

**HISTORICAL SOCIETY OF THE NEW YORK COURTS**

**ORAL HISTORY PROGRAM**

**Robert B. Fiske, Jr.**



*Found on exterior entrance to New York Court of Appeals*

**HISTORICAL SOCIETY OF THE NEW YORK COURTS**

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**ORAL HISTORY**

**Subject: Robert B. Fiske, Jr.  
Davis Polk & Wardwell LLP**

**An Interview Conducted by: Carey Dunne**

**Date of Interview: December 1, 2015**

**Location of interview: Law Offices of Davis Polk & Wardwell  
New York City, New York**

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# HISTORICAL SOCIETY OF THE NEW YORK COURTS

## Oral History Project

**INTERVIEWEE:** Robert B. Fiske, Jr.

**INTERVIEWER:** Carey Dunne

**DATES:** December 1, 2015

CD: This is an interview of Robert B. Fiske, Jr., a longtime leader of the American Bar and a dedicated public servant. It's being conducted for the Historical Society of the New York State Courts. The date today is December 1, 2015, and we're in Bob's office, here at the law firm of Davis Polk & Wardwell, the firm where Bob practiced, with several breaks for important government service, as we'll hear, for 55 years; from 1955 to 2010, and where Bob currently serves as senior counsel. My name is Carey Dunne. I've had the privilege of working at Davis Polk, and on and off with Bob himself, here, for nearly the past 30 years. I'm delighted to be able to spend some time today getting his perspectives on his long and successful career. So with that, Bob, I propose to start with asking you some questions about your so-called early years, and in particular, your family background. For example, is it true that you were born into a family of lawyers?

[00:02:13]

RF: Yes, that is true. My father was a lawyer. He worked with the firm of Root, Clark, Buckner, Howland, and Ballantine, which later became Dewey Ballantine, which we all know is no more. But he started there in the late 1920s, after graduating from Yale Law School, where he was the editor-in-chief of the Yale Law Journal. He practiced there, doing corporate law, in New York, and then went over to help

start their Paris office. He then came back in the early '30s, and then left to go to the reconstruction finance corporation in the government; came back after that and went into the legal department at American Cyanamid and he became eventually, general counsel, and a member of the Board of Directors. So that's my dad.

My uncle, my mother's brother, McNeil Seymour, was a very prominent lawyer in St. Paul, Minnesota, had a number of interesting cases, including one where he represented a family in whose house they found original papers of Lewis and Clark. The issue was who do those papers belong to. He persuaded the Minnesota Supreme Court that it should belong to the family, and the family subsequently donated them to the St. Paul Museum. One of his sons became a very successful lawyer at Briggs & Morgan in St. Paul. My brother John went on to become a lawyer here, in Massachusetts, so we are a family of lawyers.

CD: I know that, eventually, you attended and graduated from Yale College, in 1952, and maybe your prior answer makes this obvious, but how did you decide to actually apply to law school?

[00:04:09]

RF: Well, my father's influence was certainly important, but there's one event that stood out. In the summer of my sophomore year at Yale, my dad and mom took us all to Bermuda. We went by ship, called the *Queen of Bermuda*. Just before we sailed, somebody gave me a book called Courtroom, which was about a famous criminal defense lawyer named Samuel Leibowitz, and I spent the whole trip going down to Bermuda on the boat reading about his trials, and I think that really

stimulated me, the strategy, the tactics. I think that, together with my family background, together with a general sense that lawyers, probably more than anybody else, can have the greatest impact on society, good or bad, were the motivating factors.

CD: So eventually you applied to and attended Michigan Law School. Of all the law schools in the country, how did you come to attend Michigan?

RF: Well, it's kind of an amusing story. As I said, my dad had been editor-in-chief of the Yale Law Journal. He was a very good friend of Wesley Sturges, the Dean of the Yale Law School, and I had pretty much decided, after four years in New Haven that I didn't want to do another three at the Yale Law School, but he said, "Why don't you go see Dean Sturges and he can give you some good advice about where else you might want to go?" So I went in to see him and we had a conversation, which started out by me saying, "I really appreciate this, Dean, your taking the time to talk to me. I have to tell you, I really decided, I'm not going to apply to the Yale Law School, because I don't want to spend another three years in New Haven," and without batting an eye, he looked at me and he said, "Well, I've looked at your college transcript and that's a wise decision."

[00:06:02]

So with that out of the way, we then proceeded to what are the next best law schools, and he said, "The two next best are Harvard and Michigan." And it suddenly dawned on me that I'd been in the East all my life, and maybe this would be a chance to do something different. Half my class went to Harvard Law School and a few of us went out to Michigan.

CD: I'm curious, how you think the law school experience of your day compared to what we see now. There's a lot of talk about the value or maybe less value these days, in some people's minds, of a law school education. A lot of talk about the size of the classes and the demographics. How did your experience at Michigan compare to what you see and read about today's law schools?

RF: Well, the most obvious difference is just the makeup of the class. There was no such thing as diversity. We had 205 members of my class at Michigan Law School, 202 were white males and there were three women. I can't remember a single minority in the class, and of course that's totally different today, much for the better.

The other main difference, I think, was that there was much more emphasis on the Socratic method of teaching than there is today, which I think is too bad, because I think that's what really trains you as a lawyer. You learn how to think, you learn how to analyze problems, and that's what makes lawyers better at no matter what they decide to do later. Whether they go into government or business, it's that analytical thinking and analysis that you learn, particularly from the Socratic method.

CD: And how big were those classes, how many students?

RF: In a given classroom, we'd have 20 or 25. And of course the other great advantage of the law schools today is there's much more emphasis on the clinics, where people get hands-on training, which we never did. Except for the de-emphasis of the Socratic method, I think law schools are better today than they were before.

[00:08:20]

CD: Your second summer at Michigan Law School you came back East and worked as an intern, or whatever the word was, at the U.S. Attorney's Office here in Manhattan. How did you come to take that job and what was that like?

RF: Well, I was very fortunate, because the U.S. Attorney at that time was a man named J. Edward Lumbard.<sup>1</sup> He was a partner in Donovan, Leisure, Lumbard, Newton and Irvine law firm. He had been an Assistant U.S. Attorney back under Emory Buckner.<sup>2</sup> In fact, he'd been head of the Criminal Division, and he was the first U.S. Attorney in the Eisenhower<sup>3</sup> administration. If you go back to that time, after 20 years of Democratic administrations, and this is not a political speech, the Office had really lost a lot of its luster. It had gotten to the point where, in order to apply, you had to have the endorsement of your district leader. If you didn't have that, you wouldn't get the job, no matter how qualified you were, and a lot of people got the job that weren't qualified. Beyond that, believe it or not, it was a part-time job. Assistant U.S. Attorneys could practice law on the side. Lumbard came in and just changed that completely. I think there were 50 assistants, he fired 48 of them, kept 2 good ones and then built the Office back up to what it had been back in the days under Buckner, and earlier, before, under Henry Stimson.<sup>4</sup> He started the first summer program that summer of '54, where you would work one-on-one with an assistant.

[00:10:04]

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<sup>1</sup> Joseph Edward Lumbard Jr., United States Attorney for the Southern District of New York, 1953 - 1955.

<sup>2</sup> Emory Roy Buckner, United States Attorney for the Southern District of New York, 1925 - 1927.

<sup>3</sup> Dwight David Eisenhower, President of the United States, 1953 - 1961.

<sup>4</sup> Harry Lewis Stimson, United States Attorney for the Southern District of New York, 1906 - 1909.



He was a good friend of my dad's, and the Lumbards came for Thanksgiving dinner in the fall of my junior year at Michigan. Around the Thanksgiving table he said, "Bob, what are you going to do next summer?" I hadn't really even given it much thought at that point because back then, nobody practiced law in the summer, they all did something different, figuring you can spend the rest of your life practicing law. He said, "Well, I'm starting this program, you can come in. We can't pay you anything but it will be a good experience." So I did and it was a fantastic experience.

CD: A similar question to the one I asked about your college observations. What was the Office like, that is the U.S. Attorney's Office, back then? How many assistants worked there and what were the demographics and atmosphere like?

RF: In the Office, there were about 50, I would say 35 in the Criminal Division, 15 in the Civil Division. The demographics were pretty much like the law school class, pretty much all white. I think there were maybe three women in the Office, maybe one minority.

CD: Can you remember any particular cases or experiences from that particular summer?

RF: I worked for a wonderful man named Fred Nathan,<sup>5</sup> who had a case against a big drug dealer named Tony DiPalermo. I got to do everything, interview witnesses, write the briefs, write the request to charge. I actually sat at the counsel's table, a two-week trial. Right before trial, our star witness's girlfriend was murdered, and everybody thought that was an effort to intimidate him. He went ahead and

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<sup>5</sup> Frederic Nathan, Assistant United States Attorney for the Southern District of New York, 1953 - 1956.

testified anyway. We convicted DiPalermo, and he went away for 20 years. It was a very heady experience for a second-year law student.

CD: It sounds like you think that was a positive experience.

RF: It was.

[00:12:00]

CD: Would you say that early one had an impact on you?

RF: It did, totally, and at the end of the summer, I went to Judge Lumbard and said I really want to come back and he said, "Well, I think you should, but first you should go with a law firm, get some good training from a leading law firm for a couple of years and then come back."

CD: I also know that you happened to get married that summer, is that right?

RF: That was the summer of 1954.

CD: What was that like to --

RF: August 21.

CD: You remember that day?

RF: Yes.

CD: What was it like to go back to law school and not only attend to your studies but to be newlyweds as well?

RF: Well actually it was great and it made a big difference, being married and going into my senior year, compared to some of my friends who had gone when they were married their first year. The first year, as you know, is brutal, and it's hard. It put a lot of strain, I think, on newlyweds, if you start right out in the first year of law school, where the wife didn't get a great deal of attention, but by the time of

senior year, you've pretty much done it or not after the first two. So in the third year, it was a lot easier, and we had a really good time out there and made a lot of good friends.

CD: Let's turn to that great law firm that you alluded to a minute ago. Once you finished law school, you came back East and you ended up, your first job, at Davis Polk & Wardwell. How did that come about?

RF: Well, back then, the way it worked, as I said, nobody worked in the summer, so all the hiring happened at Christmas vacation. I came, and I spent three days. I saw six law firms; one in the morning and one in the afternoon each day, and they were essentially the same firms. Cravath, Sullivan and Cromwell, Milbank Tweed, Donovan Leisure, which is no longer in existence. Davis Polk, and there was one other. And I remember after three days, I said to my wife, I said, "You know, I can't tell these firms apart. They all have a litigation department, they all have a corporate department, they all have trust and estates, tax. Everybody says they're the best at everything." There's no way I could distinguish them, except that I really liked the people I met at Davis Polk, in particular, Nelson Adams and Hazard Gillespie,<sup>6</sup> and it was because of those two people that I came to Davis Polk.

[00:14:24]

CD: So, when you arrived, again can you describe what the firm looked like back then and how it compared to the Davis Polk of today?

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<sup>6</sup> S. Hazard Gillespie, Partner of Davis Polk & Wardwell, 1948 - 1959, 1961 - 1980; United States Attorney for the Southern District of New York, 1959 - 1961.

RF: Well, there are a lot of differences; again, the demographics, it was entirely white male, there were absolutely no minorities, no women, and that didn't change for at least seven or eight years. There were probably 90 lawyers in the firm, maybe 20 partners, 70 associates. The other thing that was different, we had a library and we used the library, you did your work in the library. You'd go in there and that's where you do the research, pull the books off the shelf and you do it the way you learned in law school. There were no computers, there was no Lexis and Westlaw. You did it the old fashioned way.

CD: You make it sound a little bit like Mad Men. Did you actually wear hats?

RF: Absolutely, everyone wore hats. In the fall, you wore a fedora and in the spring, in the summer, you wore straw hats, and they were sort of like in the vaudeville routines, with the canes and the hat, and you could have a ribbon that went around it. You had a lot of opportunity to change the color of the ribbon. You could wear a blue and red one, a green and yellow one. But it was straw hats in the summer, fedoras in the fall. In fact, I'd been there about two days and my phone rang and it was the secretary to one of the senior partners, Fritz Schwarz, and I picked up the phone and it was him and he said, "Bob, we're going over to J.P. Morgan, get your hat, and I'll meet you at the elevator." Well, I didn't have a hat, needless to say, I went out and got one at lunchtime.

Interestingly, it stayed that way until Jack Kennedy<sup>7</sup> became president. He never wore a hat, and it just killed the men's hat business. Everybody stopped wearing hats, all the hat factories near where I lived, in Darien, up in Norwalk, up Route 7,

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<sup>7</sup> John Fitzgerald Kennedy, President of the United States, 1961 - 1963.

they all went out of business. Nobody wore hats, but back then, everyone wore a hat.

[00:16:41]

CD: You started in 1955. How many other first year lawyers started with you at the time?

RF: I think about six.

CD: You mentioned a few of the leaders of the firm by name. What were they like, and what was the sort of atmosphere in terms of formality, et cetera, compared to today?

RF: Extremely formal, it was very austere. Everyone called the partners Mr. whoever, and the partners called most of the associates Mr. In other words, I was a first-year associate, I'd go in to see George Brownell, Mr. Brownell, he would say, "Good morning, Mr. Fiske," and it wasn't until you'd worked with them for quite a while before the partners would call the associates by their first name, and it was unheard of for the associates to call the partners by their first name.

CD: What about, with your peers, associate to associate, did you socialize together?

RF: Yes.

CD: What was that relationship like?

RF: It was pretty much the way it is now, I mean there was some you socialized with, some you didn't. I made a lot of good friends back then.

CD: Who were the major clients that you worked with or worked for in those days, compared to today? Do you have any particular experiences that you recall?

RF: The principal clients were J.P. Morgan, Morgan Stanley, International Paper, AT&T; many of the same clients we've had ever since.

[00:18:08]

CD: Any early cases come to mind from that first couple of years?

RF: Not really, no. Well, the one that probably sticks out in my mind, I did a lot of work with Hazard Gillespie on smaller cases, but there was one gigantic case that I worked on, and the client was Esso, now Exxon. Esso used to want to always have the leading lawyer in the country, and that was John W. Davis. John W. Davis had died in March, just before I came, so for this particular case, they also then brought in Sullivan & Cromwell, because they had Arthur Dean. The Davis Polk team stayed on, and so we were working together with Sullivan & Cromwell. It was a civil case, brought by the government, against all the major oil companies, alleging price fixing all around the world.

So there was a group of three Sullivan & Cromwell associates and three Davis Polk associates assigned to do a document review. The document review was in a building at Rockefeller Center. They had taken an entire floor, and the entire floor was filled, floor to ceiling, with file cabinets. The documents were assembled from around the world and we had to go through them, one by one, and review them, first to see whether they were responsive, that we could do. Then if there was a question of privilege, that was above our pay grade, but we put it aside for further review. And then there was something called sensitivity. If somebody made a nasty comment about a Saudi Arabian sheik, you'd put that aside, somebody else would have to deal with that. But that was all we did all day long,

was just go through these documents, and it was pretty gruesome work, to say the least. I'd been doing this for about three weeks and Judge Lumbard called and said, "You've been there at Davis Polk now for a couple years, don't you think it's time you applied to the U.S. Attorney's Office?" I said, "Yes, indeed I do." I went to see Gillespie and I told him this is what I want to do.

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CD: That's Hazard Gillespie.

RF: Hazard Gillespie, yes, who I'd been doing a lot of work with and who I really liked. He reacted very negatively, because at the time it was still very early in the Lumbard era, and the U.S. Attorney's Office still suffered from the reputation it had developed over those 20 years, as not a very worthwhile place to be. And so Gillespie said to me, "That will be a huge mistake. You'll go up there, the experience isn't going to be that good and you'll be away from the office. I don't know whether we would take you back if you wanted to come back, but if you did, you'd be way behind. There's three other associates that started with you in the litigation department, they would have been working with the partners. You would be two or three years behind if you came back, that's a terrible idea." So I went to Judge Lumbard, and I said, "I'm running into a little flack here," and he said these people at Davis Polk -- you know, all the partners were saying the same thing -- had any of them ever done it? Of course, they hadn't. So I went back to Gillespie and said I think I really do want to do it and he said, "Let me do one other thing, ask you to do me a favor. I'm going to ask you to go see the person I think is the most prominent lawyer in New York today, a man named

Bruce Bromley<sup>8</sup> at Cravath, Swaine & Moore. He's a former Judge of the New York Court of Appeals, he knows public service, go get his independent advice." So I did and he said exactly the same thing, "Oh it was a terrible mistake." He said, "You have a chance to work with men like Hazard Gillespie, Ralph Carson, Taggart Whipple, learning from the giants of the bar, you'll throw that all away, that's a terrible mistake."

[00:22:20]

So, I remember I went back and we lived in a walkup apartment; 332 West 89th Street, 3rd floor, and there was a park not far from where we lived, and there was an evening in May 1957, where my wife Janet and I walked around that park, around and around, for about two hours, talking about the pros and cons; should I go or shouldn't I go? There was one part of me that said, you know, listening to Gillespie and Judge Bromley, do I really want to make what could be a career ending move at age 26? They're all telling me not to do it. If I go, I'll be rejecting their advice, they may not take me back, if they do I'll be way behind. On the other hand, I'd been there and I had that summer with Fred Nathan, I had that exhilaration of that trial -- the pull of public service was strong -- and there was something deep down inside me that said if you don't do this, you will be making a mistake. I remember thinking, when I get to be at the end of my career, I don't want to look back on it and have my entire career just be at this law firm.

So I went back the next day and told Gillespie I was going to do it and he was great. He said, "That's fine, I know you've thought it through, good luck." He

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<sup>8</sup> Bruce Bromley, Partner of Cravath, Swaine & Moore, 1926 - 1949, 1949 - 1980; Associate Judge of the New York State Court of Appeals, 1949.



didn't say we'll take you back but he said, "I wish you all the best," and so I went off and did that.

CD: How did that turn out?

RF: It turned out beautifully. I had a great experience for a couple of years, tried, I think 13 cases, and then I was just about ready to summon up the courage to call him, to see whether maybe he would think about taking me back. There had been a change in the U.S. Attorney's Office. The U.S. Attorney that hired me, Paul Williams,<sup>9</sup> had left to run for Governor and got crushed by Nelson Rockefeller,<sup>10</sup> and there was a lot of speculation about who the new U.S. Attorney would be. Everybody thought it would be Arthur Christy,<sup>11</sup> who was the acting U.S. Attorney, who had conducted a big, successful trial, but one day, just when I was about to pick up the phone and call him, call Gillespie, I read, coming in on the train, front page of the New York Times, "GILLESPIE TO BE NEW U.S. ATTORNEY."

[00:24:47]

So I walk into my office and literally, the phone was ringing as I walked in. I picked it up and it was him and he said, "Bob, you were right, I was wrong, when can I come up and find out what this job is all about?" Because he had never done anything in public service. It turned out that Lawrence Walsh,<sup>12</sup> who had been a Davis Polk associate way back with Gillespie earlier and had gone on to be

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<sup>9</sup> Paul W. Williams, United States Attorney for the Southern District of New York, 1955 - 1958.

<sup>10</sup> Nelson A. Rockefeller, Vice-President of the United States, 1974 - 1977; Governor of the State of New York, 1959 - 1973.

<sup>11</sup> Arthur H. Christy, Acting United States Attorney for the Southern District of New York, 1958 - 1959.

<sup>12</sup> Lawrence Edward Walsh, Deputy Attorney General of the United States, 1957 - 1960; Judge of the United States District Court for the Southern District of New York, 1954 -1957.

counsel for Governor Dewey<sup>13</sup> and a federal judge, was then the Deputy Attorney General, and he thought Gillespie, having known him at Davis Polk, would be a really good U.S. Attorney, even though he'd never been in public service. So basically because of Walsh, Gillespie got to be U.S. Attorney.

I said, "No, I'll come down and see you." I stayed another 2 years. He made me head of the Organized Crime Section. I tried a major racketeering case against the biggest racketeer in those days, named Johnny Dio, and then I was able to go back to Davis Polk. I had the best of all worlds, being in the U.S. Attorney's Office and working for Gillespie.

[00:26:00]

CD: Bob, let me just take you back again, to ask a few follow-up questions about your second experience at the U.S. Attorney's Office, when you were there as a young Assistant U.S. Attorney, and that was again, between 1957 and 1961. You've talked a bit about the leadership of that Office and some of your early experiences. Did you participate in any trials back then or any interesting cases you recall?

RF: I probably had 15 trials in three years, which is a lot, but there were three that sort of stood out. One was the second retrial of a major income tax fixing case, which originated out of the Truman<sup>14</sup> administration, that had been tried and after a conviction, got reversed in the Supreme Court, it came back for a retrial, and I was the second chair in that retrial. That ended up with a hung jury, and then the

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<sup>13</sup> Thomas Edmund Dewey, Governor of the State of New York, 1943 - 1954.

<sup>14</sup> Harry S. Truman, President of the United States, 1945 - 1953.

assistant that took the lead left the Office and I was lead, trying the case for the third time. This time, there was an acquittal after seven weeks.

I'll never forget, the judge was a man named Edward Dimock,<sup>15</sup> a wonderful man, and the next morning, the phone rang about 9:00 o'clock and it was him. He asked me to come up to his chambers and he said, "You really tried a great case. We had a pool here in our office, there are five of us, and the voting was 3-to-2 for a conviction." So he said, "You may have lost 12-0 with the jury but you won 3-to-2 here." It was just such a nice gesture and it's the kind of thing you remember for all your life, when somebody reaches out to you like that.

[00:28:17]

Then I had this case against Johnny Dio, who was the biggest racketeer of that era. The Office was doing an investigation of labor racketeering in the garment district. At the same time, there was a columnist, named Victor Riesel, that was writing articles about labor racketeering, for the Daily Mirror, and he was cooperating with the Office. One night he came out of a restaurant called Lindy's, and somebody came out of the shadows and threw acid in his face -- blinded him. After they caught the person that threw the acid, he cooperated, and they traced it to this guy Johnny Dio, who everyone thought was working for Jimmy Hoffa, but they identified Dio as the mastermind. They got three people to plead guilty, they were all ready to go to trial against Dio for the acid blinding, and then they just clammed up. Even though they'd been convicted and had no Fifth Amendment

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<sup>15</sup> Edward Jordan Dimock, Senior Judge of the United States District Court for the Southern District of New York, 1961 - 1986; Judge of the United States District Court for the Southern District of New York, 1951 - 1961; New York State Reporter, 1942 - 1945.

privilege, they were asserting their Fifth Amendment rights, and they came before Judge Herlands,<sup>16</sup> who the case was assigned to, and it made headlines in both the Daily Mirror and the Daily News when he looked at them and he said, “This is not a case of constitutional silence. This is a case of underworld lockjaw.” He sentenced them to another 10 years, but they still wouldn’t cooperate. So that case basically never could be tried, but separately, there was a tax evasion case, and just about the time Gillespie came in, he made me in charge of the Organized Crime Section and I tried that case and convicted him and he went away for five years in jail. So that was a big case.

[00:30:11]

Then, Gillespie and I had one together, against Fortunato and Anthony Pope, sons of Generoso Pope, probably the most powerful Italian family in New York. It was a securities case arising out of a rock salt contract that their public company, Colonial Sand and Stone, had with the City of New York. What the Popes had done is they formed private companies, owned just by themselves. Colonial Sand and Stone had the contract and they did all the work, but the Popes subcontracted the business to the private companies, so the private companies got the profits even while the Colonial Sand and Stone workers were doing the work. We indicted them for securities violation, for misstatements in the registration statement where they said, “We deal with our private companies on the same terms as we deal with anybody else.”

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<sup>16</sup> William Bernard Herlands, Judge of the United States District Court for the Southern District of New York, 1955 - 1969.

So when we came into court, they were represented by former U.S. Attorney John Cahill<sup>17</sup> of Cahill Gordon, former U.S. Attorney, Matt Correa,<sup>18</sup> who became U.S. Attorney after Cahill, Paul Williams, who had been the U.S. Attorney that hired me and went back to Cahill, Gordon, two other partners and three associates. They had an eight-person team coming in on their side, and on our side, it was Gillespie and me. They made a motion to dismiss the indictment. I got up to argue the motion and I'm arguing against John Cahill. Looking down the table there's Matt Correa, Paul Williams, two other partners, two other associates, and way down at the end of the table, number eight on their team, is a law school classmate of mine at the University of Michigan. So I was thinking about Judge Bromley telling me how this experience in the U.S. Attorney's Office really wouldn't be that worthwhile, while I'm arguing against John Cahill and my classmate in private practice is number eight on their team. But anyway, those were the major cases that were interesting.

[00:32:13]

CD: Well, this will become a recurring theme, but there came a time, after about four years, when you decided to go back into private practice, and you returned to Davis Polk. There was mention a minute ago, there were some question as to whether they would have you back after this experience. How did you come to make the decision to leave at that point and to reapply to Davis Polk?

RF: Well, I'd say to put it mildly, the landscape had changed, because Gillespie went back to the firm, and then Judge Walsh, who had just finished up as Deputy

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<sup>17</sup> John Thom.as Cahill, United States Attorney for the Southern District of New York, 1939 - 1941.

<sup>18</sup> Mathias F. Correa, United States Attorney for the Southern District of New York, 1941 - 1943.

Attorney General, also came back to the firm. So there was Gillespie and there was Walsh, and there was never much of an issue at that point, Gillespie said, “You’ve got to come back to the firm,” and I said, “Sure.” So I had a chance to work for the two of them, for basically the next seven or eight years.

CD: So you arrive back at Davis Polk in 1961, and you stayed there about 15 years, until 1976, as I understand it.

RF: Right.

CD: Let’s talk first, about your initial return. What was the reaction among peers of yours, and what kind of cases did you work on during that timeframe?

RF: Well it was kind of interesting. I think there were two, I wouldn’t say camps, but certainly, Gillespie and Walsh were totally supportive and I did most of my work for them, but there were other partners and I would say some were ambivalent, and there were a couple that I got the sense were sort of sending me a message that “Okay, you went off, you got all these headlines -- Johnny Dio, the Pope brothers, the front pages of the New York Times -- while these guys had started with you, were here working for us, toiling in the vineyards, and you’re not going to get any special privileges for what you did up there. You’re going to have to earn it back here, you’re not going to be treated any differently than they are.” One of them, Taggart Whipple, who was a wonderful man and a great lawyer, put me on a case early on, doing a document review, with one of the other younger lawyers that had started with me, and he made it pretty clear, when we were sent off to do this document review in this dusty warehouse in Foxboro, Massachusetts, that I was working for him and he was in charge. I thought, you

know, this was a test and how was I going to handle this? Was I going to get up on my high horse and say, "What are you doing? I put Johnny Dio in jail, I don't do document reviews in dusty warehouses." But I swallowed it and I said, "Okay, I'll do my job," and I did, and I passed that test, and then from that point on everything was fine.

[00:34:59]

CD: Now, it must have been fine, because in 1964, you were promoted to partner at the firm. What was that process like and who were some of the firm leaders at the time?

RF: The leaders in the litigation department were Theodore Kiendl, who was probably the greatest trial lawyer of his time, Ralph Carson and Porter Chandler, both brilliant men, both of whom had gone to Oxford. There was no email, people communicated by sending memos around the office, and occasionally, Chandler and Carson would communicate back and forth in Latin. They were that erudite. Then there was of course, Gillespie and Walsh and Whipple, and those were the litigation people. On the corporate side, there were people like Leighton Coleman, who had the relationship with J.P. Morgan, Fritz Schwarz, George Brownell, and Nelson Adams was the head of the tax department. There were some really prominent lawyers.

[00:36:02]

CD: Now, your first partner years were 1964 to 1976. You alluded a minute ago to the notion that things began to change perhaps a little bit at that point diversity-wise. What were your observations about how the atmosphere changed in the office?

RF: Well, it was slow. Going way back to when I started, in 1955, they used to hire almost entirely from Yale, Harvard, and Columbia. There would be maybe four associates every year, and there would always be one from Yale, one from Harvard, and one from Columbia; maybe there'd be Virginia once in a while, but it was basically those four law schools. When I started, I came from Michigan and they had also hired Sam Pryor, who had gone to Pennsylvania, so we were the first two really out of that mold. Then, in the mid-'60s, Sam became a partner before I did, a terrific corporate partner, and he became head of the hiring department, and he was the one, more than anybody else, that began to diversify the hiring process bringing in women, minorities, and Jewish lawyers. There hadn't been any Jewish lawyers in the firm until the mid-'60s, and then people like Arthur Golden, Dennis Hersch, and Jeff Small, came in because of Sam.

CD: Do you recall any particularly noteworthy cases that you had as a young partner in the late '60s, early '70s?

RF: Probably the most significant one was one I did with Gillespie, and there was a great lesson I learned in that case. It was the first major insider trading case, brought by the SEC against Texas Gulf Sulfur, and some of its officers and directors. Texas Gulf Sulfur had had a huge discovery in a copper mine in Canada, and they called a press conference to announce it, at 10:00 o'clock in the morning. They made the announcement about this major ore discovery, the press went pouring out to phone in the news. People stayed for a while and one of the people that stayed was an outside director, a J.P. Morgan vice president, named Thomas Lamont. At about 20 of 11, he called his friend, Longstreet Hinton, who



was the head of the J.P. Morgan trust and investment section, who had been giving him a hard time about what a dog the Texas Gulf stock was. And so somewhat gleefully, he gets on the phone and he says, "Street," that's what he called him, "This is Tom -- Take a look at the broad tape, there's some news on Texas Gulf." Hinton said, "Is it good?" Lamont said, "Yes." And so without waiting to look, Hinton put in an order for 300,000 shares for a Long Island Hospital and for some other clients. It turned that for some reason, the news didn't come out on the broad tape until 15 minutes later, so the SEC sued Lamont for tipping Hinton on the basis of inside information. They also sued a bunch of other officers and directors who had bought the stock and calls earlier, but the key for us was obviously Lamont.

[00:39:31]

Our basic argument was that Lamont had acted in good faith. He thought the news was on the broad tape, just by the very nature of his conversation, take a look at the broad tape. So, we took the deposition of a guy named Jerry Bishop from Dow Jones, who had been at the press conference, and we said, "What time did you leave?" He said, "I left there at 5 after, then phoned in the story." We said, "When would you expect it to be on the broad tape," and he said, "Oh, I would say in 10 minutes, maybe 10:15, 10:20," which is 20 minutes before Lamont had made his call.

[00:40:12]

I remember sitting at a meeting with Gillespie and a partner from Cravath named Al Connolly, who was representing another outside director who had bought after

the press conference, and we were talking about what to do next and I said, “I think we should find out who at Dow Jones got that call from Bishop, and really work him over, and how could you possibly get that call at 10 after 10 and not put it on the broad tape for 45 minutes.” I’m fresh out of the U.S. Attorney’s Office, I was going to rip this guy into shreds and Connolly said, “Now, wait a minute, I’m not sure that’s such a good idea,” and I said, “Why not?” He said, “You know what’s going to happen? You’re going to take his deposition and he’s going to say, I don’t remember when I got the call from Mr. Bishop; all I know it was on the broad tape five minutes after I got the call, and then you’re going to have a huge mess on your hands. So let’s leave it the way it is.” And as it turned out, Lamont was exonerated by Judge Bonsal,<sup>19</sup> and on appeal, the Second Circuit affirmed, even though it reversed as to a lot of the others, and made note of the fact that it was reasonable for Lamont to act the way he did, believing that the news was on the broad tape. I always thought later if we had maybe taken that guy’s deposition, maybe that wouldn’t have been so clear. So that was a great lesson.

CD: So, Bob, another recurring theme. There came a time, after you were a partner at Davis Polk, in 1976, when you again rejoined the U.S. Attorney’s Office in the Southern District of New York, but this time you arrived as the U.S. Attorney himself. How did that position come about?

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<sup>19</sup> Dudley B. Bonsal, Judge of the United States District Court for the Southern District of New York, 1961 - 1976.

RF: Well, if you go back to 1975, the Justice Department was in total disarray after Watergate. Nixon's<sup>20</sup> first Attorney General, John Mitchell,<sup>21</sup> was convicted and went to jail. The next one, Richard Kleindienst,<sup>22</sup> was also convicted and went to jail. The next one, Robert Bork<sup>23</sup> served only a short period of time and then he resigned, a man, a pretty undistinguished person, who had been a Senator from Ohio. So there had been four Attorney Generals in a very short period of time. When President Ford<sup>24</sup> came in, he made a brilliant move to restore confidence in the Justice Department, by bringing in, as Attorney General, a man named Edward Levi,<sup>25</sup> who had been Dean of the Chicago Law School and was then President of the University of Chicago, and one of the most admired men in the country. That was a brilliant move, and Levi in turn made a brilliant move, because he recognized that he had spent his entire life in academia, except for one short period of time in the Justice Department, so he had no real background in law enforcement or even civil litigation. So he reached out to Harold Tyler,<sup>26</sup> who had been a Lumbard assistant, first head of the Civil Rights Division, and was then a sitting judge in the Southern District of New York, and just as Judge Walsh had left the bench to become Deputy Attorney General in the Eisenhower administration, Levi persuaded Tyler to leave the bench and come down to be

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<sup>20</sup> Richard Milhous Nixon, President of the United States, 1969 - 1974.

<sup>21</sup> John Newton Mitchell, Attorney General of the United States, 1969 - 1972.

<sup>22</sup> Richard Gordon Kleindienst, Attorney General of the United States, 1972 - 1973.

<sup>23</sup> Robert Bork, Acting Attorney General of the United States, 1973 - 1974.

<sup>24</sup> Gerald R. Ford, President of the United States, 1974 - 1977.

<sup>25</sup> Edward Hirsch Levi, Attorney General of the United States, 1975 - 1977; President of the University of Chicago, 1968 - 1975; Dean of the University of Chicago Law School, 1950 - 1962.

<sup>26</sup> Harold R. Tyler, Jr., Deputy Attorney General of the United States, 1975 - 1977; Judge of the United States District Court for the Southern District of New York, 1962 - 1975.

Deputy Attorney General and run the Justice Department, and that was a brilliant move.

[00:44:02]

I'd had a couple of cases in front of Tyler, so I knew him, and he called me up in March of 1975, right before he went down, and he said, "How would you like to be head of the Criminal Division of the Justice Department in Washington?" I said, "Well, that sounds like a terrific job." So I went down, talked to him, and he said, "There's only one problem. Levi has his own candidate, a man named Thornburgh,<sup>27</sup> who is the U.S. Attorney in Pittsburgh, and that's going to be tough competition." I started thinking about it and it turned out, it really wasn't the right time. I didn't want to go to Washington and leave my family back in Connecticut, and the kids were at the wrong time to try to move them to Washington, and so I finally said to Tyler, "I have to take myself out of the running," and Thornburgh became the head of the Criminal Division, later became Attorney General and Governor of Pennsylvania.

But anyway, fast forward to September of '75 and again, I'm riding in on the train and I read that Paul Curran,<sup>28</sup> the U.S. Attorney, has announced he's resigning in six weeks. So I call up Tyler, and this is 9:00 o'clock in the morning, and I said, "Everything I told you about not wanting to go to Washington -- that doesn't apply to this. This is the best job in government for me, I'd love to do this job if you'd consider it," and he said, "Don't worry, I've already sent your name in to

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<sup>27</sup> Richard Lewis Thornburgh, Attorney General of the United States, 1988 - 1991; Governor of Pennsylvania, 1979 - 1987; Assistant Attorney General for the Criminal Division, 1975 - 1977; United States Attorney for the Western District of Pennsylvania, 1969 - 1975.

<sup>28</sup> Paul J. Curran, United States Attorney for the Southern District of New York, 1973-1975.

the FBI.” So, for about the next three or four days, I was getting phone calls from my friends, “Hey, the FBI has been around, they’ve been asking about you,” and then all of a sudden the calls stopped, and after a couple of days, I got concerned and I called up Paul Curran, he was a good friend -- we’d been assistants together with Gillespie -- and I said, “Can you find out what’s going on?” So he called me back that afternoon and he said, “Well, I found out and it’s not good news.” He said, “The senior Senator from New York, Jacob Javits,<sup>29</sup> found out about the FBI check and he was furious, and he called up Tyler and he said, ‘You don’t pick U.S. Attorneys, I pick U.S. Attorneys,’” and he stopped the FBI check. And what’s worse, he had his own candidate, who was a very qualified person who had been an assistant with me under Paul Williams.

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So, we went along during the fall and I interviewed with Javits, I interviewed with Senator Buckley’s<sup>30</sup> committee, and then I started thinking, right around November or December, what is the role of politics in all of this? When I started reflecting on it, I had never been active in politics, never contributed to Javits’s campaign or Buckley’s campaign, never campaigned for them, never been active in politics, hadn’t even voted for them, I lived in Connecticut. So, I thought if politics are important here, I’m dead, but somehow, giving great credit to both Tyler and Javits, something happened, they worked it out. I was in a meeting in Cincinnati, at a client, in mid-December, and right in the middle of the meeting, the general counsel’s secretary came in and handed me a note and it said, “Call

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<sup>29</sup> Jacob K. Javits, United States Senator (NY), 1957 - 1981.

<sup>30</sup> James Lane Buckley, United States Senator (NY), 1971 - 1977.

your secretary, you have an important call to make.” So I called my secretary and she said, “You’re supposed to call Senator Javits.” So I called Senator Javits and he said, “Bob, I’ve decided you will be the next U.S. Attorney.” So that’s how I became the U.S. Attorney.

Just parenthetically, I can’t imagine that happening today, somebody from Connecticut being the U.S. Attorney in the Southern District of New York. Great credit to both Tyler and Javits.

CD: So, you served in that position from 1976 to 1980, and when you arrived, you hadn’t really been in the U.S. Attorney’s Office since you departed in 1961. How had the Office changed over that period of time?

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RF: Well, the same way I think the law firm had changed. Again, it was bigger, but it was much more -- well, it wasn’t actually all that much diverse, in fact that’s a very important point. When I came in there were probably 100 assistants, there was one African American and seven women. There was an interim period, after I’d been nominated but before I’d been confirmed, where I couldn’t have access to the cases because it was still confidential, but I was able to go down and start looking at resumes. They decided they would suspend the hiring until I came in, and I went down there with an idea that we’re going to have to do something special here. We’re going to have to sort of target women, we’re going to have to have sort of an affirmative action program here because this is not acceptable; we only have 7 women out of 100. Then I started looking at the resumes and I said we don’t need any affirmative action program, all we’ve got to do is just hire

people on the merits. So I said to the hiring committee, "You just treat everybody the same, just like we're doing all the hiring on the merits," and by the time I left, at least 50 % of the hiring over the four years was women, and when I left, we had 35 women and several of them were in executive positions.

CD: Interesting.

RF: So that is one change that I think was very much for the better, and we actually added six minority lawyers.

CD: To this day, you are regarded as one of the best U.S. Attorneys who ever sat in that position. How would you describe your management style during those years and in particular, how did you interact with the younger lawyers you brought in at the time?

[00:49:58]

RF: Well, I think one of the important things that somebody can bring to that position is if you're a good lawyer -- and this was true of Gillespie. He had never been in public service, he'd never been a prosecutor, but he was a really good lawyer, and just being a good lawyer, he could work with the assistants and lead them and train them, and make the right kind of decisions on which cases to bring and which cases not to bring. That's what I tried to do, mostly in the mold of Judge Lumbard, when he was the U.S. Attorney, and also Gillespie, I mean, I got involved with it. First of all, I followed what the assistants were doing. I knew what every assistant was doing, which cases they had. If they won a case, I'd call them up and congratulate them and if they lost, I'd write them a note or call them up and tell them that you learn more by the cases you lose than the ones you win.

I'd walk around on the weekends and just drop in their office and chat with them, find out what they're doing. So I conveyed to them a sense that I really cared. I used to go to every assistant's first opening statement.

Then also, I got involved in the decisions, and it was a delicate balance, because you have a Chief of the Criminal Division, a Chief of the Civil Division. You don't want to completely undercut them, so I would basically let them do their thing, but whenever a case came to me, on appeal or whatever, then I would get involved in it and use my judgment to try to reach the right decision. It was very much a hands-on style, both in terms of legal analysis and in terms of individual relationships with the assistants.

CD: Now, I understand that for a time during that period, you commuted back and forth to Connecticut in a rather unusual vehicle, and that one night you almost didn't make it home. Could you share that experience with us?

[00:51:54]

RF: Shortly after I came in as U.S. Attorney, I got a call from the head of the DEA in New York and he said, "Bob, we've just confiscated two vehicles in a drug raid and we forfeited them to the government. One is a Mercedes 350XL, and the other is a Volkswagen," and he said, "I'm going to have one and you're going to have one." He says, "Guess which one you're getting?" So I got the Volkswagen, and I would drive it in every day from Connecticut. I'd leave at 6:00 in the morning, get into the office around 7:00, park in the parking garage at the courthouse, and drive it home at night. I did that for four years, put 100,000 miles on it, and gave it back to the DEA.



Early on, there was one morning actually, when I came into the office and started feeling sick, so I said I felt I had to go home. So I was driving probably faster than I should have, on the Bronx River Parkway, and I got pulled over by a cop. He says, "License and registration." I'd only been the U.S. Attorney for about a month at this point, and so I hand him my license, but since this is a DEA undercover car, the registration is in the name of Tom Edwards, Bronx, New York, or something like that, so the registration doesn't match the license. So I hear this guy talking on the phone to his supervisor and he says, "Hey, Pete, I got this guy -- he says he's sick and guess what he says, ha-ha-ha, he says this is an undercover car and he says he's the U.S. Attorney for the Southern District of New York." And he's cracking up. Then there's this pause and all of a sudden, I hear him say "Oh, he is?" And he says, "Sorry, sir, have a good day, I hope you get home all right."

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CD: As you mentioned, you were appointed by President Ford, courtesy of Senator Javits, and within a year or so, Jimmy Carter<sup>31</sup> became President and of course he was a Democrat, and yet you were allowed to stay on under Carter, and I understand that that doesn't always happen that way. Can you explain how that came about?

RF: Yes. This is very important and it's a great tribute to Senator Daniel Patrick Moynihan,<sup>32</sup> because when I took over in March, everybody thought I was only going to be for like six months -- why do you want to take this job, you'll only be

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<sup>31</sup> James Earl Carter, Jr., President of the United States, 1977 - 1981.

<sup>32</sup> Daniel Patrick Moynihan, United States Senator (NY), 1977 - 2001.

here six months. Ford is very unpopular. He pardoned Richard Nixon, there's this rising star from the South named Jimmy Carter that's dazzling everybody and Carter's going to win, Ford's going to lose. It had always been the practice, up to then, that whenever there was a change in administration, all the U.S. Attorneys were fired. People said, "Carter is going to win, you're going to be out of office and you've only been there six months, it isn't really worth it." I said, "Look, if I could have this job for three days, I would take it."

Anyway, we get into the fall, Carter wins, sure enough, but at the same time, Senator Daniel Patrick Moynihan defeated Senator Buckley, so he became the Democratic Senator. He was a brilliant man who knew a lot about labor, economics, foreign policy, but he knew nothing about the law and the U.S. Attorney. So he formed a committee, headed by a man named Leonard Garment,<sup>33</sup> who had been Nixon's counsel, been chairman of Republicans for Moynihan, and he said, "I'm not sure that we should just automatically fire the U.S. Attorneys because there's been a change in administration. I think if they're doing a good job, we should let them serve their nominal four-year term." So he asked Garment to form a committee and report back to him, and to make a long story short, Garment took me to lunch in January and said, "The Senator is ready to recommend that you finish your four-year term, if you'll agree to leave after that, so he can appoint a Democrat." I said, "That's a deal," and he came out publicly and supported three of the four U.S. Attorneys. It was a very courageous thing for him to do because this was one of those elections where there were three

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<sup>33</sup> Leonard Garment, White House Counsel, 1973.

or four states that made the difference, and if Carter, for example, had lost New York, Ford would have won.

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So the two co-chairmen for Carter's campaign in New York could rightfully say to Carter, but for us, you wouldn't be the President. So what did they want? Well, it was reported that one of them from New York City wanted to be the U.S. Attorney in New York, the other one from Buffalo wanted his best friend to be the U.S. Attorney in Buffalo, but Moynihan, supported by Griffin Bell,<sup>34</sup> who had become the Attorney General, persuaded Carter as Moynihan put it to put, "Professionalism ahead of politics."

CD: Now, in addition to being hands-on in your supervision of the assistants in your office, I understand that you personally tried a number of cases while you were U.S. Attorney, and handled yourself a number of important appeals. What was your thinking in taking on that role, and did that in fact differ from some of your predecessors?

RF: Well, actually, not so much my predecessors, because Judge Lumbard had always felt that trying cases personally by the U.S. Attorney, was an important part of leadership of the Office, sort of like a general leading his troops into battle. So he had tried cases, Paul Williams had tried a case, Gillespie tried a case, Paul Curran tried a case, and I was very much of that same view, so I actually argued eight appeals and tried two very prominent cases. One was a labor leader named

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<sup>34</sup> Griffin Boyette Bell, Attorney General of the United States, 1977 - 1979.

Anthony Scotto, and the other was a drug dealer named Nicky Barnes, and those were each 10-week trials.

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CD: Just tell us a little bit about the Nicky Barnes trial. I think that was probably the biggest case of your administration.

RF: It was, and to put it very simply, he was a drug dealer that ran the biggest drug ring in New York, probably in the country. He had been indicted four times in the state; twice by the Bronx, twice by Manhattan, and acquitted four times. He'd gotten a reputation of being, "Mister Untouchable." We indicted him in the spring of '77 and there were two assistants in the Narcotics Unit that were going to try the case. Then on June 5th, I went out to get the Sunday New York Times and on the cover of the Magazine section, there was a picture of Nicky Barnes in an arrogant pose, under the caption, "THIS IS MR. UNTOUCHABLE." Inside there was a long article, about his flamboyant lifestyle, his thumbing your nose attitude towards law enforcement. He had Maseratis, Lamborghinis, he had 100 suits, 25 pairs of shoes, and he would lead the police on wild chases around the city, making fun of them. He had developed a reputation, particularly among the young African American kids, who looked up to him as a role model: white guys go to Wall Street, we can make money selling drugs and we can beat the rap like Nicky does. The article ended up by saying now the Feds are taking their shot but the betting in Harlem is that Nicky is going to win again.

[01:00:10]

So the next morning about 9:00 o'clock, I got a call from Griffin Bell, the Attorney General. He said, "Bob, I've just come from a Cabinet meeting. President Carter saw this article and he said to the Cabinet, 'This is the most important case in the country because if we can't put somebody like this away there's something wrong with our system of justice.'" And then he had turned to Bell and said, "We have a good case, don't we?" And Bell, who knew nothing, said, "Don't worry, Mr. President, we've got a good case." And then he said to me, "We do have a good case, don't we, Bob?" I said, "Well, it's got its problems, we have informants with credibility issues, but I think we'll be okay." And then there was a pause and he said something like, "Well, this is really important to the President," and I said, "I get it, I get it." So I took over the case, tried it with the two assistants, to make a long story short, we convicted him, and he got life without parole.

CD: And what about the Anthony Scotto case you mentioned, what was that about?

RF: Well, that was a labor racketeering case. He was the head of the ILA in New York and we indicted him for taking payoffs on the dock. Probably the most significant thing about that case was he took the stand and said the he had indeed taken these payments, because some of them were on tape recordings, but they were political contributions. He had raised a lot of money for Democratic candidates; Governor Carey,<sup>35</sup> Governor Cuomo,<sup>36</sup> and most people paid by check, these guys wanted to pay by cash and so he took the cash. That was the defense and so I had like a

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<sup>35</sup> Hugh L. Carey, Governor of the State of New York, 1975 - 1982; Member of the United States House of Representatives, 1961 - 1974.

<sup>36</sup> Mario M. Cuomo, Governor of the State of New York, 1983 - 1994.

three-day cross-examination of him on the stand. He also called an array of character witnesses like you wouldn't believe. There was former Mayor Wagner,<sup>37</sup> former Mayor Lindsay,<sup>38</sup> Lane Kirkland,<sup>39</sup> the head of the AFL-CIO, Judge Thompson<sup>40</sup> from the Appellate Division, Carl McCall,<sup>41</sup> and then finally, Governor Carey himself, who came down from Albany, when he was a sitting Governor. Of course, Scotto had raised money for all of these people, which we brought out in cross-examination, and we convicted him as well.

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CD: Now, after four years as U.S. Attorney, you returned, yet again, to Davis Polk, and that was 1980. As I understand it, you were almost immediately tapped to handle one of the biggest trials of the decade. First of all, did you have any hesitation in returning to Davis Polk yet again at this point?

RF: No, no, every time I left the U.S. Attorney's Office, I had offers from other firms, but I always came back to Davis Polk because I liked the people and I liked the culture, and it was a chance to continue to work with Gillespie and Walsh. But when I've talked before, about the advantages of a career that combines private practice and public service, one of the things I've always said is that people that do both are better at each, because people that are in government that have been in private practice have a better understanding of the industries they're supposed to regulate and a broader based background upon which to make the important

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<sup>37</sup> Robert F. Wagner, Mayor of the City of New York, 1954 - 1965.

<sup>38</sup> John Lindsay, Mayor of the City of New York, 1965 - 1973.

<sup>39</sup> Joseph Lane Kirkland, President of the AFL-CIO, 1979 - 1995.

<sup>40</sup> William C. Thompson, Associate Justice of the Appellate Division of the Supreme Court, Second Judicial Department, 1980 - 2001.

<sup>41</sup> H. Carl McCall, New York State Senator, 1975 - 1980.

judgments they have to make. Conversely, people who are in private practice, who have been in government, because of the enormously increased responsibilities they get there, are often far better lawyers in private practice, and it definitely helps in getting clients. That's what happened right after I came back to Davis Polk, I read, almost the first day, an article about a \$4 billion suit that had been filed by the owner of the utility at Three Mile Island, against the manufacturer of the reactor, saying that the manufacturer of the reactor had been responsible for the damage arising out of that accident.

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After the case was all over, the American Lawyer wrote an article about it and they asked the general counsel, why did you pick Bob Fiske, and he said, "Well, he seemed to have had a pretty good track record as U.S. Attorney." So there's no question I got that case because of my public service, and because of that, then I got a case after that, representing the National Football League, in an antitrust suit by the U.S. Football League, and just one thing led to another, and I think most of the major cases I had in private practice, resulted directly or indirectly from the fact that I had had that public service.

CD: During this period, another interesting development was that you began to represent more and more individuals and companies, in cases which I think we now refer to as involving white collar crime. How did you see that practice evolving at the time?

RF: Right after I came back from the U.S. Attorney's Office, I got the idea. There was a lawyer at Davis Polk named Jack Cooney,<sup>42</sup> who had gone to the U.S. Attorney's Office before I went up there at U.S. Attorney, and was in the Narcotic Unit. I picked him to head the Narcotic Unit, which he did. In fact, he obtained the indictment against Nicky Barnes. He went back to Davis Polk, became a partner in early 1980, and we said together, why don't we start a white collar crime defense practice. That was something that no large firm was doing at the time. Arthur Liman would take a case every now and then, at Paul Weiss, but other than that it just wasn't done, there were small little boutiques but no big firm.

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So we started it, Jack and I got our first case and it worked out successfully and we just built from there. We ended up representing Paul Thayer,<sup>43</sup> the Deputy Secretary of Defense, in a major insider trading case. We represented Clark Clifford in the BCCI investigation. We did a lengthy defense of Philip Morris, successfully, against a potential government indictment of them. So we had a number of successes and in the process, built up the White Collar Unit of which you, Carey, are a very important part, which I think really became a model for other firms and now today, it's taken for granted. Every major firm has a white collar crime unit and I think in all fairness, it's okay to say that we really led the way.

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<sup>42</sup> John P. Cooney, Jr., Assistant United States Attorney for the Southern District of New York, 1972 - 1977.

<sup>43</sup> William Paul Thayer, United States Deputy Secretary of Defense, 1983 - 1984.



CD: I happen to know, because I had the privilege of working on it with you, that you had a nine-month long trial in Florida during this period. It was the case of *United States v David Brown*. Can you mention a little bit about that case?

RF: Yeah, that was a classic case, it was a nine-month trial. It involved a company that was selling real estate in Florida and they were charged with fraud because of the prices for the houses that they were selling -- what they would do is they would start a development, and then they would sell lots, on which you could build a house, or you could buy a house that was already on the lot. They had the expenses of doing the development. They also had the expense of a northern sales force that would induce people in the north to come down south and buy the houses.

So what happened is after a period of time, local builders could build a house on one of their lots that they could sell for a lower price than General Development, our client, because they didn't have those additional expenses, and then the people that bought those houses to -- the General Development house -- began to realize that they had paid more than people next door, and worse, it was hard for them to refinance the houses because the market value was set by the local builders' houses and was often lower than what they owed on the mortgage. So the company and four of their officers were indicted for fraud. We represented David Brown, the chairman of the board, and after a nine-month trial, he was convicted of one count, but we got that reversed in the 11th Circuit on the grounds that there was no fraud.

[01:08:47]

CD: It was a great experience, I can attest to that myself. So the period we're talking about now was from 1980, when you return from being U.S. Attorney, to 1994, which was 14 years later, and it was at that point that you were again called into government service, to become the independent counsel on what became known as the Whitewater matter, involving President Bill Clinton,<sup>44</sup> at the time. Can you tell us about how that assignment came about?

RF: Yes. Well, you have to go back a little bit in history, to Watergate, and what happened in Watergate is that when the allegations were made against Nixon, the Attorney General, Elliot Richardson,<sup>45</sup> sensibly decided the Justice Department can't investigate this because it won't be credible if the President is being investigated by somebody that he appointed and who reports to him. So he reached out to a Harvard Law professor named Archibald Cox,<sup>46</sup> and asked him to come in and become an independent counsel, with all the authority of the Attorney General, to investigate Watergate. Cox did, he put together a very good team of lawyers, and was moving along when it came out, in Congressional hearings, that there had been tapes of conversations at the White House. Cox doing what he should have done, subpoenaed the tapes. At that point, Nixon went kind of ballistic and called up Richardson and said, "Hey, this guy you appointed is totally out of control, he's subpoenaing these tapes, it's executive privilege, you've got to fire him," and Richardson said, "No, I'm not going to fire him," and then Nixon said, "You're fired."

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<sup>44</sup> William Jefferson Clinton, President of the United States, 1993 - 2001; Governor of Arkansas, 1983 - 1992; Attorney General of Arkansas, 1977 - 1979.

<sup>45</sup> Elliot Lee Richardson, Attorney General of the United States, 1973.

<sup>46</sup> Archibald Cox, Jr., Special Prosecutor for the United States Department of Justice, 1973.

[01:10:27]

So then William Ruckelshaus,<sup>47</sup> Deputy Attorney General, became Attorney General, Nixon gave him the same order, and Ruckelshaus said, “I’m not going to fire him.” Nixon said, “You’re fired.” And so the next person was Robert Bork, who was then the Solicitor General, and Richardson and Ruckelshaus went to Bork and said, “Look, you have to fire Cox, because if you don’t, what’s going to happen is he’s just going to keep going down lower and lower into the Justice Department and sooner or later you’ll find somebody that will fire Cox, who won’t be anywhere near as qualified as you are to be Attorney General. So for the good of the country, carry out the order and then set up a new independent counsel,” which is exactly what happened. He fired Cox, brought in Leon Jaworski<sup>48</sup> and as they say, the rest is history; a number of Nixon’s top people were convicted.

So that all had a happy ending but then Congress decided, in the aftermath of that, we can’t let this happen again, so they created, by statute, a three-judge court called the Independent Counsel Court, and they said whenever there are credible allegations against a high ranking government official, you apply to the Court and the Court will pick someone as an independent counsel, and most importantly, that person can’t be fired without the approval of the Court, basically making the job bullet proof. But there was a sunset provision, the statute had to be renewed every five years. It worked fine for about 10 years, and then along came Iran

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<sup>47</sup> William Doyle Ruckelshaus, Deputy Attorney General of the United States, 1973.

<sup>48</sup> Leon Jaworski, Special Prosecutor for the United States Department of Justice, 1973 - 1974.

Contra, my former partner Lawrence Walsh<sup>49</sup> was the independent counsel. The Republicans were in charge of Congress and they were very upset with Walsh. They thought he took too long, he spent too much money, that he wasn't fair, so when the statute expired, they refused to renew it.

[01:12:19]

So, fast forward to summer of 1993, there's no statute, and that summer of 1993, two things happened. One, there was a municipal judge named David Hale,<sup>50</sup> in Little Rock, Arkansas, and he went public with some allegations relating to President Clinton. The Clintons and James and Susan McDougal, together had bought land on the White River, they called the development Whitewater. They borrowed money from the Madison Bank to pay it off. The allegation by Hale was that he had a small business company called Capital Management, and that right in the middle of all this, when Clinton was Governor, Clinton came to Hale and said, "Look, Hillary and I are having trouble paying off these loans and what we want you to do is to have your company apply to the Small Business Administration for a loan, which you can say you want to loan to Susan McDougal, for her advertising company. And so you make the application, you say that's the purpose, but really, you're going to give that money to Hillary and me, so we can pay off our loans." Well if that was true, that's obviously a federal crime, they're making false statements to the Small Business Administration. This all came about because Hale had been indicted for fraud, against the Small Business Administration, couldn't work out a deal with the U.S. Attorney, and

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<sup>49</sup> Lawrence Walsh, Independent Counsel in Charge of the Iran-Contra Investigation, 1986 - 1993.

<sup>50</sup> David Hale, Arkansas Municipal Court Judge, 1978 - 1993.

then went public with these allegations about Clinton asking him to make this false application.

[01:14:03]

At or about the same time, they found Vincent Foster,<sup>51</sup> the Deputy White House Counsel, dead, in Fort Marcy Park, with what appeared to be a suicide. There were immediately two theories about that death. One: it wasn't a suicide, it was a murder, because he was murdered by the Clintons because he knew too much. The other theory was that well, if it was a suicide, he did it because he was so distraught over all the problems the Clintons had, that he committed suicide. So people put those two things together and the Republicans started demanding that Janet Reno,<sup>52</sup> the Attorney General, appoint an independent counsel, the way Richardson had with Cox, and she said, "No, no, I'm not going to do that because people will say how can that person be independent if I've picked him, when I report to the President. You want an independent counsel, renew the statute." Well, they wouldn't do that, but then as demands continued, some Democratic Senators asked for an independent counsel, and finally Clinton himself announced publicly that I'm asking Janet Reno to appoint an independent counsel. That was in January of '94, and at that time, the Deputy Attorney General was a man named Philip Heymann,<sup>53</sup> a Harvard Law professor who had been the head of the Criminal Division when I was U.S. Attorney, and the head of the Criminal Division in '94 was Jo Ann Harris,<sup>54</sup> who had been one of my assistants. So, as

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<sup>51</sup> Vincent Walker Foster Jr., Deputy White House Counsel, 1993.

<sup>52</sup> Janet Wood Reno, Attorney General of the United States, 1993 - 2001.

<sup>53</sup> Philip B. Heymann, Deputy Attorney General of the United States, 1993 - 1994.

<sup>54</sup> Jo Ann Harris, Assistant Attorney General for the Criminal Division, 1993 - 1995.

soon as Clinton asked for an independent counsel, I figured that at least I would be one of the ones considered. So I was giving it a lot of thought, what would I do, and there was lots of reasons not to do it: You'd be away from home, it would be at least three years, I'd have to leave my law firm, but in the end, I thought, you know, if I get asked to do this, how could I say no -- what could be more important than this?

[01:16:08]

So, two days went by and then it was early in the morning. My daughter Susan lives in Wayland, Mass. Her cousin Addie lives in Weston, and my daughter Sue called and said, "Dad, I just got a call from Addie. She was driving to work, listening to National Public Radio and Nina Totenberg, well known for her good sources in the Justice Department, said it's between you and Dan Webb." Dan Webb<sup>55</sup> was a former U.S. Attorney from Illinois, a terrific person who would have been an excellent choice, but late that day, I got a call from Jo Ann Harris and asked me if I would do it and I said, "How could I say no?"

CD: And indeed, you moved to Arkansas, right?

RF: I took a leave of absence from the firm, went down to Arkansas, yes.

CD: And how did you go about assembling the team to support you in that effort?

RF: Well, that was pretty easy. I started out with people that I knew and trusted. The first person I picked was Julie O'Sullivan,<sup>56</sup> who had been at Davis Polk, who

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<sup>55</sup> Daniel K. Webb, United States Attorney for the Northern District of Illinois, 1981 - 1985.

<sup>56</sup> Julie O'Sullivan, Assistant United States Attorney for the Southern District of New York, 1991 - 1994; Associate, Davis Polk & Wardwell LLP, 1986 - 1991.

was then in the U.S. Attorney's Office. The next two were Denis McInerney<sup>57</sup> and Mark Stein,<sup>58</sup> also former Davis Polk who were then in the Southern District. To investigate Vince Foster, I picked Rod Lankler,<sup>59</sup> who had been head of the Homicide Division under Morgenthau, and then Pat Smith, who had also been a Davis Polk associate, worked on the Brown case in Florida. So I started with a small group of people that I knew and trusted and then I wanted to expand the team nationally, I had like 300 resumes in three days, and I started looking at them and I finally just said forget it. I don't know any of these people, I don't know anything about them. They may look great on paper but what are they really going to be like? Are they going to be team players, are they trustworthy, are they going to write a book later? Are they going to leak things to the press, are they going to complain because they're not getting the right attention?

[01:18:13]

So I reached out to four or five people that I knew around the country, like Griffin Bell, the former Attorney General. He's the first one I called and I said, "Griffin, if you had my job, there has to be a 45-year-old partner in your firm that you would bring down as your chief assistant. Can you lend me that person for a couple of years?" He said, "Yes, I've got just the right guy for you, Bill Duffey," and he came down and he was a great success. I called Bob Mueller,<sup>60</sup> who had

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<sup>57</sup> Denis J. McInerney, Assistant United States Attorney (Deputy Chief of the Criminal Division), Southern District of New York, 1993 - 1994; Assistant United States Attorney for the Southern District of New York, 1989 - 1993.

<sup>58</sup> Mark Stein, Assistant United States Attorney for the Southern District of New York, 1989 - 1994.

<sup>59</sup> Roderick C. Lankler, Assistant District Attorney, New York County, 1963 - 1976.

<sup>60</sup> Robert Swan Mueller III, Special Counsel for the United States Department of Justice, 2017 - \_\_; Director of the Federal Bureau of Investigation, 2001 - 2013; United States Attorney for the Northern District of California, 1998 - 2001.

just left the Criminal Division of the Justice Department, and I said, “Bob, I need a fourth- or fifth-year woman associate, because we only have one woman, Julie,” and he said, “I’ve got just the right person for you, her name is Gabrielle Wolohojian, she’s a great associate at Hale & Dorr.”

Anyway, I put together the team that way, and so we ended up with about 12 people, all either handpicked by me or by a reference from somebody I trusted, people who would have all the intangible qualities that were so important when you’re working together in a small group in a city like Little Rock.

CD: I know that one of the notable exercises you went through in that assignment was you actually took the depositions of the sitting President, Bill Clinton, and his First Lady, Hillary Clinton, is that right?

RF: Yes.

CD: What was that like?

RF: Well, we figured we had to do that and I called up David Kendall, who was their counsel, and I said, “David, I think we have to do this -- and it should be under oath.” We had different phases in the investigation. We had the whole Whitewater thing in Little Rock, but there were also issues in Washington, first of all about Vince Foster and his death, and also, there were allegations that came up while I was in the middle of this, that there had been meetings between the White House officials and people at the Treasury Department, where people from the White House were trying to find out, purportedly, what the RTC was doing in its investigations of the Clintons, and that of course raised the specter of obstruction



of justice. So we subpoenaed a lot of high ranking people in front of the grand jury to investigate that, and so that was another part of the investigation.

[01:20:33]

Complicating the whole thing was that at this time, Congress decided it wanted to have hearings. I told them that I thought that would interfere with what we were doing and the Democrats who were in charge of Congress agreed. But I said what we'll do, we'll do this in phases, and when we finish a phase of our investigation, then it's perfectly okay for you to go ahead and do your hearings. So in order to accommodate that, we questioned the Clintons first, about everything relating to the Washington part of it, and said we'll come back later and do the Arkansas part, but let's get this done so we can finish that part of it, and then Congress can have its hearings. So in June 1994, we spent the better part of a day at the White House, questioning both the President and Mrs. Clinton about RTC and about Vince Foster.

CD: Just continuing on with the Whitewater story a bit, can you tell us briefly, what was the conclusion and aftermath of the Vince Foster investigation you mentioned, and the other issues that you were focusing on at the time?

RF: Well, we issued a report, I think on June 30th, both with respect to Foster and with respect to the contacts between the White House and the Treasury, and on the White House/RTC, we found that there was no obstruction of justice. With respect to Vince Foster, we found that it was a suicide in Fort Marcy Park, and that we had no evidence that Whitewater was a factor in the suicide. That created

kind of a firestorm. I think a lot of the conservatives were very unhappy with both of those conclusions.

[01:22:36]

Simultaneously, interestingly enough, the same day, the Congress reenacted the independent counsel statute, and so Janet Reno, at that point applied to the independent counsel statute, saying we needed an independent counsel and it makes sense to have Mr. Fiske continue, he's been doing it for six months. We waited the whole month of July and nothing happened, and then August 5th, it was, a Friday, I had been in Little Rock for four days. I came to Washington Thursday night, to meet in the Washington office and then flew down to Florida because my wife's mother was very sick and she'd been visiting down there for about a week, and I said I'll come down for the weekend. I got off the plane in Orlando at 3:00 o'clock in the afternoon, my wife is waiting right there, and my beeper went off -- we carried beepers -- and it listed the number to call. I came off the plane and said, "Oh, I have to call the Washington office, this will just take a second." So I called the Washington office and Mark Stein answered and said, "You won't believe this, you've been replaced by Ken Starr."<sup>61</sup> So that's how I found out that I'd been relieved.

[01:24:00]

So, all hell broke loose down in Little Rock, I mean everybody was very upset. A lot of the people that I'd hired wanted to quit, they didn't want to go on, and so I flew down there on Monday, we had a big meeting and I said, "Look, you can't

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<sup>61</sup> Kenneth W. Starr, *Independent Counsel for the Whitewater Controversy, 1994 – 1998; Solicitor General of the United States, 1989 - 1993.*

quit, this is really important, we've done an extraordinary amount here in five months, we have to keep this going." I said, "Ken Starr is a man of integrity, he'll do the right thing with the evidence we've developed. He has no experience as a prosecutor so it's going to be longer." And I assembled all the FBI agents and the IRS agents, who were all very demoralized. They thought that everything they'd done was going down the drain, I said that's not going to happen. I remember saying, "We were ready to bring 8 indictments against 11 people in the fall of '94 and the early winter of '95," and I said, "I am confident that those indictments will be brought. It will just take longer." And indeed, it turned out that they were and all of them were brought and they all resulted in convictions. It included a case against Webster Hubbell,<sup>62</sup> a partner of Hillary's in the Rose Law Firm and then the Associate Attorney General, two cases against Arkansas Governor Guy Tucker,<sup>63</sup> I mean significant cases, and we were on the verge of bringing those when I was replaced.

CD: I mentioned this would be a recurring theme, but you then returned to Davis Polk. That was 1994 at that point, and you stayed practicing there as a partner until 2010, for 16 years, at which point you've retired well after what the firm otherwise had as its mandatory retirement age. I remember the meeting in which that decision was made, to allow you to continue. It was made by acclaim, as I recall, it did not take a moment to make that decision. But just generally speaking, in that era, 2000 and beyond, what changes did you see going on in the firm and

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<sup>62</sup> Webster Lee Hubbell, Assistant Attorney General of the United States, 1993 - 1994.

<sup>63</sup> James Guy Tucker Jr., Governor of Arkansas, 1992 - 1996.

in the broader professional community in New York and outside of New York, compared to when you had started so many years earlier?

[01:26:33]

RF: Well, there was just a gradual change over the years, but the two very significant changes that I think were for the good, one the diversity in terms of minorities and women, and I think there's steady progress over the years in that, and the other interesting development was in client relationships. When I first started back in the early '50s, mid-'50s, every firm had its clients, like we had J.P. Morgan, Milbank Tweed had Chase, Shearman & Sterling had Citibank, and the same way, we had ITT, AT&T, and basically any matter they had, if we said the firm said we can do it, we got the business, and so you had these alignments between law firms and clients so that basically 90 % of the client's work would go to one law firm. Over the years that changed, firms started up like Skadden Arps and other firms like that, that began to compete, and over the years, it's gotten to the point now where it's basically on a case-by-case basis. A client decides a particular case, we'll use this firm, in a particular case we'll use that firm, and if you've had a long relationship with them, that gives you an edge, but it doesn't guarantee you the business, and I think that's a good thing. It's more competitive and I think it gets better results for the client. So those are the two changes that have occurred over the years.

[01:28:09]

Plus the development of the white collar crime practice in firms, which was considered basically something you just didn't do many years ago, to the point

where now, every law firm is doing it, and I think one reason for that is the expansion of criminal prosecutions where U.S. Attorneys and District Attorneys are prosecuting conduct that many years ago would have been dealt with civilly. So, corporations are exposed much more across the board by potential criminal prosecutions, so if a firm wants to maintain its relationship with a client, it's important that it have a white collar crime practice because those are the kind of cases that can be the most damaging to the client.

CD: During this latter period, you were involved in some of the biggest investigations and litigations of the era. You may want to touch on or identify some of these: *Boston Scientific*, *Burlington Industries*, the *Taubman* prosecution, the *Samurai* cases. If you want to mention a few of those and their significance.

RF: Well, they're all significant. In *Boston Scientific*, we successfully defended Peter Nicholas, the chairman of the board, against an investigation by the U.S. Attorney's Office. In *Burlington*, we started with a situation where the company had a plea agreement delivered to it by the U.S. Attorney in Wyoming, charging it with fraud in connection with the payments of royalties on their oil leases. We were brought into it at that point and after a year, not only persuaded the U.S. Attorney to drop the case, but also the U.S. Attorney refused to sign a 6E order, which would have allowed the SEC to bring a civil case. So, starting from a potential plea agreement, we ended up with a complete victory on both the civil and the criminal side.

[01:30:14]

The *Taubman* case was a fascinating case involving price fixing between Sotheby's and Christie's. Taubman was the chairman of the board. His position was that the conspiracy had been conducted at a lower level, he wasn't aware of it, and we had a battle with the Antitrust Division. We had two problems. One, the government's claim was that Taubman had met with his counterpart at Christie's, a man named Tennant, over in London, and that they had agreed that they would fix the prices but let their subordinates, Dede Brooks for Sotheby's, and Christopher Davidge for Christie's, carry out the details. The problem was Tennant was in London and he couldn't be extradited, and he was sitting over there and there was a series of notes and conversations between him and Davidge that Davidge put into evidence as in furtherance of the conspiracy, which he claimed said that Tennant had instructed him to fix prices. It's hard to cross-examine a document. Secondly Taubman was in very poor physical condition so he wasn't in a position to testify. In the end he was convicted, went to jail for much less than the government wanted, and his experience in jail sort of rehabilitated him physically and he came out stronger than ever. But he was an amazing man, he was a wonderful philanthropist. He was a big donor to Michigan, to Harvard, and to Brown, and after the conviction, nobody took his names off any of the buildings or programs that had been named after him. He got an honorary degree from one of the universities and everybody considered this thing as a small blip on the horizon in terms of his whole life.

[01:32:19]

CD: One case that was not a blip on the horizon was the case of Bernie Madoff, probably the biggest Ponzi scheme orchestrator in history. In that case, you represented the New York Mets and the family of Fred Wilpon.

RF: Yeah, and that was a very gratifying victory, because the Wilpons had become friends with Madoff, and like many others, they got suckered in and invested hundreds and millions of dollars with him, lost a lot of money. It was all compounded by the fact that the trustee who came in for the estate filed claims against Wilpon, and so his partner Katz, claiming that they had reason to believe that Madoff was a fraud and therefore, they had to give back all the money that they had invested, even though the money had been lost. They were facing a billion dollars in liability. We removed the case from the Bankruptcy Court to the Southern District, to Judge Rakoff.<sup>64</sup> Judge Rakoff ruled that the criteria would have to be willful blindness, and in the end, we convinced the other side that they didn't have a case of willful blindness, and the case was settled extremely favorably for the Wilpons.

CD: Now, during this latter period in your career, in addition to the big cases that you've worked on, you also continued to do a variety of public service assignments while still practicing at Davis Polk. Do you want to comment on those experiences?

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RF: Well, I said before, the advantages of combining a career and private practice, that people don't always appreciate is that if you have a reputation from public

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<sup>64</sup> Jed Rakoff, Senior Judge of the United States District Court for the Southern District of New York, 2010 - \_\_\_\_; Judge of the United States District Court for the Southern District of New York, 1996 - 2010.

service, you get asked to serve on commissions or other groups that are doing very constructive things for the public. One good example of that is that I was retained by the 5th Circuit Judicial Council, to represent them in an investigation of a district judge in Fort Worth, for abusive conduct on the bench, which after three years of hard fought litigation, resulted in the biggest sanctions ever imposed on a district judge under that particular statute. Clearly, I was retained for that because it was right after Whitewater, and I think as a direct result of that. Then, I worked with Carey on a commission set up by Chief Judge Kaye,<sup>65</sup> to investigate the impact of drug cases on the court, basically the issue of what do you do with cases where someone is selling drugs, not as a drug dealer, but for their own habit, and came up with a recommendation for the great expansion of the use of drug courts, under which basically somebody in that situation, with the consent of the DA, would plead guilty to a felony that exposed him to five or six years in jail, but if he or she went into a treatment program and came out at the end of two years successfully, the conviction would be expunged. We recommended a sweeping expansion of that program, pointing out, I think significantly, three benefits. One: basically, it saved lives and there were moving testimonials at graduation ceremonies at the drug courts, about this had changed their lives and saved the lives of their relatives.

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Secondly, we pointed out importantly that it reduced crime, an answer to people who say this is soft on crime, you should be sending these people to jail. The

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<sup>65</sup> Judith S. Kaye, Chief Judge of the New York State Court of Appeals, 1993 - 2008; Associate Judge, 1983 - 1993.



answer to that was, the recidivism rate for people that go through treatment is one third of what it is for people that come out of jail, so we're actually reducing crime. And third of course it saved money because treatment is cheaper than jail. So that's an example of one commission.

I was retained to serve on a commission chaired by former CIA Director Webster,<sup>66</sup> to investigate security breaches at the FBI in the aftermath of the Hanssen spy scandal. I was retained to serve as a special advisor to Attorney General Cuomo,<sup>67</sup> in an investigation into the State Police, and most recently, to serve as Judge Lippman's<sup>68</sup> representative on a judicial compensation commission, setting the compensation for New York State Judges. I don't think I would have been asked to do any of those things if I hadn't had both the private practice and the public service experience.

CD: Let me follow up on that by asking you some broader questions on your perspective, looking back over your career. One of them is, as we've heard time and again, you have returned from government service over the decades to the same firm of Davis Polk, in an era where, increasingly, people are moving all across the city, from firm to firm, for all kinds of reasons, including greater offers of compensation, that type of thing. What explains your lifelong loyalty to Davis Polk?

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<sup>66</sup> William Webster, Director of the Central Intelligence Agency, 1987 - 1991; Director of the Federal Bureau of Investigation, 1978 - 1987.

<sup>67</sup> Andrew M. Cuomo, Governor of the State of New York, 2011 - \_\_\_\_; Attorney General of the State of New York, 2006 - 2010.

<sup>68</sup> Jonathan Lippman, Chief Judge of the New York State Court of Appeals, 2009 - 2016.

RF: Well, it's significant, because I said in the very beginning, the reason I picked Davis Polk ahead of those other five firms in 1955, was because I really liked the people and I really liked the culture. The firm has been able to preserve that culture through the years, even as it has grown. There's a sense of collegiality and it comes right from the top, because of our lockstep system. Partners work together, there's not competition. People aren't arguing about who should get more money than the other person and it's just a friendly place to work and people form friendships here that last for lives, for their whole lives, and so I've always come back to the firm really because of that, even though I'm sure I could have made more money somewhere else.

[01:38:22]

CD: Similarly, we've already talked a bit about the value of government service and why you continued to make those commitments despite the opportunity to continue in your lucrative career. In particular, what would you say to young people these days who were coming out of law school and considering a career like yours and particularly, at least some part of that career being in public service, whether it's the U.S. Attorney's Office that you pursued or otherwise.

RF: Well, I continue to believe that that's a very important career path, because of the benefits that you get from doing both. I mean it's rewarding to do public service, but it also makes you a better lawyer in private practice.

CD: As I alluded to earlier, there are a lot of articles in recent years, post-financial crisis, about whether it's value to go to law school in the first place, as people are having trouble getting jobs. What would you say to new lawyers, or people

considering going to law school in the first place, about the value of pursuing a legal career?

RF: Well, I think the reason I pursued the legal career from the beginning was first of all, I was inspired by the concept of trying cases, but also, because I think lawyers really influence society. If you look at the makeup of Congress, I gave a speech not too long ago, my 55th reunion at Yale, I was the featured speaker, and I talked about this and I did an analysis then, but the number of lawyers in Congress is enormous. In addition, at that time, it was more than two-thirds of the Cabinet officers were lawyers, and I think lawyers have an ability to shape the way society moves.

[01:40:13]

CD: One thing we haven't touched on this morning is that you have, over your career, had a variety of outside interests beyond your career and the law, including your family, but also outside activities and sports, et cetera. Can you comment a bit on the importance of those kinds of pursuits, to provide balance over the course of one's career?

RF: Yeah, that's the same speech I've given to the younger lawyers also is the importance of developing outside interests, I mean whether it's music, art, whatever, everybody's different. For me, it was a lot of sports and outside activities. In particular, with my family, we used to have one very close family weekend with my brothers and their sons and grandsons, we'd get together for ski weekends and we'd do things like that. I was an ice hockey player in college and I continued to play until I was like 65 years old, but I also enjoyed coaching ice

hockey, coaching boys, it was extremely gratifying. I ran in a marathon, I play tennis, I do a lot of bicycling.

CD: How old were you when you ran the marathon?

RF: 50.

CD: How did you do?

RF: Well, it was interesting, I had three goals. One, to keep running, don't walk. Well second was to finish, that was number two. And three to finish under four hours, and I did 3 hours and 40 minutes, and I did. One marathon, that was the deal with my wife, I'll do one, no more.

CD: And bicycling has been very big.

RF: Yes, to do distance, a bike-ride across Iowa, and I've done the Pan-Mass Challenge in Massachusetts, with my daughter several years.

CD: So you don't regret pursuing that initial decision to go to law school?

RF: No.

[01:42:00]

CD: Anything else you want to add?

RF: No that's it, thanks.