine Gilligan there might have been some male-oriented or some female-oriented outlook to the case (she's written a lot about that). But

³⁹ Victoria A. Graffeo, Judge of the New York State Court of Appeals, 2000 - 2014.

one of them was a corporate case, a Delaware case -- fees on fees -- that had nothing remotely to do with gender. So I suppose when you have enough decisions, ultimately it has to break down in every conceivable variation. And this broke down 4-3. [01:22:00]

The other time was a plaintiff's case in which a plaintiff was gored by a bull. Fred the Bull. (Laughter) It was an upstate case. And for some reason, the three men lined up with the plaintiff, who was gored by the bull, and the four women against Fred -- against the plaintiff. Now what that means, I cannot tell you. If you could read something into that, I don't know. (Laughter) The leadership of the Chief Judge was also genderless. I don't know that any of her initiatives would be -- you can characterize -- as feminine. She made great changes in the Court, and the women on the Court had characteristics and personalities that were no different than the men. Judge Read came on the Court. Her background was as Counsel to the Governor; University of Chicago, law and economics -- great background, wonderfully intellectual, fine writer. [...]

Judge Carmen Ciparick -- marvelous background with the Office of Court Administration Counsel -- very thoughtful, one of the kindest, most benevolent people around that I've known, hard-working, charming, [01:24:00] intellectually strong. Judge Vicky Graffeo -- the fourth woman. She came on a little bit after me. She had been Counsel to the New York State Assembly, which meant that she had extraordinary knowledge of legislation and of the whole process. When we had a case dealing with municipal law, Vicky Graffeo was really the one who had the most experience. She was also very fastidious in her preparation and she'd come in with huge whole wagonful of books and papers. Every once in a while, when we needed something, you'd say, "Well what did that say on page 534 of the record in the third volume?" And we'd all look at Judge Graffeo, and there

would it be. And she would say, "Yes, here it is." And she'd pull it out. Extraordinarily well-prepared and knowledgeable. And that was the female contingent. The men -- when I was on the Court -- Judge Wesley who I talked about, my buddy. And we would kid about being on the third floor like the boys' locker room up there. When we were the junior Judges, we'd talk about the big shots on the second floor. There were two of us -- the two junior people on the third floor and the five senior people on the second floor. So we would talk about the guys' locker room on the third floor. Getting up in the morning at 5:00 a.m., snapping towels at each other up there on the third floor. And Judge Levine I spoke about a little bit. And we're also pals to this day. I speak to him all the time. We're working together on some matters. Judge George Smith who, as I'm sure is known, after he graduated from Yale College and Yale Law School -- as did Howard Levine -- went to Selma, Alabama, where he was a protester in the civil rights movement and was actually arrested for doing nothing more than sitting [01:26:00] at a lunch counter. And that conviction was vacated in a case called *Abernathy* and the record was, of course, expunged. But I think there is a way to get on a website where you can see him, you know, kind of with a mug shot. And that's the background that he brings to the Court, which is extraordinary and courageous. And he's a man of unyielding integrity, patience and thorough-going decency. And Judge Bellacosa⁴⁰ -- who I shared a little bit of time with -- had been the Clerk of the Court for a number of years and then the Dean of St. John's Law School; came to the Court with an extensive background in the judicial process and in the intricacies of appellate practice and jurisdiction of the New York Court of Appeals. So he knew that in a way that exceeded almost everyone else's knowledge.

⁴⁰ Joseph W. Bellacosa, Associate Judge of the New York State Court of Appeals, 1987 - 2000.

And he had an ability also to, you know, kind of “see around corners” and that’s something we all admired. I remember him now. He would come in his own sort of professorial way with a kind of a buttoned-up sweater and we’d visit in his chambers or mine from time to time. And lastly Judge Robert Smith, who came to the Court after I did and after Judge Read came to the Court. And he -- I suppose it’s OK to say -- he had probably the most extraordinary memory of anybody that I had ever met. In addition to being of the highest intellectual capacity, he was first in his class at Columbia Law School and President of the Law Review. He has committed to memory all of Shakespeare’s sonnets, so that at dinner -- did you know this? [01:28:00]

LD: I don’t.

AR: At dinner you could say, “Bob -- Shakespeare’s Sonnet 64.” And he would recite it from top to bottom. Everybody would applaud and one of the Judges might say for example “82.” And he would recite that sonnet. And he memorized this not the night before but maybe 20 or 30 years ago. And somehow has retained it. And I don’t think he gets up every morning and memorizes them all over again. (Laughter) That’s the kind of mind he has. And legally speaking, it is a steel trap. And I think he brings that to the Court; just an extraordinary intellect. So it’s been a great bench.

Judge Gene Pigott⁴¹ came onto the Court toward the end. I didn’t have as much time with him as I did with the others because it was in my last year or so. But I love Gene Pigott. He brings the same sort of background as Dick Wesley did, coming from the western part of the State, he brings a sense of what it’s like to be from another region of the State, from the Buffalo area. He had been the Presiding Justice of the Fourth Department so he

⁴¹ Eugene F. Pigott, Jr., Associate Judge of the New York State Court of Appeals, 2006 - 2016.

brought with him all that background, his enormous knowledge and experience in being the Presiding Justice of the Fourth Department and all that goes with it; a man of wisdom and great temperament. And when I go up to the Court with my law students these days, there they are and I'm just so proud of the way all of them are as astute as they are and how they are an exemplary bench. So I've been very lucky. I love all the colleagues and I like to maintain my friendship and intimacy with all of them. So they treat me -- when I got up there with the students -- they treat us well. They give us lunch. The students actually meet them. They come down --

LD: That's nice.

AR: -- from their perches on the third floor. They come down. They shake hands with the students. They get to visit a little bit. And that's one of the bonuses that I get [01:30:00] for having been on the Court.

LD: Do you keep in touch with your former colleagues?

AR: Yes, all the time. I still speak to Judith Kaye, my goodness, probably -- not every day but often at 5:00 a.m. That was our hour when we would speak. And that's when we're both not busy and that's when we chat with one another at least twice or three times a week. And the others, not quite as much but very often, and that's something I value.

I don't want to argue cases in front of them because I would lose all that and that's worth to me more than big cases. Now the other thing I think is in your script, if I can anticipate it and preempt it is where the judiciary has been and where it's going. Do you want to lead off with something like that or --

GT: Sure, Judge.

AR: When you were in the building, I mean, that was today's era. Things are more or less OK. What are the flaws in the system? Is that what we're going to talk about?

LD: Sure, if you'd like. Do you have any flaws that stand out for you?

AR: Well I think we have not seen the worst of it. We see it from time to time -- the unsavory aspects of elections that generate money entering into the judicial arena in terms of campaign acquisitions and ugly campaigns. We have been spared a lot of that but I'm a little bit fearful that we could take on some of the horrific experiences that we've seen. I saw some from -- not to single out Michigan or Iowa or Texas -- but I've seen some [01:32:00] unfortunate campaign consequences with the effects of money in campaigns that take down the judiciary and have to result in a lack of confidence in the courts. Maybe they've gotten over it in some of those places but I think it's probably very hard. Maybe someday we'll have a system where the selection of Judges can be done without those bad consequences. The other -- generally speaking, looking at it at the beginning of the 21st Century, I think we're doing reasonably well. And I'm speaking now from a perspective that I gained when writing an article for the Cardozo Lecture. [...]

A kind of an overview of where we've been and where we've been going for the last maybe 5,000 years. And it gave me the opportunity to see what I call the path of law. And I welcome that because I wanted to learn about where the law had been over those centuries. And I came away with a conclusion that we have cause to be optimistic; that when you think about us human beings, we've been on this [01:34:00] planet for a very long time and the advances that we've made in the judicial system but it has not approached anything like the advances in science. We cannot duplicate that. We cannot go from the Iron Age and the Bronze Age to where we are now in the judicial setting. It

would be nice if we could but when we're dealing with interpersonal behavior, which the judicial system is all about, and how people get along with one another and bump into one another, there is no way we're going to match a trajectory from making tools to getting to the moon. But we have charted a pretty good course toward freedom, liberty, individual rights, and equality that has a long way to go but has been getting better and better over the course of legal history. As far as Western Civilization is concerned, from our origins to where we are today, we have done quite well. And we've done so recognizing, I think, primarily that diversity is among the healthiest conditions that we can possibly bring to any culture. When you look back, as I was recently -- we're doing a book on Dutch New York -- when you look back on as recent as the 17th Century [01:36:00] mind, the attitude was in that order to have a healthy, functioning culture, you have to have everybody acting the same. And people ruled on that basis. And so there was a homogeneity that was enforced, religious practices that were enforced. And that's the way they thought that a society could function; that if you had diversity and divergence of religion and different groups that it would create chaos. That was the 17th Century outlook. And it carried through until even in our own lifetime we have come to recognize that we've almost got it right. We've recognized -- it's taken us thousands of years to realize -- that we do a heck of a lot better in our law system and in our culture by recognizing people's differences, gender differences, religious differences and every other difference and respect them than we have by forcing people into a certain mold in order to get conformity and congruity. That's taken us a very, very long time. And I think the judicial system has been, in the forefront of recognizing that. These are changes that the Judges have wrought if not as pioneers certainly by bringing it to the judicial table

quickly or as well as anybody else. And I think we're moving in that direction. Now of course there is bumpiness. There is going to be bumpiness along the way but I think the introduction of new immigrant groups in the United States and in New York, which is in the forefront of all this, is healthy. I think that our judicial system recognizes it but we have to do something else also and we have to recognize that the judiciary is not strictly speaking as it has been for centuries [01:38:00] entirely reactive. And this is something that Judith Kaye has brought to the fore. For generations, the judiciary was strictly reactive. And we would say, in effect, if somebody brings a case, I decide it. Period. But she brought something else where she has taken certain strides which are being, I think, mirrored nationally and internationally, where the judiciary sees itself as going a little bit beyond being strictly reactive and being more proactive but carefully and in measured doses because the judiciary is not the social hospital. It cannot be. We are not equipped to do that. But to the extent that the Family Court has been reframed into an institution where you're dealing with the families and the kids in a way that you actually help them rather than by saying, "OK, X dollars a week support, Y dollars you do this, you do that." That has been her innovation and that's been, I think, wonderful. Time will tell, of course, but I think that's been a stride. The specialized courts also have fashioned new ideas toward problem solving that Judges really never got into. And I've seen, right in my own lifetime, right in the last five years or so, I've seen some pretty, arch conservative Judges who had earlier asked, "What am I doing in this business? I don't like this kind of shift in the judicial role." And I have seen them go from that to actually weeping at graduation in the Family Court when a family is set on the right course, reunited. Whether this is going to be the future of the judiciary only time will tell. But I see

[01:40:00] beginnings of it and that's really -- that's been the Chief Judge's -- her initiative. And she's done it marvelously well. And I've been a little bit a part of it but basically watching her do this. So I think she's going to go down as having made these great changes. And maybe that's where the judiciary is going to go in the years ahead. Other ways, in more technical ways, laws, rules of evidence -- I think we're kind of doing OK. And if somebody asked me in 100 years from now, when they look back in 2009 where we are now and they are saying, "What is it?" of which they are going to say, "How in the world could they have thought that?" I'm not sure I know the answer. I don't know what they're going to say. "How in the world could they have thought that?" I think that, like any society, we think we're doing the best we can. And if we could perceive that we're doing something really crazy, we would try to fix it. So I don't know. I don't know the answer to that. That takes a crystal ball that is not in my -- that's not in my closet. So we just hope that we're off on the right track.

LD: Judge, can you tell us a little bit about the search for Judge Charles Ruggles?⁴²

AR: Oh, that was great. That was in 1997, it began. The Court of Appeals was founded in 1847 which was 150 years earlier. Of course, there had been a Court before that, the ancestor of the New York Court of Appeals, which I call the court of the cumbersome name -- the Court for the Trial of Impeachment and Correction of Errors. The Court of the Cumbersome Name. That went from 1777 to 1847. 1847 started the New York Court of Appeals. Before 1777, we were the Supreme Court of Judicature, [01:42:00] 1691 to 1777.

⁴² Charles Herman Ruggles, Chief Judge of the New York State Court of Appeals, 1851 - 1853; Associate Judge, 1847 - 1855.

So in 1997, it was the 150th anniversary of the Court. As you know when we sit in that extraordinary courtroom -- that inspiring courtroom -- we see the oil paintings of the Judges around looking down on us in a friendly, benign way, we hope, approving, we hope, of what we're doing. And Judge Kaye and Fran Murray our librarian/archivist took an inventory of who these people were, and she learned that the Court had all but two represented in the paintings -- one of whom she was able to find -- so there was one missing; the second or third Chief Judge of New York in the 1850s was named Charles Ruggles. She called me, knowing that I'm a member of the Sherlock Holmes Society, the Baker Street Irregulars. I was not on the Court then. I was on the Appellate Division. And she asked, "Can you help us find Charles Ruggles? Nobody can find him." [...] So I began the campaign to locate an image of Judge Ruggles; little by little I learned about him and I thought, "OK I think I can find him. I'll do this and I'll do that." But I couldn't find him. And then one day, after having written a dozen letters to all sorts of facilities and societies, it turns out that he is pictured in a daguerreotype. (Have you ever seen these little -- they call them daguerreotypes. I don't know what the photographic process was.) In Kingston -- in the Senate House -- and that there was provenance to establish that it was Charles Ruggles. A Poughkeepsie philanthropist Jack Gartland, who was interested in this, then commissioned a portrait painter to take this little daguerreotype and [01:44:00] expand it into a picture the size of the other portraits -- oil portraits -- in the courtroom. And now Charles Ruggles has his place among the others based on what the artist did and what Jack Gartland did to sponsor the picture. So I look at Ruggles and I think, wow there he is. He's now there and that may have been the start of my passionate interest in the history of the Court -- because I would, once in a while, look

around the courtroom really in awe of some of these predecessors and I thought, “Who are these people? They must have been pretty good people.” And they didn’t get to the New York Court of Appeals by accident. And I asked the Chief what we know about these people. And we began with an inventory. And we found this dusty old loose-leaf book where there were fragmentary accounts of probably 80% of the former Judges. And I thought, “Well, Judith, what do you think? Would you help me if I wrote a history of the Court and all these people?” And so it began. She gave me an enormous amount of help with the records and asking the clerks to help out and asking people to do research and making this a huge team family effort. And we were able, after maybe two or three years, to identify all 106 Judges of the New York Court of Appeals. There were search devices that 10 years ago or 15 years ago would have been unimaginable, Google and the Internet, and ProQuest. I mean, Google is going to be seen 100 years from now as something utterly primitive. But to me, Google was opening up horizons that were undreamed of [01:46:00]. I also used the *New York Times* database and New York historic newspapers and then finding a descendant and then through that descendant finding letters -- we were able to assemble the histories of almost all of the Judges, all 106 of them, and to write biographies of all 106 of them; some of them a little bit skimpy but really OK and others quite extensive based on all that we were able to gather through these diverse sources. So there’s the book that’s out there now. And it’s one of our really proud achievements. So it’s out there now, and I will remember it for life. A very special experience. Another was when all of this actually came to life. After having found the identities of all 106 Judges, we located offspring, progeny of 80 of them, which is just a spectacular job. And I had so many conversations with descendants, Charlie or Sarah

Jones in Minneapolis where I would pick up the phone -- after tracking generation after generation after generation after generation -- I would call Sarah Jones in Minneapolis and say, "Hello. Please don't hang up. (Laughter) My name is Albert Rosenblatt. We've never met before but I have reason to think that you are the great great-great-great granddaughter of Judge so and so." And the reaction was -- and I made so many of these calls -- the reaction was sometimes incredible saying, "Who are you?" [01:48:00] And I would say who I am. They'd say, "Oh my goodness! Yes, we did hear that there was a Judge back there." And then it opened up into a memorable conversation. And in two or three of those instances -- Judge Samuel Foot⁴³ for one -- I reached a great-great-great-great-descendant and I told him who his ancestor was and he said, "Yes, I do know Judge Samuel Foot. As a matter of fact, I'm sitting in my study where there is an oil painting of him opposite me." Amazing! So it varied. The Chief and I arranged for a gathering of all of the progeny of all 80 of them and we invited them to the Court of Appeals. We had to put a limit of five per family because there would have been hundreds. So we told each of the 80 Judges' descendants, "Come on to the New York Court of Appeals and we're going to put on an unforgettable afternoon for you. And we're going to go down each of the Judges -- each of your ancestors -- and tell about them and you can sit up there and cheer or whatever." And all the present Judges came out and it was a great mix and it was all afternoon. There were so many people we had to do two showings; one for a batch of 40 Judges' descendants and then the others. To this day, I'm still friendly with some of these people. I don't know what this says about cultural descendance -- but these families are today of remarkable achievement.

⁴³ Samuel Alfred Foot, Associate Judge of the New York State Court of Appeals, 1851.

LD: Any Judges among their ranks?

AR: I can't think of the whole inventory now but oh yes -- the level of achievement of this group is just remarkable. [01:50:00] Well Judge Bergan's⁴⁴ son was one of the folks who did a biography for the book. Judge Van Voorhis's⁴⁵ son did a biography. And in some instances, the law clerks wrote biographies. And in other instances, direct descendants. In other instances, family friends. In other instances, I did a few of them and many of the law clerks pitched in --doing biographies I learned a lot about their backgrounds and their histories and about their political origins. So that was unforgettable.

LD: That's a great undertaking.

AR: Well you saw it. You saw the excitement around the chambers when we were putting some of that together.

LD: Oh yes.

AR: Were you there when we actually found some of the people or were in on that? Or was that --

LD: That was after my time.

GT: Yes. The excitement was barely starting. You know, we were trying to locate people at that point.

AR: And who they were, yes. We got back to the first Judge -- first Chief Judge of the New York Court of Appeals, and we found his direct descendant who was a law clerk in the New York Court of Appeals, about 150 years later.

LD: Wow.

⁴⁴ Francis Bergan, Associate Judge of the New York State Court of Appeals, 1964 - 1972.

⁴⁵ John Van Voorhis, Associate Judge of the New York State Court of Appeals, 1953 - 1967.

AR: Just imagine that. Yeah these were phenomenal, unforgettable times. And I think that's what got us started in forming the Historical Society of the Courts. The Chief and I felt that we want to preserve a lot of these events and somehow chronicle our history because it's rich and it's exciting. And there are a lot of people involved. And we even tried to sponsor and to further a Society of Law Clerks because the law clerks -- and there are well over 100, maybe 250 law clerks -- carry the [01:52:00] backbone of the memories of the courts. They know where the skeletons are buried. (Laughter) They know all of the intimacies. And this society exists. Stuart Cohen has a list and there is a Chief Clerk and the wonderful guy that he is, he has them all in his black book and every once in a while assembles. And I hope you folks will be active in that.

LD: And what other projects are you working on with the Historical Society?

AR: Well we did another book on historic court houses. I did that with my wife Julie. Good fun. And our reward, of course is, you know, they're pro bono books but we get to write great inscriptions in them and give them to friends. That's one of the joys of it. And we're working on one now on the judicial aspects of Dutch New York, 1624 - 1664. Right now, as a matter of fact I'm editing some of the articles that are going into this anthology involving the jurisprudence of Dutch New York. It's just so -- to me, I don't know about to others -- I hope to others. It's so exciting to learn about that period. And I never thought I would be aroused at a debate between two Dutch scholars debating over what happened in 1624; whether Director Governor Verhulst was given something by the West India Company as instructions or whether that was in the second set of instructions. I was really stimulated by this discussion and watching the passion in which the two of

them were into this. I have emails to prove the intensity of this scholarship. So I'm sharing some of that.

GT: Looking back, Judge on [01:54:00] just the course of, you know, your life both on the bench and off the bench, what would you say are some of your most significant or exhilarating moments?

AR: Well I've told you some of them here. And the collaborations with Julie and of course with my daughter Betsy, watching her graduate and having gone through the same dormitory at the Harvard Law School as I did -- Hastings Hall. That was one of the unforgettable moments, very touching, sentimental. And yes, in my athletic life as a squash player -- I don't want to neglect athleticism and how we would at lunch time leave the Court of Appeals, go out and put on our sweatshirts, go across the street near the Italian Center in the lot where we were threatened with getting kicked out of there because they were afraid that we were going to start injury lawsuits. And playing Frisbee in front of the courthouse in very difficult circumstances because there are statues and benches that get in the way. (Laughter) And the lawyers who were about to argue two hours later not knowing that we are the Frisbee players out there and are not telling them. And watching Gabe's arm chuck that football the way he did. And I asked Gabe, "I didn't know you could throw the football that well." And he said that he quarterbacked. Didn't you? At what high school?

GT: Nogales High School (laughter).

AR: So the football maybe not quite as far as Eli Manning but (laughter) darned good. As for squash [01:56:00] I got to the U.S. team playing for my country in the Maccabiah Games in Tel Aviv in 1997 and 2001, playing on the Masters Team. And although it does not

approach anything like the American athletes in the Olympics, it was kind of a mini version of that, when the U.S. team marched through the stadium carrying American flags and wearing jackets -- that was unforgettable. I can hardly talk about that without getting a lump in my throat. And another great event -- yes -- was in I would say it was around maybe 2004 when in Philadelphia at Independence Hall, the authorities had acquired a copy of Magna Carta. There are only maybe a dozen of them out there, maybe three or four originals. I don't know how many, and a few copies that were written later. And of course, it's before any printing press, so they're all by hand. Somehow one of those copies was in Philadelphia and it was a celebrated event at Independence Hall. And on July 3, there was a ceremony. The Attorney General of England gave a lovely talk explaining the path from Magna Carta through the Petition of Rights, through ultimately what we recognize as Due Process Clause that really originated with the words [01:58:00] "law of the land" in Article 39 of Magna Carta. He gave this delightful, wonderful talk about how we are at base descendants of Magna Carta, ultimately blossoming into American Constitution.

And I was asked to come to Philadelphia to give the American response. It was Lord Peter Goldsmith, Attorney General of UK. And then I gave the American response. It was one of the great July 3rds of all time for me. (Laughter)

LD: Judge, Gabe and I feel very lucky to have served as two of your law clerks, but you've had many law clerks over the years and other, you know, secretaries who've worked for you. And I was wondering if you wanted to mention a few?

AR: That's great, Lisa. We still, as you know, get together and I'm just so lucky that you folks all come up and visit typically in July at the house. And watching you grow and your

families along with it, this yearly picnic gets to be better and better. And I hope to be able to continue it as long as I'm breathing and as long as you folks will come up in the summer. I am thinking of you Lisa, and Gabe Torres here, and of the others, Jim Lagios, Mike Garvey, David Markus, Gordon Lyon, Dan Paisley, Mike Dimino, Justin Long, Tim Kerr, Jason Rubenstein, Justin Levin, Veronica Benigno -- what an all-star cast. Of course, we invite then not only the Court of Appeals law clerks but two of my super special law clerks -- three, actually -- Jennifer Van Tuyl, who started with me early and is a lawyer in Poughkeepsie; George Marlow -- probably the best friend I've ever had and who went on to become a Judge and a Justice of the Appellate Division. And he joins in. And of course, Michelle [02:00:00] Schauer who was with me for 10 years on the Appellate Division and who came up to the Court of Appeals and was there for a while. Also Marston Gibson for a time, at the Appellate Division. [Ed. note -- he is now Chief Justice of Barbados.] And also, as you well know what it's like in the office day to day how the office could not have been as successful, whatever success we had, without secretaries who are really office managers, like Terry Pullaro who was there before you and Inez Tierney, who is now working in the Court of Appeals. She has a big job there now. But she was more -- Terry was more than a secretary. They were really kind of office managers. And Inez Tierney was extremely helpful in helping get the book together on the history of the Court. So those people are really background people, great friends and enormously helpful.

GT: Do you have any other thoughts, Judge? This is your oral biography. It's going to be around forever. Any concluding thoughts that you want to share with posterity?

AR: Well only that I've been so fortunate to be surrounded by a great supportive family of Julie and Betsy, marvelous law clerks who, to this day, are friends; on whose time I hope I have not trespassed too much, and colleagues that I love and value dearly. And I'm very, very fortunate to have been given the opportunities that I've had.

End of Interview