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RICHARD J. BARTLETT ORAL HISTORY

February 25, 2005 – Session 1

Hon Richard J. Bartlett (RJB)
Prof. Sandra Stevenson (SS)
Stephen P. Younger, Esq. (SPY)

SPY: We are assembled here at the Schaffer Law Library of Albany Law School. It is February 25, 2005. I am Stephen Younger and am here with Prof. Sandy Stevenson and we're to do the oral history of Richard J. Bartlett today, which is our distinguished pleasure. To start off what we'd like you to do is tell us about your youth in Glens Falls.

RJB: Before I do that, I want to say that I'm delighted to have this oral history being done by two very old friends and it's a wonderful excuse to get together again.

I was born in Glens Falls in 1926. My parents were both local. In fact, both of my grandmothers were born in Glens Falls and so I grew up in a very friendly environment, a community in which my family had deep roots and which I have come to love and never really left. I had an uneventful childhood so far as I remember. I was more interested in baseball and soccer than I was in books certainly. I had two sisters both younger.

When I was ten years old I had an accident, a gunshot wound, which really is worth mentioning because it changed my life in many ways. I was very much involved at the YMCA in town, was doing target shooting there. I persuaded my Dad, against his better judgment, to buy me a .22 rifle. On Washington's Birthday 1936 we were out doing some target practice, and I guess trying to shoot a crow or two. The gun accidentally discharged and I was shot through the left leg. I'm not going to dwell on that except to

say that that took me out of sports for a long time and turned my interest to books. And I have to say it was a shaping event in my life. I became interested in student government and was class president, and student body president, and that kind of thing. I continued my interest in the YMCA and when I graduated from High School I was Assistant Boys' Secretary at the Y, obviously, a part time job. I think they might have gotten me up to 5 bucks a week by that time, I'm not sure. My expertise was keeping ping-pong balls available and putting tips on cues. I got quite good at that. But anyhow, I graduated from High School in 1943 and went to Georgetown. . . .

SPY: Were there any other influences in that period of your life?

RJB: Oh sure. My Dad and Mother. I loved them both very much. They did not have an especially happy marriage together so there was always a bit of tension in the house. And I'm sorry to say that my Dad, when the accident occurred in '36, really fell apart and ended up in a mental hospital. He finally developed multiple sclerosis. We have no idea when that first occurred and how that tied in with his mental illness, but my Dad was pretty much out of the house from 1941 on. By the time I graduated from high school he was hospitalized. I would not have been able to get the education I did if it weren't for an aunt of mine and a cousin of my mother's, who happened to be my godparents. They took their responsibilities seriously and made it possible for me to go to Georgetown.

SPY: And who are they?

RJB: Miriam McCarthy was my mother's sister and my godmother, and certainly my favorite aunt. She taught school in New York City. She was a very bright woman. She went to Teachers College in Albany. She was very much an influence for good and made sure

that I got a decent education. She had an apartment in New York City. That was my New York City headquarters. It was in Tudor City, very near where I later maintained an apartment while Clare and I were in the City. She was a major influence. My godfather was a cousin of my mother's, the only person in the family who had any money. But he did have some money and he was very helpful to me financially, although my Aunt was too, in being able to go to Georgetown.

SPY: What was his name?

RJB: His name was Daniel F. McCarthy. His father had been my grandfather's brother and had been a career army officer. He was a Quartermaster General of the AEF when World War I started. He is reputed to have been the first American officer ashore when the AEF moved into France. He married the daughter of a wealthy family from Indiana, of the Frederick Cigar Company, which was one of the mainstays of business in Evansville. The money that ended up in my cousin's bank account can be said to have been generated by something that I later became involved with, and that's cigars. But there is no related influence that I am aware of. Anyhow, those were two people outside of my mother who had a strong influence on me.

I must talk just a bit about my mother. She was a very strong person. When my Dad fell apart, she went back to nursing which had been her profession. She really kept the family together and was a wonderful influence. She was an unusual person in that she came from an Irish Catholic background. She had a very broad view of life, and by Glens Falls standards in the 1930s I'm sure she would have been called a flaming liberal. For

example, she was one of the people in town who got the NAACP going in Glens Falls and she always had a broad view of things. I owe her a great deal.

My sister Nancy was younger. My sister Mary Jane had cerebral palsy, and special consideration had to be given to her of course while I was growing up. She died a few years ago. My sister Nancy is still alive and well. You may remember Billy Horne who was on the Law Review here. That's his mother.

SS: Is your sister still in Glens Falls?

RJB: No, they live in Florida. She married Bill Horne Sr. who was at one point a Deputy Director of Planning during the Rockefeller years. He then ended up with EPA and was in charge of the program that never got off the ground of reclaiming the Chesapeake. Bill stayed in Baltimore and did some other planning related work there and then retired. They're in Florida now. They spend their summers in Lake George. Billy Jr. has a home in Lake George now, a summer home. Billy of course married another Albany Law School girl, similar to your experience Steve. Cathy Broadbent is young Bill's wife. They have three kids and live in Virginia. He's the editor of the Chronicle of Higher Education. He decided that practicing law is not for him. He went to work for Steve Brill originally. When he left Brill, he became editor at the Chronicle, where he remains. Cathy was with a dot.com company that flowered and then withered and she is not practicing anymore.

SPY: How did the Bartlett family get to Glens Falls?

RJB: Well, the Bartlett family I know less than I do about than the Millers.

SPY: They were your mother's family?

RJB: No the Millers were my grandmother Bartlett's family. I can very quickly tell you about my grandmother's family. They were Irish immigrants. My grandparents were both born here, my grandmother in South Glens Falls, my grandfather not too far from here in Albany. Their parents had all been immigrants in the 1840-50 period. My grandfather grew up in Albany, Grandfather McCarthy now, went to Union College on the trolley and ended up a lawyer in Glens Falls. He never practiced law because he contracted tuberculosis when he was a fairly young man and was never really able to work after that. That's the Irish side of my family. On the Yankee side, so called, the Millers, my grandmother Bartlett's family, came to New England, shortly after the Mayflower, 1630 I think I have the family first being in Connecticut. They slowly but surely came up the Connecticut valley. They got as far as Marlboro in Vermont, and then they came west all the way to Fort Anne, where they had farms with more rocks than cows I think. My great-grandfather Miller came to Glens Falls to work in the paper mills. I have a very clear track of that ancestry. They, of course, were Puritans. They go back to a village in the Southwest of London, Crandall, which Claire and I visited a few years ago. So that's the ancestry. On the Bartlett side, that's a little less certain because my own conclusion is that great-great-grandmother and great-great grandfather were an item, but I doubt they were married. The reason I doubt that is that George Washington Bartlett was born in 1821. He's the only one to be found in the research that I've done, and I've gone through all the Mormon records and everything. The only George Washington I could come up with – and George Washingtons were all over the place – the only George Washington of the right age to have been my great-great-grandfather lost his parents when he was very

young and went to sea – like at 14. Ellen Fitzgerald entered the Irish element on the Yankee side, and was an early immigrant to New York City. She was my great-great-grandmother. The family fable is that my great-great-grandfather died when my great-grandfather was in his infancy or even before he was born. I think the truth is that he skipped town. I think that's what happened. My great-great-grandmother married a guy who was in effect the stepfather of my great-grandfather. They grew up in New York. My great-grandfather was here in Albany. He lived on North Pine, and was a local representative of Singer Sewing Machine. So that's a thumbnail of the ancestry, which I have now concluded makes me 11/16th Irish.

SS: You never really left Glens Falls

RJB: Never.

SS: Why?

RJB: I love it there! I'll touch on how I happened to come back to Glens Falls practice law because that had a lot to do with my family situation at the time. But I've always loved the town. Bob Reagan is Mayor now, my daughter Amy's husband. My grandfather was on the Common Council when I was a kid. So I've always had some kind of finger on what's going on in Glens Falls, and of course I was politically active there, too.

SPY: What is it that you love about Glens Falls?

RJB: It is a wonderful small town with a terrific public education system. I owe a whole lot to the high school education I got in Glens Falls. In my view, it was the equivalent of any

good New England prep school. We had incredibly good teachers who really motivated us and made us want to do the work.

SS: Why was it so good?

RJB: A little bit about Glens Falls. It was a town which had two major influences economically. The first was the Falls, of course, and the power that was there. That produced first planing mills, lumber mills, and then produced the paper mill. And that remains one of the economic anchors of the area. The other economic influence started in 1849 when the Glens Falls Insurance Company was founded, a company for which my Dad worked all of his adult life until he became ill. And those two companies were joined by a cement company, and a colorworks. Glens Falls was the source of chrome yellow for example. It was internationally recognized as one of the prime sources of chrome yellow. And those all contributed to the economic strength there. Let me give you a little example of that with respect to the culture of the town. The Finch Pruyn families were the early wealthy people of the town. The Finches had a lot to do with starting the hospital there, which is a very good hospital. The Pruyn family particularly, Samuel Pruyn, was one of the partners of Finch. Pruyn had three daughters. He built three relative mansions, substantial homes, on Warren Street, overlooking the mill of course. It's true to this day that if you go out to the backyard of any one of those houses, there is the wood yard and the paper mill. The three daughters all married interesting people. One daughter, Mary, married a guy named Hooks who ended up running the paper mill. The other daughter named Charlotte, married a guy named Hyde, Louis Hyde, who was a Boston lawyer who came and joined the family business but never really worked at it. They assembled a remarkable art collection in their home. It is today

one of the finest small collections of Renaissance, well broader than Renaissance, because it is pre-Renaissance of a broad scope, art collection, largely European, to be found anywhere in the country. That is the basis for the Hyde Collection. I'm pleased to say I was a trustee there for many years and our firm still represents the Collection. So there was economic stability. A little town like Glens Falls was able to build a very good golf course for example back in the late teens, early 20s, because there were people who were able to join a club. In fact, the Glens Falls Open was on the Tour until 1942. It remains a very good course.

SS: And of all the places you lived, you always came back?

RJB: Yes.

SS: Because no other place could measure up?

RJB: Well, that and my Mom was there and that had a lot to do with my going back there to practice. She was struggling a bit. I really was a big spender when I came back home to practice law. I contributed ten bucks a week to the family budget, I think. It got up to 15 before I left, but anyhow, I came back. My friends were there. Girlfriends. Best friends. We remained a very close-knit high school group. I still have lunch with one of my classmates every week.

SPY: Who's that?

RJB: Ed Hutchison. He's a retired chemist, who was with Imperial Color & Wallpaper. He is retired and lives in Glens Falls. But there is a group of us, and DeSantis is one of them.

SS: Did your peers then tend to remain in Glens Falls?

RJB: Not entirely – but I stay in touch with those who don't. Tom Rider for example was a very close high school pal. He lives in Bridgeville, Delaware, but we're on the phone a lot. He comes up once or twice a year and we still fish together occasionally.

SPY: You mentioned fishing. Is the outdoors life part of the lure of Glens Falls?

RJB: Absolutely. Part of our High School song talks about “in the Adirondack Foothills, where roars the Hudson grand.” It's the gateway to the Adirondacks. It's the largest town at the south end of the Adirondacks, and that had a lot to do with it. We never had a place at Lake George until much, much later, but my childhood consisted of going to Lake George to swim every weekend. And we went to the public beach at the head of the Lake. I worked there summers. That's all part of the story. My first sailboat was a Cape Cod knockabout I bought with friend of mine. We put up 150 bucks apiece and we were in business.

SPY: When did you get your first boat?

RJB: The summer of 1948. I was at Harvard Law School, and was making about \$150 week as a bellhop at the Sagamore. Bob MacCrate had already started at Sullivan & Cromwell, and I think he told me got \$65 a week there, just to show you the relative entrepreneurship.

SPY: Did you work at the Sagamore a lot?

RJB: Two summers. I worked at the mill. I went to Finch Pruyn for my summer employment during Law School, because I did not have the GI bill. Although my cousin Dan McCarthy lent me some money during law school, I worked all the time I was in Law School. Once I was in Law School I needed to take summers off. We were at that time on a seven trimester schedule, so I went two trimesters and took the summer off. I did that throughout my law school career and found good paying jobs.

SPY: What special memories do you have of Glens Falls as a kid?

RJB: Oh my, the neighborhood groups, sandlot baseball. The High School had almost like a High School fraternity/sorority called High Y. I was very active in that. It was connected with the YMCA, roughly speaking. They had a wonderful library there, which by the way was endowed by a lumberman named Henry Crandall. Crandall did a lot for Glens Falls. He gave us two public parks. The Crandall Trust still exists. One of my partners is a trustee. That helps support the library and helps to support the Parks. I became a library freak when I got hurt. That resulted by the way in my having no muscle from the knee down on my left leg. I have a stiff left ankle, which made me 4F, unhappily, in World War II. That was of no consequence when the Korean War came along – when I became 1A. So, we'll get to that later.

SS: When did you meet Claire? In High School?

RJB: No, she was much too young. She was 2½ years younger than me. Claire went to St. Mary's. I went to High School. I knew her sister Jean who was a year older than I, but I still knew her well. I used to play bridge with Jean occasionally when we were kids, because I started to play bridge fairly young. My mother was a life master at bridge and

got me interested in bridge as a kid. But I never knew Claire until the summer of 1950. We were both in Europe, not together. She graduated from New Rochelle in June of 1950, and went to Europe with a student group or post-student group. I was in Europe that summer in the community ambassador program. When I got back, my boss, Louis Carusone, and her uncle who were great pals, used to needle me. You know, there's a very attractive girl who spent her summer in Europe. You guys ought to get together. So finally I asked her out. The rest is history.

SPY: And what kind of books did you enjoy back then?

RJB: History, but also the usual boy series. The Motor Boat Boys. I read every one of those. There was a series about the Civil War, a fictional history, which took you through all the battles. I can't remember the name of the series, but I thought I knew everything there was to know about the Civil War by the time I was 12. I've always been fascinated with history. I spent most of the year 1936 in and out of hospitals, but I didn't miss any school. One of the first books I remember somebody bringing me when I was still in bed was a book called *Fun In Bed*. It was a crazy little book, but it had interesting things for kids to do. It was for sick kids. Somebody got me started on P.G. Wodehouse. I read all the Jeeves stuff, and quite a great variety of stuff. I had no interest in the law at that point, at least not in any real respect, but I was fascinated by the Revolution, and figures in the Revolution. I remain so to this day. I just got Ellis's new book *His Excellency*. I haven't read it yet. And while I was picking that up, I found another book by Ellis on Jefferson that I haven't read before, so I got that. Right now, I'm reading about Jerusalem mostly.

SPY: How did you first get interested in politics?

RJB: I was elected homeroom representative in student government in the seventh grade. In those days, the school system was organized as follows: K through 6 was elementary, 7, 8, and 9 were junior high, and 10, 11, and 12 were senior high. I had always been a schmoozer, and had a lot of friends in my class. This ties in with my accident. I was in the fifth grade when that happened, fourth or fifth. And I was out of school from Washington's Birthday until the end of the semester. I didn't go to school at all that semester. I was in rehab programs, and so forth. I spent the summer in the hospital over in Springfield, Massachusetts. Kids in my class at school put out something called *Bartlett News*, and every week they would bring me a copy of *Bartlett News*. They would come to see me. I suppose I was a figure both of curiosity and some sympathy. It developed into a kind of different relationship. I also developed a different relationship with my teachers, because I remember before I had the accident, one teacher told me – not that I was wasting my life, I suppose, at 9 years old – that I was a screw-up, and there were other things in life besides the soccer team. Not that I thought so. Ms. Moyer, our principal, who was a wonderful principal, she saw to it that kids brought the homework assignments home, and I kept up. So I didn't miss any school. That kind of led to a political interest, oddly enough, and it led to an interest in student publications, in which I was later involved, at Georgetown. Anyhow, seventh grade homeroom representative was how it started. Then I was President of the student body in junior high, and that was quite a chore. You led the assemblies, and I had to get up in front of several hundred kids once a week. We had a Student Council. Then in senior high, I was President of the sophomore class. I was Vice-President of the junior class when I graduated. That sounds

a little screwy, but I was a February graduate. The war came, and I thought, gee, I don't want to be hanging out here any longer than I have to, so I filled in some extra courses, and I fulfilled my graduation requirements after two-and-a-half years of the three years. So I graduated with the Class of '43. But at the time I graduated, I was Vice-President of the Class of '44. That also gave me kind of a jump in time, with respect to time. That impacted my scholastic career, because I graduated from Georgetown in two years and a quarter. So when I went up to Harvard, I was 19, and forgive me for saying this, Sandy, but I was still discovering girls. That ought to be long out of the way before you get to law school.

SS: You've said that you've always been a schmoozer.

RJB: Yes.

SS: And one thing that always in my mind has distinguished you tremendously is, wherever I go, and your name is mentioned, people like you. And there's a feeling of warmth towards you. Did you take after your mother?

RJB: No. My grandfather was the schmoozer in my family. My grandfather Bartlett had been a salesman and was involved in politics. He was a great BS'er and I loved him very much. Of course, my dad when he was younger was a very outgoing guy. I like people a lot and I find people interesting. If you find people interesting, they'll find you interesting. They'll find things about you that they want to know about.

SS: You naturally communicated that from the very beginning?

RJB: Well, I always felt at ease with different people. I think it requires a funny kind of self-confidence, and that's been true my whole life. You've got to be willing to risk failure and that goes for friendship. Because it keeps so many people from doing things and they are afraid to try because it may not work and the hell with that. If it works it works. If it doesn't you go try again somewhere else. I've always thought that was an important attitude that helped me very much – a lot of risk taking. I think about some things I've undertaken for which I really wasn't prepared but I became prepared in the process. The deanship is one of them.

SS: And a good sense of humor.

RJB: Well, you need to laugh at yourself. If you can't laugh at yourself, you're in a lot of trouble. When I think of some of the dumb things that I've done in my life you have to. I gave a talk to the Rotary in Glens Falls, this past year. They wanted me to talk about my 55 years as a lawyer in twenty minutes and at the end I identified some things that I thought were important with respect to success as I define it. That is getting to do things fairly well so that you get used to people. The first was to be willing to take a chance. The second was to try to associate yourself with people at least as bright as you are and hopefully much brighter. The third is don't take yourself too seriously. And the fourth is don't take yourself too seriously. I think that obviously I haven't always been true to that but I've tried to. I've had a lot of fun. I've really enjoyed doing things. I've enjoyed some experiences which at the time, seemed pretty dismal. But, when you think about it later there is something about it that was worthwhile or entertaining or whatever.

Back to Glens Falls for a minute. I may be spending too much time on the early years. You each asked in your own way what kept bringing me back to Glens Falls. Roots. Friends. The institutions of the town are very sound. It's fallen on hard economic times now as all cities of that size and it is struggling mightily to try rejuvenate its downtown. I have a project I'm working on to try to bring a good book store to town. But it's the people. I grew up on the right side of the tracks, even though my family didn't have anything. My dad worked for the insurance company. For example, we always lived in rented houses but in a better neighborhood. So I grew up with kids who all went to the country club. My father played golf earlier before he started to fall apart and so we went to the country club. And it was a nice way to grow up. It was fun. There are always little tensions in life that are produced by ordinary circumstances -- just trying to do decently in school and still have time for fun. They don't always square with one another very well, but it was a great experience and I look back on it with fondness. The family struggled economically after my dad became ill, but I was spared that because of my god parents who saw to it that I got a good education. So, there is the early years. I'm sure there are other things I've left out.

SS: I would love to know what produced this tremendous feeling of self confidence that enabled you to take chances. Did your mother affirm you tremendously when you were little?

RJB: My mother was very supportive. My sisters would tell you that being the older brother gave me all kinds of advantages that built self confidence. I'm really not sure. I think, you know, I mentioned this a minute ago. Being unafraid about the possibility of failure has a lot to do with self-confidence and for reasons that are not clear to me, I've always

had that. But, it's been an important aspect of my personality. I wouldn't have taken things on.

SS: Did you have any pressure to achieve great things?

RJB: No, I don't think so. Perhaps when I was given the opportunity to go to Georgetown, and I will touch on that, I felt an obligation to produce, not that I wouldn't have gone to college. I would have gone to college for sure. In fact, this may sound strange, two places to which I had applied and been accepted were Union and Colorado School of Mines.

SS: Mines?

RJB: How do you like that?

SPY: Why school of mines?

RJB: Well, outdoor work. I did very well in the sciences and math and being a gold prospector, or whatever the hell they produce out there, seemed intriguing to me, but obviously I had no funds. Georgetown has an explanation. My father and mother were a mixed marriage. My mother came from a Catholic family and my father from a Protestant family. My grandmother Bartlett, she was the Miller, was from good solid New England stock and was very determined that she was going to save me from the Pope. So, my dad made the commitment that we'd be brought up Catholic. Of course, he didn't keep that. We were brought up Baptist, a church familiar to you Stephen. The one block street in Glens Falls is Church Street. It runs between the Baptist Church and

the Catholic Church. One could say I spent my whole life on Church Street going from one end to the other.

SPY: Did you mother stay at the Catholic Church?

SS: Oh yes, my mother stayed there essentially. She was at daily mass during Lent every Sunday. I keep reminding you again, it was my Godparents who jumped into help me go to college. I think they were hoping that going to a Catholic school might influence me toward the Church, and indeed it did. No doubt it did. But you know influenced me toward the Church is a good way to put it, because I went to the foreign service school. I was not registered as a Catholic student so I didn't have to attend Mass and didn't have to take any religion courses. I took the Jesuit philosophy courses because they were so good for training the mind. The discipline of those courses was great. But, I became a Catholic when I was at law school. I was confirmed in Boston and have led a more or less Catholic life since, more or less, because I'm not a very good Catholic sometimes.

SS: What made you choose that?

RJB: Choose the Catholic church?

SS: Yes.

RJB: I think my mother's devotion undoubtedly gave me an example of how faith can be important. I didn't have that sense about the Baptist church frankly.

SS: Did it seem more genuine?

RJB: Yes and no. There is an artificiality about the church of course, a superficiality, which I still find annoying. I'm not a devotee of the rosary. But I believe in the principles of Christianity which I find better expressed in the Catholic church than elsewhere. But, having said that, let me give you an example where I depart strongly from where some of the hierarchy. I think that suggesting for a minute that John Kerry shouldn't receive communion because of his views on abortion was outrageous. Happily, I consider Bishop Hubbard a very good friend and I did not take that view. But yeah, I'm a regular church-goer. I wasn't for a time. It's hard to imagine a Catholic who became a Catholic. I was baptized as an infant and became a Catholic at age 20 or 21. Since then, I've been back pretty much in the church, at least my concept of the church. I can happily say that I've tried to be helpful to Bishop Hubbard in his difficulties recently and I have been helpful. John Dunne and I got Howard Levine involved. That certainly was a very big plus. I got Mary Jo White to do that investigation. I went down and saw her and that was a big plus for us.

SS: It was.

RJB: At Georgetown, I started off at the foreign service school. Dan McCarthy's sister, Gertrude, was married to a diplomat named Jefferson Caffrey, who had been ambassador to Brazil, Costa Rica, France, Egypt. He had been all over the place. I kind of thought gee, I was 4F, so I couldn't get into the service. Maybe the foreign service would do. So I signed up for the foreign service school. About half my academic career was there and then I changed to arts and sciences because I really decided I wanted to go to law school.

SS: What made you decide on law?

RJB: It's probably more complicated than I can articulate quickly. But I had the sense that the skills I seemed to be having and developing were adaptable to a career in the law. I was very comfortable in public speaking and had been since seventh grade really, because that's when I first started having a role of that kind. I've never been in dramatics, but the thought of being a litigator is really what attracted me to being a lawyer. It seemed to be to be a good use of what I knew about my talents. Of course, we never really understand our own talents completely. I don't think I ever actually filed an application in Albany. I had a part time job at Georgetown with the National Planning Association. I went downtown everyday to that job. A young man was working there who had graduated from Harvard undergraduate, Preston Wright. He became one of my closest friends. Preston had decided he was going back to Harvard and was going to start in September '45. It appeared that I would finish my credits for graduation by then. I was trying to cobble together all kinds of credits from here, there and everywhere, including one summer in Mexico which I'll mention in a minute. I was able to get my degree in '45.

SPY: Had you known any lawyers growing up that were your role models when you were making that decision?

RJB: Well, my Granddad really was not a litigator at all. He was a real property titles person. From the time I knew him, Grandpa McCarthy was a great book collector. I should have mentioned that influence because I still have some of his library. He read everything from Euripedes to well, everything. He had a very broad literary appetite. I always thought lawyers were a respected part of the community. I knew Al Clark, with whom I later practiced, slightly. It just struck me that that would be a good way to make a living and make a contribution to society and it would work out well in Glens Falls because at

that time I really was thinking about Glens Falls. But when I graduated, when I was in the last year of law school, I did what everybody else did. I started looking in the City. I had a job offer – I had two of them. One was from Mendes & Mount -- I gather they still exist. They were an insurance firm. Because of my history in Glens Falls, my life there, law practice associated with the insurance business had an appeal. Although it didn't later, it did at the time. There was also, gosh, I can't remember his name. He was a solo practitioner who did international work who also gave me a job offer. I didn't interview at any of the traditional firms. One of my classmates went, I don't think he went straight to Debevoise, I think he went somewhere else first. But I remember somehow I talked to Joe and he got me that interview. I really can't remember. He had some connection with them.

SPY: Did you have any interest in working at a big firm in New York?

RJB: No. Of course big firms were not big firms then. Sullivan & Cromwell might have had 50-60 lawyers. You know. But let me tell you what really made my decision not to take the Mednes & Mount job. I came home at Christmas of '48. I was going to finish up in January and study for the Bar. I stayed with my Aunt Miriam in New York and I went to the PLI course, which was given down at Washington Irving High School. I studied for the Bar there. I really thought I'd be better off and my family would be better off if I went to Glens Falls. My sister was at Columbia in nurse's training. My mom was a nurse at the hospital and my sister Mary Jane had cerebral palsy and was living at home. So that's what I did.

SS: Did you live at home?

RJB: Oh yeah. That was worth 10 bucks a week. I worked for a firm called Carusone & Carusone. They were in insurance defense work. It was a wonderful first job for me because I immediately had dozens of files that I was working on. It would be nothing to go to a calendar call and have, in those days, 120 cases on for the day. Maybe our firm would have 20 of them or 30. It taught you how to juggle things. So that's how I happened to come back to Glens Falls as best I can articulate it.

SPY: You mentioned Mexico? What was that about?

RJB: Well, that was another part of my being sorry for myself because I wasn't in the service, I guess. It was uncomfortable not being in the service. When I put a pair of long pants on, I had hardly any limp. It was hard to explain to people why you weren't in the service. My best friend at Georgetown was a polio victim. He was a paraplegic. He was in a wheelchair. Dean Bascom. We roomed together and ultimately ran the newspaper there together. Dean got some information. Another classmate of ours, who practices law in New York, Frank Lopez. He is in Brooklyn. He was a Georgetown classmate and I don't know where he went to law school, Fordham, I think. Anyhow, we went down to the summer school at the University of Mexico in Mexico City. We were down there for ten weeks and I managed to get enough credits there so I didn't risk anything at Georgetown. That was a great experience.

SPY: What did you study there?

RJB: Everything. Obviously, Spanish. I took a conversation course, a Latin American economics course, and I did a paper on the tobacco industry. I sent that to Dan McCarthy because they paid for that, too, you know. They gave me the dough to do that. I knew

more than I ever thought I would about Mexican cigars which Churchill smoked. You know, his cigars were Mexican. I went down to Mexico as part of that project and had a great time.

SS: The friend that went with you, that was Dean Bascom. He was a paraplegic.

RJB: Yes. We got as far as St. Louis. I went out and took the Greyhound bus from Glens Falls out to western Wisconsin which is where he lived. We were ready to go by train from there to Mexico City. We got as far as St. Louis and he became ill. It's a terrible thing to say, but I was a bit relieved because the thought of being responsible for him was daunting. So I went on by myself. I met Frank Lopez when I got there. His grandfather lived in Mexico City. We ended up with a room in the same rooming house. A lovely old house on Calle Madrid right in the heart of Mexico City, just past Paseo de la Reforma. Paco and I had two small rooms. At the end of the hall, his grandfather had kind of a suite of rooms. That was a great experience. We were there that summer and I got credits toward a degree and I considered that a very broadening experience. Oddly enough, my interest has been in French as a second language mostly because of my 1950's experience. But that was all part of who I was and what I was.

SPY: You mentioned the newspaper.

RJB: Well, a little bit about Georgetown. You have to have in mind that Georgetown did not have a large V-12 program or a large A-12 program. It's fair to say that after the War the undergraduate program atrophied very severely. There might have been maybe a couple of hundred in the Arts and Sciences program and maybe three hundred in Foreign Service. It was very small. Of course, the student newspaper stopped publishing and one

of our professors talked to us about getting it going again. It had been a weekly, never a daily. I think it is a daily now, but I'm not sure. The name of the paper is The Hoya and that's the nickname of the team. We produced it for about a year and I think we might have gotten one out monthly, something like that. It was fun to do. It gave us a certain amount of liberty. Let me tell you why I say that. Georgetown was still a strictly run Jesuit institution. I lived in dorms all the time I was there and we had 11:00 bed check. Of course, if you weren't on the paper you could never get around if you went to bed at 11:00 so we had passes to get in and out pretty much as we pleased. A few times I can remember pushing Dean's wheel chair up the hill after more than a few beers down at Tihan's when we were supposed to be working on the paper.

SS: Why did you end up rooming with Dean? Was it assigned?

RJB: Pure chance. It was assigned.

SS: And you developed a warm friendship?

RJB: Oh very. He died a few years ago. A tragic figure in a way, very handsome guy who contracted polio. He was a year older than I. He might have been 15 or 16 when he contracted polio. He had been the star pitcher on their baseball team. His only brother had been killed in a tragic automobile accident, high school partying. There we were sharing a room together. We had a wonderful time together. Dean went to law school at Wisconsin. He went back to practice law in Green Bay and was elected Town Justice. He was elected DA of Washington County. Unfortunately, he got into some trouble and was disbarred. The family had money. I last saw Dean and Marge in Bolton Landing 15 years ago, probably. They're both dead now. They had a specially fitted van that he

could travel in. He never practiced law again, of course, but was able to get along without that.

SS: Did you maintain strong ties with Georgetown after you left?

RJB: Yes and no. One of my closest friends at Georgetown is in a nursing home as we speak. I just found out about that the other day. Remember Ed Crummey? Peter came to the Court of Appeals the other night where I spoke and he brought his dad Ed because his dad and I are old friends from Georgetown. Ed told me that Gerry McGuire is in a nursing home over there so I've got to go see him. Not today, but sometime in the next week or two. No, I have not been active in the alumni association. I contributed and I've been to a couple of reunions. I was planning on going to my 60th this year and they aren't having one. They are planning a multi-year in 2006 -- whether I'll go or not. The last time I went was very disappointing. Some guy said to me "you're Dick Bartlett." I looked at him and drew a complete blank. I couldn't remember the guy at all and it turned out we were in a class together. There aren't too many. It was a very small group, you know? You graduated when you got the credits together. I didn't come back for my regular graduation because I had finished one year at Harvard and I started to work for the summer. That's the year I worked at the mill. So I never went to graduation.

SPY: Because of the war years, people were probably coming and going.

RJB: Exactly. It was not a typical undergraduate experience at all, but one I remember fondly, frankly, in many respects.

SPY: How did going to school in the capital shape your view of government?

RJB: A little bit. I took a look at our Congressman and said I can do that job. I almost did, but I didn't quite make it. I got a job in the Library of Congress. I worked in the stacks there. It was a wonderful chance to study. You work from 7 to 10. There was another excuse I had for not making my 11:00 bed check. I worked in the stacks at night. You might get one or two calls all night. You had a station, you know. They used the tubes to order books. Sometimes you'd get no calls and could study for three or four hours there. It was a great way to pick up a few bucks. I think that interested me somewhat. I remember when the War was over but before that, when Roosevelt died, I was on Pennsylvania Avenue watching the cortege go by and Dean Taylor was our Congressman. He was from Troy. I can't remember anything distinguished he ever did but he was there for a long time. I thought at one point I was going to succeed him, but I missed by just a little bit.

SPY: Bob MacCrate was in law school with you? And who else?

RJB: Tom McCoy.

SPY: Boy, Tom McCoy. That's an interesting.....

RJB: Joe Arbash was in my class. Lou Crandler was in my class.

SS: He just passed away.

RJB: He just passed away. I had two of the Pan Am 103 cases, you know. They were handling them.

SS: Have they finally been paid?

RJB: I think we got our last payment. The deal was \$10 million per claim and they made two payments of \$4 million each, which were already way over anything we could have ever expected in the recovery of a civil case. And there was \$2 million remaining. And right now, we're in a pot and kettle situation where Libya says "we aren't paying until we're off the terror list, and since we didn't get off the terrorist list by the end of February, we're not paying because that was the deadline of the agreement." Actually it has been extended several times and it expires finally next week. Oh, last week, I'm sorry. It was the 20th. So I think that's gone. Hey listen, to have \$800,000 come in out of left field.

SPY: That's amazing.

SPY: Well you described before lunch what led you to go to law school. How did you pick Harvard?

RJB: I picked Harvard because my friend Preston Wright was going there. I had a conversation on the telephone with the admissions office. I sent them up a transcript and they told me they thought they would take me. I thought why not. I didn't have any money, then, either, but I had learned that there were jobs to be found as there were at Harvard, too. And there were student loans to be obtained. It was long before the elaborate program we have now, but so everything about Harvard sounded inviting and off I went.

SPY: What was Harvard like in those days?

RJB: A mad house. Keep in mind that the war ended in August 1945. This is the class that began right after Labor Day, in September, 1945. My first day in class, I had a brigadier

general sitting next to me in uniform. Tom McCoy was a colonel. He wore his uniform the first few days. I think it was just to let us know who and what they were, as it was they hadn't bought any civvies. Anyhow, it's all part of the game. And we had huge classes. There were 1,800 students in the law school by September 1946. They consisted of classes of about 300 each for each semester because they brought in students three times a year. It was a madhouse. Landis was dean when I first arrived. I never got to know him very well. I got to know Griswold very well, because I borrowed from the Griswold Fund. Wherever I could find a soft touch, I ran to it.

SPY: What was Griswold like?

RJB: He was a wonderful man. Gruff. It took me a while to warm up to him. I'll put it differently: it took him a while to warm up to me. But he became a good friend and I admired him very much. He was a brilliant guy. I took Tax from him, which was his field. He was not a scintillating classroom speaker by any means, but he was so sharp in give and take with students that, in the end, it was a very great learning experience.

SPY: What were your favorite courses in law school?

RJB: Well, my first year my least favorite course was Criminal Law, because a guy named Sheldon Glueck was teaching it. I nearly flunked his course. That was the only course at the end of the first semester in which we took an exam, so it was the only indication of how we were doing. Let me see if I've got the numbers right. They put a notice up that the grades were available for the first year students. We lined up in the library and someone was sitting at the table, took your name, and handed you an envelope. Paul Daly, who also had come up from Georgetown, was there with me. Preston Wright

wasn't there that day. I mean, he was there obviously, but we weren't there together. Paul and I went outside and opened our envelopes. Mine said "Criminal Law: 29." Now, I can't tell you the shock I felt. 29, what the heck were they talking about? They must have missed a page of my answer or something. They must have left out a book. It turned out that Criminal Law was half a credit, paired with Agency in the second semester. So, 29 was 58, and 55 was passing. But, still, I just barely passed the darn course. And how my colleagues on the Penal Law Commission used to kid me about that because I would tell the story fairly early on. They'd say, "No wonder you're a little thick on this stuff, you know." But, anyhow, that was not my favorite course. Lon Fuller taught a course in Ethics, which I liked very much. Torts was interesting. Ed Werner was a great teacher. He taught Civil Procedure. It wasn't called that. It was a very broad course, but it gave you a sense of the procedural side of the law. It wasn't designed to teach you the practice of any particular jurisdiction, which was true of all the survey courses. I liked Arch Cox's Labor Law course very much. He had just come from the NLRB and started teaching. That was a good course. We had no practice courses with respect to the court system. It was all appellate.

SPY: It was all substantive law.

RJB: All substantive. All appellate. I've forgotten the name of my team. All the clubs had names. I can't really remember now.

SPY: It's a moot court?

RJB: Everybody had to do it.

SPY: Was that an appellate argument?

RJB: Appellate. There were two arguments per team, and I gave one of them. That was a worthwhile experience. The preparation was, and the give and take among the members of the team putting this together was. I didn't have much of a social life in law school. I didn't have time because I had a job by the time I was there.

SPY: Where did you work?

RJB: The library. I worked mostly in the library. I also lived in Hastings, which was the dormitory, my first two trimesters. The next two trimesters I lived with the widow of an Anglican clergyman, Mrs. Rogers, who lived down on Appian Way. Her husband had been a rector of Christ Church which was the old original Episcopal Church right around Cambridge Square, and my job with her was keeping the furnace going, mowing the lawn, and shoveling the walk, for which I got room and breakfast. Not a bad deal. It worked wonderfully until one night the furnace went out. That was one of the most miserable nights of my life. I couldn't get that thing going again. I used every scrap of wood in the cellar. I was right at the point of bringing up furniture. It didn't quite get to that. But I couldn't get that darn thing going again. Finally, at about six in the morning, I got it going up. It was a coal furnace. I remember what happened. The fire was real low when I came in about 11 o'clock. So I opened everything up and threw coal in. I thought it would get roaring and I'll damp it down for the night. But I fell asleep reading. I woke up at four in the morning, colder than heck. My room was over a back shed, part of the second floor, but it was always a cold room. I rushed down to the cellar. Mrs. Rogers had her sister-in-law from Providence visiting her at the time, and don't think that

didn't run through my mind. Two old ladies die of the cold on Appian Way. I was down in the cellar trying to get that darn thing going. There was a back set of stairs that came into the kitchen, and then another back set of stairs by which I could get to the second floor. I was thinking I'll just sneak back up to my room and hope that thing gets going. I got to the kitchen. There were Mrs. Rogers and her sister-in-law with their coats on, their overshoes on, their gloves and hats, and Mrs. Rogers had a fork. She had left a dish of prunes out. She was chipping prunes out which had frozen. They were on the windowsill. "What happened to the furnace, Richard?" "I don't know, Mrs. Rogers, it just died... oh, I've got it going now," or whatever I said. Oh, that was awful. But we parted friends. I stayed that whole year. And she wanted somebody who was going to be there that summer, too, so she got someone else to do that job. I think she got either an undergraduate or another grad student of some kind. But we stayed friends. And I moved back into Hastings in the fall. I had sold my half interest in the Cape Cod, so I was flush with cash. I had made pretty good money that summer. So I just had the job in the library then.

SPY: Who were some of your friends at law school?

RJB: Oh, gosh, well, very good friends. Tom Carens, who just died last fall, who was a lawyer in Boston. Jim Perkins, who was a partner in a big Boston firm. Press Wright, of course, ended up practicing law in Niagara Falls at a good firm there. Tom McCoy, I continue to be friendly with. My social life was limited there. First of all, I was five years younger than everybody else. They'd all been in the service and I hadn't. Ross Perkins was in my class. We didn't know each other especially well, but became friends later.

SPY: Other than work, was there anything else you did in law school?

RJB: No. I worked. I studied. Oh, Preston and I took a couple of interesting trips together. A friend of his, Pete Steffens, his father was Lincoln Steffens, he had a convertible which we borrowed one weekend. We made an excursion up through Vermont, ostensibly to sell ads for the yearbook or some venture like that. But it was more an excuse than a reason. We had a great time. Then Preston started going with a girl at Bennington. So we made a number of excursions up to Bennington. For reasons that are not entirely clear to me now, I was sort of disinvited with respect to the Bennington campus. It had something to do with light bulbs being removed from hall lights and being put into a laundry bag, which were then thrown onto the truck to a great deal of pop-pop-pop Monday morning. Somehow they blamed Preston and me for that. I don't think, really, that was fair. We may have had something to do with it, but anyhow. We didn't go back to Bennington right away. But he ended up marrying Mary Heath, so it didn't all turn out badly. I didn't try to find law firm work because they paid you nothing. The bellhop job was the best one I had that summer. Then I had enough credits to graduate at the end of the fall trimester in '48. I was class of '49, actually. And I studied for the Bar in New York City. I became a member of the Harvard Club immediately. The reason I became a member was because when we finished our evenings down at the PLI course, Preston Wright, and three or four others of us, went to the Harvard Club to have a few beers. After I had my share on their tab for about a week, they got an application form and said "sign right here." So, I became a member of the Harvard Club without any idea of how I could ever pay the dues. I've been a member ever since.

SPY: How is law school taught differently now than it was when you were at Harvard?

RJB: Well, it was very much the Socratic method. When I started in Fall '45, the old adage “look to your right, look to your left, because one of you won't be here next year” was a fair statement. We had a very high flunk rate. Because there were so many veterans who had been out of school for quite a while, it was “two outs and you're out.” You come back and redo the second trimester. Paul Daly, one of my buddies from Georgetown, whose family had a very prosperous business in Providence, he flunked out. It was not because he wasn't smart enough, but he had no interest in becoming a lawyer. Dad said I want a lawyer in the family and that was the predictable consequence. He happily flunked, and his father made him go back and do a second semester again. That was predictable, too.

SS: He flunked again?

RJB: He didn't take the exam. He walked out of the place before the exams. So Paul was very happy in the real estate business in Providence until he died a couple of years ago.

The teaching was Socratic. You were called upon in class, and God forbid that you weren't prepared. You did not get a scolding, just a stony stare: “How'd that guy get in here?” The peer pressure to be prepared was pretty strong. I had Casner for Property the first year. He was an excellent professor. But he laid it out. There was less give and take in his course than in others. I had Bart Leach my first year. He was very good. Seavey, of course, was very much the Socratic teacher. It got less so second and third year, which is typical, at law school anywhere. Everything depended on one exam. There were no tests. You had nothing by which to measure your progress in the course of a semester, which was a bit scary. I did poorly my first year. I did average my second

year. I did well my third year. So I ended up with a respectable average. But based on that first semester, I could see myself being the dregs in the cup. It was a fun experience, it really was, when I look back at it. A couple of my partners went to Harvard. One of them hates the place and hates the memories. I don't feel that way about it. I enjoyed the experience. I certainly found that my training had been good when I got around to practice.

SPY: Were all law schools taught the in Socratic method at that point?

RJB: Albany less so than others at that point. They all got to that. And that certainly is the norm for the first year. It seems to me that it still is. It depended so much on the ability of the teacher to teach, as opposed to understanding his subject, which is a very different matter.

There were no women in the law school, by the way. The first woman was a classmate of Claire's at New Rochelle, class of 1950. So she started in the fall of 1950, when the first time women were admitted.

I had been out a year by that time. I took the bar exam in the gym here in Albany. There were three of us who came down from Glens Falls to take the exam: Bob Nolan, Bill Watson, and I. Bill and Bob had both gone to Albany Law. Bill had been a teacher in high school when I was a student there. He came out a lieutenant colonel, and went to law school. He was a wonderful guy. He was a bright enough guy, but law school never took. Bob, Bill, and I stood out in front of the school. It was in early March, just about 56 years ago and a few days. We got into a discussion about a particular essay question, and Bob said "I was so darn busy identifying issues I'm not sure I ever gave much of an

answer.” I said “I had the same problem. Gosh, there were all kinds of issues in that question.” Bill said “Guys, you missed it entirely. There was one issue. This is what it is. And I wrote exhaustively on it.” Bill was still taking the bar exam three years later. He ended up practicing law. He took it three or four times. But that one Bob and I both passed. We were admitted in June of 1949. We were numbers 49 and 50 in the Warren County Bar Association. There are now 240 lawyers there – but not that many more people. Business has changed. I went to work for Carusone & Carusone doing insurance defense litigation, primarily. I stayed with them with one break for five years.

During the spring of 1950, I became interested in the community ambassador program. I was active in the Young Adult Civic League in Glens Falls and they sponsored this community ambassador program with the Rotary. It was run through the Experiment in International Living in Vermont. It consisted of one or two people being selected to go abroad and be a community ambassador from Glens Falls, New York. I was sent to Balfour, France. Barbara Foster, who was a brand new Methodist minister, was the other ambassador that summer. She was sent to Israel and lived with a family there. The guy’s name was Moshe Dayan, the famous general. So we came back and talked to every church group, school group and service club. That’s how we repaid the community. We each had our own slideshows. It was a wonderful experience, and it sharpened my political appetite a bit. I spoke to everybody in town, every group. It also helped my law business very much.

SS: Had you been abroad, other than Mexico?

RJB: No. Canada, that’s all. I had been to Canada.

SPY: So, what did you do when you were in France?

RJB: I lived with Mme. Durr and her mother-in-law, and her children, Louis, Michel and Elisabeth. Louis was a year older than I and I spent some time with him. His wife is in terrible shape now. He's a retired chemical engineer. Would you believe that his field was pigments, so he knew all about Glens Falls and about chrome yellow, because we were a principal source of it. Michel was 15 years old when I was over there, nine years younger, I guess, than I. We've been very good friends, too. He just retired from the French Nuclear Energy program. He was the number 3 man in the program. They live in Lyon. We're going to see Renee and Louis too. They've been back and forth here. Michel used to come here fairly often, because, as you probably know, the French nuclear program is essentially the Westinghouse program. So he was back and forth to Westinghouse a lot when they were building new plants. As we all know, they are more nuclear than any other large nation and have had a minimum of trouble. That's not to say there isn't also risk, but a minimum of trouble. Michel ghost-wrote a book for the head of the Atomic Energy Program. He gets a little bit of a credit at the beginning of the book. In the book, he recounts the success of the French program, and why, in his opinion, it succeeded. He identified as sort of an excessive free capitalism here. We let every possible system compete and didn't settle on anything as being the preferred system. He said that's okay when you're manufacturing automobiles, but not when you're producing nuclear energy. They picked what they believed to be the safest process, and it's paid off. So we'll be seeing them too and one of their daughters, Emanuelle is a banker and she lives just outside Paris. Louis and Renee's daughter

Catherine is married to a country doctor, Dominique Rossin, near Dijon. We probably will not get to see her.

SPY: Did you travel around when you were in France?

RJB: Oh, sure! We were in Belfort which is a town of about 35,000. General Electric Europe was there. Bull, which is a big electrical equipment producer, was there. So that also had connections with Glens Falls. The pigment business, by the way, is not in Belfort, it's in Mulhouse, which is 40 miles away on the Rhine. That is a part of Germany that is sort of half French and half German. And of course the name Durr is Durr with an "umlaut," although they dropped the "umlaut" after World War II. There was a great French woman tennis player, Françoise Durr, she was a world champion for a time.

That summer I was with a bunch of young people. We were part of the group. I was the only community ambassador. The rest were just seeing France as part of this experience. I got to know the Deputies from that area. One of them was a very good lawyer and he took me to the appellate court on business a couple of times. I spent a little time in the local court there. I got to know the Mayor, with my credentials as community ambassador. It was kind of fun. It was a great group of young people. We were the oldest group of the experiment program, so they were about my age, some a little younger. But a good part of the program kids were out of high school. Apart from spending time there, we took a bus, we took a bike tour, where we biked to the region. For example, we took the train from Balfour to a French town, the name of which escapes me, just south of Geneva. We biked from there down to Nice. That took about a week or so. And then we were in that area for a while. We biked across to San Raphaël and got

on a train there, which took us to Carcassonne. Then we biked around the Carcassonne area. We took the train again up to Toure, and biked the Loire Valley. We then ended up in Paris at the end of the trip. Then Louis and I took a separate trip to Italy. We borrowed some money. It's amazing – I had enough to pay for the two of us to go to Italy for a week. We had a great time. Then we became very dear friends, of course.

SPY: What was the role of the community ambassador?

RJB: Not much. It was pretty much a chance to get to know their culture, their political institutions and their family life, and then go back and talk about them. I had zero ambassadorial responsibilities in Balfour except being taken to meet the Deputy and the Mayor of the town, and a couple of ceremonies I went to. Not much. But it was a great experience.

SS: How did they choose France as the place that they sent you? Was there some connection with Glens Falls?

RJB: No! That was being picked by the experiment, rather than by Glens Falls. There were other community ambassadors in Europe that summer. Not in my group. I was told when I was leaving, you're going to be the community ambassador for Glens Falls, New York to Balfour, France. They told me about the similarities. Belfort is a lovely town. It was at one time a little independent duchy, you know. There was a big siege there in the war of 1870 with the Germans. The dominant architectural feature there is the remains of an old fortress, up on a height. There is a carved lion, just outside the fortress walls so you can see it from all over town. "Leon de Belfort." That was sort of the identifier for the town. It was a great experience.

SS: Did you have any residual pain or impairment from the injury to your leg?

RJB: Yeah...

SS: I was thinking about your bicycling.

RJB: Oh, the bicycling didn't bother me a bit.

SS: Didn't bother you a bit?

RJB: Our bikes had toe clips. I had to take mine off, because I had to get my heel down on the pedal. You make little adjustments like that. I had no trouble biking all over the place. I've done mountain climbing. I've hunted all over the North American continent.

SS: You play tennis too?

RJB: I play tennis.

SS: Yeah.

RJB: Yep. I play kind of a ragged game of tennis these days. But no, I've been very blessed. I spent two years in the Air Force in Korea.

SPY: But tell us you started at the law firm in what, 1949?

RJB: Our firm?

SPY: Yeah, you started at Carusone...

RJB: I started at Carusone in '49...

SPY: Then you went in the war in '51...

RJB: As I said, I had some interruptions. I spent the summer of 1950 in Europe. That's when the Korean war broke out. Would you believe, those rats who were in the draft board read my account in the paper, because I wrote to the newspaper every week. In fact, sometimes twice a week I did a column. He said, what's that guy doing in Europe without our permission? At the time, the rule was if you left the country you had to let the draft board know. The last thing I thought about was the draft board. So, I called my mother. Mother was very upset. She gets a hold of Dave Robertson who's a local lawyer and was a good friend. They said you'll show up in September, show up at our office, and I did. They sent me down for another physical and, son of a gun, the guy, the orthopedic guy, he had glasses like the bottom of a coke bottle, really thick glasses. He said, son, walk up and down there again. Gee, you had a marvelous result from that 1A.

SS: Oh my goodness.

RJB: So I was going to be drafted. Age 24. I didn't have the slightest interest in serving in the military at that point, but I would've killed to be in it in 1943.

SPY: And why the difference?

RJB: Who knows?

SPY: Why the difference in your outlook?

RJB: Oh, because my generation had been in their war. It wasn't that I was resistant to it. In fact I didn't. What I did was to get on the phone and find out what Judge Advocate

General opportunities there were. I got a commission in the Air Force, Judge Advocate General's Corps, in November, and I reported for duty in late January. I spent two years in the Air Force. I spent a year at Mather Field in Sacramento, California. I had a wonderful experience. I was trying cases long before I ever got to try cases at the firm. Then I spent a year in Korea. The only sad part about that is Claire and I had just gotten married, and I really thought I was going to Tokyo. But as it turned out, I was assigned to K13, which is an Air Force base in Suwan, Korea. I spent a year there. It was another learning experience. When I was a First Lieutenant I got a combat zone promotion to captain. I was the principal legal officer for the Eighth Fighter Bomber wing at age 25. That was pretty heavy stuff.

SS: Do you remember how, when you were dean at the law school, you parlayed that experience into getting a certain judge that no one thought we could get to come up and speak.

RJB: Yes! That's right! I do remember that.

SS: Yes. Because he had served also.

RJB: He served with Judge Avins? That's right.

SS: The court is CAFCA, Court of Appeals, Federal Circuit.

RJB: Yeah.

SS: Chief Judge Markey.

RJB: Yeah. Great guy. So anyhow.

SPY: What kinds of cases did you try?

RJB: Desertion. Murder. One huge grand larceny case. The staff sergeant running the officers' club was running it alright. It was like his private fiefdom. When I was at Major Field, I did primarily defense work. That's what they do with new guys. I defended a major who was charged with rape – a date rape sort of situation. That was an interesting case. When in Korea, I had a dual role. I was the only legal officer for the whole wing. The Eighth Fighter Bomber wing flew F-80's which was the first jet fighter. It was not a successful jet fighter. So they quickly converted it to fighter bomber. They thought it could carry 500 pounds of bomb under each wing, and a full canister of 20 millimeter. So they were low attack, low bombing close support with a very high attrition rate, I'm sorry to say. So I lost a lot of buddies in that year. I was the general legal advice guy for the wing because you got to fill your hours over there. I also assisted in debriefing with the intelligence officer after flights. I was the prosecutor for the General Court Martial for the Fifth Air Force for about six months of that year. I went to other bases and tried cases. That's where the heavier cases occurred during about eight months actually. I got over there late winter, and I was into that, within a few weeks I would say.

SPY: Were you sort of trying cases from the seat of your pants?

RJB: A bit. Although the first prosecution depends so much on how well the case is prepared. That went all over the lot. Some military police did a perfectly wonderful job. I had one investigator, he was out of the Fifth Air Force but he spent a lot of time at K13. He would've been in the state police, I think in Wisconsin. He was a very experienced

investigator. He had been called in the reserve, and got called back, so he was a retread. He was very good. So, that's what the quality of cases depended on – how well they were investigated. I got reversed a couple of times, with the convictions thrown out. Then I was involved in the defense of a black airman who was charged with murder, killing another airman. It was a fight over a girl friend in a nearby village. He got fifteen to life. He was really a sad sack, not very bright. This other guy was trying to muscle him with his Korean girlfriend. He wasn't going to stand for that so he shot him. We had that happen in Glens Falls here in the last week.

SS: Yeah.

RJB: Very similar, if I think about it. I followed his case and it was finally reduced by the Civilian Court of Military Appeals in Washington to something like involuntary manslaughter. He ended up doing three to five, or something. It was that kind of case. You got summary court martial for falling asleep on post, other minor stuff.

We were quite a way behind the lines, and occasionally there'd be an infiltration of our outer perimeter, but it was for harassment purposes. It didn't amount to much. We had a couple of air raids at our base, but air raids consisted of a bi-plane coming down and releasing a couple of hundred pound bombs. I don't know if anybody ever got killed, but they'd kind of make a mess of things through the night at least. I would not say serving at K13 was a high-risk job.

SPY: You weren't directly in harm's way.

RJB: That's right. But it was overall a great experience, another broadening experience. It gave me another dimension as a lawyer. And I came back to Glens Falls.

SPY: And where was Claire when you were in Korea?

RJB: Claire was in Glens Falls. She was with me in California.

SPY: But not in Korea.

RJB: No. And I fully expected I was going to go to Tokyo, in which case she could have come over.

SS: Can we back track? You never told us about any girlfriends all the way through Georgetown, Harvard Law.

RJB: Well, yeah, I had girlfriends. I went with one girl from Glens Falls for a number of years. Margaret Doire, who is still in Glens Falls. I see her occasionally. Her brother married Claire's best friend, so we have a little bit of a connection there. She was the prom queen in 1943 – the year I graduated.

SS: Did you think you were going to marry her?

RJB: I thought so at that time. Well, I mean, yeah, I guess so. We dated back and forth some when I was in Georgetown – when I came home for holidays. But I didn't go with anybody on a regular basis in Georgetown. I had several different gals I went with in law school. The usual Cliffie.

SS: But nothing serious?

RJB: No, I wouldn't say so. I was going very seriously with a gal when I met Claire. She married someone else and is in Glens Falls now, or living near Glens Falls. We broke up after I met Claire.

SS: You met Claire in France?

RJB: No.

SPY: When you met it was 1950 you said, right? Summer of 1950?

RJB: 1950.

SPY: When you came back from France?

RJB: I came back from France, and Louis Carusone and Loren Goodson started teasing me about this gal who was in France too. She was in Europe too. Over there, wherever that was. We must have some common experiences to talk about. So I saw her outside church one day and went home and called her up. That was in the Fall of 1950. We were engaged right after Christmas. After about 10 weeks I would say.

SPY: And where was your first date?

RJB: First date was shooting darts and drinking beer at Breen's Tavern in Glen Lake. I remember very well. It was that Sunday. Dick Anderson, my best friend at that time, had a date with another gal. The four of us went up there. I found out Claire couldn't shoot darts worth a nickel. She got better. That was kind of a hang out. That was our first date. Glen Lake was just five miles from Glens Falls.

SPY: What was Claire's background?

RJB: Claire grew up in Glens Falls. Her dad was a very successful business man, who died when Claire was 14. He had lung cancer. I never knew him. Everybody knew him as Case Kennedy, cause he ran TJ Kennedy, which was a beer distributor. It was a tobacco-candy distributing business. He manufactured cigars, oddly enough, in the early 20's. Then after prohibition, he got a Schlitz distributorship, so that was a major part of his business. Claire grew up there with one sister. Her parents were older. Ernest was 45 when Claire was born, and 40 when Jean was born. So her parents were older. I go by their old house everyday on my way to the office. It's right between where we live now and the office.

SS: Her family approved of you?

RJB: Yes, for some strange reason. They weren't quite sure whether I was a Catholic or not, you know. They were very suspicious about that. I hadn't gone to St. Mary's. I was part of that other crowd, the high school crowd, public school crowd. But our mothers became very good friends. My Aunt Mary, when she retired from teaching in New York, bought a house right around the corner from the Kennedy house, so she and Bernice became good friends. So I guess in the end they approved.

Claire and I were in California together until I was sent overseas. I remember waiting at the base in Tachakowa, at the pay phone. There was a big line to call home. That's when I had the piece of paper in my hand saying that I was going to Korea and not staying in Japan. We really were expecting her to join me. But that's life. We sent quite a lot of letters that year, a lot of letters.

Then when I came back. I went back with Louis. My self-confidence had grown. I guess I chafed a bit because I was really the boss, the Eighth Fighter Bomber, boy, I ran the legal office. Our Commanding Officer was a Colonel who was a good friend. We took trips together. And I thought, when's it going to be that I'll start trying cases. They let me argue appeals. I was in the Appellate Division my first year of practice. I did a lot of motions, but not jury trials. I finally got a jury trial after I came back from the service. I picked up a plaintiff's case and I said my client wants me to – of course I prompted her a bit to say this – but my client really wants me to try it. And they let me try it. It didn't go to verdict. I settled it on decent terms, after a couple days of trial. But then I decided I really wanted to try cases on my own. So I did and opened a small one-person office, with one secretary.

SPY: And what year was that?

RJB: May 1954. I take that back, it was October 1954, not May. A couple of years later, John Dier joined me. He had gone to Albany. He was a classmate of Jeff Walsh's. And we practiced together.

SPY: How did you get to know John?

RJB: Local guy. Father was a doctor in Lake George. John was an associate in another insurance defense firm in Glens Falls. He is a bit younger, not a lot. And we became partners. I think our partnership started out 75-25, and then up to 60-40, I think. I was doing more and more litigating. I had been elected to the Assembly. That took place in 1958. I had a hard primary fight. A three-way primary, which I won with 42% of the vote. That leaves 58%, doesn't it? 18 and 40, that's what it was.

SS: Wow. Did you have to get the backing of the . . .

RJB: The organization? No. In those days, I say, no. The County Chairman was for me. And he contributed a hundred bucks out of his pocket to my campaign.

SS: Was it his idea that you run?

RJB: No, no, it was my idea. Yeah. I decided I wanted to get into politics, and the Assembly seemed like a good place to start. Our Assemblyman, Stuart Holly, was an older guy. Good friend. He had been County Clerk. He was not terribly effective but was well regarded. He decided to retire, and encouraged me. I ran against two other guys in the primary and won the primary. Then I won the general election. Then I had a primary the second time I ran in 1960. I didn't have a primary after that. But I was elected to the Assembly in '58, '60, '62, '64 and '65, because we had to reapportion it. So we already served one year in '64. Then I left and ran for the Constitutional Convention. We had gone from majority to minority and I can tell you there is a whole world of difference between serving in the majority and the minority. The minority was not a happy situation. Even though I didn't suffer as much as some people did, because I had a very good relationship with Tony Travia, the Majority Leader. He was supportive of my continuing to serve in the Penal Law Commission, which I did. But anyhow.

SPY: What drew you to run? What inspired you to run for Assembly?

RJB: I was itchy to get into politics I guess. The Assembly seemed like a good place to start. There were those who thought that I should have started in a lower realm. I hadn't run for office before but I had been a Committeeman. I looked around at the other people

who were talking about replacing Holly, and I thought I could do as well or better, so, I ran.

SPY: You were 32. Is that young to be an Assemblyman?

RJB: Yeah in '58 I was 32.

SPY: Would that have been young to be...

RJB: Yeah, I was second youngest in the Assembly when I was seated. But the other guy was 30, or, you know, a little bit younger. Yes, I was young.

SS: How come you had a good relationship with Travia, when you were from different parties?

RJB: Because we liked each other. I got along well with him. I played a role in his becoming Speaker. What happened, this is a little bit ahead of ourselves, but in 1965 in the election of '64, it was Goldwater, we lost both houses. And Joe Zaretski was elected Democratic Leader in the Senate. Tony Travia and Stanley Steingut were head to head in the Assembly. Stanley was from the old crowd. His father Irwin had been Speaker, so he was the old crowd. Tony Travia represented to my mind a better choice. The other Republicans finally decided to fight with Rockefeller, with Rocky's full understanding. We decided the lesser of the two evils was Tony.

SPY: How was it that the Republicans came to vote for the leader?

RJB: The Speaker is chosen by the majority of the votes of the House. They couldn't agree in their caucus, so it came to a vote with the Republican votes voting for Tony. I'm not sure it's ever happened before or since.

SS: No.

RJB: But, I made a speech. I wouldn't say it was for Tony, but in a way it was. I chided the Democrats for their inability to agree on their own leadership. I said that time is running and that we're getting into the session. We're not going to let the whole session go by permitting you to hold everything hostage to your stalemate. If you don't decide for yourselves who your leader is going to be, we'll decide who your leader is going to be. It was clear we were going to throw in with Tony. But I got along well with Tony. After he was elected, he asked me to come and meet with him. He told me that he would continue to support me as Chair of the Penal Law Commission. I'm not sure if he had said I'm not going to support you, what that would've done. I take that back. I was picked by Rocky to be Chair, but I was picked by the Speaker to be a member. So it would've made a difference, sure. He could have replaced me, and didn't. And I stayed as Chair until we disbanded in 1969.

SS: What was your relationship with Governor Rockefeller?

RJB: Good.

SS: And how did you develop it?

RJB: We were running together? I was running for a little piddly Assembly seat in Warren County, when he first came. But I met him before he got the nomination. Our County

Chairman was an interesting fellow, his name was Earl Vetter. He was in his early 80's. Very energetic fellow. He had a hardware store in Chestertown. It was no big deal for him to be Chair, except he loved being Chair. His natural inclination was to favor Ozzy Heck. Ozzy was from Schenectady. He was the Speaker. He had a summer place at Lake George. He had good relationships with the Warren County crowd. But I remember Earl saying, you know, I don't think if Ozzy got the nomination for Governor, I don't think he'd beat Harriman. We got to find somebody to beat Harriman. Malcolm Wilson is the one who know Earl, because Malcolm kept his tentacles out all over the state. He persuaded Earl to call together the leaders of Warren, Essex and Washington Counties to meet for a luncheon with Nelson. Malcolm brought Nelson up and introduced us to him. Nelson gave a very credible talk, and we came away committed to Nelson. Of course, I ran into him on the campaign trails. He came back to Warren County as the candidate, and I was the Assembly candidate, having won the primary. The primary that year was in August. When I got to Albany I was full of myself. Of course, Ross Perkins was counsel to the Governor, and Bob MacCrate was first assistant. I know both of them. We became colleagues in a way. I got to know Nelson better.

There was a Senator named Dan Albert who was from, I think Nassau County. I think he was Chair of Judiciary, or Codes. It was his idea that we needed a Penal Law Commission. The last time the Penal Law had been systemically changed in its organization and content was with the Field Commission in the 1860's or 70's. So there were 80 years between then and there. Dan really had the idea. He had decided he wasn't up to being Chair, and he started promoting me. I was on the Codes Committee, and I had been pretty active on the floor of the Assembly. I had carried some

administration bills and, so I got to know the second floor crowd a bit. Judd Morehouse was then the State Chair. I knew Judd from Ticonderoga. All those things combined to get me some recognition, I guess. Anyhow, in 1961, Bob MacCrate called me and said Joe Carlino is nominating you for the Penal Law Commission. He said that the Governor would like you to be Chairman. I said how does that happen? He said Joe Carlino has agreed to nominate you as one of his appointees, and the Governor is going to announce that you're his choice for Chair. And that's how it happened.

SS: Wow. Before that, had you seen yourself as a legal expert in the penal law area?

RJB: No! I saw myself as somebody who could do the job, it wasn't because of any...

SS: Natural inclination towards...

RJB: No. Not, certainly not in the penal realm. My main private practice was not criminal. I had had one heavy criminal case at home, that I could think of, in Glens Falls. I had spent two years in the military doing essentially criminal law. But no, I didn't. I quickly agreed with Dan Albert, that this area desperately needed reorganization. The Penal Code, as they called it then, was so filled with trivial stuff, I mean, like you can't drive cattle in the street at night unless someone proceeds you with a lighted lantern. Those are the kinds of things we took out of the Penal Law.

SPY: What were the main influences shaping the penal law?

RJB: Herb Wechsler. I would not call him the father of the Modern Penal Code but he certainly was the second generation father in respect of the earlier work that had been done by others, but in terms of finally putting the penal law together. Herb was the

guiding genius. He was a very important influence on the Penal Law Commission. I came to like him and admire him very much. And I respected him. I am still in touch with his widow, Doris, who is still alive in New York. We had just a great bunch of people. Tim Pfeiffer was the vice-chair. Tim was a partner at Milbank Tweed. He had been a Rockefeller lawyer. He did work directly for Nelson when they were putting the Rockefeller Center property together and has some good stories to tell about that. Pfeiffer was a charming guy. He was a bit older. I was the youngest of the group by quite a bit. Apart from that, Tim was older even among that group. He had played at Princeton when Ham Fish Senior had played at Harvard. So you can see the vintage. They were on opposing lines at that time. I first met Tim Pfeiffer for lunch at the Ford Orange Club. We hadn't known each other. He had a summer place up in Cattaraugus County somewhere. His wife was from there. He was coming back. So we took the train. We met for lunch here. We were going over the list of who was on the Commission. He knew Herb. I don't think he knew anybody else. I guess he knew Whitman Knapp, he probably knew Whit. He said now let's see, I assume, I know Herb is Jewish. I said yes. And Nick Atlas is Jewish. I said I'm a Catholic. Bill Mahoney, Walter's brother was on there, and well, Bill is a Catholic. Frank Hogan came on later. Anyhow, there were nine members of the commission. And there were four Catholics, three Jews and two Protestants. And Tim said, well, who's the other Protestant. I said Howard Jones. He was a black assistant counsel to Nelson. He said well that's fair enough, one black, one white. And they're the only two Protestants in the initial group. But Tim was a delightful guy. Of course, the real genius of that work was the wonderful staff we all put together.

SPY: Who was on the staff?

RJB: Let me tell you how I got to the staff. Of course, it was big news in Glens Falls that I was going to chair this Penal Law Commission. And one of the first people to call me up was Jay Hurley. Jay was a Supreme Court Judge, and a former prosecutor. He called and congratulated me. He said you know, I'm a very good friend of Frank Hogan's if you need any help there. I said well, I've got to find a staff, and I hadn't been given any direction. It was amazing. I remember it was either Perkins or MacCrate, I've forgotten which because I've dealt with both of them, saying well, we have to go find the best staff possible. It was a pretty healthy appropriation as far as commission funding went. So anyhow, I ended up talking with Frank Hogan. Frank said that his Chief of Appeals was an absolutely brilliant guy who was a little burned out in his job, so he thought he was really looking for a new challenge, his name is Dick Denzer. So I hired Dick as Chief of Staff. Pete McQuillan became number two. Another very very bright guy. And not too long after that, then we had a couple of other, Charlie Torcia came from Dickinson Law School. And Arnold Hechtman, I don't know where we got Arnold. So, then Dick and I agreed we should find somebody to focus on the sentencing provisions, and maybe also get involved with the procedural law. That's when we got Peter Preiser. Preiser had worked for Denzer at Hogan's office. He had gone out with a firm, I forgot the name of the firm now. For a while he was with Charlie Poletti who was Lieutenant Governor and he took Lehman's place as Governor. Preiser worked for him. He did mostly PSC work. Pete worked for him for a while, then he went with another firm. Then I got him to do the sentencing part of the Penal Law. He never joined our staff in a full sense. He always practiced a little law on the side. He manages to do that to this day, I think.

Except for that one period while he was Commissioner of Corrections, he's always managed to have a client or two. Anyhow, Pete did a marvelous job. The success of our work is in no small part the quality of the staff. And Herb Wechsler being our inspiring genius, really.

SPY: It started out with the penal law and then decided to move onto the procedural side?

RJB: The charge of the Penal Law Commission was to redo, revise, simplify and modernize the Penal Law and the Criminal Code. Special attention was called to the capital punishment issue and the McNaughton rule issue, the insanity defense. So we issued separate reports on those. Capital punishment was dealt with separately from the main Penal Law. McNaughton ended up being dealt with as part of the main Penal Law. The organization of our work is largely dependant on the Model Code and a very rational organization. That's one part that's been retained to this day. Some of the really important definitions at the beginning have been retained. But the sentencing structure of course is barely recognizable now. With all the add-ons, with all the hate crime add-ons, raising something that a degree because the victim is this, that and the other thing, something I never agreed with. Murder is murder and assault is assault and shame on you for doing it because the guy is gay or a woman is lesbian or whatever. But, it's still murder and it's still assault. I never felt raising a degree was in any way protective of anybody. It all has to do with political correctness I'm sorry to say.

SPY: That's what's doing it.

RJB: We handled the death penalty by agreeing that we would have a special study done. I have a copy of it with me. We held hearings on the death penalty in New York,

Rochester and Albany. And, then we took a poll as to where we stood. At that time there were 12 members of the Commission – it had gone from 9 to 12. It was 8 for abolition, 4 for retention. Herb drafted the language for the majority statement and Howard Jones drafted the language for the minority statement. We recommended abolition and greatly over-simplified it because . . .it's my rationale at least because I came from I testified a month ago before the Assembly Committee. I put it this way -- I know that I didn't have a strong position on the death penalty and I had probably assumed that there was good reason for it because it had been around so long, part of the fabric of our Penal Law since the beginning of recorded time. So, I assumed that it was well justified. I concluded that whether or not we should keep the death penalty depended on the burden of proof – how you assign the burden of proof. Because if the proponent had the burden of proving that the death sentence is uniquely effective as opposed to a generally effective deterrent to murder, they can't prove it. If on the other hand, those opposed to the death penalty before abolition, they have to prove that it is not a uniquely effective deterrent, they fail because they can't prove it. I decided that with all of the shortcomings and the perfectly awful consequences of the State which we've seen so much evidence of, getting the wrong person, the burden should be on those who want the death penalty and that can't sustain the burden. That's what I came up with.

SPY: But, the Commission was somewhat ahead of its time. Was that within the mainstream view of the death penalty at that time?

RJB: The death penalty has been cyclical in its use in this country. We had a big spurt in the '30s. Then it seemed to decline. But that was true of punishment generally. When Dewey was governor he adopted what they called the Baumes laws. It was sort of 3

times and you're out. It was a life sentence based on repeated felony. And then, one of the 3 repealed that and got it back to a sentencing structure that had more flexibility. Of course, any time you have more flexibility in sentencing structure, people get uncomfortable. They say, you mean some judge is going to decide whether this guy . . . and the answer is yes, a judge has to decide that. But, yes, I would say that we were a bit ahead of our time, not a whole lot. The last execution in New York had been Mays, not Willie. Mays, was executed in 1963 and the execution before that was Wood, a real nut who was paroled from a life sentence and went out to kill somebody. Talk about a death wish. He decided it was best not to appeal. As he was going to the chair he turned to the spectators and said "Gentlemen, you are about to watch a very interesting experiment. The effect of electricity on Wood." Of course, he was frizzled within minutes. But any how, we held hearings and the hearings were interesting. How instructive they really were I'm not sure. Charlie Breitell gave a wonderful, wonderful testimony in opposition of the death penalty. And you know, a mark of Charlie's greatness . . . he was opposed to the death penalty all of his adult life – on policy grounds, it wasn't worth it. It wasn't worth all the elaborate process and the delay between the commission of the crime and the final execution. How you can talk about the deterrent when nine or ten years go by, people don't even remember the circumstances or where they produced them. He gave that testimony and then 1967, while I was Chief Administrative Judge and Charlie was Chief Judge, he wrote the dissent in *People against Davis* in which the majority of the court found the then statute unconstitutional and he found it constitutional. He put a footnote in the opinion. *People against Davis* is well worth reading Steve. He said in the footnote, I've been opposed to capital punishment all my adult life as a matter of public

policy and remain so convinced. But that had nothing to do with whether or not this provision is constitutional.

SPY: So Breitel.

RJB: Pure Breitel. Isn't that wonderful.

SPY: How did you first meet him?

RJB: When Herb Wechsler said, you know Charlie Breitel would like to testify but if I may suggest it, a call from the Chairman might be in order. So I called him. I didn't know him from Adam.

SPY: Was he in the DA's office?

RJB: No, hold on. Charlie was counsel to Dewey. He went from the DA's office to private practice for a short time with Dewey. He then became counsel with Dewey. It took two tries on Dewey's part to get him on the Supreme Court because the first time he appointed him to fill a vacancy he was defeated in the general election. He ran as a Republican. The next time he got cross-endorsements and was elected. After he testified, we got to know each other through that. He then grabbed me one day and said, Dick, I got a fellow who wants to join the American Law Institute and I need a second. He says he knows you. I did know him. It was the guy who was the director or president, whatever they called him, to explore criminal justice at SUNY and Dick somebody. I can't remember his name. Anyhow, Charlie proposed him, I seconded and then we started seeing each other at ALI. I mean, I never really met Mr. Breitel until much later. Then in the fall of '73, when I was running for Supreme Court, Charlie was

running for chief judge. So we appeared in programs together a couple of times. After I was elected he asked Dave Peck to head up a committee to look for the right person for the new Chief Administrative Judge or administrator or whatever. The committee did interviews and they ended up recommending me. I think MacCrate had his hand in that too, frankly. He shaped my life in a number of different ways.

SPY: Let's go back a minute. Were there any other controversial issues in the Penal Law Commission.

RJB: Oh sure. There was the issue of whether or not there should be grand jury reports, grand jury presentments. We had proposed a statute which was adopted before the Penal Law which authorized under limited circumstances grand jury reports with a mechanism for challenging them. The imposition of the death penalty was dealt with separately in an act in 1963, in which there was a two-stage trial where the guilt and penalty were decided separately. It set the stage in New York for two stage trials which exist to this very day or at least to last summer that was decided.

SPY: No other big issues?

RJB: McNaughton. That was a big issue and I'm not sure we got it right yet - defining satisfactorily the defense of insanity. The landscape seems to change from generation to generation and it's hard to find the right words that will always work. It used to be you didn't know the difference between right and wrong by reason of insanity. We've broadened that. Instead of insanity we use the words "by reason of mental disease or defect." We really adopted pretty close the Model Penal Code, not precisely. That was controversial. We did away with the Baumes laws as I said. Oh, a very controversial

thing was the defense of justification. That occurred late in our work but it became very controversial. Under what circumstances you can blow somebody away right in your home. I had been aware of a terrible tragedy in upstate New York, and I must say it stuck in my mind, where a son in the family got drunk one night and tried to sneak into house. He climbed up on the porch roof and was about to come in through the window and his father blew him away, shot gun, dead. Every time you hear the leaves wrestle you can't fire your gun, you know what I mean. It's a very tough issue though. Because my home is my castle is an important concept of Anglo-American jurisprudence. We got into a nasty struggle over that. There were two newspapers in Buffalo at that time, the Buffalo Courier Express and the Buffalo Evening News. The Courier Express was after my hide on that. Bartlett ought to know better, since he's an upstater. The Evening News defended me. I wasn't even sure where I stood on it. But it got a lot of attention. The Penal Law got past the Senate quite handily. That was largely due to the support we got from Earl Bridges and Warren Anderson. My own senator at that time was Nate Prolic. He supported us. We had some very vehement opponents. Mostly upstate republicans. Dale Volker's father, Jules Volker, sort of led the opposition in the Assembly. We had a big to do about adultery and consensual sodomy too. Two amendments were offered to the Penal Law to restore adultery and consensual sodomy as crimes. And I could only get 19 votes including my own to keep consensual sodomy out. The big gender issue hadn't occurred yet. We barely kept adultery out as a crime, like, I'm just guessing now, like 79 to 74, something like that. It was very tight. We didn't get too many votes. I went to the phone after the vote. I promised Herb I'd call him and I got him at home. I said, Herb, the bill passed handily except we won one of the amendments and we lost the

other. I told him what happened with consensual sodomy and adultery. It was a long pause at the other end of the line and he says, well, that figures. There are a lot more of us than there are of them. But, anyhow . . .

SPY: The process of putting the Penal Code together goes through this commission process but that's really the beginning of the process. How do you get it passed in the legislature?

RJB: Well, it's a lot of work. I can say with my major legislative work from '63-'65, my last year in the Assembly was '65. It required a lot of bridge building. Sometimes just persuading people not to say anything. Okay, go ahead and vote for God's sake, but don't get up and oppose this. One of my best friends in the Assembly, Dan Becker, was one of my strongest opponents. Let me take a little break. There's the capital punishment report. This is actually produced by my law firm's staff. I think that they just made up a book about it.

SS: Robert Stewart.

RJB: That's my partner.

SS: Yeah.

RJB: Yeah. He died you know.

SS: No, did he really, oh?

RJB: He must have known more about his condition than he was letting on because he retired. Of course, Danny is our godchild.

SS: Yeah, I adore Danny. Give him my love.

RJB: I will, I will. Bob and Maggie were down in Florida sailing. They just drew a 20 footer down and she was looking in the sailboat one afternoon down in Key Largo. He said he wasn't feeling too well and went to lay down. He had a massive heart attack while he was taking a nap. Okay, I don't know where we were.

SPY: Can you describe for us what techniques you used to get a bill passed? Especially something as comprehensive as the Penal Law. Is it true, some of it is persuading people to do what they don't want to do, some of it is persuading people not to take a position. But, how does that work?

SS: Hey, how much of it is personality and your natural ability to convince?

RJB: Well, it comes down to a kind of salesmanship of course but you know so does appellate argument come down to salesmanship. It's persuading. I mean, the books are there for all of us to read and the cases. It's very, very unusual in an appellate argument that both sides aren't telling you the same case means something different. It's a matter of presenting it in a light that's favorable to your position. It's advocacy, that's the nice term for it, but salesmanship just as well. In the legislative context, first of all, it's getting to know the people in your house and building a network of sorts so that you're not just talking to your own people. The kind of stuff that I've dealt in wasn't gonna be passed by a Republican majority. We didn't have the majority. We had lost it by then. See, I was in the majority in '59-'63. But '64 and '65, we're in the minority. Tony Travia was Speaker. It was in '65 when we passed these bills. In terms of the Penal Law, it was very important not to paint this as a Republican proposal or a Democratic proposal. It's a corny expression but I've used it so often, "Good government is good

politics and good politics is good government.” Persuading people this is really in the public interest and that it’s fair. People will know more certainly what it is they can’t do without being prosecuted for criminal behavior. Having a rational, organized framework for the sentencing of offenders when they are convicted. Having adequate safeguards for the personal liberties which have been enshrined in the American concept of freedom from the Declaration of Independence. There are probably some things I’m leaving out of this description. Was it networking? It started with the Assembly Codes Committee. I can’t remember. I have to go back and look because I’ve got all those records. But my guess is that I had three quarters of the Codes Committee supporting this project from both sides of the aisle. I know Danny Becker was one who didn’t but starting in the Committee and then trying to isolate pockets of opposition and urging them not to vote against the whole bill because it did so much -- because they’re unhappy with this little corner of it. That’s the part we encouraged them not to let their feelings about whatever was bothering them color their view of the whole project because the project is so much bigger than that. I remember telling one person, it may not have been wholly honest intellectually, I hope it was, but I remember telling him that nothing can fix that leak. You don’t want to let the whole thing go down the tube because of . . . I can’t remember what the issue was. It was Charlie Henderson. But he voted against it anyhow. I remember trying to use that argument with him. It takes two houses to get a bill passed. As I said, I had wonderful help from the other house. Just to show you, in 1968 the committee was still Bartlett, Chair and Pfeiffer Vice Chair; Charlie Rangel, the secretary; Hy Barshay was a Supreme Court Judge in New York City, Democrat; Earl Bridges, Jr. was Earl’s son, lawyer from Niagara Falls; Jack Conway was the D.A. of Monroe

County, he had been in the house with me; John Dunne in the Senate; Frank Hogan; Howard Jones; Arch Murray; Ed Panzarella was Tony Travia's brother-in-law, just happened to be his brother-in-law; Bernie Smith was a state Senator, former D.A. from Suffolk County; and Herb Wechsler. That was the line-up in '68. We expanded it between 1965 and 1968. In 1965, and these are the folks who voted on the death penalty: Bartlett, Pfeiffer; Bill Kappelman, who was an Assemblyman and then a Supreme Court Judge, later on the Appellate Division, Second Department; Nick Atlas, a lawyer in New York; Ray Barratta, the former Surrogate in Dutchess County; Jack Conway, D.A. of Monroe; now there's an interesting line-up with respect to capital punishment. I go through this list first, Howard Jones, Whitman Knapp became Chair of the Knapp Commission then of course U.S. District Court, just died this past year; Bill Mahoney, Walter's brother; Jules Volker, a conservative Republican from Buffalo; and Herb Wechsler. Those were the nine of us who voted on the Penal Law Commission. I have to say that no amount of partisan politicking was going to effect the death penalty very much. I hesitate to call it a vote of conscience because in all cases it was not. One guy, whose name shall remain unmentioned, made an impassioned speech about how awful the death penalty was and how it offended his sense of decency and fairness and offended his sense of justice as a practicing serious Jew. He said, well, my constituents are all for it so I vote aye.

SS: Oh, no.

RJB: Long speech. I mean, he gave a long speech.

SS: Did people laugh?

RJB: That's all part of the material, you know. Anyhow, I can't describe it more precisely. I found that preparation as it is with litigation generally is enormously important. You must know your bill backward and forward, because you have to be prepared to defend any part that comes into question. Now, the day of the debate, it took all afternoon. I don't know whether Pete was there, but McQuillan was there and Denzer was there. Preiser might have been there, I just can't picture the people. At that point, I was Minority Whip so I was sitting right in the center of the House. Perry was Minority Leader. Boy, life was so much simpler then. We only had two leaders: the Majority Leader, the Majority Whip, the Minority Leader, and the Minority Whip. Now, you have about twenty leaders on each side of the aisle. But knowing the bill well, being as precise as you can dealing with criticisms, not trying to use just broad principles, being precise. It is not wholly unlike oral argument in a case, except that you're not arguing to a panel of experts. You're arguing to representatives of the people. In those days, would you believe it, a majority of the Assembly were lawyers and that hasn't been true for years of course. I think there were 92 lawyers, then. Some such number as that. It was a clear majority. Now I think there are maybe 60 lawyers in the Assembly or less. The reason for that is it was a nice part-time activity with your practice. Now, since they take all year to do what they ought to do in two months, it's difficult to combine a busy law practice.

SPY: What was your law practice like during the Assembly years?

RJB: Well, it was obviously muted somewhat. I tried cases. After the new firm was formed, I think I took you through forming my own firm, and John Dier joining me, I had a great variety of cases. I had a trade secret case that produced the longest single trial in Warren

County, about six and a half weeks. I'm sorry, it wasn't trade secrets; it was a patent fraud case.

SPY: What was the issue?

RJB: That case was right after I got out of the Assembly. I think I tried it in the late sixties. The issue was whether my client, who had founded U.S. Catheter, was the inventor of four separate processes, or whether he had stolen the idea from employees or consultants. I got a no cause after a six and a half week trial. A very good guy from Simpson Thacher, Rogers Doran, sat second seat with me on that. Rogers was representing U.S. Catheter, and I was representing Jekyll. U.S. Catheter had a hold harmless from us, so if they were held liable, they wouldn't lose anything. But Rogers was very helpful. We tried it before a jury in Warren County. I litigated such quaint issues as who owns the bottom of Brant Lake, because a number of those lot lines go out into the lake. We had an enterprising fellow who wanted to charge the people who fish over in his part of the lake, and actually tried to keep people out of it. Since it was the best well on the lake, he got a little testy there for a while. The case that produced the firm of Clark, Bartlett, Caffry & Dube, in an indirect way, was the matrimonial case involving David Smith, the sculptor. David is probably the best known 20th century American sculptor. David and Jean came to a splitting of the ways. I represented Jean, and Al Clark represented Dave. I think we appeared before every judge in the Fourth Judicial District over the course of a couple of years. Bitter, bitter, bitter. Dave was a great big guy and he had this sad look. He could conjure up tears like that. If it was helpful for him to cry, he'd cry. After a particularly trying day, I came back to Glens Falls with Jean. She was living in Washington. She was going to fly back the next morning. She was staying at the

Queensbury Hotel. I stopped and had a drink with her. We were sitting in the cocktail lounge. Al Clark walked in the door. He said "I know this probably isn't right, but I don't give a damn. I'm gonna have a martini. Can I sit down and join you for a drink?" I said sure. No problem at all. Jean didn't care. So he sat down and had a drink. Then we decided to have another. He goes to the phone to call his wife. I had already told Clare I was going to be a little late. I told her where I was. He called Mary. Mary said "why are you sitting down at the Queensbury Hotel having a drink at some bar? Why don't you bring them all up here?" So we all got into Al's car and went to Al's house. Now I got my client, Al, and me. After a drink or two, Jean, who was not a real party girl, decided that was enough for her, so we called a cab for her and sent her back to the hotel. Of course my car is still down at the hotel. After Jean left, Al and I had yet another drink. And Al said "you know, if we got rid of these two clients, we could practice law together."

SS: Isn't that interesting.

RJB: That was in late November, early December, 1961 and the firm of Clark, Bartlett, Caffry & Dube opened its doors on May 1, 1962. John was not acceptable to Al. I was a little bit relieved. We were good friends, but the partnership had had its problems. So John went off on his own, and later succeeded me as Supreme Court Judge of Warren County. So you see how things work out sometimes.

SPY: Who were the other partners?

RJB: Glenn Caffry, a very good lawyer, went to Harvard. Clark went to Harvard, too. Bert Dube went to Duke. Glenn's three years my junior, maybe four. He went to Cornell and

then to Harvard. He had been practicing with Al Clark as an associate. Bert Dube had been an associate of Al's, then gone to Hudson Falls. But still they shared some kind of a loose partnership. We continued that relationship. So Al and I were the two senior guys. Bert was really almost of counsel. He had his own operation. As Al said, once a year, Bert brought his numbers over and we produced a partnership tax return. That's kind of the way it happened.

SPY: When did Stewart join?

RJB: Bob Stewart, I got to know when he was in law school. He worked for me when I was in the Assembly. He worked in the office. He joined me that year. In fact, it caused a breach between John Dier and Stewart which never healed, because John perceived Bob as having taken his place. Unfortunate. In a sense, it's true. I mean, Bob turned out to be a wonderful lawyer. Very good litigator. And Glenn, although Al Clark could do anything, and, as I said, was representing David in the matrimonial, he was essentially a transactional lawyer. He represented one of the banks in town. He had a very healthy trusts and estates business. All-around good lawyer. Al and I were partners from '62 to '67 when he died just five years later. He had a massive heart attack in the office.

SPY: And when did Pontiff join?

RJB: Pontiff came up to Glens Falls, and I interviewed him, when Bartlett & Dier was down on Warren Street. I didn't have any place for him at that time. We had just taken on a guy named Bill Backus as an associate. So Paul went to work as sort of in-house counsel for Peat Marwick in their Glens Falls office, and got to know Al through his doing accounting work on trusts and estates. Al took him in and he came in at the same time as

an associate. It went from Clark, Bartlett to Caffry & Dube until I left to go on the Supreme Court in September of 1973. So, for 11 years that was the firm name. And then my name had to come out. For a while, it was just Clark, Caffry & Dube. Then they reorganized the firm, and it was Caffry, Pontiff, Stewart, Rhodes, and Judge. Five partners. It was that way until I came back, and then Glenn's name came out. He had died in the meantime, quite young. He wasn't quite 46 when he died. So then the firm was Bartlett, Caffry, Stewart, Rhodes & Judge. Then Wayne left and formed his own practice, and it's been Bartlett, Pontiff, Stewart & Rhodes ever since. Paul is semi-retired. Alan is going full bore. Bob Stewart's dead. I'm a 3-day-a-weeker.

SPY: In what ways was the practice of law different, then?

RJB: Well, the conventional answer is we were more civil to one another, but I'm not sure that's really true. Lawyers could be pretty darn mean to each other fifty years ago. We probably had less need for rules then, because we all knew each other. It was a smaller bar. If you pulled any shenanigans, you paid for it. The next time around, you got whacked. I don't think lawyers needed quite the supervision they clearly need now. I mean, getting a lawyer disbarred was a very major undertaking in those days. We had no mechanism for it. We had a bar association committee. The State Bar took that over, and that didn't work. The State Bar Committees became the Appellate Division Committees. Now you have the Committee on Professional Standards, where I litigated a fair amount, by the way. And the Commission on Judicial Conduct. I've represented defendants in both, mostly successful, not always. My last Professional Standards case, was a District Attorney where the complainant was the County Judge. Nice little tempest in Madison County. They dismissed the charges. Certainly an unpleasant episode for both of them,

for the whole Madison County Bar which is not really big. You know who got me in that case? He was one of the geriatric group, we called them. Very good lawyer, he practices down in, well, when this case took place. It grew out of an incident at Colgate. Oh, dear, I'll think of it. A very good guy who asked me to get involved with the case. We represented the D.A. Interesting case to try. That was just a couple of years ago.

SPY: People are fond of saying that law was more of a profession then. And it's now much more of a business. Was that the case?

RJB: I'm not sure that's accurate. It was different. I go to a Warren County Bar meeting now, and if I know half the lawyers, I'm doing well. It was unthinkable that I would go to a bar meeting 50 years ago and not know everybody in the room. They'd all know me. The practice of law, that is, in a content sense, has changed enormously. In those days, you sued every darn thing you could. There was no no-fault threshold. Every little fender-bender ended up with a summons and complaint. That's why we had these horrendous calendars, half of which deserved to be there, and the other half clearly didn't. Maybe the pace was a little slower. Maybe, I say maybe, making a buck did not quite have the priority it does now. They were simpler times.

SS: Overhead was less?

RJB: Oh, much less, yes. When I came back from Korea, and Carusone offered me a junior partnership, 25% of the Carusone & Carusone Glens Falls compensation. The firm's Saratoga Office was simple, financially, I thought that was a huge deal. But let me tell you Steve, it amounted to somewhere between \$7,500 and \$8,000, and I was like a pig in you-know-what. I built a new house that year. You know, Clare and I built a beautiful

four-bedroom Cape Cod house, 2 ½ baths, beautiful house. I think we figured we had \$22,000 in it, and our mothers thought we were nuts to spend that much money. \$22,000, you're gonna be in debt for the rest of your life. It's true. And it was true. I certainly worked just as hard then as I did later. There was in general more left to trust among lawyers. But having said that, the only reason that worked at all is because if you screwed up, they were gonna come down on you real hard next time. It was fun. And it remains so to this very day. I spent early this morning, just to show you the infinite variety you get in a small-town practice, getting ready to have a telephone conference call with a client at 9:30. That's why I was a little bit late getting away. It was over a right-of-way case. I seem to specialize in boundary disputes, and right-of-way cases, and stuff like that. This right-of-way case involves wealthy landowners at Blue Mountain Lake, including the _____, they're part of the lawsuit. They're on the other side. It is over whether or not a right-of-way described as right of way across the back 300 feet of these two adjoining, they're multi-acred parcels, like 120 or something, for a bridle path, a hiking trail, and road. No ingress/egress language. No for vehicle or on-foot language. None of the typical language of a right-of-way. The _____ own the two lots beyond my client's lot and they want to put a big road in there. My client isn't too happy about that. He's offered them an alternate route which hopefully they will agree to take. That's the kind of stuff. And yet you put that together with a case like the Stokowski case, where I represented the estate of Leopold Stokowski against Disney. That also came out of Glens Falls, New York. So I have all kinds of stuff. Great variety. Great fun. It does tend to keep your mind active.

SPY: Absolutely.

RJB: That's the best part.

RICHARD J. BARTLETT ORAL HISTORY

May 13, 2005 – Session 2

Hon Richard J. Bartlett (RJB)
Prof. Sandra Stevenson (SS)
Stephen P. Younger, Esq. (SPY)

SPY: It is May 13, 2005. We're back at Schaffer Law Library with Dick Bartlett, Sandy Stevenson and Steve Younger. We're on Day 2 of Dick Bartlett's oral history. We will start by talking about an event known in history known as Attica.

RJB: Sure, Attica as we all know was a most unfortunate event in the history of our correctional system here in New York. Russ Oswald was then the Commissioner of Correctional Services, who was generally viewed as a forward-looking liberal in the general field of corrections. He had been Chair of the Parole Board in New York. He came here for that purpose. And he succeeded Paul McGinnis as Commissioner. The Attica riots were put down harshly with State Police intervention and a substantial loss of life. There was an outcry afterward that it shouldn't have happened as it did. Blame was assigned to various people — well, just about everybody, I guess, including the Governor. The Governor appointed two committees or commissions following Attica. One headed by Bob McKay, who I think was still Dean at NYU Law School, to look at the events themselves to see what could be learned to avoid their reoccurrence. That became known as the McKay Commission. A second commission was appointed to look at the Correctional system post-Attica, to see what changes ought to be made to prevent the recurrence of such an event and in general, to improve the functioning of the department. The Chair was Hugh Jones. Now I have forgotten the year, 1971 maybe —

SPY: Yeah, that's it.

RJB: I think it was 1971. I was named Vice Chair. I was on a hunting trip in Alberta, Canada in September following Attica, when I got a call from Mike Whiteman, the Government's Counsel. I had to ride out of camp to the nearest phone to talk to him. I was hunting sheep up there. He wanted me to know that the Governor wanted me to serve on the Commission and wanted me to be Vice Chair, to which I agreed, of course. We then proceeded – under Hugh's leadership with Pete Preiser as the Executive Director — to look at the correctional system systemically. We did a good deal of visiting institutions and taking a look at how they really functioned as opposed to how the game plan for their functioning was written. That process went on for some time to the point where Hugh had to step down as chair because he was running for the Court of Appeals. I succeeded him as Chair. It was pretty much during the wrap-up period of the work in the course of which the report was being written. John Dunne was a member of the Commission. Hugh had been the leader through the heavy part of our work. Peter, of course, did his usual, extraordinary job of guiding the staff and drafting our report. The recommendations were in large measure followed, I think. Peter had an opportunity to do that hands on later on because he became Corrections Commissioner. That was an interesting service, which I enjoyed to the extent you could enjoy visiting Greenhaven, Dannemora, Auburn and other parts of the prison system scattered around the state. But I think it was an important service. I am satisfied that we did a reasonably good job.

SPY: What do you think you learned from visiting prisons from that perspective?

RJB: Without visiting the prisons, you really have no sense of the culture of prisons: how it is possible for gangs to operate in prison; how it is possible for a drug culture to exist in prisons, we all know they do, of course; and how it was possible for Lemuel Smith to

rape a female employee in a prison. That doesn't come through by looking at the statute or looking at the description of how the department sees itself. It comes from being on hand. Not that we saw violence. But, you know, there is a smell about prisons. I don't mean necessarily what you sense with your nose. But there is a sense about prisons, that is not conveyed in any way except being there and seeing what goes on. I think it clearly influenced our report. I wasn't too clear about what a prison tour would do for us when I started out, but I am very glad we did it. I am quite sure Hugh and maybe some of the other members went to Attica. I did not make that trip. But I went to several other prisons and it was instructive.

SPY: From an historical perspective, what do you think some of the changes were as a result of those horrific events? It resulted in certain reforms.

RJB: Well, I think the level of care, health care; the importance of decent food; the importance of adequate housing for prisoners, so that you avoid the consequences of prison overcrowding. Of course, some of the problems that arose occurred after Attica and occurred after our report as a consequence of the huge increase in the prison population. The prison population went from 12,000 when we did the report on criminal offenders — that is a separate report, and Peter wrote that report as well — went from around 12,000 to around 75,000 fairly recently or even higher. That is the prison population in New York State. New York is not unique in that respect. There has been an explosion of longer sentences and more frequent prison time than there was before. It is hard to identify what it is all due to, but there are two things that have developed in the public view of crime and criminals. One is that the chances for rehabilitation are slim anyhow. So the longer prisoners are kept away from the public, the longer we can do without the

likelihood of recidivism. Right now, that is true of any sex offenders. I saw a report on a bill the other day where somebody in Congress wants to provide for lifetime commitment for sex offenders. Well, that totally denies the redemptive possibility for humankind and that doesn't suit me very well. The second thing is that we have become much more vengeful as a society. It is important to hear from victims, but we are now at the point where victims frequently dictate the sentence. They have a right to appear in almost every jurisdiction in this country and to give their testimony, "What that SOB did to me." It is horrible, of course, but sentencing is not a tool of personal vengeance, and shouldn't be. I think it's impacting adversely on our ability to rehabilitate, because we really have not tried very hard lately. Without going into the enormous controversy that grew in New York over treatment of our drug offenders, we've come full circle on that and now are trying to figure out how to decently repair what was done. It is another example of our giving up on treatment – our giving up on the rehabilitative potential of offenders. I admit it is very discouraging work, very heart breaking sometimes. But the notion that we salt people away forever to eliminate the risk of recurrence is simply not the way a civilized society should respond to crime levels. Quite apart from how an essentially Christian nation — I still think we still are — Judeo-Christian, should respond.

SPY: Now, that's interesting. Before Attica, there was probably very much a notion that you locked prisoners up and we won't see them again. After Attica, there became this notion of prisoners' rights.

RJB: Yes. But at the same time prisoners' rights were developed, society was moving in another direction. So, it came a point where that overcame the focus on prisoners' rights. I mean, it was unthinkable that a convict could win a case in the Court of Claims and be

sustained by the Court of Appeals in claiming ill treatment. It didn't happen. That's all. Ill treatment hadn't happened. Recovery against the state hadn't happened. And at the same time that was happening, we found society becoming tougher. The public debate over capital punishment reflects the same thing. I can't recall, the last time we were together, whether that was before or after I testified before the Assembly Committee on Capital Punishment — it may have been before — but, I was personally pleased to see that they decided not to report on the bill. That doesn't mean that we don't need some legislation. I think we need an improved family structure, because it has been distorted since we last did it, way back in the '60s. But, with respect to the reimposition of capital punishment, I would probably not personally object to capital punishment in very limited circumstances, not the laundry list of cases we have now, where it is plausible.

Regarding the killing of a prison guard by somebody already serving life — the argument is there is no deterrent, except the death penalty. The other might be the killing of a police officer in the course of a felony. Those are the two exceptions we put into the bill, which doesn't mean they are the absolutely right ones. But, although I supported total abolition even back in the '60s, those two exceptions are the ones we could live with. We so changed it now, with the huge list of ways in which you can be charged with a capital offense.

SPY: Let's turn back to Attica for a minute. In the course of our history, we have catastrophic events. Then there are commissions that investigate them. And there are either recommendations or actual change. In terms of putting this in perspective, what do you think came out of the Attica event?

RJB: Well, several things, of course. Bob McKay's report showed that in perfect 20/20 hindsight, very bad judgment has been used. There was no effort to negotiate with prisoners and there was almost a, "We don't have to negotiate with prisoners" attitude. But, they held a whole bunch of hostages. I know the current attitude on hostage taking is we don't negotiate — that is the Federal government's view today. I understand that. There is a limit beyond which you shouldn't go in negotiating with terrorists — whether they be terrorists in prison or out of prison. But I think negotiations are something you always try. I think they gave up too easily on that and they stormed the prison too quickly. Nobody was going anywhere. They were all inside the walls. They weren't starting to kill the hostages one by one. I think it was premature. We have not had a recurrence of Attica or anything close to it. So, I hope that the regulations that were adopted by the department, more than the legislature, it was more the regulations that have served to run a better prison system and make it more humane. There is something inhumane about a prison system. It is a character of the prison system that can't be glossed over. But we need prisons. Don't for a second think that we don't. However, they need to be run firmly, fairly and consistently. Consistency is a terribly important element of running a penal system so that you know if you mess up in this respect, you're going to be dealt with. You're not going to be dealt with because it is you as opposed to someone else in the prison. It is because you offended the regulation. Evenhandedness is very important. It is so in the whole justice system. It is what creates bad perceptions about the system, when there is a sense that it is not evenhanded and not entirely fair.

SPY: In terms of the commission itself, you have two upstate, white male respected individuals as the Chair and the Vice Chair. Did you have any feeling of what kind of impact that had in terms of the community?

RJB: I'd like to believe that your characterization of us was the general view and that was that we were fair minded. Certainly Hugh had that reputation and I think I did with the legislature, at least with respect to my service there. I think that we had blacks on the Commission. We did not have very much Hispanic representation. It was a cross section. You know, Bob McKay was a white, Anglo-Saxon from New York City. Nobody ever suggested that I can remember that our inquiry or our findings were any way tainted by any racial tilt. I don't think that there was a perception that they were either, which is almost as important as whether they were or not. But I think Hugh and I both had a reputation for being fair minded.

SPY: Were there women on the commission too?

RJB: I am embarrassed to tell you, I will have to go back and look. I've really forgotten the composition of that commission. I remember that John Dunne was on the commission. Maybe Joe Galiber was too. He was a black senator from the Bronx. I will have to go back and look at that.

SPY: How about in your own community? Was there any backlash that you got from your own citizens about the kind of recommendations you made about how the prisons should be run?

RJB: I live very near a prison community, of course. There are a lot of prison guards in Glens Falls, as there are in Warren County. I certainly don't recall any hostility from that group. We heard from the prison guards. They had to be considered too. It is very tough work. I know many, many prison employees well. The guy that helps us around the house is a sergeant at Comstock and he does this in his off time. They are all decent people. I don't honestly remember that anybody said you're giving away our authority or anything. I don't really recall that. In terms of the general community reception, I am viewed as a little bit of a maverick anyhow. That did nothing to change that perception, probably. But I don't really recall any community backlash. My conservative friends remained my friends and they remained conservative with some of them disapproving what we were doing.

SPY: We all know that the '60s was a different period in our American history.

RJB: They certainly were.

SPY: If this event had happened at a different time, do you think there would have been any different reaction?

RJB: Probably twenty years earlier, there would have been a little bit more of "They got just what they deserved." As to the dead people, we wouldn't want to say that about the hostages, because we lost some of them too. But I think Nelson Rockefeller was very troubled by Attica, after the event. He could be very tough minded about things when he felt it was necessary. It was his order really, at Russ Oswald's recommendation, that they send in the troopers. I think he wanted to be sure that there was an openness about what had happened. They weren't trying to gloss it over or cover it up. That was one of

Rockefeller's characteristics. He was not a cover up person, and I think that is why he acted so decisively naming the two commissions. Typical of the Governor's office was that they reach out for you wherever you are. I guess Mike Whiteman talked to Claire and found out I was in Alberta and asked, "Is there anyway to reach him?" Well, "I have a number here of the outfitter." They in turn sent word to a nearby ranger's station. A ranger came over and said you have to make a phone call. Of course, they always call in the name of the Governor. Everybody was very impressed with that. I was terrified. I wondered what I had done now. Anyhow, that is the whole story.

SPY: Did you get to interact with Rockefeller in terms of his views of the event, or was it more with his staff?

RJB: Over time, I did. Yes.

SPY: Tell us about it.

RJB: When I was serving as an advisor to the administration with respect to criminal justice, that followed me leaving the Assembly, I had a number of meetings with Rockefeller and conferences with him. Two or three of them were one-on-one. He was very interested in what you had to say. Let me put it this way, he sure gave the impression of being very interested, which gave you a good feeling about whatever contribution you hoped you were making. And, he did listen. We disagreed on some things. I disagreed on the drug law changes. But, we had a good relationship. I got to know him pretty well during a troubled part of his life when he and his first wife were breaking up and he was going with Happy. That was tough for him and tough for some of the people around him. But, in sum, he was a very bright guy. He cared a great deal about his responsibility – what

happened as a result of his decisions. As, I mentioned earlier, I think that he was very troubled about what he should do about our statute on capital punishment — whether he should sign it or not. He wouldn't see me right at that time. I could understand that. I was in the legislature primarily promoting the bill and I asked to see him. Sol Corbin called me and said you don't have to meet with the Governor. Well, I said, "I think I do, Sol." He said, "Dick, he's signing the bill this afternoon." So that was the answer. I didn't need to meet with the Governor.

SPY: What are your memories of your interaction with Rockefeller as a leader? What were his strengths?

RJB: Very bright. You didn't have to draw pictures for Nelson to end up having him understand your points. He had a far ranging mind and intellect. He was willing to consider options that less imaginative leadership would brush aside. He was very skillful at handling people. Very skillful. I remember, to the shock of everybody in 1965, Democrats took control of both houses in the legislature. People were saying that is the end of Rocky – he won't get a darn thing passed. Well, he had Joe Zaretski, Tony Travia and Saul Weinstein eating out of his hand after a few months. He got a lot of legislation passed. He might have had to tilt a little bit toward the liberal side beyond where he would have liked to be and that certainly may have been true of Medicaid and Medicare, which occurred during that period. But he immediately continued the leadership meetings, usually on Sunday night. He really worked hard as a governor. He was not an absentee governor. Here he had all these mansions all over the place, in Maine and Pocantico, the New York apartment and all the rest of the places in South America, but he was there for business. He had Sunday night meetings and had Tony, Moe and Joe

there. Later on, after the Senate was taken back by the Republicans, he had Earl Bridges and Tony. I attended as Minority Whip during that period, because Perry and I were what passed for the Republican leadership of the Assembly. He really listened. He had a way of listening which really made you think that he heard what you were saying and that he cared what you were saying. He was very skillful at saying, "Yes, but don't you think about kind of modifying the position just a little bit?" Before you knew it, you hadn't done a U-turn but you had done a sharp right or something. He was very good at getting discussion headed where he hoped it would go.

SPY: Did you learn anything in your own leadership positions from Rockefeller's style of leading?

RJB: Hard to say. I never played with his deck.

SPY: One thing that stands out that I've always heard is that Rockefeller was someone who assembled the best and the brightest around him and then let them do their jobs. That is something that always seemed to me characterized your own leadership.

RJB: Well, I thank you for saying that. Nelson tried to hire the very best people. That is certainly something that impressed me and that I tried to emulate whenever I could. That was certainly true of the Penal Law Commission and I would hope, later on, in Court Administration and elsewhere. Yes, he did do that. It didn't mean that if you had an idea that he thought was cockamamie that he wouldn't let you know that in a polite way. And yet he had his little quirks. Ken Riland was his osteopath and Ken was, to my mind, too influential on the health care picture. He was probably very good at what he did. But I kind of wondered about Nelson's reliance on him as much as I thought he did. He did

assemble the very best people and he was not afraid to try to get advice from somebody whose advice he might not have liked. That's terribly important about making an informed judgment regarding anything - that you are willing to listen to everybody, sort out the advice you get and decide what is the best course. Nelson was always very good at that. He did get the best people in the room and sometimes would produce spirited discussions about things, but I admired him. I didn't always admire what he did or always agree with where he ended up. But on the whole, I think he was a very good governor. Whether he would have made a good president or not is problematic -- who knows.

SPY: You touched on one of those debates which was over the drug laws

RJB: Well, that was one where I didn't think he got good advice. There are various stories around as to who influenced him most on the drug laws that he finally advocated. I'm not sure what the true story is. One story is that Jerry Finkelstein, the publisher of the New York Law Journal, came back from a trip to Japan and said, "Boy, the Japanese know how to do it. They lock them up and that's the end of that nonsense." I don't know if that was Jerry or not but that story was in circulation at that time. Somebody convinced him that treatment had failed, and of course, we had a rather elaborate treatment program then, headed by Larry Pierce and later by Howard Jones -- both able people. Nelson thought that had been a failure and we were going to create this apparatus, first, a police and prosecutorial apparatus, and a court system, to accommodate trying a whole range of offenders who had really been outside the ambit of the criminal process. I think I had mentioned before I can't be wholly critical of what happened

because the judgeship I later got was created as part of that (laughter) – I’m joking, of course – but that’s how they created another Supreme Court vacancy in my district.

SPY: The B Judges?

RJB: Not the B Judges. This is all in 1973 now. The legislature in the Spring of 1973 passed the drug laws to take effect September 1st and a whole bunch of Paragraph B judges were created who were and are Court of Claims judges and were immediately assigned to the Supreme Court. They were appointed for that purpose and the statute said so. Then they created a substantial number of new Supreme Court vacancies. The story is told, whether it is true or not I don’t know, the story is told that Bill St. Thomas - who was a Republican leader in Fulton County and happened to be Chair of the Fourth Judicial District Republican Committee and whose business it was to select Republican candidates for judgeship - got a call from whoever the State Chair was then. He was, saying, “Howard, we’re trying to figure out what additional judges will be needed in the Supreme Court upstate. We’ve pretty much got it figured out in the City. But we need upstate now. The question now is whether one or two judges are needed in the Fourth Judicial District?” The Fourth Judicial District consists of 11 counties, the largest of which are Saratoga and Schenectady and the rest are pretty rural. Bill immediately responded as you would think any good political leader would, “Clearly, we need two.” I ended up getting elected to one of them. Ray Amyot got the other. I don’t mean to suggest, by the way, that that characterized how the other provisions of the drug laws were put together. But it does suggest to you that judgemaking may be high on the list of the League of Women Voters but not high on anybody else’s list except the candidates.

SPY: To go back to the debate on the drug laws, one side was lock them up and that will prevent the problem, what was the other side?

RJB: The other side said continue to improve the treatment program, to divert more people out of the court system into treatment on the basis that treatment was not hopeless. The real strong advocates said, “If you have to make methadone addicts out of crack addicts, do it. They don’t commit crimes then.” That was not a cure to the addiction, necessarily, it was just to divert them from the frenzy that drug addiction produces in getting the money to buy the drugs, which results in crime. I think crimes of violence being drug-inspired are overdone. I mean, the concept is overdone except with respect to the burglaries, robberies and other crimes that are designed to get the money to buy the drugs. I was on the losing end of that debate. I was not a principal participant. Howard Jones was. Howard was director of the drug addiction treatment program and he came out of Frank Hogan’s office. He was an Assistant DA for Hogan, then an Assistant Counsel in Nelson’s office and a member of the Penal Law Commission. He was a negative vote on capital punishment. He was for retention. So he was not a softie by any means and yet he thought that treatment was working. No instant results – he thought long-term. Now we seem to be swinging back to the point that we have to do more to deal with drug addiction as a disease, as a character failure in some cases, however you want to term it, dealing with it in a non-criminal fashion. We have all kind of drug treatment programs around that advocates say are working. Father Peter Young, who was a priest here and actually, my summer pastor in Bolton Landing, runs a network of drug treatment programs all across the state, government-funded most of them. It’s amazing what he says the success rate is – that everybody doesn’t go back to crime. Drug addicts tend to

burn out as addicts after a time. It's not once an addict, always an addict. The addict of 25 is not necessarily the addict of 45. His argument is that it's a lot cheaper to rehabilitate than to salt them away.

SPY: How would Rockefeller deal with issues like that? Would he let the two sides debate it out and then come to a decision? How did that work?

RJB: Yes and no. Yes he generally dealt with problems that way. We had more darn conferences when I was his advisor on criminal justice. We used to assemble these huge conferences in New York City. I must say, I'm not a very good convention planner. But that's what I became for a time. He had all kinds of programs and all kinds of reports written. I had to write sort of a distillation of the reports that went to Al Marshall who was then Chief of Staff. He was the John Cahill of that time. From that, some programs would evolve. Sometimes, something seemed to come out of left field and I'm inclined to think that's how the turnabout in how to deal with drug addiction came about. As I said, I'm not quite sure who's left field it was, but Nelson did listen and he was a very affable. He really was a guy who came from enormous wealth. But he was very good at the common touch. Jokes used to go around – the one thing he couldn't say was "Thanks a million!" because somebody might take him up on it (laughter). But he really worked crowds terrifically. He was really an adept politician. He seemed unable to project himself as a national figure. I'm not entirely clear as to why that was. The national political leaders were skeptical of him. I mean how could a guy with all that wealth be that liberal? He should have been a more rigid Republican. Here Taft came from a very substantial family, of course, but was much more conservative than Nixon.

SS: Well, it coined the term “Rockefeller Republican”...

RJB: Yes, it did. A modern Republican. He liked to characterize it as conservative fiscally – some people would challenge him on that the way spending increased during his years. But he was very much of the view that you have to pay the bills. The income tax went up substantially during those same years. His view was that these programs were worth it but we have to pay for them. There was some gimmickry in his day – nothing like what’s happened since. I mean the use of authorities, bond issues, and all the other ways to create debt without referenda. That was just beginning to be explored in his days. It’s become a high art now. I shudder to think what our state debt is today – huge.

SPY: One of the legendary things about that era is the number of people who came out of that Rockefeller group. What was it like interacting with him?

RJB: Well, some great people came out of it because he hired very bright people. He had a wonderful recruiting program. Bill Ronan was a great recruiter of very bright people. He came out of NYU as a professor there. He was also a real thinker and a real doer. He became Nelson’s right-hand man in so many ways. Al Marshall came later. Al came out of budget. Bobby Douglas came later yet. But Bill Ronan was a very strong influence. He wanted Nelson to veto the capital punishment bill. I’m glad Nelson didn’t listen to him on that particular issue. Bill was a very able guy and Bill really wanted to look at resumes – not this person’s a friend of so-and-so. He wanted to know what their credentials were. I think the credential that he was interested in was more about what their potential was than what their track record was. The fact you had done something showing an intellectual potential was more important than whether you had a Ph.D.,

although he had a high value for Ph.D.'s now that I think about it. It sounds a little contradictory, but he attracted very talented people and when you think of the very good lawyers who worked for Nelson over various times – Ross Perkins, Bob MacCrate, Sol Corbin, Bob Douglas and Dick Parsons and all the loads of just good lawyers.

SS: How was Rockefeller in taking legal advice? He was not trained as a lawyer.

RJB: Well, I have a sense that once in a while, he said, “Woe unto you, lawyers. I’ve had enough lawyering.” He paid attention to what lawyers advised him and he usually – I say “usually”, I’m not really sure about this – I think he usually followed counsel’s recommendations on signing or vetoing legislation. Now that’s not to say that that was true of major policy issues. He got input from everybody on that. On questions of whether or not this legislation created more problems than it solved from a structural point of view in terms of changing the legal process, I think he followed the advice of lawyers pretty carefully. He had some very good lawyers – Dick Parsons is a good example. I think he started working for Nelson when he was in the first year of law school. I remember seeing this big black kid over in the corner when he was still at Albany Law and he became a very major factor. Howard Jones and Arch Murray were all graduates of Counsel’s office. I used to hang around Counsel’s office a lot because I’ve always liked dealing with other lawyers. Most of the time I didn’t have an office of my own on the second floor so that was a convenient place to hang out.

SPY: You talked the last time about getting legislation passed and we were talking more about the legislative process within the legislature. Tell us also about once the bill gets passed, dealing with Counsel’s office in terms of getting the governor to sign it.

RJB: Well, it is not unlike dealing with an appellate court, except the process is less formal.

You don't have to write briefs, but you do have to write briefs. And you have to urge all the reasons why this legislation should be signed, or vetoed, depending on what you are trying to achieve. Then counsel distilled those views and finally came to a decision as to whether they'd recommend signature or not. I can't really remember what the bill was, but there was some bill I was very interested in – it was in the criminal justice area. John Sheehy was an assistant counsel. John ended up with that firm which is now Clifford Chance – Rogers & Wells. Nelson apparently asked what my view was of the bill, so John got a hold of me. I came over and we went in to see him. I agreed with counsel that it should be signed and he signed it while I was there. But the process, when I say less formal, I mean they'd invite comments on the bill, and I don't know who was in charge of putting together the list of who should be asked. Somebody was very good at it because they asked everybody who had a possible interest. It was inclusive. That's very important in how the law is accepted, too. They wouldn't even listen to me. They didn't even give me a chance to talk. With Nelson's office, I'm not sure it's changed that much, everybody who might possibly have a point of view on a bill got a memo from Counsels' office saying "This bill is awaiting action by the Governor and if you have a view you wish to be considered, please communicate with us immediately." Then somebody had the job of sorting all that stuff out and coming to a conclusion. It was an inclusive process and you did have a sense of "Well, I had my chance anyhow" even if you never really did.

SS: Sounds like as a governor he was very politically adept. Did that come down from him and permeate the whole operation?

RJB: Yes he was adept. But you know, he had no real experience. The first elective office he ever sought was Governor of the State of New York. He had been on Harriman's Commission on the Constitution. There are those who say that Harriman made a terrible mistake appointing him because he created his successor in office. He immediately started finding bright people to work with. George Hinman, a very able lawyer from Binghamton, was a key advisor. Bill Ronan became a key advisor at that time. In terms of Nelson's running for Governor in 1958, a really important alliance he made was with Malcolm Wilson. Malcolm was from Westchester. Nelson was from Westchester. Malcolm took Nelson on tour in upstate New York, from county to county. He came to our county and turned our County Committee and our Chair around completely. I had mentioned before that our County Chair was pretty solid for Ossie Heck, who was the Speaker from nearby Schenectady, and a summer resident of Lake George. Malcolm and Nelson came. Malcolm, of course, introduced everybody by name. He had the darndest 3x5 card index system you'd ever seen. He'd come to a county and know that Earl Vedder runs the hardware store in Chestertown, and Pete Fiore is a Committeeman of the First Ward in Glens Falls and had a liquor store on Norris Street. I mean amazing. Malcolm always had that touch. It was a very good team. Malcolm was much more conservative than Nelson in terms of his political views.

SPY: How did the Wilson/Rockefeller alliance come together?

RJB: It grew out of Nelson's conviction. I think maybe Judd Morehouse, I'm not positive but Judd was Chair then. Judd decided that we needed Nelson to win. I'm not positive but I think he encouraged Nelson to hook up with Malcolm. Malcolm was very eager. He'd been with the Assembly for 20 years. He didn't want any more of that. He'd been Chair

of Codes and he saw that as a dead end street. He did not see himself succeeding Ossie as Speaker. I never talked to him about it, but I guess that was true. Here was an opportunity to make a Governor and to make a Lieutenant Governor in the process. He was very important to getting upstate support.

SPY: It's interesting – it's kind of counter-intuitive to put two Westchester people together to get upstate support?

RJB: But one is a conservative Catholic and the other a liberal Protestant. One had huge name recognition – Nelson – and Malcolm had huge name recognition among the professional politicians, because everybody knew who Malcolm was. He'd been on the banquet circuit for so many years, and he had spoken in all these counties. It all helped.

SS: How did you become the Minority Whip and what was your relationship with Perry Duryea?

RJB: Well, I guess I have to say that we were becoming unhappy with George Engel's leadership. He was a very decent guy, a very good speaker, and a very bright lawyer. But we didn't think that the Minority was as effective as it could be. I'm not so sure that we changed things all that much but we thought we could. So after that election – I'm trying to think what year it was . . .

SPY: You became Minority Whip in 1966.

RJB: Well, it was following the 1965 election, and it was only that one year because I left the Legislature after that. Perry was Campaign Chair. We really worked hard to get Republicans elected. We didn't succeed in taking back the House, but he and I made a

number of speeches around the State. We worked together, and we agreed that one of us should be leader. Perry got Long Island lined up very quickly behind him. I had a few supporters upstate – nothing compared to those large delegations. We agreed to challenge George Engel. Did I tell you the story about our going down to Binghamton to meet with George? Well, that was a painful trip. Perry flew up to Albany. I met him at the Albany airport. We drove to Binghamton and we told George we wanted to see him. George had had an appendix out, and he'd just gotten home from the hospital. He looked very pale, not well. The two of us sat in his living room and told him we were going to challenge him for the leadership of the party. I was wishing I were anywhere else but there at that moment. It was quite a tussle. It wasn't an overnight thing. Malcolm was opposed to this. He thought George deserved to continue. The Westchester delegation stuck with him. So we had to overcome that. We did it by pretty much consolidating the rest of upstate with the Island. Perry was elected Minority Leader and I was elected Whip, which was the second role at that time. George left the Legislature, not immediately. George is a very bright and able guy. I think we did a better job, but don't ask me to point to a list of accomplishments that resulted from that change in leadership because I'm not just sure what they were. We then became effectively the leadership of the Minority so we became involved in the leadership meetings and had a different role with the Governor. I got to know the Governor better than I had before.

SPY: Can you shed some light on how that process works in terms of you talked about going to Engel and telling him you were going to challenge him. How does that process work in terms of lining up support?

RJB: Well, the process meant that every single Republican member of the House had to be contacted and wooed. Perry and I decided who to see, and who would see whom. We talked everybody into supporting us.

SPY: Do you do that in secrecy, hoping that they won't let the current leader know?

RJB: No, we went and told George first, to tell him that we were going to oppose him. So it was all an open process. Malcolm was pretty annoyed with us. I remember he was telling us he thought you have to wait your turn or something like that. I don't know what I said to him. But I know the one thing that went through my mind is that he waited his turn for 20 years and nothing happened. Well, anyhow, we succeeded, and I think it was a more vibrant leadership than it had been. I hesitate to say I know we did a better job. I have a feeling we did, but I really can't say I know we did. But those were interesting times.

SPY: There's a lot of talk now about the rule of three in Albany. What was it like back then in terms of how the leadership interacted with the Governor's office and who was involved?

RJB: Well, we were very involved. That's not to say that Nelson didn't have his own communication with the Senate or the Assembly in which we weren't included. In fact, I recall our objecting about exclusion at one point. But Nelson played things at multiple levels. The fact that we came out of a long leadership meeting thinking we knew just where everybody stood didn't mean that he wouldn't call Tony Travia an hour later, saying, "Now, Tony, I really want this program and I know you would like to see something done about this. Maybe we ought to talk about how we can help each other." So, by no means could we say we were privy to all the arrangements that were made. We

were privy to many but not all. I don't think it was quite the rule of three as it appears to be today. For one thing, we had to go through our conference and our conference was not a rubber stamp. That was true when we were in the majority when Joe Carlino was the leader. And it was true when we were in the minority. You couldn't guarantee that because Perry agreed to something, the minority would line up that way. So that's why I think it was more a collegial process than it is today. Joe Bruno and Shelly Silver seem to have absolute control of their houses. I marvel at their ability to do that.

SPY: When you refer to "the leadership", who would get involved in a typical bill or budget decision?

RJB: Well, as to who gets what in the budget, that was discussed at the Sunday night meetings.

SS: And who would the players be?

RJB: The players would be the Director of the Budget, and his key staff, Counsel's office, the Secretary's office, occasionally a department head or a program head, if that was the issue, and the legislative leaders.

SPY: And by the "legislative leaders", who would be involved?

RJB: Republicans and Democrats from each house. As I said, those were the meetings that were scheduled for 7:00 o'clock. That is not to suggest that those were the only communications.

SPY: Where would they be held?

RJB: At the mansion, usually. Nelson was very good at hosting.

SPY: A warm, social setting?

RJB: Yeah, as warm as that building can be. It's not exactly cozy over there. But yeah, and he had all this great art around, you know. They had a wonderful major domo there – Robert, who was the butler. He was still running the mansion when Cuomo was Governor. I don't know, he must have retired by now, but he was the Chief of Staff in the Executive Mansion. He knew who liked what to drink and was very good at it. I was drinking Heineken beer in those days. There were always Heinekens available.

SPY: In many ways, what we have now is a much simpler process – three people can make a decision. How do you make a decision when you have all these different players?

RJB: If it was clear that there was a sharp dispute between this participant and that one, Nelson started making phone calls. He would ask you to drop by. He was very good at schmoozing, and was not above doing some horse-trading. That's all part of the process. We see it now in Washington, you see it here, and Nelson was very adept at that. I'm not exactly sure how the process works today, but it does seem to me it's the result of absolute control of each house by its leader. I suspect if Perry and I had failed in our effort to upset George Engel, there might have been certain retribution. I'm not sure, but that certainly happened when Bergman took on Shelly Silver and was defeated. He didn't have any staff the next day. We didn't do that with George. In fact, George could have had whatever he wanted. I can't think of anything else I can add to that.

SS: Why did you leave the next year?

RJB: I don't know. I was kind of frustrated with the legislative role. We were in the minority and it appeared we were going to be there for quite a while. As it turned out, it wasn't all that long. When the Republicans regained control of the Assembly, Perry was elected Speaker. But there were also some things going on in Glens Falls. My senior partner, Al Clark, was not well, and although I thought at one point I could be in the Legislature forever and still carry on a successful law practice, it was pretty tough. The sessions got longer. The session of 1965 went into June. So you no longer could be sure you'd be home by April 15 to file your income tax return. I was getting busier as a lawyer. So it seemed like a good time. There was one other factor. I was very interested in participating in the Constitutional Convention in 1967. Although many of the delegates did both, they were unable to do anything else with their lives. They went right from the legislative session into the Convention. I really enjoyed practicing law as I have all these years, and I wanted to be sure that I didn't lose my hand in that.

SPY: What was the genesis of the Constitutional Convention?

RJB: Nelson's Commission had started it. But that was quite a while before that. I'm trying to remember if it was part of the required submission of the question. You know, every 20 years the question has to go to the people. But the people voted to call a Convention. That must have been in 1965 because in 1966 we elected delegates to the Convention.

SS: Reapportionment – was that an issue?

RJB: It had been. But it turned out the Convention never dealt with it. The Court of Appeals dealt with it, really. Well, Baker v. Carr started it. Then the Court of Appeals put its stamp on the legislative reapportionment. That was part of it, too. I went from

representing Warren County, which is a pretty discrete geographic area – I knew all the people there – to representing all of Warren, all of Essex, part of Clinton and part of Franklin. That involved showing up for more dinners and more meetings.

SPY: It's a much more dispersed geographic area?

RJB: Oh, much more, yes. I wouldn't say the character of my constituency changed all that much. It changed some. Not only did I have Comstock in my district but I had Dannemora in my district, too. That was a factor. Al Clark's health was a factor. Al died in January or February of 1966, and that sort of sealed the deal for me that I would not go back. I had wavered about whether I'd try to do what Perry Duryea did, Earl Bridges did, Mo Weinstein did, and Tony Travia did. A number of people continued to serve in the Legislature but also served in the Convention. I didn't see that as being feasible for me, particularly with Al's death. So I thought it was a good time to pack it in with the Legislature. I didn't see myself ever getting to top leadership. My experience had taught me that a small county upstater has very little chance for leadership. I counted myself lucky that I'd been deputy leader for that one year. So all that combined to persuade me to drop out of the Assembly and run for the Constitutional Convention, to which I was elected. That was an interesting experience serving in the Convention.

SPY: Why did you want to do that?

RJB: Well, I thought it would be important. We hadn't had a Convention since 1938. The Constitution establishes a framework of our government. There were all kinds of interesting issues going on. There were church/state issues, on which I disagreed with my church, but anyhow. There was the issue of the extent to which government should

involve itself in social services because remember Medicaid/Medicare was going on at the same time. There were mostly questions of what the direction of government should be – how prominent a role it should play in social planning. By the way, in 1965, as a flashback, Hugh Jones was Chair of the Board of Social Welfare at that time which was the very time when all these critical changes were taking place. That's how we got to know each other well.

SPY: How did you first come into contact with Hugh Jones?

RJB: We knew each other through the Bar Association originally. When he ran for President, I was supporting him at the Bar Association. Then he became Chair of the Board of Social Welfare and so he was a significant player in policy formulations that led up to the Medicare/Medicaid business.

SPY: Tell us about some of the key issues in the Convention and how they were framed?

RJB: The Convention obviously did not turn out as I thought it would, either what the issues were or what the result was. Tony Travia became the President of the Convention. Tony was the Speaker of the Assembly, of course. The Democrats won control of the Convention because they won nearly all of the statewide seats. We did pretty well – there were three delegates per Senatorial District and then I think 15 was the number, statewide. The Democrats won most of the statewide seats. They ran people with more name recognition than we did. Anyhow, they beat us and the State was becoming more Democratic all the time. I was Vice Chair of the Bill of Rights Committee. We worked on a number of issues on that committee, not the least of which was to do a new preamble

for the Constitution. The draftsman of the preamble that was finally adopted was Ralph Semerad, who was my counsel.

SS: Did you choose Ralph to be your counsel, and how did you know Ralph?

RJB: I knew Ralph through Albany Law School and through litigation. He had represented Ernie Morris, and did some Appellate Division work. Ernie and I were friends. I got to know and respect Ralph and Marge. Of course, he'd been ill. He'd had the heart attack and he decided he was well enough to do this. Sam Hesson helped me, too. Sam persuaded him to do it, because Sam was a Delegate. I had a very young man named Bob McMillen who was on the Law Review here and later became my partner. He still is. He worked for me during the Convention. Anyhow, I had to resign as Chair of the Bill of Rights Committee fairly early on in the Convention – I would say June – because Nelson asked me to. I had been sort of an informal adviser on criminal justice but after the Safe Streets Act was passed they had to have more of a structured approach to the program. So they created the ...

SPY: Crime Control Council?

RJB: Yeah, the Crime Control Planning Board.

SPY: There were two: the Crime Control Planning Board and the Crime Control Council.

RJB: Yeah, and I forgot which followed which. They were both responsive to the national program. I chaired each of those in succession. They didn't overlap. I've forgotten who – I guess the state chairman – thought that was a bit much for me. Besides he had an anxious delegate who wanted to be Vice Chair, Bernie Bertman from the Island. So,

Bernie took over as Vice Chair. I continued to be very active and very involved. But I had to organize a staff at the Crime Control Council.

SS: Why don't we pick up with the Constitutional Convention. I want you to tell us how it worked, what you felt was effective, what wasn't effective. Why it all went down, you know ---

RJB: It was a curious process, really. It was organized on political lines, somewhat. The Republicans, the Democrats and the Liberal Party was a faction. There were a whole collection of Liberal Party members who were elected, Dubinsky, Rose, and the minister, Harrington, all Liberal Party members. They had a point of view which didn't always exactly click with the Democrats. Then there were so many huge egos at that Convention. I'm sure other people probably said that about me, but you know, people who knew just what the Constitution should look like. In fact, one delegate (I can't remember who it was) introduced a whole Constitution. He put it in a bill, providing here's what the Constitution should say. That didn't get beyond its first printing, of course. But the committee system worked fairly well, up to a point. Tony ran things with a pretty firm hand. Apart from pieces of the proposal, the real major issue of the Convention was how it was going to be presented to the people, whether in a single package or in multiple pieces. What I would call the liberal (with a small "l") faction insisted on a single submission. Tony bought that and there was no changing his mind about it. Of course, between the amendments to the Blaine amendment and the other pieces, what you had was an accumulation of negatives which assured its defeat.

SPY: What was the thinking behind having a single submission, as opposed to multiple?

RJB: Travia thought the strong pieces would carry the weak pieces with them.

SS: He was very confident of that.

RJB: He was absolutely sure that what we had wrought, no man would put asunder. I think he really believed that it was a winning package of proposals. There were a lot of areas in which we didn't do much of anything, the courts being one. Not much happened with respect to the courts. The social services aspects of government functions were enlarged, probably unreasonably. Certainly that made a lot of fiscal conservatives edgy. I thought the Bill of Rights proposals were in general pretty good. But the Blaine amendment, which as you will remember has to do with limitations on the government's right to support religiously-related activities, had served us pretty well in New York. We had, you remember, the school bus controversy back in the late 1930s or early 1940s, but it settled out. A compromise was reached by which the public school districts transported kids to the parochial, both Catholic and Jewish, schools. That didn't seem to upset the balance of government very much. I thought, frankly, that the Blaine amendment was something everybody should live with. The Catholic Church, I'm sorry to say, played a very strong role in lobbying. Charlie Tobin was the principal spokesperson for the Bishops' Conference. He persuaded the leadership that we should do away with Blaine and rely entirely on federal First Amendment language which – if you were writing on a clean slate – probably was okay. But Blaine had been Blaine for a long time. We had a history of judicial interpretation, and a history of legislative grafting on the principle. It seemed to work. I think that's what cost the constitutional amendment, more than any other thing, its defeat.

SPY: And what were the political forces that motivated the Blaine amendment?

RJB: In favor?

SPY: No, to defeat it.

RJB: Well, the Protestant Churches were opposed to it because they foresaw a great increase in aid to Catholic schools which would have been out of balance with what our experience had been in New York. There were Catholics who were uneasy with it, I being one. There were a number of Catholic delegates who thought it was terrible that I was opposing the proposal. But I did.

SS: What was your concern?

RJB: My concern was that it was working well now, and that aid that was appropriate to religious schools was being given, so it shouldn't be enlarged. Catholics, Jews, private schools generally, have an absolute right to have their own schools. But they can't expect the general taxpaying public to pay for them, with some exceptions, transportation being one and teaching of some subjects with support textbooks. That all seemed to work. Why upset the apple cart? That's what I was opposed to. I voted against it, and I campaigned against it. I won't say I vigorously campaigned against it. But at the public appearances, I recommended a "no" vote.

SS: When you showed up for church on Sunday, – were there negative comments?

RJB: Accumulated negatives.

SS: Yeah. You'd show up for church, and you probably didn't get too warm a welcome, I'll bet.

RJB: It depended on who you were talking to. Our own pastor, I don't remember his saying anything to me one way or the other about it. But some of my Catholic friends were pretty upset with me. But that's show biz.

SS: Was there much lobbying by the public on that issue, or were there professional lobbyists?

RJB: Oh, professional lobbyists. You know, there were citizens groups who showed up. The League of Women Voters, I can't remember what their position was. I'm sure they had one on that particular issue. I would identify that as the final nail in the coffin for the proposal. It was too bad. It was an interesting bunch of people working together. On the whole, the workings were reasonably harmonious. There were some sharp exchanges on the floor, I remember I had one rather unpleasant debate with Bill vanden Heuvel about something. I can't remember the subject.

SS: Were veterans' preferences an issue at the Constitutional Convention?

RJB: I don't recall that they were. They might have been. Of course, I got in trouble with my veteran friends when I was in the Legislature, over the Korean War bonus.

SS: What about the cost of the convention?

RJB: Well, it cost millions, of course. I did tell you the story, didn't I, about my friend on the Island, Eddie Ferenbach, who was at a cocktail party in Nassau County sometime after

the Convention. A lady there was saying that she had just returned from the most incredible house party in the Hamptons. Her host had the finest of everything, pheasant under glass, the very best booze, caviar and oysters from all over – the whole thing. She said “It was incredible and there was no end to it. It went on for the whole weekend.” She said, “Why, he must have spent ten thousand dollars!” Eddie said, “That’s nothing. I went to a house party that lasted five months and cost ten million dollars. It was called the Constitutional Convention.” (*laughter*) It was. You could find a remarkable number of delegates at the track in Saratoga during August.

SPY: Who were some of the leaders of the debate?

RJB: The debate? Earl Bridges was very active. Bill vanden Heuvel had a fair amount to say. The judges who spoke – of course, Charlie Desmond was a Delegate, and he spoke not often, but well. Bill Wallace, a judge from Buffalo, who later became Dean at Notre Dame Law School – he’s in San Diego now, I think. He was a delegate who spoke. Sam Hesson, of course, from here. The delegates from my senatorial district were a fellow named Clark from Colonie and a lawyer from Saratoga whose name escapes me for the moment. The legislative leaders were all there – Perry was a Delegate, of course, and Earl. Tony was President and as I said, ran things with a pretty firm hand. I think Tony was annoyed by my position on the Blaine amendment issue, but he never really had much to say to me about it. It was an unfortunate exercise in futility. Frankly, I’ve not been very keen on the idea of a Constitutional Convention since, unless it’s organized differently and I don’t know how you’d go about that. That takes a constitutional change in itself.

SPY: How would you organize it differently?

RJB: For one thing I don't think I'd have any statewide delegates. I think it would be by senatorial district. The statewide delegate notion is so that top leaders in the state can be delegates. That brought some interesting people in – Marietta Tree and Bob Wagner were two of the Democrats. In fact, most of the delegates-at-large were Democrats. Bill vanden Heuvel was on the statewide ticket. Judge Desmond. Of course, we had Judge Bergen and Judge Scileppi who were both sitting on the Court of Appeals and they were delegates.

SPY: Where was Judge Desmond?

RJB: Desmond had just retired from the Court of Appeals.

He was succeeded by Stanley Fuld – no, no – who succeeded Desmond? I guess Judge Fuld. It must have been.

SPY: How does something like that get organized?

RJB: Remember Nelson chaired the commission under Harriman. Then he appointed a commission to prepare for the Convention, chaired by Sol Corbin. Corbin and his group wrote position papers on a number of the key issues, and in a way, that helped to form the agenda. I thought it was a very good job. Later some critics denigrated the role of that commission, but I thought it was important. The suggestion was that nobody ever looked at their work, but that's not true. We did look at their work. I'm not suggesting that every delegate read everything they put out. I certainly read it on many areas in which I had a special interest and wanted another point of view. By the way, when I say

“position papers,” they were not “the Convention should do this.” With respect to voting rights, here are the arguments for 21-year-old voting and 18-year-old voting, and so forth. That was an issue, by the way, at the Convention. It may surprise you to know I was not for 18-year-old voting.

SPY: Why not?

RJB: I thought the maturing process was barely adequate at 21. (*laughter*). And probably based on my own experience, more than anything else.

SPY: Well, the law on alcohol has gone with your view, but not the vote. (*laughter*).

RJB: Don’t think that argument wasn’t made more than once.

SPY: The two have switched now.

RJB: Of course, now they’ve switched. Now an 18-year old can vote, but can’t drink.

SS: Did the presence of so many members of the judiciary have a moderating effect on the politics of the convention?

RJB: No!

SS: Was it more apolitical as a result?

RJB: No. I don’t believe so. I hate to say this, but the judges were as political as anybody. They really were. Let’s just take the Bill of Rights Committee for example. The question you asked, I think, Sandy, was whether the judges’ participation improved the tone of the convention and made it less political. I’m sorry to report that I don’t think

that's so. I think some judges were clearly trying to approach this from a non-political point – Charlie Desmond being one of them. He was a very decent fellow. He did try to find common ground and reduce the partisanship. It was not quite as sharp as it is in the Legislature. But on the other hand, it was more like it than different.

SPY: Do you see any conflict with a judge also serving in a capacity as someone helping to shape a constitution?

RJB: There's a conflict, except our Constitution says it's fine. (*chuckles*)

SPY: The Constitution says it's fine?.

RJB: Yes. And I'm a little troubled by that.

SS: What about the allegation of double-dipping on compensation?

RJB: Oh, sure, there was that. Court of Appeals judges were getting their regular salaries plus this. Legislators were getting their regular salaries plus this. Oh, sure. But the notion was that all the best people in government or in politics should participate. I guess that was the origin of the notion. I recall that the 1938 convention was presided over by – who ran for President in 1928? Oh, my lord.

SPY: Dewey?

RJB: Oh, no, no. He was the first Catholic to run for President – Al Smith. Smith presided over the 1938 Convention. He was President. The reports I've had is that he wasn't all that political in running it. But the forces that drove the Convention were just unable to

forge a consensus document, because it was not a consensus document. It was the pieces that the leadership wanted. That's what caused it to fail, I think.

SPY: Let's just go back for a minute. Who were some of the luminaries that were collected in this group?

RJB: Well, it was quite a remarkable bunch of people. All the top Democratic people in the state seemed to be involved because they were not in the executive branch. Nobody from the executive branch served. But Marietta Tree had been a delegate to the U.N. and was a charming person, a very nice person. Her brother was a classmate of mine in law school, so I knew her slightly. I mean, we got to know each other quickly when the Convention started. And Bob Wagner, Abe Beame – Arthur Levitt, Jr and Frank Moore, the Controller under the Republicans who was Lieutenant Governor for a while. It was a great collection of people to be around for the spring and the summer. It was an enjoyable process, but not very productive from the point of view of our mission.

SPY: Who were some of the judges?

RJB: Bernard Botein --

SPY: -- the Presiding Judge?

RJB: P.J. of the First Department. There was a justice from the Second Department, Judge Scileppi from the Court of Appeals, Judge Bergen, a bunch of Supreme Court Justices, John Bennett was Surrogate of Nassau County, and Judge Hogan was a Supreme Court judge from the Island, no relation to Frank.

SPY: In the legislature, the legislative leaders have ways of controlling the process. How does that work when you're in a constitutional convention?

RJB: Not quite the same, obviously, because you're never going to see these people again for the most part. So it's not a matter of, you won't get a chairmanship next year, or I'll take your extra stipend away which you get as third-ranking deputy minority whip or whatever. Nonetheless, the control seemed to work. Party discipline was surprising to me. The Democrats were a pretty distinguished bunch of people. They were independent people for the most part. You would have thought that they would have had more difficulty developing consensus among them. But they didn't. It was kind of a bitter fight. I never quite understood how Tony did what he did. But he sure did.

SPY: You said that a lot of the agenda came from Tony Travia. What were the main items on the agenda?

RJB: The 18-year-old vote giving complete flexibility to state government to do social support programs expanding the notion of the social welfare, the power to take care of our less fortunate so that it would set the groundwork (if it had passed) for more progressive, more liberal, programs that might have been true under our existing constitution. The court proposals were all over the lot and they ended up not being much, frankly. What was done with the courts in 1977 was even proposed to be done in the Convention. I would say that the social welfare aspect was probably Tony's most important issue. The church-state issue was very important to him. I don't recall there being a lot of controversy about the Bill of Rights, really. We didn't, obviously, change the Bill of Rights with respect to taking away anything the federal constitution gave us. We

couldn't of course. But that was a pretty civilized discussion overall. Ralph wrote his preamble. That came to naught with the rest of the pile. So it was an interesting, challenging process to participate in. But I didn't have any sense of accomplishment when it was all over.

SS: What was the role of the Governor and the executive branch during this process?

RJB: Subtly influencing. The Governor would call meetings of the Republican delegates, but Earl Bridges was our minority leader. Perry was a deputy, and certainly there was communication there. There was communication between Counsel's office and the Counsel to the Republicans. Bill Mulligan was counsel to the minority, and later ended up on the Circuit. I think he was Dean at Fordham Law School at the time.

SPY: Were there other names that you want to add to the mix?

RJB: Well, Frank Moore, of course, had been Comptroller and then Lieutenant Governor. He was really the resident expert on local government. He was an important delegate. It was a remarkable collection of accomplished people who had name recognition. I guess if there were a lesson to be drawn from that, it's that you can get the brightest people in the world together in one room to try to accomplish something. But if the meeting isn't organized in the right way, nothing happens. The organization here mirrored too much the way in which the Legislature operated. In the end, he was a friend and he remained a friend until he left the bench, but Tony Travia really put his personal stamp on the product and it didn't fly.

SPY: What was the relationship like with the press?

RJB: I don't think they did a good job of selling what they were proposing. First of all, there were lots of splits. There were a lot of people who said in the end, "I'm going to vote no." The Governor did not campaign for the adoption of the new Constitution. There are those who say it tried to accomplish too much by trying to deal with every aspect of the Constitution. In effect, we were writing a new Constitution. They should have focused on a few chosen issues. But as to the way the question is submitted to the people, I'm not so sure you can control the agenda of that carefully. I don't think you can call a convention just to do the judiciary article. For example Mario Cuomo always kind of thought we could do it. But I don't think we could. I made a lot of good friends in the course of that experience, and enjoyed being there and participating. But I feel a little guilty about having taken the money, frankly.

SPY: This was before the Open Meetings Law. How would the press interaction have come about?

RJB: Well, before the Open Meetings Law, there was a lot of secrecy. But in the Legislature, you know, there's still piercing the veil.

SS: That's right.

RJB: With respect to Tony, Joe Bruno or Shelly Silver getting his key people in and saying, this is the way it's going to be – Open Meetings Law doesn't help a bit with that. But they did a poor job of selling. I think generally there was a poor perception on the part of the press of what was going on and what was accomplished.

SPY: If the press is brought more into the process, do you think that helps to sell it in the end?

RJB: Oh, no, I do. I think the press likes nothing more than to be in on things. I think they had developed almost a hostility toward the Convention and what it was producing, which certainly didn't help.

SPY: In terms of some of the ideas that came out of it, were any of those concepts later taken up?

RJB: The 18-year-old vote was. Certainly, the fact that Tony didn't get his amendments in the social services area didn't seem to impact heavily on what happened after that. The government appears to be able constitutionally to do whatever it wants to do with respect to what I'll call social engineering programs. Some of the ideas that have come out of that, certainly the debate over the judiciary, ended up, as I've said, with not much happening. The argument for an appointed judiciary was advanced. Of course, there wasn't a judge there who'd vote for it, because they were all a product of the other system. I've been called a traitor by some of my elected judicial brethren for being in favor of an appointed judiciary. So there were some ideas that germinated there which later produced some results. The 1977 amendments to the Judiciary article didn't directly reflect what happened at the Convention, but the Convention discussion advanced that issue. After the Convention, groups like the Fund for Modern Courts and some of the other groups became much more active toward trying to get some judicial reform.

SPY: How long did the process last?

RJB: Well, we barely concluded in time to get it on the ballot in November, so I think it lasted until September.

SPY: Were there public hearings?

RJB: There were some hearings, but not a lot of public hearings. The press were there, and they reported on things. But it wasn't a well-reported event. As I said, I am glad I participated, but not too much.

SPY: Is there anything you can say, sitting here today, that would have been identified back then as a need to change in our Constitution in New York that hasn't been changed yet?

RJB: Yes. The courts. I still think important changes need to be in the courts. I still favor an appointed judiciary, with a proper mechanism for screening so that not just anybody can get appointed. Even without that, I would have consolidation of the courts. I would have a single statewide court of general jurisdiction in place consisting of Supreme Court, Court of Claims, Surrogate, County and Family Court. I know that specialized parts are the rage these days, but I'm skeptical.

SPY: Why is that?

RJB: Because I think that there is something to be lost in saying to judges, you're only going to try this kind of case. You'll be an expert at it. You'll do much better at it. I think the good judge is a generalist. The good judge should not bring a huge reservoir of knowledge and experience that would tilt one way or the other. A likelihood of bias comes from overexposure sometimes, Family Court being a good example. When you do nothing but hear custody and visitation cases, over time you begin to get some pretty fixed views about who ought to win and who shouldn't. That's not really what the judicial process is about. It's about starting fresh with each case, hearing each side, and

deciding based on the applicable principle of law, who ought to prevail. The fact that you've tried a hundred of them might help you procedurally, but it shouldn't help you toward the result. That's why I'm opposed to the idea that – we've got these commercial parts now – Judge Cahn sits in such a part, doesn't he? I question that. The federal courts don't operate that way. You take the luck of the draw. Of course, all federal judges are not created equal. We know that. In general, they're pretty good. They try all kinds of cases, and I think the results are pretty good. That's why I have a bias against specialized courts.

SPY: What informs your opinions about appointive versus elective judges?

RJB: The experience of my being associated with the Court of Appeals election in 1972, my experience of running for office in 1973 as a judge, and my following closely the Breitel-Fuchsberg election -- and thinking that was a sorry episode. In all candor, even the judges I supported in 1972 did not all behave as I think they should have. Some of the advertising was provocative and appealed to base instincts, as opposed to reason. I won't single any particular ad out, but there were TV spots showing a judge slamming a steel door on a cell, and saying if I'm elected, I'll put all the bad guys away. Of course, a judge can't do that. He's not supposed to do that. He's supposed to decide the cases on the merits.

SPY: Let's talk about that election first. It's three judges, Gabrielli, Wachtler, Hugh Jones – how did they get assembled as a ticket?

RJB: Well, they didn't get assembled. They ended up being a ticket. The nominating process, of course, was the convention. It was an interesting combination. Mike Gabrielli had

been on the Appellate Division. He had been a long-time trial judge, before that, D.A. in Steuben County. Sol Wachtler was in politics in Nassau County and then was on the Supreme Court. Hugh Jones had been President of the State Bar Association and of course, Chair of the Attica Committee. Each had their own strengths. Each had their own supporters. Even they differed pretty markedly in their personalities and their approaches. They ran well together as a team. They campaigned together, not all the time but a good deal of the time.

SPY: There had been a tradition of cross-endorsements. What happened in this election?

RJB: I guess the Republican and Democratic leadership couldn't agree on how the three should be split up because there were three vacancies here.

SPY: It's easier to do when you have two – you take turns – but what happens when you have three?

RJB: Even if you have one, you say next year is your turn. But no, the cross-endorsement fell apart there. Of course, it got worse the next year because that was the year of Breitel-Fuchsberg. Up until that time it worked pretty well, Francis Bergan and James Gibson, and several cross-endorsements worked. But it fell apart. I don't really recall precisely why. But in any event, Hugh had the support of the organized bar and a very diverse support. Dave Peck was a strong supporter in New York, the former P.J. of the First Department. There were the lawyers out in Binghamton, George Hinman, Addison Keeler and that group. Central New York was certainly falling in. I am pleased to say I got a lot of support from the new mayor.

SPY: What was your role on that campaign?

RJB: Well, informal campaign manager for my area. We didn't have much of a structure actually. But it was a matter of primarily being sure that the county leaders remembered there was a judicial race and we had three candidates. There was speaking at some rallies and trying to get the lawyers interested in supporting our slate.

SPY: The "Vote for All Three" slogan, what was the need for that?

RJB: Well, the poster said that but make no mistake about it, each of them was running his own campaign. They collectively did a good deal of things. But no one of the three said vote for the three of us or don't vote for me – only vote for me as part of the three. There was no certainty that all three would win. I have to think, I've forgotten how the vote worked out, but I have to think that Sol had the strongest political position, coming from Nassau as he did and a very attractive candidate here, handsome, articulate and sometimes a little bit of a wise guy, but still an attractive candidate. I'm embarrassed to tell you I can't remember who they ran against

SPY: Was it the year of the Nixon landslide?

RJB: That didn't hurt.

SPY: Tell us about your own campaign.

RJB: Well, I think I mentioned to you that the vacancy was created as part of the court changes, the Rockefeller Drug Laws. I had been proposed for a federal judgeship the year before. Jake Javits was our Senator and they had a judicial selection committee to

the Senator. There was anticipation of action to create additional judgeships. That never happened – at least it didn't happen then. So that ambition and interest was put aside and then this vacancy was created. I thought well, maybe I'd like to be a State Supreme Judge and the County Chair of Warren County, I'm happy to say, was my best friend. We put our heads together and started consulting with other Republican leaders and lined up their support. I wasn't a slam-dunk. Of course, there was no primary. It was simply a matter of getting support from the Judicial Convention. I had an opponent from Schenectady who felt that Warren was too small to get a second judge. Our existing Supreme Court Judge, by the way was Jake. He was on the Appellate Division. So we had no local resident Supreme Court Judge. Of course we didn't get much when we got me. I only lasted a few months. We had a meeting. First of all I called on all the county chairs and the delegates to the extent I knew who was going to be a delegate. We did the same for Saratoga so we became the Republican nominees. Bob Lynch, who was from Schenectady, had to wait a couple of years. He later became a Supreme Court Judge. We ran that fall. It was no contest really. I got the Republican, Democratic and Liberal endorsements. The Conservatives denied me their endorsement. I don't blame them because I had refused to take their endorsement. Every time I had run for the Legislature or the Constitutional Convention I never accepted the Conservative endorsement. So I ran with three endorsements and my colleagues ran that year. A whole bunch of us were running. Mike Sweeney was running for re-election. Ray Amyot and I were running. They all got endorsed across the board.

SPY: How does a judge campaign? What do you campaign about?

RJB: You can't do much. You're not supposed to do much. You show up at party functions. That's the only time you can go and glad-hand everybody. You have bumper stickers and some signs around. Not much. You try and establish your name recognition. You can't say why I should be elected instead of Pete Smith? Forget it. That is a political campaign. I mean it can be. I had no opponents. I just showed up at the clam bakes. I went to a lot of clam bakes. And I was appointed. The vacancy occurred September 1st. Nelson said that he didn't want to make any appointments for people who didn't get the nominations. That was quite different from now. It was a whole different process. So after Ray and I got the nominations, I was appointed to Supreme Court on September 23rd. Thereafter, I was elected for a full fourteen-year term in November, but I started serving October 1st. My first assignment was to Dutchess County. They didn't know what to do with me or anything. The term was well established for a year. The truth be known the State of New York or the Fourth Judicial District would not have suffered severely if we hadn't become judges. But we were lucky enough to become judges. What happened in Dutchess County is that Murray Gurfein who is a Federal Judge in New York let his good friend Stanley Fuld who was then Chief Judge, know that if the State New York didn't do something about the back-up in federal trials in Dutchess County, he would start signing habeas orders. He had a whole bunch of habeas applications. There were 31 detained but not convicted prisoners in Dutchess County awaiting trial on felony cases who had been there over a year. So they created a special part of the Supreme Court and got that experienced Judge Bartlett down from Warren County to deal with it. I was there for three months, October, November and I think December. They cleaned up the 31 cases.

SS: What did it feel like all of a sudden to be on the other side of the bench?

RJB: Well, it was quite a change. But you develop the imperious attitude very quickly. It was quite a change. We had two kinds of judges who didn't get along. They were passing the buck back and forth between each other and nothing happened. So I just started picking juries. As soon as you get a couple of convictions it's amazing how the rest settle. They needed to know that this was the time, go to trial or settle.

SPY: You had spent so much time on the legislative side. Did you form any different views of the law enforcement system as a judge?

RJB: Well, I don't know. I had been a prosecutor in the military. I guess I hadn't really thought through issues like jury selection, how it works in criminal matters, because I had tried very few criminal cases. I can only think of one felony case I tried and we took a plea halfway through that in Supreme Court or County Court. But one thing that happened was that when I went down there I asked Frank McCullough, who was the Administrative Judge for the Ninth District, to get me whatever help he could and offer any suggestions he had. He urged that I take a much stronger role in jury selection and the statute required it. I did right from the beginning. We had juries in half a day when those two county judges would take two and half to three days to pick a jury. It was just a matter of keeping the heat on. Don't deny anybody their rights. At that time, we didn't inquire about the use of peremptory challenges. It wasn't the kind of scrutiny of peremptory challenges that later became the law. But we got juries. I moved trials along as swiftly as I could without trying to impose on anybody's rights. When I said we're going to take a 15-minute break, and if I had phone calls I wanted to make that I couldn't

make in 15 minutes, I made them at the end of the day. So we got through the 31 cases. We had maybe three acquittals I think in two and a half months. I think I had eight convictions. There were nine verdicts altogether. I think I had three acquittals so there would have been six convictions. But after that they started to fall out.

At the beginning of my third month there I got a call from Bob MacCrate who said that he had asked Dave Peck to chair a search committee for Chief Administrative Judge or State Administrative Judge, or whatever the heck he called it, and would I be interested in having my name submitted. That's the rest of the story. I did submit my name. I was in a Civil Term in Schenectady when I got a call from Charlie Breitel saying that his committee had recommended me, that he was happy to concur in that and would I do it. So, I packed up and went to New York and never drew a jury again as a judge.

SPY: And how did that process work? Did you get interviewed?

RJB: Yes. A professor at Columbia chaired the subcommittee that interviewed me. Dave Ross was a candidate. He was the Administrative Judge for Manhattan. There was a guy named Malachy Mahon who was a professor. I forget which law school.

SS: Hofstra.

RJB: Hofstra, I think you're right. He may still be there, I'm not sure. Malachy was interviewed. Arch Murray was interviewed. Ross was interviewed. Charlie Breitel and I had some discussions about this. He called me when I was in Poughkeepsie. This was after I heard from MacCrate. He asked me if I was satisfied that a Judge could serve as Chief Administrator under the existing statute. I did some research and wrote a very brief

memo. I sent it down to him and I suggested that it might be helpful to have a statutory change but I thought constitutionally it could be done. So they proposed me and I went down to take the job. Then Chapter 2 of the laws of 1974 was passed saying that a Supreme Court Judge could be Chief Administrator.

SPY: How had court administration been run before you came on board?

RJB: Tom McCoy was the Administrator of the Judicial Conference. The Judicial Conference was pretty much a toothless tiger. They put out reports. They collected statistics. They didn't run anything. Charlie had a very different concept of what he wanted the McCoy administration to do. Some of it required constitutional change but some didn't. At the same time, he was very keen on doing something about the mechanism for judicial conduct – to do something beside the very awkward process they had. He wanted to do something about elected Court of Appeals judges. He wanted to do something about elected judges period. But it turned out the legislature refused to do that.

SPY: How was the court system run when you came in?

RJB: The P.J.s ran the court system basically. There was the Administrative Board of the court, which consisted of the four P.J.s plus the Chief Judge. They ran it. The Judicial Conference, when I took over the office at 270 Broadway, was largely a reporting process. They did call together judges for conferences and they did have some judicial instruction. I think Crotonville had preceded us. But the Judicial Conference didn't have much to do with how the courts ran on a day to day basis. As you know from your own experience, Steve, we started looking at how the courts operated. Our people looked at various aspects of the court system to see how we could improve them – to see what

kinds of changes were needed – what was constitutional and what was statutory. Of course, one of the biggest obstacles to a truly unified court system was the funding process. The funding process was a combination of local funding and state funding with no overall judicial budget. The judicial budget was a joke. It existed but it didn't really control the planning of the court system. So we started working on all of those projects. Charlie decided that he should not wait for a constitutional amendment before he had more centralized administration, and he did one of the most incredible feats of judicial management or judicial politics or whatever you wish to term it. He persuaded the four P.J.s to persuade their four Appellate Divisions to name me the Administrative Judge of each of the departments.

SPY: It had never happened before.

RJB: No. It never happened again either I don't think.

SPY: Because each P.J. ran his department within that geographic area and now they were ceding to me.

RJB: For a long time, for months and months and months, I had to negotiate my powers. I had to go to the P.J.s constantly. I was in and out of the Appellate Division chambers. Tim Murphy later and Frank Gulotta and then Milt Mollen and up here with Clarence Herlihy. Herlihy kind of thought of me as his protégé. In a sense I was a Glens Falls local. His mother and my grandmother were best of friends. He was very pleased with me and he was very supportive. John Morrison of the Fourth Department was wonderful. And they ceded a lot of authority.

SPY: How was Breitel able to invent something like this?

RJB: Charlie Breitel was a very interesting man. A little extra effort or energy or enthusiasm. He just was able to focus things and say “hey look here, we can’t let the court system go on the way it is and we’re going to get a constitutional change one of these days, but we can’t ask Dick to run the administration at the court with no authority.” He persuaded them. Each Appellate Division entered orders. I’ve got the collection of orders in my file. He just did it. Judith Kaye asked me the same question, “How did he ever manage to do it?” I said it was a miracle. But he did it. The result was that I had my authority which was begrudgingly given. Very few people were enthusiastic about this change but over time they got used to my being around at least. I remember some change we instituted in the First Department and a delegation of judges came to see me, or made an appointment to come and see me, Andy Tyler, I forgot who else. All the top dogs on the trial bench. I had a meeting set up for 2:00 one afternoon. I had to go to Albany on very short notice, so I had my secretary call whoever the contact person was, it may have been Tyler, to say I was going to be away and if they wanted to come down, my staff would be glad to meet with them. But I assured them that if it didn’t suit them, we would reschedule them as soon as I could do it. Well, they decided to come down. Mike Juviler and Peter Gray were there. The report I got out of that meeting was that Tyler said well we decided to come down even though Bartlett was not here. We want to know what’s behind this, some change, of course, I don’t remember. So Peter patiently tried to explain the change. Then Juviler got in the conversation. At some point Tyler said “Wait a minute, let me get something straight here, you’re a lawyer and I know you’re a lawyer,” pointing to Mike. “You were in the D.A.’s office. How about you, Gray?” “No, I’m not

a lawyer.” “What did you say, he’s not even a lawyer? What the heck are we doing meeting with a guy who’s not even a lawyer?” They picked up their papers and walked out. Peter didn’t know what to do and Mike Juviler said “Look, you said you wanted to meet with us.” “No, we’ll deal with Bartlett when he comes back.” That’s just a humorous incident. But it does express the resentment that was felt toward our upsetting their normal routine. I must say it probably also caused them concern that a fairly young guy from upstate was the point person.

SPY: Tell us about the conversations you had with Breitel in terms of forming what his vision was for the court system and then how your two roles would play out in shaping this job?

RJB: Make no mistake about it, Charlie was always boss, as he should have been. I worked for Charlie Breitel – every bit as much as I had worked for any superior in any role. He viewed me as his lieutenant. But that meant that when we agreed on what should be done, I was to go do it and I didn’t have to check with him on every step of the way. He was a good delegator. It was important that we listened carefully to what he was delegating and what it was he wanted to accomplish because he was not patient with failure. But we talked things through. He consulted me in a wonderful way. When he had some proposal he wanted to take up with the Administrative Board, he’d dictate a memo to me, outlining what he had in mind. He asked me what I thought about the concept and said we’ll talk about it the next time we were together. We were together very often. Of course, I had an office in New York and in Albany so I was in and out of chambers all of the time. Both up here and in the city.

SPY: Where were his chambers?

RJB: Trinity Place.

SPY: You were at 270 Broadway.

RJB: I used to walk there. He was right over near the American Stock Exchange on Trinity, next door to the American Exchange. If I had a different idea he'd listen to me, sometimes patiently and sometimes impatiently. He told me why it couldn't be done that way. But when you take an assignment, the kind I accepted, you have to sign on for better or worse. And I did. I can't honestly think of many, if any, cases where I thought he was dead wrong about something. But I did it anyhow, because in the end Charlie really wanted you to see things from his point of view. He wanted your agreement. It was a wonderful relationship.

SPY: What was Breitel like?

RJB: Tough guy, tough minded, somewhat driven, but really a very decent guy. He had a wonderful sense of right and wrong. He had a good sense of fairness. Of course, in my dealings with him, it was a non-judicial function. I speak now on his decision-making function. When he became an advocate for something, he was very careful to distinguish that role, his leadership role as chief from his leadership of the court. He was very good at separating his personal views from his court views. I think I mentioned the footnote he had in the death penalty case. That was classic Charlie. He was very good at dealing with the Governor. Here was a guy who had remarkable experience. He had been Chief of Appeals for Frank Hogan. He had been Counsel to the Governor. He had been a long time judge at the trial court and at the Appellate Division. He had been a very active member of ALI, been on the Council for ALI for years. He was really a very nice fellow

and he had a vision about the courts and made sure he was going to do his best to carry it on. He accomplished a lot.

SPY: He had a different vision in terms of the public face of a Chief Judge than several of the chief judges thereafter. What was his view in terms of how public the Chief Judges should be in terms of serving as the public face of the courts?

RJB: Well, he didn't hesitate to go public with something in his role as Chief Judge of the courts. When I was appointed, he held a press conference in the conference room in Albany at the court. A lot of the reporters had never been in that room before and probably never were since. He had announced that I was his choice and that the Administrative Board had agreed to it. That was before we got the orders. He certainly gave me a wonderful reception. When we got into office he started doing annual reports. In February 1974 he addressed the Legislature and it was quite well attended I thought. He started talking about reorganization of the courts right off the bat. That's what this address was about. He spoke about each item. This had all been put together, state funding for example. I'd only been around since February 27. I had been around for a month and he's already got this package put together. I forgot who the press guy was at the Court of Appeals, but we had our own press people and we worked, making suggestions. My recollection was that he dictated most of this. Let me just give you a sentence or two. In the constitutional reorganization of the courts in 1962, a sound compromise has come to a pass when the compromise that was required must be re-evaluated. There must be a further reorganization by 1976. Before then, whatever additional steps could be taken without constitutional change must be taken. The debate is no longer whether we shall move, but what we shall do. He was a powerful message

deliverer. And the attention was very good. Afterwards was there a string of endorsements from the legislator leaders? No of course not. It was a very sensitive area. We'll take his thoughts under consideration and some of them they are still considering. We got the start of a unified budget well in advance of the constitutional amendments. That happened in 1976.

SPY: Why don't we take them piece-by-piece. Describe the unified budget. How was the budget done before, what happened thereafter and how it got changed?

RJB: I'm going to refer to Charlie Breitell's address here. He talked about judicial administration. By the way, by February he already had those orders. This is incredible. He only took office as Chief Judge on January 1st, okay. Here we are, in February, he already had the orders to designate Bartlett as the Administrative Judge of each department. Then the Legislature unanimously adopted, the Governor approved, the Legislature permitting me to exercise the office of State Administrator. This is classic language: "By this joint action there is now—not tomorrow, or next year, or two years hence—a single administrator with management authority over the courts." It was pure Charlie.

In other words, it could be called a coup d'etat.

Yes. Then he talked about the City of New York. Dave Ross became my deputy for the City of New York. He talked about what great guys we were, a little bit of BS here, but that's alright. We'll accept it. Then he talked about the fragmentation of the court system and the need for constitutional unification. And then, essential to a unified court system is a central court budget funded by state revenue. The present method of

financing is fragmented and chaotic. No less than 59 government units fund the state, local, and city courts. Then he talked about a centralized state budget, incorporating a pending constitutional amendment. But we adopted it before the constitutional amendment had passed. Then he talked about judicial selection which did not bring any ringing applause as I recall it. And judicial conduct. So all the pieces of what we wanted to do are here. That was spelled out in his first address to the Legislature. Those were very busy days. We worked very hard down there.

SS: Meanwhile, what about all the judges? Is everything happening so rapidly that they don't have a chance to get together to register their concerns?

RJB: Well, I told you about the visit from Andy Tyler and that other bunch. I shouldn't single out Andy. He was not the worst by any means. He just happened to be chair of the group. Yeah, there was resentment. This may sound silly to you, but we were trying to reform the civil service structure in the courts. And it was anything but uniform. I wanted to do away with the personal attendants to the judges in New York City. Judges upstate didn't even have them. That was a bitter pill. The idea of taking away their personal attendant.

SPY: Not to mention the elevator operator in the Appellate Division.

RJB: Yeah, right. They said, "Who's gonna take my check to the bank and cash it?"

SS: Jeepers.

RJB: Right. It was awful. They were all district leaders, you know — all the personal attendants. On the other hand, in Buffalo, we said every judge should have a secretary

and every judge should have a law clerk. In Buffalo, they raised hell about that. Why? Because they had a pool of secretaries and a pool of law clerks and they liked it the way it was. And I said, “Well, we can’t have a different rule for Buffalo.” Oh, they were so upset. John Marsh called and said, “You got to come up here.” “What and get hung?” “Well you won’t get hung. But you gotta come up here.” So, I went up and met with the board of judges, I think they called themselves. There were all the Supreme Court Judges in Erie County. It was the whole 8th District. It was not a pleasant meeting. They finally agreed that they would have to somehow adjust themselves to each having a secretary. There were some who liked the idea, of course. The P.J.s didn’t like it. But, then when I went to Syracuse, I was asked to meet with the Onondaga County Bar Association. Bill Roy was the Administrative Judge and I met with him. This is my first visit around the state. I walked into the main court room in the Onondaga County Courthouse. It was jammed. I mean, it was standing room only.

SS: Were you alone?

RJB: Yeah. Usually I was alone. Nobody even covered my back. I was introduced by Bill Roy. A guy I knew slightly — at least I recognized him — stood up, and said that he had been asked to speak on behalf of the Onondaga County Bar Association. “I don’t want you to take this personally, Judge, we hear you are a nice guy, but,” he said “ they may need unified court administration in New York City, and they may even need it in Buffalo, but we sure as hell don’t need it here in Onondaga County. So I suggest to you that you worry about the rest of the state and we will worry about Onondaga County. Don’t impose any of your silly rules on us.” That was Howard Munson, who later

became the Chief Judge of the Federal Court. I've told that story a number of times. I barely got out of Onondaga County alive that night.

SPY: Was that one of the themes that you saw repeated – why you needed a solution for the State, when the problems are in New York City?

RJB: Yes. “It ain't broke and don't fix it”. Oh, yeah. New York City is a mess we know, but, worry about New York. Don't worry about us. We really tried to have a uniform set of rules applicable everywhere. Modifications are always necessary to deal with — some inevitably with some normal conditions — but not much.

SPY: You read a statistic from Breitel's speech that over 59 government units would get involved in the court budget. How would a county judge's budget be set before this happened.?

RJB: Before this happened, the County Board of Supervisors would set the budget and adopt it. And then there was some state aid that paid part of the County Judge's salary. We changed all of that to some county aid to supplement state aid and there was a single state budget. It became a mechanism, as you will remember, for our accomplishing some policy things, which budgets always do. That preceded the constitutional amendments. I don't think our opponents — we snuck one by them, I think — I don't think they realized the significance of that until after it happened. Then, of course, we had a system by which local contributions were reduced over time. Now it is truly a state budget. The only area in which I believe we still have local contributions is in court house construction — where it is shared. Of course, then we drew the battle lines slowly but surely they were being drawn for the constitutional battle.

SPY: Before the constitutional battle, how did the budget part of it get changed?

RJB: We submitted a unified judicial budget in 1976, which provided for all the state level courts — with local assistance coming in as a contribution. It was a state-directed budget.

SPY: So, it was done through a legislative act, as opposed to a constitutional amendment.

RJB: And thereafter, it stayed in place. So, we have a single judicial budget — but it only provided for partial funding. This provided for whole funding, and identified what the state and what the local responsibility was — something that was directed statewide. It was a change in concept and over time a change in control, of course. That occurred fairly painlessly. I think the judges also, maybe they get paid a little more. Indeed, they did in the end. My salary went from \$38,000, when I first became J.S.C., in 1973, up to \$60-something five years later. Of course, I was being paid the equivalent of an Associate Judge at the Appellate Division. That would be the basis for my pay. I am sure the P.J.s were a little bit above me.

SPY: Speaking of pay, there was an expression, “Paychecks by April 1st.”

RJB: Yep.

SPY: Do you know what that was all about?

RJB: I am trying to remember. I do remember that expression. I can’t remember that particular battle.

SPY: The payroll system had to be put in place to get everybody's paycheck out for the new budget.

RJB: For the new budget. Exactly right. That was a major undertaking. I got to hand it to our people, who really did a great job with that — OCA people. But, everybody got their paycheck. There were a lot of interesting things that went on. The resistance to our changing some of the civil service rules was formidable, particularly our efforts to get Hispanics and women into the court clerk channel. The court officers, of course, violently opposed that. We wanted to reduce the height requirement for Hispanics and permit backroom clerks to compete for court clerk positions. All the court clerks in New York City came from the court officers' ranks. So, you were a cop first, and then a clerk. We changed that. That was a very major change. But that is what elicited the marches, the picketing of my apartment house, the picketing of 270 Broadway, the picketing of 6 Sherman Avenue in Glens Falls, New York, and the picketing of 14 Mile Island. Oh yeah, they didn't miss me anywhere.

SS: How did they picket the island?

RJB: Well, while they were picketing in Glens Falls, someone announced, we rented the house that summer. The fact is, that summer we gave the use of the house to the Lake George Opera and opera personnel were staying at our house. We had a particularly frantic soprano staying there at the time. I have forgotten her name. She was from Queens originally. A very good singer. She was in the Met later on. She had a fit in the paper that they were gonna picket 6 Sherman Avenue. So, I said, "I'll be down there. You take the afternoon off and I will be down there. So, I went down with my

driver/bodyguard/companion Ed Pratt. City police, of course, showed up to make sure there was no disturbance. There were probably over a hundred pickets outside — milling up and down Sherman Avenue, wearing side arms, would you believe. While I was there, some of them rented a boat and went out to 14 Mile Island. They put posters all over the property saying “BARTLETT DROP DEAD,” nice little expressions like that. Of course, they carried a coffin by my apartment in New York. I rode to work in a City police car for about two weeks there. But the episode up at the Island was disturbing only because when they found nobody was there, they came in the house. They disassembled my stereo system. They didn’t take anything. They wanted to be sure I knew they had been there. So there in the middle of the living room floor, were all the components of my stereo system with a poster propped against my speakers.

SPY: How does that impact you personally?

RJB: If we weren’t on tape, I would tell you. I was ticked. Thoroughly ticked.

SS: How did it impact Claire?

RJB: She was annoyed and a little worried about my going back to New York. They had evidenced a craziness that was upsetting.

SPY: It must have been distressing

RJB: Yeah, those people were bound and determined that they were gonna break me, send me back to Glens Falls and then their troubles would be over. Then, of course, they picketed Charlie Breitel’s apartment house too. They used the same casket they had in front of mine. They had a pickup truck and they put it on the back of the pickup truck and went

out to Central Park West and picketed Charlie. Mrs. Breitel was really upset. Oh my. She was afraid. She really was afraid that something would happen to us.

SS: What was the effect on the community of Glens Falls?

RJB: Oh, I got very good press coverage. “A bunch of hoodlums from New York are up here bothering our Dick Bartlett.”

SS: Very protective.

RJB: I didn't lose that one.

SPY: What was it that they were most upset about?

RJB: They were losing control of the court clerk entry system and we were going to tell them that whether they wanted Hispanics or not, they were going to be court officers. The union leadership was opposed to it because the members were opposed to it. They had an exclusive. If you got to be a court officer, you had a good chance of working your way up to being chief court clerk. Pretty darn good job. All the back room clerks, who really had the qualifications to move up to court clerk, were excluded. There were no women court officers then. They had women matrons, you remember, who were present when a woman prisoner was present. But never without a man.

SPY: You mentioned Michael Juviler who was your counsel. Maybe you could talk about how you put your team together?

RJB: We put my team together somewhat the same way that I put together the team for the Penal Law Commission. I called on people I knew to make suggestions. I've forgotten

who called me about Mike Juviler. I knew his cousin, Dick Uviller very well. Their names were spelled differently. Juviler and Uviller. But they were cousins. Dick was in the D.A.'s office and then went to Columbia. He just died you know, a few weeks ago. Rena, his wife is a judge. I think a suggestion came from Dick Uviller, that his cousin was kind of burned out in the D.A.'s office. He had been Chief of Appeals and was looking for a new challenge. I was sure looking for a new lawyer. The current lawyer we had was able, but he had a very fixed notion of what the office should do and what it should not. The emphasis seemed to be on what we shouldn't do. I needed a different point of view. So I hired him. He put a very good staff together. We kept some people. Mike McEneney. Bill Bulman we kept on. John Wynne you remember was in Personnel and he stayed around for awhile but not terribly long.

SPY: How did you come to Sue Johnson?

RJB: Peter Gray was already working for me. He was very bright, you may remember. He was a PhD from MIT. I forgot what job he came from. But I knew Don Johnson. Don was the head of the Criminal Justice Information System. He went back and forth from Albany. I had known Don because I was working with Frank Rogers. I heard that his wife was a very able person. Whit Knapp called me. Of course, I had known what law firm he was from. He was on the Knapp Commission. Whit called and said Sue Johnson worked for me during the investigation of the Police Department. She is looking for a new challenge. My first meeting with Sue was not successful. Somehow I was going to meet her for lunch, just to get to know each other. I went to restaurant A and she went to restaurant B. Finally, I called the office and my secretary said Mrs. Johnson called. She's waiting for you at restaurant B. I said oh, good Lord. So, I started over there. She

was not terribly anxious to get chummy at that point. She was worried about working for a guy who was so totally disorganized. Good Lord, what will that be like? But we soon got good communication. She was a wonderful choice. Sue was a genius in finding the right people, including some in this room. She really did put together a remarkable bunch of people. And they did the real tough work of developing proposals for all these activities I'm talking about. They played a very important role in what I was able to accomplish and what Charlie Breitel was able to accomplish through our office. Very unfortunately, after she left court administration she developed Parkinson's.

SPY: You mentioned the incident with the judges and Peter Gray.

RJB: That was the downstate judges.

SPY: Sue was not a lawyer either. The concept of having someone who was not a lawyer get involved in court administration, how did that come about?

RJB: That bothered the heck out of people that I would even dream of getting non-lawyers involved in planning the court system. I found that what developed good lawyering skills sometimes is useful in the other area, but not always. So I didn't hesitate to hire non-lawyers where I thought it would improve the team. That was true in Albany too. Our budget people were all non-lawyers and they did a very good job. Personnel were largely non-lawyers. But, you know when you took people like McEneney and Bill Bulman, they were assistant counsel but they really worked the way lawyers work. They were doing administrative work and I thought they were pretty good. Mike McEneney became a fixture of the courts. He had to bring other talents in and shouldn't depend on a petty law degree.

SPY: It's interesting today running court administration in that there are whole schools and there are whole conferences. Was it a novelty at that time to have non-lawyers?

RJB: Well, it was more of a novelty. Tom mostly had lawyers working for him. Of course, Tom and I had been friends since law school, so we had known each other for a long time. He mostly had lawyers working for him and I think that's what the chief judges expected. It was a lawyer's world and it never even bothered me to have non-lawyers. I saw the value of having, let's put it this way, having some left field thinking is not so bad. It challenges you. Maria Jones and Joann Witte, I can't think of her name... another planner, part of Sue's team, they found me impossible. They came in with some proposal that they were defending. I didn't laugh at them, but they could see that I was more amused than impressed. Joanne turned to Maria and said "I think this meeting is over with Maria. Let's get the heck out of here." They picked up their papers and walked out. I said "Wait a minute, wait a minute now." Ultimately whatever they were trying to convince me on, they did and we moved forward with it.

SPY: There was a later concept which is still in place, called Standards and Goals. I am sure the judiciary had not seen the notion of standards in terms of time management that were put in place.

RJB: Standards and Goals became very important. They are now part of the rhetoric of the court system. They absolutely accepted, sometimes with a little cursing, but most rules are accompanied by a little cursing, the notion of having standards to meet and not meeting them. I had an example of this yesterday. I was in court on a matter where a judge had issued a TRO last September. He told the sides to try to agree on what the

limit of the stay ought to be until the matter was tried and they worked on that finding until a return date of December. They showed up in December and the judge was right in the middle of charging the jury in a big case. So he gave them five minutes and said if “You can’t come to an agreement, I will have to get you together again.” He called a conference of the lawyers the day before yesterday. I know why he called it because he looked at this and said “I have had a TRO on my docket since last September. I’m going to hear from court administration about that.” So he called us in and he set down a hearing for two weeks from now on a preliminary injunction and he’s got the case moving again. Of course, my client was deeply upset because he loved having a TRO there. He would have been glad to have that there forever.

SPY: How did the concept of Standards and Goals come about?

RJB: We had to have accountability. We had to have a method for being sure that things were done in a timely fashion. Charlie emphasized constantly that justice delayed is justice denied. We’ve got to dispose of our business. It is not fair to anybody, including the judge. There is nothing more worrisome to a judge than having an old stale case kicking around that hasn’t been dealt with yet and knowing that you’re responsible for it being dealt with. It’s depressing, demeaning and unfair. So that was the whole idea behind setting standards under which you had to dispose the cases or leave them alone. I think it’s been a very important change. I know that judges – when they have to make that year-end report, especially, listing everything that is pending over 60 days – they scurry like the dickens. They have to have as short a list as possible so they need to write as few excuses as possible. So I think it’s been very useful. I think it’s for the interest of justice and the reputation of the court system.

SPY: Was there a push back from the judiciary to Standards and Goals?

RJB: Yes. You can't tell me how to run my courtroom. First of all, you don't know how to run one yourself frankly. I was delighted to pull out my 31 indictment record, reminding them that I had brief experience, intense experience. But, yes there was resistance. But I don't get that sense now. They're still sneering about it. One judge was a very good friend of mine from the Fourth Judicial District. He referred to OCA as Oca and it was used as a curse word. Darn Oca and he would just bite off his words. He complained constantly. But I'll tell you something, by the time he retired, he didn't have any old cases hanging around. He responded. He just liked to bellyache about it, especially because his friend Bartlett had something to do with it.

SPY: Another part of the team was Bob Sise. How did you decide to have an emissary to upstate New York?

RJB: I decided that what had worked in New York City ought to work upstate. I really worked very hard in those days and thought I needed some assistance in keeping an eye on what was going on upstate. I was able to send Bob to troubleshoot where I'd been doing that all myself. I'd gone all over the state and gone to judge's meetings everywhere. So the concept of having a Deputy Administrative Judge for upstate grew out of that need as I perceived it. Charlie agreed with me. Bob Sise came to mind because he was doing a very good job in the Bronx. I knew him slightly, not well. I knew him slightly because he was from Amsterdam of course and he had gained a good reputation upstate. He was a Family Court Judge. But he tried murder cases all over the place. He was the favorite designated hitter when a local county judge couldn't handle a heavy case for some reason

– to bring Bob into try the case. He had a wonderful record and he had a record for keeping a docket clean down in the City. We were friends. I should say we became friends. I didn't know him that well before he became a judge. He knew who I was but didn't know me that well. We started talking about his being upstate. He thought that was a great idea but Theresa (his wife) thought it was an even better idea. So he became my Deputy in Albany. It worked out very well. Of course, I had an Albany set up which worked well with New York generally. Freddy Miller was legislative counsel. Marc Bloustein is still there as legislative counsel, he was deputy, too. Ed Gardner was budget. We had a good team. They sure made me look good, I'll tell you that.

RICHARD J. BARTLETT ORAL HISTORY

September 2, 2005 – Session 3

Hon. Richard J. Bartlett (RJB)
Prof. Sandra Stevenson (SS)
Stephen Younger, Esq. (SPY)

SPY: We are here at Schaffer Law Library again. It is September 2, 2005 on day 3 of the Richard J. Bartlett oral history with Richard Bartlett, Sandy Stevenson and Steve Younger. We talked the last time about your role as Chief Administrative Judge. I thought that we would start off by talking about the constitutional amendments that were passed during your tenure. Maybe just to start, you can give us some background about the genesis behind the idea to get these amendments passed.

RJB: Well the court reform groups in New York had for sometime been agitating for an appointed court, for a stronger judicial conduct program and for a stronger court administration to which you can add the merging of the courts. I am talking now about the Fund for Modern Courts, the League of Women Voters, the citizens group from New York, I forgot their name now.

SPY: Citizens Union?

RJB: Right. The League of Women Voters I want to mention especially. They were very strong. Of course, the Fund for Modern Courts has been around for quite a well. All were urging that the work started by the Tweed Commission be finished. And I had been involved, primarily through the League because I had developed a close relationship with the League while I was a legislator and thereafter, in supporting that kind of effort. But

when Charlie Breitel found out, when we were both running that year, speaking of 1973, that I had an interest in completing court reform, I think that was one of the factors that focused interest on me as a possible candidate for Chief Administrative Judge. In February of 1974, Charlie addressed the Legislature, less than two months after he took office as Chief Judge and less than a month after I became State Administrative Judge. He laid out the whole program to the Legislature. It was quite an incredible feat. I went back and re-read it the other day, because I forgot how the blue print was laid out by him so early in our effort. It included all the amendments that we are going to talk about in a minute. It talked about the need for a single unified budget for the courts. He talked about the fact that the name Unified Courts was a joke. It wasn't unified at all. He talked about what we had to do to make it unified. And he spelled out his full program which came to fruition at least in part, before he left office as Chief Judge. The effort to change the Constitution started shortly after and we were back and forth with the Legislature. We tried to get Bernie Gordon, who was Chair of the Judiciary Committee in the Senate. I have forgotten his counterpart in the Assembly, but Gordon Burrows was very helpful to us. He was a Republican Assemblyman. They sponsored the bill that legitimized a Judge sitting as Chief Administrator. What really brought it to a head was Hugh Carey. It was his frustration with the back and forth, unresponsive attitude of the Assembly. I have to say this – usually you think of reform as being more associated with Democrats than Republicans in general, at least they are pushing for change more often. In that setting, however, Warren Anderson was hardly enthusiastic, but Stanley Fink was positively reluctant.

SPY: They ultimately agreed to the bill?

RJB: Fink was more concerned about doing anything about his judges and the relationship that the elected judiciary had with the machine in New York City. That's what he was reluctant about. And mucking around with the power that was in the P.J.s because the P.J.s, even though they were appointed by the Governor, came out of the political process. First of all, Hugh Carey met with Charlie and with me. Judah Gribetz was his Counsel. He said I am going to call a meeting at 55th Street, where his office was in the City, with the legislative leaders. I would like you and Judge Breitel to participate. I am going to tell them that we are going to call a special session of the Legislature to consider court reform. This was in the summer of 1976. To get first passage of the constitutional change. It will be in time to be on the ballot in the fall of....

SPY: 1977

RJB: 1977, exactly right. He called that meeting and it was clear that the legislative leaders were not happy with that proposal. But Hugh stood his ground. My admiration for him, really I hate to say it, began that day. It certainly was a large part driven by the stand he took on this issue, and through negotiations, we narrowed the choices down. It was clear that appointment of judges generally was not going to fly at that time. What they seemed to care least about was the Court of Appeals because it had the least political implications. As Charlie put it very well, the Court that needs the appointed system least is going to get it first. He was right. So, it began that summer with a special session.

SPY: What was Carey's interest? What was driving him?

RJB: I am not sure. It is hard to know what drove Hugh Carey. Like 20/20 hindsight is that a lot of things that drove him were good instincts. I think Judah was an influence.

Although Judah had close ties to the political scene in New York City, he was essentially an idealist. I don't know what other factors were at play behind the scenes, but he was a tough cookie on that issue. The result was a first passage of constitutional amendments. There were a couple that were in alternate form. I know that they affected judicial conduct and that permitted the Legislature the next year to select between some alternatives. I have forgotten precisely how that broke out.

SPY: Did they pass two different amendments so then the next year they could decide what to do?

RJB: Exactly and I think it had to do, I have to go back and look that up and fill that piece in but the result was that is was going to go on the ballot in 1977. It transformed 270 Broadway with which you are familiar, Steve, from a very non-political place to a very political place each with respect to getting those amendments passed. Charlie got busy. His friend Simon Rifkind who was a senior partner at Paul Weiss agreed to chair the committee to raise some money for this effort. We hired the best political consultant in New York City, who worked for Ed Koch, I am trying to remember his name. He was a well-know guy named Garth.

SPY: David Garth?

RJB: Absolutely I used to go up to Garth's for meetings. Ed Koch would be in the next room eating his Chinese take-out and we were eating corn beef sandwiches in our room. Oh yeah, it was Garth. And he assigned a guy who worked for him who designed the punchline amendments, vote for 1, 2, and 3

SPY: Yeah 1, 2, and 3.

RJB: Yep. We didn't raise a huge amount of money but it was enough to float some TV ads and a fairly modest campaign. But we had a lot of people out on the street. The picture in my mind is Mike Seymour, all 6'5" of him, or whatever he was, at a subway stop in mid Manhattan passing out fliers for Amendments 1, 2 and 3. You never know what energizes Mike, but when you energize him, he really goes like crazy. And we had a very satisfactory voter response, you know?

SPY: Let's go back. How did it work in terms of talking to the Legislature to convince them to pass these constitutional amendments?

RJB: They were embarrassed to do it. But Hugh Carey, I mean, I shouldn't say that he was the only driving force. Bernie Gordon in his gut, supported systemic change in the court system, he really did, and he got Warren Anderson to go along. Warren has never been a cynical machine-oriented person with respect to the courts. His father had been a Judge and he respected the courts. I think, he had that interest. There were a lot of Democrats, of course, who supported change. We also know that there were many Democrats who were not of that inclination. So the selling job was in the Assembly and they were called to a special session in the summertime by the Governor of the State to do something about what he said was a critical problem. The New York Times said it was a critical problem. In fact, editorial support was very strong across the state. The Times Union was a big booster. So it became the "white hats against the black hats" and they folded.

SPY: And was it reform versus political patronage basically?

RJB: I don't want to put the contrast quite that sharply. Also at play, was the significant ego factor on behalf of the existing judiciary. Frank O'Connor, who had run for the Senate, had been the Majority Leader in the Council, among other things, and then became a Queens Supreme Court Judge. He lead the charge against court reform on behalf of the judges. It is fair to say that the establishment, especially in New York City but not solely in New York City, said if it isn't broke it doesn't need fixing. So you have the judges saying and very publicly these are a bunch of do-gooders who are unrealistic with Utopian goals that won't work. That was the mentality. It was the kind of attitude they were opposing and so it was an interesting campaign. Of course, Charlie was absolutely critical. It was his next to last year in office. He left at the end of 1978. He can really claim properly when he looked back and re-read that speech of his, that his blueprint has been largely forged and I was very proud to have been his lieutenant. You remember, we had quite a celebration.

SPY: That's right. Were you surprised that all three of the amendments were passed?

RJB: Well towards the end I wasn't because the polls told us that they were going to pass. We didn't do extensive polling. In fact, we didn't commission any polls but it is an issue on which the pollsters obviously took a poll, you know. I was skeptical to begin with. But it was clear that the cry for reform was going to be listened to. I don't mean it was a great outpouring of strong support for it, but people on the whole thought it was probably a good thing, as opposed to God I got to vote for that because it is absolutely critical. I think it was sort of an on balance thing, that we are better off with these reforms than without them. After they passed, it was in the 1978 session that we had a lot of arm wrestling with respect to the implementing legislation because all of details were not laid

out in the amendments. That was quite an experience in which I would say that we probably lost more than we gained. In the implementing legislation, to the extent that it changed the direction at all, it tended to water down a couple of things that we wanted. I can't point you to anything specific, Steve, but it was certainly true with judicial conduct, and with the composition of the nominating commission. I don't mean in a destructive way, but to the extent that they could influence where we were going, it was to lessen the impact of the changes.

SPY: You know that the nominating commission has a very unique structure and it attempts to get people appointed from all walks of government.

RJB: Yes.

SPY: They give all walks of government a say in the composition and then people from all walks of the political spectrum.

RJB: True.

SPY: The political parties and even non-lawyers.

RJB: Yep.

SPY: Were there any models that you were looking at for that?

RJB: Well the exact outline that Charlie proposed in that speech was not for a nominating commission. He wanted a confirming commission but he didn't want to go to the Senate. Of course, we lost, I wouldn't say we lost, I think it worked out ok. The confirmation has changed, but he has a line in here with respect to that that I thought was absolutely

terrific. He preferred the confirming commission to the nominating commission. He has this sentence, that nominating commissions are manipulable but often beyond detection. Think about that, and how that has worked now. Governors have gotten people on that list who would not be on anybody's short list when you expect who the next vacancy would be filled by and it is true. You are very familiar with that. You know how it works. I would say that over the years, we had good people named, but I would say, that if there was a single person, whose influence was out of proportion to their role that would be Counsel to the Governor. I saw Jim McGuire last night, by the way.

SPY: Now Judge McGuire.

RJB: Yep, and I congratulated him and he was all smiles.

SPY: What was the trick in terms of getting it to resonate with the voters? If it is usually not an issue that is on the top of the voters' minds.

RJB: No there was no attack. I don't recall any attack on the judicial system as it existed. It was more a matter of this is an opportunity to substantially to improve the system. It wasn't based on corruption of the judiciary. It wasn't based on its failure to function decently, although, there was focus on the backlog of the Supreme Court. Actually Civil Court and Criminal Court were not in that bad shape at the time. The Supreme Court had very significant backlogs. There was talk about how long it took a significant court case to get to trial in Nassau County for example, like forever, that kind of thing. But it was putting the white hats on our side and I think the people bought it.

SPY: Let's turn to the judicial discipline system. New York had not had this kind of a mechanism before.

RJB: No.

SPY: How do you think the independent commission system has worked?

RJB: Good, not perfect, but good. I think that at times the Executive Director of the Judicial Conduct Commission has been given a bit more authority than the individual office requires. I think that sometime the Commission itself has continued to delegate more than maybe they should have to staff. But I have been very involved in that system since I left the law school. I defended several judges on charges or have been involved at least with several judges' cases. I am sorry to report one resulted in his removal. By hindsight it has to be that it was not necessarily an erroneous conclusion but a sad one just the same. I think it has worked pretty well and I think there has been a clear message sent to judges that they are being held to very high standards of conduct and that if they screw up they are going to be whacked. I hate to say this but the latter may be more important than the former. The Commission has acted pretty swiftly and on the whole well. I testified at hearings before the Commission. I am not sure that you couldn't improve the hearing system that they have with respect to the prosecuting attorney who obviously bears a very close relationship with the Commission. It is like the whole field of administrative law where the agency lawyer who ends up being the prosecutor has a very warm and cozy relationship with the decision maker. I would like to find a way to have a little more insulation between the two functions. But this is not a sharp criticism. The overall impact on the judicial system and the conduct of the judiciary has been good. The last

time I appeared, I was a witness for a judge who was being investigated. He finally was cleared. I thought they were a little too quick in evaluating the complaint which had been made by a former business partner. There were pending civil litigations between the judge. This was conduct, by the way, before he had become a judge. Having said that, I think we are better off, substantially better off, than we were before.

SPY: We have had few constitutional amendments that have succeeded in our recent memory. What do you view as the success behind these amendments?

RJB: Well, I have pondered that a number of times. I don't know that the secret is to bringing about a number of changes that ought to be brought about. I still believe that a really meaningful change in the budget making process is appropriate. I speak now about the judicial budget. But the problem now is the executive budget. I am not sure how best to go about that. I am not an enthusiast as you know of constitutional conventions, at least based on the one experience I had. That is not a very good way to change government particularly when you think about the way in which the delegates are selected. I think I already commented on that. I would do away with statewide delegates and senatorial district delegates. I think it would help to make it more grassroots than it is now. But the difficulty with constitutional change is that you rarely have a circumstance like we had in 1976 and 1977 where you had a Governor who was really gung ho to get something done. Governors had been ho hum pretty much about constitutional change. My 20/20 hindsight is that maybe Nelson Rockefeller should have been more active in the 1967 convention than he was. He had a lot to do with putting together a very good commission to look at the issues so he had done a super job with that despite the later criticism of his work. But I don't remember Nelson or the leadership generally doing an awful lot about

how the constitutional convention turned out. Because it was clearly in the hands of Tony Travia and the Democrats. I just don't know. It was great fun and I enjoyed it a lot. But I ended up getting very frustrated.

SPY: You have an incredible legacy as Chief Administrative Judge. Is there any business that you felt was left undone when you departed.

RJB: Probably. Something that has clearly happened since I left that I would have liked to have seen started earlier is the administrative structure being really a part of the central administration. It is fair to say that when I left in 1978 administrative judges were still largely picked by the P.J.s and there was not as much uniformity as there should have been. I thought that if there was something that I wanted to give attention to that the Administrative Board and the Chief Judge should be concerned with was uniform rules. A lawyer showing up from Buffalo, shouldn't think he is in another branch of the U.N. in a totally different jurisdiction not part of the New York Court system so the Buffalo lawyers can feel the same at 100 Centre Street or 80 Centre Street. I am not sure that has been fully realized yet but it is better than it was. I am sorry that we didn't get to do something about that, but I would in general say that is probably what we have accomplished, Steve.

SPY: What are you most happy about, having accomplished as Chief Administrative Judge?

RJB: Having brought a grudging respect to the notion of a uniform centralized administration, a Standards and Goals device by which we did it. I think you never get an enthusiastic response from judges with respect to changes you affect in your way of doing things. But as I look back on it, when I left, OCA was still a young agency, still feeling its way in

many respects. Now the assumption is that we are waiting for OCA to tell us what to do. We say that it is more the fact or the reality and I think with respect to my contribution, I had many short-comings in the job that I did, but to the extent that there is a right person in the right place at the right time, I think maybe I was for at least part of that time and I look back with a feeling of satisfaction.

SPY: In terms of getting both legislative and constitutional change, did you think that you had a better ability to do that than other potential Chief Administrative Judges given your past role as a legislator.

RJB: Maybe. Certainly there were times when that was true. Chief Administrative Judges who had no background with the Legislature may not have had the feel for the place like I did, but I am not so sure that any of them were crippled by that. I had only been in the Legislature for eight years. I had been in the Rockefeller Administration and lobbied for a number of things, had represented Bill Ronan and the MTA and the Legislature, represented the UN Development Corp. as a client and I had done some lobbying. I was not unfamiliar with the technique of how to go around with hat in hand and garner support for something.

SPY: One thing that struck me about your whole career Dick, is that everywhere you went, you brought change and I know that change is sometimes threatening to some people and sometimes difficult for people to go through. What do you attribute that too?

RJB: I don't know. I have been very successful dealing with people from different views, I may have mentioned this before, but one of the things that inhibits many, many people from attempting change is the risk of defeat. You have to put that aside. You have to

accept that once you are a lawyer you are going to get a bloody nose. That goes with the territory and it is part of the process of effecting change. If you accept that and it doesn't mean that you shouldn't be prudent in what you undertake but it means that you do it with the acceptance of the possibility of failure. I think that is generally important to providing any leadership with direction in trying to change an existing circumstance or an existing institution or an existing practice. I had my share of bloody noses, but it only hurt for a while.

SPY: Did you learn anything valuable by how you deal with people of different views, the people who didn't want the change?

RJB: Yes you have to be respectful of their position. Frank O'Connor and I had two or three spirited debates, one of them before the House of Delegates in Cooperstown. You have to be prepared for the fact that they are going to try to knock you a little bit and some of them will be insulting, but you don't turn the other cheek quite in the sense of the Biblical injunction. You don't let it get to you. You know a fairly cheerful demeanor gets you through an awful lot of stuff. I have not always been able to do that to the extent that I have been able but, I think it has been useful. I look back with great pleasure on the court administration today, because we accomplished a lot. I worked with a wonderful bunch of people. Even the judges with whom I disagreed remain my friends. I just enjoyed the wonderful collection of people and the fact that we were all working for a good cause.

SPY: The first appointed head of the Judicial Conduct Commission was a non-lawyer and a woman.

RJB: Yes.

SS: How did that happen?

RJB: I think Lee Robb did a wonderful job. First of all she was a very balanced person. She took the responsibility very seriously and she was not cowed by lawyers or by judges by the way. I remember Lee had Claire and me and Charlie and his wife out to the house for dinner. Her husband had been publisher of the Times Union, Steve, and Lee was very much a figure in the community. I remember the discussion that night was very friendly and warm but she expressed a little trepidation at the undertaking. I forgot just where that dinner fit in with her being appointed. But I think it was after the legislation was agreed upon which would have been early in 1978 or sometime in 1978. I think she proved to be an excellent Chair. I think it was important symbolism there.

SS: I agree.

RJB: This is not the “good old boy” network at work. It is not the judges or former judges evaluating judges. It is a person who comes from a varied background who doesn’t have close ties to anybody in sight in this arena. And she did just that. I admired her very much. She did a great job. That was an important symbol, an important statement. Did Mario appoint her?

SPY: Oh no.

RJB: Nelson Rockefeller?

SS: It was long after.

RJB: It was long after that. I think Carey appointed her.

SPY: That's probably right.

RJB: It was 1977. Because he appointed Larry Cooke Chief Judge. And Larry in turn appointed Herb Evans to replace me. And I thought that went well. I think that generally speaking the Judicial Conduct Commission story is a better success story.

SPY: You mentioned the debate in the House of Delegates. What was the reaction of the organized bar to reforming the court system.

RJB: I neglected mentioning that and I shouldn't have. They were all for one, two and three. That goes for the Association of the City Bar and the State Bar. I think there may have been some negative resolutions adopted by some upstate bars, but they didn't spend any money on it. If they were negative they were being prodded by their local J.S.C.s. There is a certain feeling about being elected a J.S.C., that I am not insensitive to as a formally elected J.S.C., that the people have chosen you. It was more a feeling of being anointed than chosen. You would have reached a lofty height from which you should be immune from criticism.

SS: Did you ever have a license plate?

RJB: Well, Don Zimmerman in another context was arguing a case before the Court of Appeals for the Legislature. It was one man, one vote, some fall out of that. He was chiding the court as only Don could do, about the court meddling in the other branches of government. He said I know you wouldn't like it if we took your little license plates away.

SPY: A major event happened for the institution that we are sitting in right now, after you decided to leave the Chief Administrative Judge's position.

RJB: Yeah.

SPY: Maybe you can tell us what led you to want to become Dean of the law school?

RJB: Well, I can't tell you that it was something I spent much time thinking about until the fall of 1978. I was trying to decide what I should do when Charlie Breitel retired. I had no idea who would be the Chief Administrative Judge, but I did have the sense that I have already served for five years and that was long enough.

SPY: Five years probably seemed like twenty-five.

RJB: It was a sentence of five years with no possibility of parole. Right? I guess to be honest about it, I wasn't very sanguine about my future in the judiciary. I wasn't very sanguine about it. During 1978, unfortunately, the good relationship I had enjoyed with Governor Carey eroded and he became very angry with me. I didn't think it likely that he would appoint me to an Appellate Division post. In those days, by the way, that meant the Third Department because you didn't have all the moving around you have now.

SPY: What was Carey angry about?

RJB: He had come out with a proposal. I am trying to place it in time but I think it was around September 1978. Everybody felt we needed to deal more firmly with juvenile offenders. What he proposed was that juvenile offenders of a certain category of crimes be tried in Family Court by a jury so that they would be punished constitutionally much more

severely than they could under the current system. There was a constitutional impediment against trying somebody in a court designed to avoid adult results and adult implications. His solution, which he got from somebody, I have forgotten who, and he announced it in a speech. I'm going to say it was on a Friday or maybe a Thursday. Judge Williams who was the head of the Family Court in New York City called me very upset. Judge Williams was a good Democrat. He said that it will destroy Family Court and he said that basically we can't do it. Our courtrooms are not built for juries. You would have to rip the whole structure apart and rebuild to do this. I think I have my sequence right. I urged Judge Williams to come to meet me in Albany. We sat down with Bob Sise who has many years of Family Court experience and with Freddie Miller who was legislative counsel then. I think Marc Bloustein might have been involved too. We put together a very carefully done and I thought well done memorandum to the Legislature and to the Governor and respectfully pointed out why this wouldn't work. We left out the arguments that you would be destroying Family Court as we knew it. We put it more on the fact that physically you couldn't do it. Family Court judges had no experience working with juries. The whole range of arguments. Apart from the question of the fundamental change it would work and what Family Court was all about. I think we worked over a weekend. I know it was a Monday that we finished the memo. Freddy Miller who was in charge of our day to day dealings with the Legislature and the second floor had I think Marc Bloustein, but I am not sure about that, go across the street to distribute this to the second floor, Warren Anderson, Stanley Steingut and I think it might have been Stanley Fink who was the Majority Leader then. Anyhow, the leaders. For some reason it didn't come to Hugh Carey's attention. Judah Gribetz told me that he has

a story to tell me about this sometime, but he has never told me. The typical way of delivering messages of that kind was going to the Secretary or more likely Counsel to the Governor because we tended to deal with the Counsel's office. The Senate was in session that day. I may have the time of year wrong. Warren Anderson made a speech on the floor with our memo in his hand and ridiculed the proposal. He called it asinine or words to that effect. He really blasted it. I got a call from Judah saying, "Dick what the hell is going on? The Governor is thoroughly annoyed and is very angry with me." "Why, why?" "Because he thinks you got the memo over to Warren before you got to it us." Anyhow, nothing happened to the idea. Nothing should have happened to the idea. I had a meeting at the 44th Street Association of the Bar, with the Governor, Judah, Charlie, myself and somebody else that fall. He erupted and went up one side and down the other but Charlie had me by the speaker, "Come on we're meeting." Anyhow, that's an unfortunate thing but it's a longwinded way of saying that I didn't think my prospects were good for being named to the Appellate Division by the Honorable Hugh R. Carey so I was looking at other options. I looked at law practice and I talked to firms. At that time, I really didn't think going to Glens Falls made sense although it later did. I talked to a couple of Albany firms. I talked to some New York firms including a certain firm at 30 Rockefeller Plaza and I didn't just make up my mind. Then I got a call one day from Warren Anderson. Warren said "I just got off the phone with Bix, and we have a great idea. They haven't filled Ralph Semerad's position at Albany Law School."

SPY: Bix meaning? R. Burdell Bixby.

RJB: Yes. R. Burdell Bixby. "They haven't filled the slot there. I don't need you to go to Albany, but I know you have connections there. I think you ought to do that and I want

to put your name forward.” Well no sooner than he hung up than I got a call from Bixby urging the same thing. I said, “Gee, that’s a very intriguing idea”. I started to think about it. I think this whole thing is earlier than I put it. I think it was more like late spring of 1978 because I remember that Jack Welsh was Acting Dean. . .

SPY: One of ten times.

RJB: He was the perennial Acting Dean. I came up and had lunch with Jack and then I had a meeting with Helen about whether it made sense or not. They were both supporters. I talked with Claire about it and then I heard from some other people. I heard from Dave Siegel and at least at that time, that was a friendly conversation. I had forgotten who else. I knew Frank Wallace pretty well, but I didn’t know you at that time.

SS: No, I didn’t know you at all.

RJB: No. . .

SS: I heard about you. That Helen is Helen Wilkinson.

RJB: Helen Wilkinson of course was the real power of the school. She ran the law school all the time I was here in fact, and did it well. The idea started to appeal to me. I left out a very important person out, Van Straub. Van and I had known each other through law practice. His firm had done a lot of lobbying going way back to when I was in the Legislature and Van was a friend.

SPY: He was Chairman of the Board then?

RJB: He was. Jake Herzog was another one and Emil Peters. They are all people I knew well, with whom I had conversations. At some time late summer or early fall I decided it was something that I wanted to do so I became an active candidate. I can't recall precisely how the process went, but I did meet with the faculty and I met with the trustees. Of course, I had an association with the school. I had been the graduation speaker in 1974 and received an honorary degree. I got on the Board of Trustees. So Van and I had developed a warm relationship and all of that came together. I was very happy to be asked to come and very happy to accept.

SPY: What was it that interested you about legal education?

RJB: Well, I came to realize how critical it is that everybody going to law school would ultimately become a good lawyer. The habits you learn in law school, the basic principles of law you grasp, the techniques you learn, of research and writing, all together are what make a good lawyer. I thought it would be very challenging to be involved in the process. I have to mention something else of course. Albany Law School at that time was in real difficulty with the accrediting agencies. Substantial changes had to be brought about. I found that challenging.

SPY: A lot I know had to do with the library, was there anything else?

RJB: Oh, yes. The student to faculty ratio -- they had to deal with that.

SS: Conversion of the faculty you dealt with that too.

RJB: Oh yes. We hired a lot of new faculty and the fact that it maybe needed fixing was appealing to me.

SS: The faculty will always remember you as the dean that looked at salaries.

RJB: Yes.

SS: So the school restructured the salaries for the existing faculty, as well as getting new funds and it was that ability to work with the board and communicate . . .

RJB: Well, yes. I certainly enjoyed those years very much. One faculty member who shall remain nameless, was rather cynical about my interest in salary increases, and of course he may have been right, and that is the higher he pushes salaries, the higher his own salary is. But anyhow, those were good years. I enjoyed very much the interaction with the faculty, the trustees and a good relationship with the trustees and the students. Of course, you know, no responsibilities are without their problems and frustrations and that is certainly true of Deaning. I heard it said about Deans that they are like union leaders; they never know whether they are leading or being chased. And there is something to that.

SPY: It's like herding cats.

RJB: Exactly. I use the expression herding turtles.

I think back to how things came together with the faculty. For most of my time here , it was not warm and fuzzy because that's not the kind of relationship a Dean can have with the faculty. But it was a friendly relationship that I think will bode well for the school. My teaching career was not an unqualified success. I had a group of students come me to me in my evidence course, one of whom is now my partner by the way, Trish Watkins, and say "You know, we know you have been an active lawyer for many years, but you

keep assuming things we don't know and you need to deal with the fundamentals." I hope I took that to heart. I met with the group and they had that complaint. It was legitimate. I guess, that helped bring me to my appreciation of, and that is why I feel so strongly when I think back on it, the importance of the first year program. It was very important for me as a student, and I think very important for the formation of lawyers. When you think about how law schools work, our very best students spend less time studying after their first year than doing other things. They go to the Law Review, they go to this activity or that activity and it all depends on having knocked them dead in the first year. Employment decisions are made based on the first year transcript, a whole variety of things. I think the first year is an absolutely *sine qua non* for law school programs. I had some ups and downs at Albany. Unfortunately, I had some disputes with individuals who left or who certainly brought me my fall that detracted from my deanship. I can say now that we all speak to each other. One of the things I think is worth talking about a little bit is the relationship we had with the accrediting people. Early on in my coming to Albany, I called Jim White. We didn't know each other. I had met him at a school for new deans and that was the first time I had met him. I knew nothing about him. I found out that we had some friends in common, particularly in the Indiana Bar. I flew out to Indiana to meet with him. We established a good personal relationship which I think helped the school a lot over the next few years. Getting by our various problems and his appreciating that we were trying to get things done took time. So long as we were kept working at it, he was satisfied. Make no mistake about it the accrediting process at that time was Jim White. He ran the show. That was an important part of whatever success I had here. The students gave much. I can honestly say Steve

that a lot of my good friends were former students here during my time and remain good friends. It is true of faculty members too. Of course, there is one faculty member that I have to mention. Peter Preiser and I have been following each other around since 1963 in various roles. I talked to him just the other day and I got a couple of rumps out of him about something that I have forgotten. I love him dearly. He is a very good guy. I didn't bring him here you know. I sent him here before I came as Dean. Peter said "I really want to get into teaching. It is really what I want to do." He had been Commissioner of Corrections, and he was in court administration you remember. He was my guy on Centre Street. He managed to get along with Dave Ross and me at the same time, which is quite a trick. But he said I really want to teach. So I called my buddy Ralph Semerad. I said "Ralph, I don't know what your openings are," but I told him about Peter. He knew who Peter was. So he said "Please ask him to call me." Within a short time he had a faculty employment. But all the people I worked with were wonderful here and wonderfully supportive. Bob Barker was Assistant Dean. Sandy and I had a wonderful time teaching the seminar together. That was fun.

SPY: You were a raving success in that.

RJB: Well.

SS: Mary Donohue – a few people – went on to become....

RJB: Yup that's right. She married a man who manages to announce that occasionally when she is speaking at functions. That was a great experience. In fact, I have maintained my interest in the subject of state constitutional law largely because of that experience -- far more than being at the Convention. But I just think being dean of a law school -- if you

are not ridden out of town on a rail at the end of your tenure -- is a very challenging opportunity to contribute something to the formation of good lawyers. Lord knows we continue to need good lawyers. I am not so sure in that camp that we need many more lawyers. But we certainly need many more good lawyers and that all begins with law school.

SPY: In terms of the structure of a law school, it seems to be a much different management structure than anything else because you have the different constituencies between the Board, the faculty, the students, and the accrediting bodies. Do you think that it is a system that works well?

RJB: I think that each of the components that you mentioned are necessary components. You need to have a governing board, and that differs of course from law school to law school depending on its relationship to the parent organization, if any. Let me just give you the difference between Syracuse and Albany, for example. At Syracuse the Dean reports to the Chancellor of the University. The Chancellor of our University here plays quite a different role. He is someone to have lunch with once in awhile. There was a university governing body, but that is a loose connection among a group of essentially independent units. In Syracuse, that is not all the case. Syracuse is more typical than most other law schools. Its professional schools in the university structure have a board of visitors or whatever you call your own little group – and it is just that. There are so many boards, that don't make decisions. It is a balancing of constituencies, but it is not unlike what you have in other roles. Dealing with the legislature and the executive from the judicial branch point of view is the same kind of balancing of other components. Right now the Governor appoints the Court of Appeals. He appoints the key areas. He still is the Chief

Executive of our State and that includes the judiciary. The Legislature provides the dough when they are so inclined and when they are so inclined they make the changes in the statutory structure that are critical to the operation and most important of all they adopt the laws which have to be applied in our courts. So they are all interdependent. That's true here in the law school too and obviously with different assigned responsibilities to each of the pieces. But the Dean needs to be the point at which each of the constituencies touch each other. He has to act as he or she has to act as an interpreter among the constituencies. I am all for, and I like that letter from Harry Robinson, for example, the trustees getting to know the faculty better. But you cannot go around the Dean to deal with the trustees insofar as the faculty is concerned. You certainly cannot have that from the trustee point of view trying to deal with faculty or the study body. It is important that you have mechanisms for communication that keep, and in my hindsight that is the most important thing, everything transparent so that everybody knows what is going on. That's not always easy in any institution. It may be more difficult to some extent in law schools then elsewhere. But there has to be a transparency about the communication so that people don't think they are being side-stepped, avoided and wronged. It's a very interesting role which I am very glad I experienced. I have to say that at the end of seven years I was probably pretty glad to leave. It had been enough. It had been a long road. But happily I left at an early enough age that I could go onto some other things.

SPY: Seven years is – twice the average tenure of a dean.

RJB: At one point it was 2.7 years back at the time I was Dean and I think its more like 3 something now.

SPY: I think it's 3.5 years.

RJB: Something like that. Well, it was a great experience and I had a great time. But I needed to go to.

SS: I once heard about you that you were well prepared to deal with that because you dealt with judges and I so want you to contrast the roles.

RJB: There are some strong similarities. They have complete power within their belly.

SS: I know it.

RJB: There was a judge in Manhattan, Martin Evans, a very nice guy. He was very gracious to me always pleasant. But he was part of the unhappy group I'll say. Long after I left, in fact I may have left the law school by that time, he was visiting up around Lake George and he called me. He couldn't have been warmer. We had some real pissing contests for awhile.

SS: I guess it wasn't personal.

RJB: Well, all my personal contacts were not successful, but on the whole I think they were.

SS: Was R. Burdell Bixby a graduate of the school?

RJB: Oh yeah, oh sure.

SS: I did not know that.

SPY: Yeah, sure.

RJB: Oh sure.

SS: Was he on the Board of Trustees?

SPY: I don't think he was ever on the board.

SS: I don't think he was either.

RJB: He was a big

SPY: Secretary to Dewey?

RJB: Bix was very close to Tom Dewey.

SPY: Right.

RJB: After Dewey took over Ballentine, it became Dewey Ballentine. I always thought Bix's job as a partner there was to temper Tom Dewey who had a sufficiently healthy ego that he needed somebody. I acted as Parliamentarian of the Republican Convention. It was in Rochester when Nelson was nominated, I guess the second time. Tom Dewey came to the Convention and made a speech. Bix was with him. I had met Tom Dewey as a kid. He was campaigning for Governor. My grandfather was involved in local politics. Grandpa probably presented me as a potentially young Republican I suppose. I remember meeting him when his commanding voice – that wonderful baritone in him. I was a little intimidated by him. I hadn't talked to Dewey since that day in the gym at the Glens Falls Academy when I was a little kid. Bix came over to where I was sitting. There was a recess. I was sitting right under the podium. Bix said "I want you to meet the Governor." Of course you always knew who Bix was talking about when he talked

about the Governor - it was Dewey. So he brought me over and I had a very nice visit with Dewey. We talked mostly about the Penal Law Commission because Bix had told him that I had chaired that. He was very very kind in his remarks about the work of the Commission. But that was Bixby. Bix was Campaign Chairman in the year that Charlie ran for the Court of Appeals but they didn't get involved.

SPY: Oh no how come?

RJB: Well, they were so different. I mean Bix was a great guy, but not cerebral. It was not his best. He would suggest things at the campaign that just wouldn't do. He grumbled about it. Of course, I was running for Supreme Court Judge that fall, but it was a non-election. I had been endorsed by three of the four parties. But I did make it a point to try to be helpful to Charlie in our area. It may have been later - at some point Charlie said "How well do you know Bixby?" I said "well, I've known him for quite awhile." He said "He's an interesting guy." He said something like "Well you can say that." It was surreal. So I decided from that point on I wouldn't bring up Bixby's name unless it came up in some other context.

SPY: He was appointed head of the Thruways Authority.

RJB: Exactly right. It became the Thomas E. Dewey Thruway. That's right.

SPY: That's right.

SS: Well I'll be darned.

RJB: Bix is a graduate of the law school.

SS: And then Bixby must have been in the law firm Dewey Ballantine.

SPY: Yes. He was with Dewey Ballantine.

RJB: Oh sure. He was Tom Dewey's man.

SS: Oh yeah.

RJB: Very much so. Well, I always liked Bix.

SS: His son came here. I had his son as a student.

SPY: Oh really?

SS: Yeah.

RJB: Bob.

SPY: Bixby didn't go to Dewey Ballantine right out of law school.

RJB: Oh heck no. Bix came up through the Columbia County Republican Organization. He was from Hudson you know.

SS: No kidding.

RJB: Oh sure.

SS: I didn't know that.

RJB: He got involved with Republican politics. Dewey liked him. There were those that said Dewey liked Bix because Bix never said boo except "how high sir."

SPY: Yeah right.

RJB: But I don't think that is fair. Bix developed a real shrewdness about the political world. Tom Dewey did not come from a political background. He got elected DA of Manhattan, but again without any roots. He had done such a good great job as a special prosecutor.

SPY: Turning back to the law school. How did you form your vision for what you wanted to do at the law school? Albany Law School at that time was a traditional law school and you came in and brought it into the modern century. How did you identify what needed to be modernized?

RJB: I will be candid with you. My first source of inspiration was part of what I described as being chased. That is I was being chased by the accreditation people. I didn't have the sense of deficiency that was brought home clearly by the fact that the library collection had fallen way off. Physically the library on the top floor of the building was about to fall through and end up in the Dean's office. That is how the engineers described it. And we needed a new leadership. Those deficiencies were there and made obvious by the accreditation report. The faculty/student ratio was something that did not concern me as much because I come from an experience at Harvard Law School that I think still has one the highest student to faculty ratios in the country. It is fair to say that they haven't suffered greatly because of it. But there were other concerns about governance and faculty relations that I quickly got a sense about. In all candor, it's not that I came here with any vision. I came here recognizing that there were challenges because of the report and my sense of the school developed from being on the ground here. Also I have to say during my time we did a couple of very thoughtful self-studies, which were painful for

me because they were critical of me, in some respect. Howard Sprow was Chair of the last one while I was here and we remained very good friends in spite of what I called his snippy remarks. We remained very good friends to his death. Anyhow, to the extent that I developed a vision, that is exactly what I happened to develop over my experience here. I had known loads and loads of graduates of New York Law School because of being a practitioner. In Northern New York, you are dealing with a preponderance of Albany Law graduates.

To this day I think they are a majority of my law firm. I'm sure they are. There are several Cornell, a couple of Columbia, an NYU, two or three Harvard. But the bulk of them are Albany Law School graduates. Some of my closest partners are Albany Law graduates. So I had a feel about the school without really understanding the dimensions of the problems that were here. I didn't conclude by the way that - let's say I came here on March 1st – by September 1st which was the first entering class after I was Dean, I didn't have a sense that I was presiding over the Titanic about to go down. I had a sense that there were certain identifiable weaknesses – some of them physical, some of them money related, some of the way in which we allocated money – that had to be dealt with and met. It was a challenge that we worked on and things worked out.

SPY: How do you view the role of the accrediting institutions with regard to law schools? Do you think they play a good role?

RJB: Oh, I think they do, although unpleasant sometimes. I'm not sure that their standards are always realistic. I became good friends with Jim White. Jim, Ann, Claire and I saw a fair amount of each other. Over time, Jim White came to build his own glass house in

which he lived. Even though he was connected with the law school, he was more connected with the office in which he sat that was developing standards for law schools. Those standards were not always wholly realistic and were somewhat detached and occasionally divorced from the reality of law school operations. So, there was some of that. But on the whole there is clearly a need for some mechanism by which law schools are measured. I would want to do some tinkering with the current system, but the standard setting is something we need.

SPY: Now the average schools are measured by the U.S. News and World Report. What is your view of that development?

RJB: Happily that did not play a significant role when I was here. I have forgotten when they started. But U.S. News and World Report is like any other unprofessional evaluation. It's just that. Now I don't mean to suggest we should totally ignore it because occasionally it will identify some deficiency that needs to be addressed. I must confess that I don't fail to get my copy and take a look at it. I don't think that Albany Law has been given its due, but some of that is probably brought on by itself. So, it's not that those standards are totally unrelated, but if you take a look at the list you benefit considerably as a law school with an association with a strong university. Independent law schools are not on the whole highly valued in that poll. I think Albany gets some of that in the way it's ranked. I don't take the position that it's inappropriate to rank law schools. I wish it was done more carefully, but with this emphasis on consumerism. College students looking at law schools have to have some guidance. For myself, I think the evaluations done by LSAT people in their book of law schools is something that should be looked at more carefully than U.S. World News.

SPY: Let me ask you something about the library. I don't remember the exact details of it, but I seem to recall that you put the shovel in the ground before it was paid for. Is that accurate? What kind of confidence does it take to build a library without having any money yet?

RJB: A big set of you know what. We recognized that we had to raise some money to pay for this and we knew that it had to be done. I convinced the trustees that this was for real. It had to happen. Ed Sandman was a very important piece in that machinery because he was thinking about how we could leverage the commitments we managed to have into a package that would produce \$6 million or whatever it was. I've forgotten the number now that it was going to take to pay the bill. And he figured out that the Dormitory Authority played a big role and Ed was very critical in putting that package together. I'm embarrassed to say I don't even know if he is alive now. They've pretty much moved to Florida now. But Ed was a key factor. Jake Herzog was an important factor. Emil Peters. And we got our break. Harry Schaffer gave us a name and \$100,000 essentially. I always called it the cheapest name buying opportunity around in the academic world. But it gave us a certain symmetry to Union University with the Schaffer Library on the Union Campus, here and at the Medical School. Harry's brother started that. He had died by that time and Harry continued it. But the real big shock was a guy named Harry Slingerland who had retired young. He was a good example of somebody who said I never made a success at practicing law so I decided to do something else. Harold was living in Sarasota, a gentleman artist, living in great comfort. He had a wonderful apartment there with a very interesting wife. I got a call one day when I was sitting in the law school in the office I remember Irene saying there is gentleman on the phone named

Harold Slingerland who says he was class of '26 or whatever it was and he wants to talk to you about making a gift to the school. I got on the phone and he said do you ever come to Florida. I said sure. Sarasota is a short distance from where cousins of mine live. To make a long story short, we went down and met with Harold and his wife. He had half a million dollars in General Electric stock, which he said he didn't need. He gave us the stock. It was worth a half a million. Ed Sandman put that money into a bond issue called -- oh dear, I'm embarrassed to say what kind of bonds were they. They were the equivalent of compound cumulative interest bonds. They have a particular name, which escapes me for the moment, and that grew like topseed. We then had major fund drives with a lot of good support and a lot of people.

SS: You put the first Institutional Advancement office together at the school.

RJB: Correct. That was all Jane Nile. I remember hiring Jane with Jake Herzog. She was very good at what she did. To be a good fund raiser you have to be a good pain in the butt by definition. She fulfilled that description but she did a great job here. I remember Jake and I interviewed her at the Harvard Club in New York. I can't recall why we had to be there but we were in the City. At some point it was like 5:00 in the afternoon or 4:30 or something, I said should we have a drink. We were sitting around a table. She said sure. So I said what would you like? She said Wild Turkey on the rocks. Jake said now there is a woman after my own heart and she drank Wild Turkey.

SPY: That's kind of emblematic of the era in that when you came on board Helen Wilkinson had been running the school for who knows how long and it was really a one person show. You created a department like the Development Office.

RJB: Well, we put together a great team. We had Jane doing that. We had the Government Law Center. We haven't even talked about the Government Law Center. The genesis of that and lots of other important ideas and connections with the school came from a lady to your immediate right. Sandy was the godmother of the whole concept. It never would have started if it weren't for a certain agitating professor who saw the need for a program that really tied Albany Law School to Albany as the government center. It really made the nexus or built the bridge between the law school and its primary function of educating lawyers and the government structure which surrounded us. It was just a wonderful thing. I remember our talking about hiring the first director. We went back and forth about who it ought to be. Langdon Marsh, was I think he was DEC Commissioner wasn't he?

SS: I think he had just been fired by Governor Carey was it?

RJB: Which was wonderful for us. And he turned out to be ideal. I remember Langdon was probably correct. He said I wasn't the target, but I was standing too close to the target. We hired him as the first director. He brought some good people with him. I think he hired Mary Hagerup originally.

SS: He did a great job.

RJB: Mary was also in that office and later became involved with financial aid. So the Government Law Center was a very important new institution. I really can't give enough credit to Sandy Stevenson.

SPY: What was your vision for the Government Law Center?

RJB: Doing more or less what it did. I'm not saying I'm an uncritical supporter of everything it has been done. There is some of the work I think was a bit ambitious and a bit beyond the reach. Some of the efforts in connection with judicial selection, which Patty undertook through the Government Law Center, may have been something short of scientific from a social science point of view. But on the whole I think it's been a huge success.

SS: You actually were the Dean who initiated the Science and Tech program.

RJB: Again, guess whose idea that was? Sandy's. I remember we had a conference, where... who was counsel to IBM then?

SS: It was Roger Smith.

RJB: No, who was the overall counsel - he came to one of our conferences? He had been in the Kennedy Administration.

SS: Oh yeah. Well, actually Paul Rizzo who was Chairman of the Board was in touch with us because of your friend George Cox.

RJB: That's right. We got George Cox involved who was my sailing buddy and who was head of the Power Division of GE. I can't think of that fellow's name who was very impressive.

SS: Bill Keefauver of AT&T.

RJB: Oh, yeah. It was fantastic. That ultimately lead up to the development of that program. Another program which occurred on my watch, and by the way, that's really the way to

describe these things, they were on my watch. Other people were so responsible for getting them going. One of the really good programs we had for a while but it petered out was the Estate Planning Institute. Nancy Sills, God bless her, was the sparkplug. You never could be sure if Nancy was going to offend or wow people because she was sharp tongued occasionally. She's dead now and I still see Steve occasionally at the lake. But, let me just tell this one Nancy Sills story. We had a wonderfully successful Estate Planning Institute program at a big resort in the Catskills?

SS: The Concorde, Brown or Grossingers?

RJB: Grossingers, and we had somebody here who had some connection with the Grossingers family.

SS: Rick Herman.

RJB: Rick Herman, exactly right. We had a great conference down there with Jim Casner my old and future professor from Harvard came over. We did get him the presidential suite which he insisted upon because he wasn't called King James for nothing. He was full of himself but very good. He invented estate planning really, in the modern sense. We had all of the big guys there. The guy from Stanford, and all of the top people in the country. I thought it was an enormously successful program. I wrote a note to Nancy telling her what a great job she had done. A few days after the conference was over she said well I haven't settled with them down at Grossingers yet. The phone rang. "There is a mister so and so on the phone and he insists on speaking with you." "Well, who is he?" She said "I think he said Grossingers." So I got on the phone and it was like the in-law or the nephew or something. He was the family member who hands-on was running the hotel at

that time and who Nancy was dealing with. Claire and I were down there for the conference. He said I hope everything was wonderful. I said everything was wonderful and I hope we established a relationship that goes on for a long time. He said well Dean that's why I called you. We would like the relationship to continue too, but not if Nancy Sills is involved. I just can't deal with her. So, anyhow, Nancy did a wonderful job. She had a little sharp edge occasionally, but she did do a great job and that was a very successful. Harold Dooley was very involved. Jack Welsh was to a lesser extent.

SS: You plastered the conferences at the height that the medical malpractice crises.

RJB: Oh yeah. We met down at Rensselaerville Institute. Let me see, Dale Moore was very involved in that. Did you know she was a nurse originally? She graduated from Nurses Training at the University Pennsylvania. She then clerked for Louie Pollock, one of the top lawyers in the country. I stopped in to see Louie during the Stokowski litigation when I was down there and he was very kind. I told him that I wanted to stop and pay my respects. She must have called to say I was going to be in town so anyhow, I said we're at the Golden Retriever. She said you must know about it. Anyhow, he thought very highly of her.

SS: While you were dean you continued to help friends in need too.

RJB: Oh, dear. There was one case where the client was disappointed. Let me explain that quickly. Mike Seymour was running for U.S. Senate. He got into a jangle with the state fair people. They insisted that in order to hand out pamphlets on the fair grounds he had to rent a booth. Nobody was permitted to do anything without renting a booth. He said that is a limitation of my free speech rights and I'm not going to do that. "Well, we're

going to have to throw you off.” “You’re not going to throw me off unless you arrest me.” So a trooper showed up and arrested him. And he was before, I can’t think of his name, a very nice guy, he later became supervisor of the State police, a graduate of Albany Law School.

SS: Kevin Moss

RJB: Kevin Moss. He was the Judge. Mike came up to be arraigned. He said not guilty and I want a trial. Kevin did his very best to try and work that out, but there was no settlement. So I tried the case. Needless to say, I was substantially helped by my client who wrote lengthy memoranda to counsel on every aspect of the case. To his bitter disappointment Kevin came out with a verdict of not guilty. We waived the jury. He was disappointed because he was hoping to appeal it all the way to the Supreme Court of the United States and he had nothing to appeal. But Mike was here and the kids were here. Of course, his daughter later was a student here.

SS: Gabriel.

SPY: A former mayor.

RJB: Yeah, that’s right.

SS: And an artist.

RJB: A good artist. Yes. Anyhow, that was another interesting little sideline on being Dean.

SPY: There are some who say that a school like Albany needs a specialty to survive. What’s your feeling about that?

RJB: I think the specialty is producing good lawyers, and a specialty is something that happens to lawyers more by happenstance than on purpose. Two possible exceptions: tax law, it may indicate a real interest in taxation by having been through accounting training or something like that, and intellectual property, for a certain aspect of intellectual property, but intellectual property is not a pure specialty. I've litigated a great deal in the intellectual property area, and loved it. It's a fascinating area. I barely passed high school chemistry. It took my average down a point or two. A lot of people in that field, however, are science-trained who decide to become lawyers. Many of the litigators I've encountered are litigators who have intellectual property cases and that certainly was experience. I don't think we need a specialty. I think we should go back to the specialty we had which was a deserved reputation of producing very good lawyers who handled the New York State bar examination like a piece of cake. And that opens all the doors. That's the law school you went to, Steve. We had no specialty. The Government Law Center, for example, and the Science and Technology specialties are specialties that are appropriate to any good law school. But they're not the tail that wags the dog. They're all important, supplemental pieces to the centerpiece, which is educating good lawyers. It's another opportunity for another exposure to the law. But I think that Albany ought to be right where it was twenty years ago, and that is: the top schools in the state with respect to the New York Bar Exam were Columbia, Cornell, NYU, New York, and Fordham. Albany was right up there. I mean, we were over 90% a number of years. That's because all those students learned blocking and tackling. The passing game is something you learn later on. I don't think we need specialties. I am mildly skeptical about LL.M programs with a school of this kind. We have limited resources.

Broadening our programs has certain value, but it also tends to dilute the main program. That's a concern I have. Everybody knows that an LL.M in taxation from NYU is a very valuable addition for somebody going into tax-related work. Alan Rhodes, one of my partners, went to Columbia undergraduate, and went to NYU, for an LL.M in tax. That's a real credential. I don't think that outside academia, LL.Ms are a big credential, generally speaking. That's what I hope we'll stay focused on.

SPY: In dealing with faculty members at the law school, did you find it different than anything else that you had done?

RJB: Oh definitely. They were very special. They are a little like judges, of course. To be a good faculty member, at least from where I sit, you have to have a pretty healthy ego. I don't mean in the sense of being egotistical. But you have to believe that you have something to give, which is what teaching is all about, and that you're entitled to be known for that. That's not different from judges. Although on the whole I found it a lot more pleasant to deal with faculty than I did with judges, as a class. In fact, I'm avoiding the term prima donna, but because I don't think it is appropriate. There are prima donnas in every faculty of course. But I had little tugs of war with a number of faculty members, Frank Wallace, even my buddy Pete Preiser, I did a little arm wrestling a number of times. But, that goes with the territory. I think in most cases he was on my side and the faculty members understood that. It didn't permanently damage a lot of good friendships. But you want people on the faculty who are strong personalities. You don't want a collection of wimps. When you say that, you are inviting a certain amount of trouble, because wimps are a lot easier to get along with. But they don't make the

contribution they need to make to the teaching effort, the instruction effort, the example effort that's so important in law school.

SPY: The faculty has a different kind of role, because they have tenure, they have academic freedom. How do you as a Dean, effectively try to raise the bar?

RJB: With great difficulty. Because in the end, tenure's a great protection. You have a little bit of elbow room with salary, but that has to be very carefully done as you know, and has to be very fairly done. It can't be a recriminatory or get even kind of thing which sometimes happens. I believe in tenure. I don't think we should have a system without it. But I frankly thought back after I left here, that there should be some mechanism for taking tenure back. The circumstances would have to be substantial and go directly to how the faculty member performed in his or her primary duty, which is teaching. I do teaching one, and writing two. I think teaching is still what this is all about. If there were a mechanism, it would not be between the dean and the faculty member, but it would have to be an administrative process by which a tenured faculty member is removed. I really can't tell you that I can think of a circumstance where that would have been invoked by me. Having said that, I think tenure is important. I think academic freedom is very important. But academic freedom doesn't mean you can do what you please with respect to the institution. It means you can teach what you please, consistent with good teaching. Academic freedom doesn't mean that you can teach rubbish, which sometimes has been viewed with more license than privilege. It is important and you can't have a good educational institution without it. So these are all things that have to be kept in balance and nothing can be applied or resorted to unreasonably. There has to be a reasonable limit to what the faculty member protection can be claimed under academic

freedom. There has to be some limit under job protection with respect to tenure. My recollection is if you have to reduce faculty there is some rule by which you can dismiss or suspend or lay-off tenured faculty. I wasn't thinking about that. I was thinking about "on the merits." Having said that I'd hate like the Dickens to have the responsibility for devising such a mess. I'm not sure how I'd do it.

SPY: One of your other successes as Dean was to quote "modernize" the faculty. What was your vision in bringing new faculty members in?

RJB: Variety. A variety of sources. Because we couldn't afford it, we weren't looking for stars in each field, but people of great promise. We went to the, it's a terrible term, these hiring sessions are called "meat markets". I involved myself religiously in that and met with a lot of people. We got some great people from that source. Pat Youngblood. Did you remember a guy named Olara Otunno.

SS: Yes.

RJB: We are still friends. Olara was from Uganda. We hired him. He was out of the LL.M program at Harvard. He was a British barrister and he was to come in the fall to teach a couple of courses. I think it was at least late July, it could have been early August, when I got a call from the Kampala Airport. It was poor Olara in a phone booth there calling me to tell me that he didn't want to do what he had needed to do. He was so distressed because he had committed himself to come to Albany, but the Foreign Minister of Uganda had just called and he was flying back to the States. I can't exactly remember the circumstances. But anyhow, he had called to tell him he wanted to appoint him at age

twenty-nine as Ambassador to the U.N. from Uganda. It was like could I be released from my vows?

He said “and I promise if you will okay this, I’ll come up and teach something in the spring.” He came up in his limousine once a week to teach a two-hour seminar. We remained friends ever since. He was a principal speaker at the Second Circuit Judicial Conference about four years ago. We had a chance to visit the island. Just as an example of our reaching out, Terry Deutsh came here about that time. John Sands was already here. Ira Bloom came. Steve Gottlieb – is Steve still teaching Constitutional Law?

SS: No, basic courses here.

RJB: Okay, okay. Uh, these were all new faces, fresh faces. Let me see now, the gal from Georgia.

SS: Mary Helen.

RJB: Mary Helen Moses. She came at about that time. Dale Moore came at about that time. These were all new people.

SPY: How did you recruit people? What was the attraction to get people here?

RJB: We were a school on the move. We were trying to build something important here. I described our goal as being the second best upstate New York school. Don’t talk about trying to being better than Cornell. That’s ridiculous. First of all, we don’t have anywhere near the resources. We don’t have the university connection. We don’t have the long tradition of excellence. But I said to try to regain what we had before, which

was what I would describe as the second best upstate school, and not only second best, but not that far away from best. It was an opportunity to be a part of a movement of change and improvement. At that time, I could honestly say we were attracting a pretty darn good pool of candidates. We got people from court administration, all over the place. Remember that Steve? It was an attractive place, Albany, in spite of some comments I heard more recently, an attractive place. Let's face it, state government had taken on another look as a result of Rockefeller. Not just physically, but in terms of what it was doing. I was talking with somebody the other day about the succession of DEC Commissioners I had known and worked carefully with Harold Wilm, Henry Diamond, Peter Berle and a whole long of list. They were running the best department in the country. Really, super duper. Frank Wallace was out there for a while. And you had a tie there . . .

SS: Oh yeah.

RJB: I know. So I think I could describe it as a school on the move where they would have an opportunity to make an impact and make a contribution. They wouldn't get lost here - too small to get lost. I think that was attractive to them.

SS: Before you engaged in fundraising, didn't you hire a consultant to do a survey to assess the potential to raise the money for the Schaffer Law Library. You came back with a report that indicated some unique features of the alumni and the way they felt about the school?

RJB: Oh yes, that was done right after Jane Nile came here. I think we may have started talking to them. It was one of the big fundraising consultant firms. They were not going

to do our fundraising. It was to evaluate what our potential was. Could we raise the money? And I don't recall candidly whether Harold Slingerland was already in our cross-hairs or not. He may or may not have been. But I think I had the commitment from Harry Schaffer. They did a very thoughtful analysis of what our support base was. It was not entirely favorable. After all, a good part of our alums are practicing law in small towns. They are part of the fabric of Upstate New York, which makes them a very important group collectively, but not rich by any means. Yet we found pockets of support, Rochester particularly, where successful alumni were willing to put some pretty good bucks into this program. That was a very important study. I can see the fellow now. He was very helpful to us and that was a big factor.

Let me talk a little bit about my leaving the law school. We can go back to anything else you want to talk about it. But I started thinking how long do you stay at the law school. I can really say that I hadn't even thought about that question until sometime in late 1974, or spring of 1975.

SPY: 1985?

RJB: I'm sorry forgive me, 1985. And I remember I was sitting down with Jake Herzog and Ed Sandman. I've forgotten who else was around then. We were talking about when would be a good time to have a transition. I remember consulting Dolores Wharton about that to. She was on our board. A very good person. The urging was that I had at least a year lead time and that was fine by me. So sometime during . . .

SPY: Their urging or your urging.

RJB: Their urging to have a year.

SPY: So there can be a transition.

RJB: I could have left the next day in terms of what I was going to do – even though I didn't know what I was going to do at that point. But they thought it would take that time to have a decent recruiting process and it began almost immediately. I can't remember just when. I started thinking about what I would do with the rest of my life. I was 59 years old. I certainly wasn't ready to pack it in. Early retirement has never been a word I understood. So I started looking around. I talked to some friends in New York, including at 30 Rockefeller Plaza and I talked to several firms in Albany, including a long time pal, colleague Mike Whiteman and Jake Herzog's firm. Then I started talking to my old firm. In the summer of 1985 it must have been, the firm asked me to get involved in a particular case. I told them that I couldn't give it a lot of time. There was no prohibition against practice as a Dean, it just couldn't interfere with your primary duties and it didn't. I started working with the firm again. Wayne was very involved in that case. In the course of those discussions, they made it plain to me that they would love to have me come back. I want to make clear that they did not make plain to me that it would be called the "Bartlett firm." That came later as a part of negotiations. But they were pretty nearly unanimous at least with respect to anybody who talked to me.

Claire and I started to talk about what we wanted to do with the rest of our lives. I had enjoyed practice enormously before I left practice in 1973. I thought I would enjoy it some more. We wanted to make more use of the lake than we had in the past. We wanted to continue our deep involvement in the community, because I had maintained

my community connections or renewed them I should say. I resigned from everything when I became Supreme Court Judge. But when I got back to the law school in 1979, I was asked to rejoin the Hyde Board and I was asked to take that back. I never resigned from the Hyde Board. I did not think that was inconsistent. I was very regular in my attendance but I had resigned from the bank board. I had other connections. So I had been going back to Glens Falls for bank board meetings, all the time I was involved in the school. It seemed like the right thing to do, where Claire and I both wanted. So I worked out an arrangement with the firm where I came back and was full equity partner. They renamed the firm. My name had been in the firm when I left. It had not been the first name. It was Clark, Bartlett & Caffry then. Al had died before that. So I came back in August of 1986, to the newly named firm of Bartlett, Pontiff, Stewart & Rhodes.

I remain there until this day and it has been a very happy relationship, a very happy experience for me. I had a lot of interesting cases which I had enjoyed being involved with. It doesn't always mean you have clients you were happy to be involved with because clients by definition have the same variety of characteristics as the general population does – sometimes more pronounced one way or another. But I have had a lot of fun. I got very involved with the bar association. Hugh Jones got me involved back again. I had been at the bar association before. My association with the New York State Bar began way back when I was a young lawyer. I was in the Young Lawyers Section. A guy named Scott, was his first name. He was a Dewey Ballentine partner. He later became Ambassador to Spain. I can't think of his name. He was President and asked me to be Secretary. That was before the House of Delegates. So I was Secretary of the Executive Committee, which ran the Bar Association. Then following my penal law

work, I was asked to be involved in starting the Criminal Justice Section. I was second chair of that. First Chair was Ed Gasparini who had been a former Assistant U.S. Attorney. I think the firm was Gersten Savage Gasparini and something. No that was before Gersten was there. It was Gasparini & Savage at that point. Anyhow I succeeded him as Chair of the Criminal Justice Section. Then I succeeded Hugh Jones as Chair of the Fellows. I became a director of the State Bar Foundation. Jones and I became very involved with that. I was on the board. I became President four years ago and served for three years. Bob Haig succeeded me last year. I'm still on the board and I'm in the House of Delegates representing Warren County.

I was very active in the ABA for a long time but that all has to do with another activity we haven't even talked about and that's the bar exam. By reason of my service as a bar examiner in New York, I was on the Board of Law Examiners from 1986 to until I became 75 and I became the victim of my own rules which was service ends at 75. So we had a wonderful party for me and I left, at age 75 in 2001. As result of my activities with the National Conference of Bar Examiners, I became Chairman of that. But you had to be caught in something really flagrant not to end up being Chairman. It's a seniority thing. Then following my chairmanship, I became the delegate representing the National Conference in the ABA. I served there for four years and became quite involved with the ABA generally during that four year period. I remained active in the National Conference of Bar Foundations, which is another satellite organization, until last year. All the bar association experiences have been wonderful and it culminated with my getting the State Bar's Gold Medal last year, which I really treasure.

I was in the Federal Bar Council many years ago and kind of became inactive. As a result of my long association with the Second Circuit, I've been an active participant in their judicial conferences. I'm sort of the local homegrown guy they call on when the U.S. Marshals find out that the contract with a certain hotel to house all the marshals had been reneged and could I please find them a place to stay? This year, my very heavy duty was finding competent guys for their hikes. I found two lawyers – would you believe that? Both of whom are very confident through the Adirondack Mountain Club. John Caffry was one, and Jim Cooper is a lawyer from, he's a graduate from here, a lawyer from Plattsburgh. So I still talk with the executive office and on rare occasion with Chief Judge Walker. But I don't know him as well as I knew his predecessor, Ralph Winter. And of course, Jimmy Oakes. We have known each other since law school. We have been good friends since then but all those are peripheral.

SPY: There are some who say that law firms today don't emphasize enough among young lawyers being involved in bar association activities.

RJB: That is very true.

SPY: What would you say to a young lawyer that you can get out of being involved in bar?

RJB: First of all there is a duty to advance our profession and advance the professionalism, which is precisely the role of the organized bar. We need to improve our reputation with the general public. We need to improve the general public's understanding of what our role is, so it is not so shocking as it frequently is these days to find out that the defendant's lawyer and the plaintiff's lawyer had lunch together or went out and had a drink together after a day in court of butting heads. Our job is to represent the client's

interest. By the way, the whole business about John Roberts, I am not big supporter of his, but neither am I opposed to him. The other nonsense that we are looking at briefs he wrote on behalf of clients to find out where he stands on things totally misunderstands what the law is all about. So that's all part of the bar association. This is something I have been extremely involved with for the last ten to fifteen years. We have an obligation to foster and further the interests of adequate representation for the people who can't afford it. That primarily is the function of the State Bar Foundation – programs that are intended for people who are oppressed, or perceive themselves to be oppressed and providing adequate counsel for them. I think the role of the bar is enormously important in judicial selection. I think what the bar association has been doing in taking a look at Guantanamo, unpleasant as that is, is essential because if a person loses his or his rights as a citizen to access the lawyers and to the right to equal protection and all the other protections the Bill of Rights gives us -- if that happens because of war, we have to be very sure that the substitute standards are still fair. Maybe they are not entitled to bring a habeas corpus writ in federal court, but there has to be an adequate structure to protect the worst person's rights. Look at all the trouble we're going to with Saddam Hussein to be sure he is well represented. Those poor guys who have been in prison for three years because they happened to be on the wrong side of the fence in Afghanistan are entitled to equal justice. That is what the bar association does, is to focus on those things.

Now, let me talk about the selfish reasons for doing it. It is a wonderful network here. That is what is so wonderful about the sections, and Steve you know that from your personal experience. I was very proud to get the Litigation Section report with your smiling face on the front page as the new Chair, succeeding Lauren Wachtler. I have to

say that my service with the Criminal Justice Section was of a different kind because it had do with a special non-practice interest of mine because it was never part of my practice. But, I try to keep up with the Litigation Section. I just rejoined it you know, in honor of the new Chair. I guess Lauren gets the credit for hiring chairs. I have long have been interested in the Litigation Section. Other partners of mine took part in the Real Property Section, the Labor Law Section, and the Land Use Section. All that stuff is very valuable. Let me give you this little example. I got a distressed call yesterday morning in the office from a guy who is an in-law relative of mine, who runs a very successful business in Poughkeepsie. His accountant is on vacation and he got served with a subpoena to appear at an IRS hearing, I assume it is just a notice to appear. But next week and he knows I can't come down to do it, but who can I recommend? So I picked up the phone and called Bob Ostertag who is a leading non-litigating lawyer in Poughkeepsie. Their meeting is this morning. I know Bob Ostertag through the bar association. He was President of the State Bar several years ago, and has been active in the Bar Foundation. I know him to be a very decent guy who is obviously very sharp too. I don't know how it will work out, but that's just a pro bono connection. I wouldn't want to bet my next meal on when I get paid by a relative. But anyhow, I had all kinds of connections through the bar association, probably more the beneficiary than otherwise, because city lawyers, particularly when they have something that has to be done in Warren, Washington or Saratoga, they kind of panic. "My god, I got to go to the boonies." They remember I'm a boonie person and so I get a call. That has happened lots of times. Finally, I'll take Harry Tweed's ammunition which is on the wall of the Association of the Bar. "Given all of mankind, lawyers are better to work with, fight

with and drink with than any other manner of man, or person” or something like that. But the point is then, there are great social events and lawyers generally enjoy each others’ company because they share approaches. They think about things in the same way. I developed a number of my best friends who are lawyers – it’s a pretty long list. I am at a cross-roads right now – my firm is. My last year in the House of Delegates will be next year. I do not intend to seek reelection. Here we are, the biggest firm in town by a whole bunch and there will be nobody from the firm actively involved in the New York State Bar Association. I am after some of my partners. I finally got Larry Paltrowitz to let the air out of his wallet and he joined the Fellows but I have got to find someone.

SPY: One of the things that I think was different was when I started out I got a phone call from Bob Patterson who said “There is this bar committee that needs somebody.” I don’t think the people who are senior partners in law firms are doing that as much with young lawyers. The message is we want you to stay and bill hours.

RJB: . . . More hours

SPY: . . . working later.

RJB: I agree with that entirely. I brought this up at a partners meeting of our firm when I became President of the Bar Foundation which was four years ago. I mentioned that while we still had a real presence and real active role in the bar exam community because Bob McMillien took my place and Larry and Trish Watkins are both active. But we were losing participation in the bar association. The attitude expressed was I don’t have the time and we want to don’t want to distract our associates. That is too darn bad. I started in the Young Lawyers Section. Bob and I remember our first meeting was at Friends

Lake, New York at the old McPhillips Hotel. Bern and Gerald were both lawyers and that's where I met Jim FitzPatrick from Plattsburgh.

SS: No kidding.

RJB: I hadn't met him before. Very shortly after that something from his firm came up in Glens Falls and he called me instead of Bern. I thought that was wonderful. Anyhow, there are all kind of opportunities that come from it. The final piece is when the day is done and you know you have been active in doing something that helps your profession, helps the public and maybe helps some poor guy who is trouble, you feel pretty good about yourself. That is all part of the payback.

SPY: Let me just go back to the deanship. You were talking about fundraising. Some say the role of the dean is now principally if not exclusively fundraising.

RJB: Yeah.

SPY: Do you agree with that?

RJB: No. I think it's misplaced. It's the tail that wags the dog too often. I do not agree with that. I think circumstances may try to force you to that result, but I think it's a bad result. It doesn't mean the dean shouldn't be actively involved in fundraising. But you hire people to do the fundraising professionally. The dean shows up when he or she needs to and that means a fair amount of travel. But that's not just fundraising, especially with professional schools. It's also keeping your ties with the alumni for other purposes than just getting bucks from them. It means maintaining the reputation you have and maintaining the perception there about the law school, which helps you attract better

students and the other good things that come from a strong alumni base. For example, Rochester, at least when I was around, and I hope it's still true, had stronger ties with Albany Law School, than it did with Syracuse or Buffalo. Many of the leading lawyers and judges from Rochester were Albany Law people. Part of my regular routine was to show up at least once a year, sometimes more often in Rochester. Steve, it's beyond fundraising. Ideally, that should be a happy by-product of good alumni relations, but not the purpose. The strength of the law school is measured by the quality of its graduates first and foremost. Never forget that. What they do in the community speaks louder about what kind of a law school they went to than any other fact you can think of. The second thing is that you need a loyal base of support for all of the reasons you can think of, not just fundraising. Jane Nile used to drive me crazy sometimes because she believed that the Dean's job was to show up at fund-raising events first. When I look back on my experience with Jane, it's with fondness and also respect because she was very good at what she did. You know when I told you about going to see Harry Slingerland – Jane came along with me, it was part of her job. I've heard it said that it's the Dean's principal role and if that's happening, that's too bad. I read something by Ellen Jacobs, the new Dean at Harvard recently. It would seem to suggest that she's disturbed about that. Harvard is looking for the Dean to be a combination of cheerleader and leader. If that improves the willingness or likelihood of alumni to send in a check, all to the good. But it has to have another base.

SS: May I ask you one other question? During your law school years, you saw the value of establishing a strong career placement entity and they didn't have one until you got there.

RJB: That's true. The first person we hired for that was John Conway and that was for a combination of alumni affairs and placement. I'm lucky I got that position approved. John proved very good within the limits of his own experience because he had no experience. He was a very nice guy who had a nice personality and had a commitment to the school.

SPY: You started the first real hiring program in New York City right?

RJB: Yes.

SPY: There was not a formal program before then.

RJB: We had nothing there before. So we got to the point where people were coming in to interview and all that process. Sandy Mans has been a great discovery for us. She's a wonderful person to begin with. I remember she left. She went down with Cummings & Lockwood, to run their recruitment program. I think that's where she went. We had a conversation over lunch. I think it was in White Plains. It was somewhere in between when she was coming home from Connecticut and she said she was coming back. Thank goodness she did. She's so good and so important to the school because that is one area where you do need to market. I don't think you need name recognition. I think that comes from good performance. You do need the marketing skills to call the attention of the consumer base, which in this case is law firms, government agencies, colleges, universities. You need to make them aware of the talent we have to offer. Managing that whole apparatus is no easy task. I think she's done a wonderful job. Just wonderful. I hope she stays for many years. She's great.

SPY: We mentioned the statistics about deans only lasting an average of three plus years. Why do you think that is?

RJB: Burn out. Being more chased than leading. Dissolution as to what the role is all about, because it's kind of a complicated role. You need to be a friend of the faculty but you can't be viewed as their friend. Listen guy, you're here to sell the trustees on salary increases. That's part of my role. It's also persuading the faculty here on the financial limits of what we can do salary-wise. If you were to ask me to do a job description of what makes a good dean, you would have me stumped because I really don't know. The reason I raise that in this context is I think sometimes there is a pretty quick disappointment on the part of the institution with people who look good when they come in but don't turn out to meet expectations. We've had that here. I think the reverse of that is true. I'm going to be dean of a law school and that's just wonderful without really understanding the dynamics of the role, the odd kind of relationships that you have with each of the component parts and the considerable demands placed on you. If you do a good job, you can't have another job. My example is maybe I did ten arbitrations the whole time I was in law school, no more than that. In terms of representing clients except for big fee producers like Mike Seymour, I didn't get involved in litigation until my very last year. I think I may have done two or three depositions, two I can remember. But I was consulted privately. The case I did with Wayne Judge or other partners, that kind of thing. But it's not an easy role to define. I think some of the short tenure experience is a combination of two things: disappointed expectations on the part of the institution, they expected more regarding what this person will do; and disappointed expectations on the part of the person who becomes dean as to what he or she will get

from the relationship. You have to be pretty optimistic in your general outlook to view yourself as a success after two or three years, because it's really very hard to measure. I think those factors play together.

SPY: You mentioned the burn-out factor. Here you are having spent five years in probably one of the highest stressed jobs in New York State and seven plus years in a high stress job as Dean yet you're still going strong. How did you keep from burning out at it?

RJB: New challenges, constant new challenges. I'm looking for a new one now. I told Bob Henry, I haven't had to call on you for awhile. He said are you still inquiring about things as much as you did. I said my current challenge right now is to find out whether the launch, of which I'm an owner was built in 1916 or 1917. He said that's interesting I think I'm exhausted by the possibility, but he's very, very good. I found with some excitement, some new information I had about this. Claire said to me about two week ago, Richard, what the heck difference does it make? I said I want to know for certain, I want to be historically correct. But anyhow, if you have any hot information, Steve, on hull number 621, let me know. But anyhow, it's new challenges, trying new things and not being afraid to lose, to be a failure and I've got a few of those I can tell you.

SPY: Another thing I think we all recognize that the law school was fairly viewed as a white male institution when you joined it.

RJB: Oh yes.

SPY: You also brought in 21 minority students. As I remember you set up a boot camp for minority law students.

RJB: Absolutely. We offered scholarships to minorities for the first time, based on nothing but the fact they were black or Hispanic. We did not have a critical mass here of minorities and this was not the most attractive place for them to come. First of all, Albany could be viewed as less hospitable to blacks and Hispanics. The law school had no tradition of that. They had a much better record on women. But even that is of fairly recent origin. I was determined that we were going to try to do our part to educate a part of our society which is grossly underrepresented in the legal field as consumers and grossly underrepresented in the legal field. We had some success. I remember discussing it, probably with Jack Welsh. We talked about this a lot. We brought in 21 minorities one year, a couple of them of questionable status. I will give you one, a young woman filled out her application and wrote a letter. She was an African American and her name was Amad Yahud or something like that and I said oh, a Muslim probably. I had a picture of her being from deepest Africa and it turned out that she was Lebanese, grew up in Egypt and she was as white as my kid. That was our scholarship the first year. As Jack said, we can't kick her out and I don't dare say send a photograph. But anyhow, that was just a little twist there. I remember talking to Jack about that funny little matter, about the fact that you can't be precise. Something like 13 had survived the first year out of 21 and that was something. Out of the 13, 7 passed the bar on the first time and I said, you know, here is a wonderful example of whether you consider a glass to be half full or half empty. I considered it a great success to get 7 first time passers. Only one third. These numbers are approximate. But I think they reflect that year. We had some wonderful people here. We had some great disappointments too. Not so many disappointments that you said the program was not worth it. I talked to Dick Parsons about that a couple of

weeks ago, about our need to get back in that business. I think you're going to see a lot more support from Dick over the next two or three years. All he's got to do is bash Carl Icahn in the nose and get that out of the way. He'll do that.

SPY: You talked about legal hiring being marketing. Is recruiting students also marketing?

RJB: Yes. But I think and I suppose that's where U.S. News and World Report comes in, but far more than that it is where the LSAT handbook comes in. I would like to suggest that the biding fear of students about whether they want to choose law as a career, is what if I spend three years going through law school and I flunk the bar. I think emphasizing their likelihood of passing the bar at Albany is key. There is nothing scarier to somebody who takes the bar process too casually and doesn't make it as to take it again. Something more devastating is they never take it again. Give me a person that is confident, hey, let's do this. 89% of last year's class passed. You're not going to be in that 11 percent are you? You've got a very good chance of passing and I think it's taken for granted too often, you'll forgive me Steve, by law review level students. But as a way of providing motivation to the rest of the student body, what if I don't pass the bar and their being able to say we're going to the law school that best prepares us for practice. We will know more about New York practice when we come out of here than we ever care to know, but so much more than other schools and that emphasis should never be lost by the way. It's very important and not just that, but we're now emphasizing the other parts that are critical to good practice. Research and writing. I wish that we had more emphasis on that than there is. It's very important. Research and writing for example is directly related to the MBE exam. That's what it's all about. Being able to write quickly on a subject which is precisely the kind of training that research and writing should do.

Marketing the students to come to Albany – why should they come to Albany? Because it's a great law school. You can talk about the range of opportunities for employment. You can talk about the range of opportunities for programs. I would hope that Science and Tech would attract certain good students and they won't all end up intellectual property lawyers either. They'll be CEOs of companies. There are more no longer employed lawyers running things around this country. That guy named Dick Parsons got hooked into that company down there. But you know, it's true. We ought to emphasize more the track record we have. We talked about this earlier. People don't have a clue. I'm talking now about students trying to choose law. We have partners at most of the major firms. We have executives. We're in top flight. We have lawyers all over the country who are excellent. They don't realize that. I don't see enough about our alumni here. These are the people who had the advantage of a legal education and here is our reputation. Here is what they're doing. This is what you can shoot for. That's a great example. I mean let's face it, Harvard you don't even need to make that pitch because at one time 7 of the 9 Supreme Court Justices were from Harvard. That's no longer true, but a lot of them.

RICHARD J. BARTLETT – ORAL HISTORY

FEBRUARY 8, 2007 – SESSION 4

Hon. Richard J. Bartlett (RJB)
Professor Sandra Stevenson (SS)
Stephen Younger, Esq. (SPY)

SPY: It's February 8, 2007 which promises to be the final session.

RJB: We'll have a reunion at Lake George and celebrate the completion of the job, but this is the last working session.

SPY: This is the Richard Bartlett Oral History. I'm here with Dean Bartlett and Sandy Stevenson. I'm Steve Younger. We left off the last session talking about your career at Albany Law School. Following the law school, you went back to your law firm. You could have gone to practice at any law firm in New York State practically, why did you decide to go back to your old firm?

RJB: I did consider other possibilities, Albany being one, of course, and New York City being another. But Claire and I decided that we really wanted to go back to our roots. Glens Falls has always been our home town. I had a strong connection with all of my old partners in the old Clark Bartlett firm, and we both loved our life at Lake George so those factors combined to make the career determination for us. It was right for us to return to Glens Falls. I was a bit concerned about there being enough exciting things to do, but I was proved wrong by that very quickly. There were loads of interesting things to do and loads of opportunities for service and for practice. All of that combined for a very nice

20-year period of the last phase of my career. We've had a wonderful time throughout that period.

SPY: Why practice law rather than something else in public service?

RJB: Well, because of all the things I've done in my life, being a lawyer was the most fun, the most challenging, and the most intellectually stimulating. I made a decision a long, long time ago, like in the late 1940's that I wanted to be a lawyer. Even though I've digressed from time to time, I must say that decision was a handy one for me. There were other things I thought about, but none of them appealed as much as rejoining my old firm. It had grown considerably from when I left in 1973 and there were a lot of new faces there. There were a lot of comfortable relationships, too, that made it very pleasant to return.

SPY: What were the major changes in the firm since you left?

RJB: When I left the firm, Glenn Caffry was still practicing. He died 3 years after that. Glenn and I essentially ran the firm. There were no partner meetings because between us we managed an overwhelming majority of the interests in the firm. We had half a dozen colleagues, some of whom had ownership interests, and some of whom were just on contract. When I came back to the firm, there were 12 or 13 – maybe I was the 13th – equity partners and a bunch of associates I had not known before. We moved into a new building shortly after I came back. I came back essentially in August of 1986. We moved into our new building – which was right next door to the old building – in January of 1987. It was much less of a personal practice. It was no longer Glenn and my support team. It had become a mini-big firm. The structure was formalized. There was a

principals meeting monthly and a management committee. That structure has prevailed to this day.

The kind of practice we did changed considerably. In this particular, our municipal work -- in that I include school work -- grew enormously. That was due in no small part to my partner, Larry Paltrowitz who became a statewide figure in school board and related representation. For example, on the Head Start Program we represented clients on Long Island and in Central New York and other places. That built up a little coterie of specialists in that area. I think we still represent 18 school districts. That shaped our practice differently. Trust and estates has grown a lot since I left although it was always a central part of our practice. So I had to adjust to a new arrangement, but it worked out well. I was certainly comfortable with it. I think most of the time the others were comfortable with it -- not always -- but most of the time. It gave me an opportunity to get involved in a bunch of interesting cases and to do a lot of pro bono work with the Bar Association.

The Board of Law Examiners work started at that same time. In that was not pro bono. We were paid. I was able to develop a small team within the firm. In hindsight, maybe I was a bit too limiting in where I picked my colleagues, but they were people I saw every day and had a good working relationship with. So Bob McMillen, Larry Paltrowitz and Trish Watkins became my three colleagues in the Law Examiner process. They remain so to this day except I retired by reason of the rules we adopted -- which was fine by me -- at age 75 out the door -- that worked out well.

SPY: What was involved in Law Examiner work?

RJB: The Law Examiners function in this way: There are now five board members. There were three originally. Laura Taylor Swain and I were the two new members in 1986 following a study done by Bob McKay, who was then the Dean at NYU Law School, which recommended a larger board. The Board itself sets the policy and reports to the Court of course. We are an arm of the Court of Appeals. The Board also does the essay questions. As we all draw questions, we put together teams of test graders for our questions. Then our associates do the 15-question multiple-choice part of the exam, subject to the Board's final approval.

When I retired, by the way, Bob McMillen took my place as a member of the Board and remains so. Diane Bosse took my place as Chair – she's a wonderful Chair.

In addition to running each exam, we were obviously very involved in the policy decisions we needed to change the exam. One of the issues was making the exam more like the practice of law. The notion in developing the performance test was that it measured your ability to work with a given set of facts and to put together a brief or a memo on law of a particular point within that universe. I think it has worked well.

That exam, by the way, is developed by the Conference of Bar Examiners and I think it's a good addition to our Bar Exam. There are more changes I would have liked to see happen, but things will come over time.

SPY: How do you feel about testing performance? It's easy to measure whether an answer is right or wrong about a statute, say, but . . .

RJB: The truth is there is no good way to do it. California spent tons of money trying to work out performance evaluations with video and then having them critiqued and graded. I think you have to understand that the Bar Exam does not certify that you are an accomplished lawyer. It is meant to say that you have met a certain minimum threshold of requirements. Nothing more than that. I think the best statement I ever heard about bar exams was by Dean Griswold – he was my old Dean at Harvard. This was in later years. I think he was Solicitor General at the time. He said “the bar exam is primarily intended to keep the law schools honest.” By that, he meant that you don’t just pass through a law school. It’s a meaningful educational process which once you have, doesn’t make you a lawyer. But it provides knowledge of substantive and practice aspects of the law which every lawyer should have at the beginning. There is no substitute in determining who should and should not be a lawyer than some kind of mentoring system or clerking system, if you will, which I’m sorry to say has gone by the boards now.

The fact is that once the bar exam is passed and you get through the character and fitness hurdle, which is not much of a hurdle, every green lawyer should be required for a year at least, to practice under supervision and have some meaningful process of evaluation of that process. It’s expensive and time-consuming. Many people these days leave law school, heavily in debt. The cost of law school has gone out of sight completely and they’ve all got to get busy earning money to pay off their student loans. So I guess you have to be satisfied with a compromise with respect to testing people’s performance. I think the required CLE for new lawyers has helped a little bit. But, we may have too

many lawyers. Ideally, we need some kind of clerking system which I am not especially optimistic will ever occur.

SPY: It's interesting to some extent that things have come full circle. Legal education started out as a clerking system and then it became a more theoretical process.

RJB: That's right.

SPY: In our time we've seen more use of clinics in law school and more practice-oriented bar exams. What was the push to go to a more practice-oriented bar exam?

RJB: It came from Bob MacCrate's group. Bob and I have had a number of discussions about it. We are good friends. We were in law school together. Bob believes that the law school programs and the bar exams that measure performance after law school should be more performance related and he has a point is. But there is a limit to what you can do in that area because of costs and time. I think he's continuing to push for that. We have been friendly adversaries on a number of issues related to the bar exam for a long time. Anyhow, this has continued my interest in legal education. Our Board meets annually with the Deans. We now have a State Bar Committee looking at the bar exam. We'll be coming out with a report sometime this year which started out focusing on the proposed 15-point increase in that cut score. Now it is really focusing on the whole process of the bar exam and what's needed to make it better. Of course, I always sit next to McKay so I can read his notes and so we can good-naturedly vie with one another.

SPY: What was behind the push to increase the cut score?

RJB: It was to bring New York up to the other states. Frankly, I started that push by having a study done of our bar exam. We had a very elaborate process through which we evaluated bar exam questions. These were practitioners and judges who were involved in this process and a couple of law school professors including the Deputy Dean from CUNY. Anyhow, they evaluated the exam and concluded that our cut score was too low and recommended a significant increase. I say “they” – the data came from the study in which a number of lawyers, judges and professors participated. The conclusions and recommendations came from our consultant. He recommended to increase the cut score and we decided as a Board to increase it somewhat, but not as much as he recommended. What we recommended was a 15 point increase. It was five points a year over three years. The first 5 point increase has been implemented. There’s kind of a doubt around the remaining increase because of the furor over the diversity issue. I don’t think it has a lot to do with diversity. The argument, let’s put it this way, the bottom of the last group are disproportionately Blacks and Hispanics so it just follows that that is where the impact will be.

SS: Not necessarily.

RJB: The impact in the first 5% was more on Blacks and Hispanics than the general population because that’s where they are in the spectrum, I am sorry to say. I don’t think there’s any excuse that operates the cut score to say that it will affect mostly people we want in the profession – we want them in the profession if they are competent. That’s the first test. It doesn’t help the Black community or the Hispanic community for us to admit increasing numbers of people from their communities who aren’t up to the task. So, it was a lasting increase.

SPY: Were there any objections other than diversity to raising the score?

RJB: Sure. The law schools thought their pass rate might go down. Albany Law School happily went up last year and I'm cheering every time they go up some more – that was the hallmark of our school for a long time. There were those who looked down their noses at that as a credential, but I thought it was a darn good one and something to be proud of.

SPY: Another change in the bar exam has been to go to a more national emphasis. How did that come about?

RJB: It's because of the mobility of lawyers and the character of practice. I can give you an example of one case I was involved in with a New York firm. I got involved because originally there was something in the Northern District of New York and I was their local lawyer. We had depositions in Cleveland and San Antonio. We had an issue in Florida. We had law firms from all over the place working on this matter, as did the other side, of course. The fact is that this is increasingly true of big cases. I am sure it's true of your firm as well. The thought was that we should give them some kind of national exam so that a lawyer who is qualified to practice in Idaho could also practice in New York and so forth.

The trouble with that is our federal system. The federal system has its faults and there are those who would like to change it – and just have one body of law for the country. That's not going to change any time soon.

The truth is New York is a major, major jurisdiction. It is often referred to as the highest common law court in this country because it is a common law court, in spite of its increasingly statutory interpretation responsibility. But the truth is we're going to have separate rules of practice so long as we have 50 states. I would like to see some more uniformity, but it needs to be arrived at the way in which we arrived at uniformity in the commercial code. We should have uniform commissioners who are working on practice issues. We don't have that. It is perfectly silly some of the distinctions that exist between New York, New Jersey and Connecticut practices, for example, that don't serve any important or useful purpose. They are there because they were always there. There is not hysteria. I'd like to see more focus on bringing those practices rules together and the same could be said about bar exams, by the way. If your practice rules were more nearly the same, you could develop an exam that could be given anywhere and would test the basic principles of practice. That is not possible today in my view because of the wide difference between practice rules state-to-state.

They tried to develop a bar exam for New England -- Vermont, New Hampshire and Maine. They are still trying. It has not happened yet and I am not sure it will.

SPY: One other change in the profession is the increasing specialization; yet the bar exam still tests a little trusts and estates, a little real estate and a little civil practice. Where does that shake out?

RJB: Well, I think the bar exam is a one-size fits all with respect to what kind of practice you're testing for. Specialization is an increasing fact of life for law practice and maybe we need more specialized certifications than we have. In order to practice tax law,

perhaps you need a certificate of successful completion of an exam on tax law. When we talk about that, by the way, we're essentially talking about federal tax law. State tax laws are not all that significant. I don't think we should try to bring specialization into the bar exam as a whole. It's up to those specialists to identify – and the courts and legislatures pursue it – special qualifications in order to practice a specialized part of the law. And then they should develop their own system of examining for that. I kind of like being a generalist. Certainly intellectual property is a specialty, but litigation of intellectual property issues is not a specialty. It's another subject of litigation for which you have to prepare yourself. But you don't have to have an engineering or chemistry background in order to be a good litigator of intellectual property issues. We rely so much on experts these days.

SPY: Are there any other aspects of the bar exam that you would like to see evolve over time?

RJB: I think from time-to-time that the content and form of the bar exam needs to be revisited. I think it may be time to review whether we need the 15 multiple choice questions in New York or not. One of the reasons it becomes hard to change is because the structure of the organization – that is the Board of Law Examiners – is built around the correct exam. For example, those assistants who prepare the multiple choice questions would not be needed for that function at least. That develops a certain inertia mitigating against change. But that's something that should be revisited. I would like to see a better way to test research and writing skills. That may be one of the things that needs to be looked at. We may not need a single bar exam. For example, we could have an exam which you take at the end of your first or second year on contracts, torts, and criminal procedure –

the so-called basic courses. We could then have an exam at the end which deals with other subjects. That's one possibility.

Another possibility is developing an exam which every applicant for the bar must pass which actually tests your research and writing skill. That can't be taken in an exam room. An assignment would be given. You could go to the library or your computer those days. You would be given a question to research and write about. There are more techniques for controlling the accessibility of those questions and preserving the confidentiality of the process. I think it can be done.

I'm for computerization of the exam process. I just came from Sandy's seminar on estate Constitutional Law. Two-thirds of the students in the room had their laptops open, pecking away. Maybe they were playing bridge. I couldn't see their screens. There is no reason why the bar exam can't be given by computer. We did a study on that – "we" being the National Conference – a few years ago. I don't know what has happened to it. There is a certain inertia which opposes change just because we're comfortable with the way things are now. There are some hurdles to be dealt with. There are some logistical hurdles in giving an exam to 10,000 people with computers. I am not worried about the future of the profession except that we don't need quite as many of us as we have.

SPY: Can you describe for us the work you did on the National Conference?

RJB: I was on the Board from 1986 on. I was Chair some 10 years ago, I think. We spent a lot of time talking about the issues we've been talking about here, such as developing new exams. We had a study on the computerization of exams. I'm still emeritus. I'm still on the Planning Committee for the National Conference so I keep my hand in there. They

really are more than just a clearing house for the bar exam. They do a lot toward developing new approaches and new proposals. We have some very good people now who work the form of the exam and the content. We are constantly undertaking change in what we do now – just doing it better. We still have the basic MBE. We have the performance test. We have the multi-state essay exam which is used by the smaller states. That could probably be the standard. There is a bit of arrogance about our states, including our own. We couldn't possibly have the same exam as Vermont. All Vermont lawyers I run into agree with that, including a lot from this school.

The National Conference works by committee. It has a good committee system. I've served on a number of them in different areas. There is no pay attached to the National Conference, but they do meet in very nice places. They are in Indian Wells this week.

SPY: Can you describe some of the cases you worked on when you came back to the firm?

RJB: I went back on the bank board – Glens Falls National Bank & Trust – and did some work for the bank.

SPY: How did being a director of a bank change over the period of time that you worked for the bank?

RJB: It changed in a number of respects. There is a lot more concern about our responsibility, much less a rubber stamp. There is the furor over compensation. That really hit the table about the time I left. We had a mandatory age 70 for retirement so I've been out of the bank world for 10 years now. But, we were in our own small way moving in that direction. We took a \$34 million hit – that's public knowledge – for a bank in Vermont

we took over. I was very much involved in the clean-up after we did the work. The bank directors have come to the realization that they have a responsibility – not just in the compensation area – but with respect to basic decisions made by the bank. As a result, less can be left to the officers. That’s certainly changed markedly over the 23 years I was there.

SPY: How do you go about encouraging people like yourself to serve on boards when the responsibility is so great?

RJB: It’s difficult but in a town like Glens Falls, a small city, it’s viewed as an important responsibility to be on a bank board and there’s a little bit of cache attached to it which has value to some people. It is also an opportunity to participate in an important economic function of the community and again, it added to my practice. We do not represent either bank on a regular basis. There are two main banks in Glens Falls – but we do mortgage work for each of them and we have a very substantial real estate department. I have represented the bank in some interesting trademark litigation with Trustco over the use of the term “hometown bank.” That was a fun case. And so it’s had value to the firm. One of my partners is a director of the other bank. It’s been a significant source of business for the firm.

SPY: What are some of the other cases you’ve worked on?

RJB: One interesting case was the Leopold Stokowski case. Skip Muller is a long-time client and close friend. Skip is the Executor of the Stokowski Estate. We started doing some work for Skip with respect to the estate, mostly having to do with royalties. They are still coming in – would you believe it – after all these years. Then one day he said he wanted

to meet with me and talk about a special claim. It was a claim against Disney with respect to the videocassettes that were being sold of Fantasia.

I knew that we had a contract back in the early 1940's through which the television rights to the work Stokowski had done on Fantasia belonged to Disney. Skip said, you know, I read somewhere that some court held that the technology in videocassettes is distinguishable from television. We did some research and we found there was a split in the circuits. We recommended pursuing the claim. We had to get the consent of the five Stokowski children, but we sued Disney and Dewey Ballentine represented Disney.

First, they tried to move us to Philadelphia where the Philadelphia Orchestra was suing Disney over the Fantasia movie, claiming they were entitled to royalties for videocassettes. We first had to ward off the effort to move us to Philadelphia and we succeeded. Then they brought a motion for summary against the estate which was heard by Judge Koetl in the Southern District of New York. After a lot of briefing, re-briefing and argument, he decided against us. He granted summary judgement to Disney on the ground that there was no distinguishable feature between the rights associated with videocassettes and the rights associated with television, which was the view, by the way, of the Third Circuit. The Second Circuit has not spoken to it. I don't think they have to this day. The Ninth Circuit, however, had held that they were distinguishable.

After we were beaten on the summary judgment motion, we filed notice for appeal and I went to perfect the appeal. I got a call from Disney – not from Dewey Ballentine. I forgot the fellow's name now. He'd been a former partner at Dewey. He wanted to sit

down and discuss a settlement of the case. All I can say is, it is by far the best settlement I ever negotiated for a case I lost.

SPY: Was it Sandy Litvack?

RJB: It was someone who was with him at Dewey and then went to Disney too. I had one meeting with Sandy, but this was a younger lawyer.

The family was very happy.

SPY: And they wanted to protect the precedent?

RJB: I think they thought there was a risk of loss. They paid us about 40% of what I realistically thought we might get, maybe a little less than 40%, but still a substantial amount.

Some other interesting cases I've had. I mentioned the Lake George Park Commission. Its work is very important to Lake George and I'm delighted to continue to be involved in that.

SPY: What kind of work is that?

RJB: They are a regulatory agency set up by the state, which oversees lake use. They control use of boating. They are concerned with aquatic, invasive vegetation, for example. They are concerned with upland run-off problems that affect the lake. They have a permitting role with respect to all boats on Lake George. You need to have a Lake George Park Commission sticker in addition to the state registration. They regulate marinas. The zebra mussel is an example of the kind of thing they are concerned about. They are

trying to control the introduction of zebra mussels into Lake George, as to which they have been more or less successful. Of course, the invasive weed – Eurasian millfoil – is another big issue in Lake George. The Park Commission is the hands-on state agency. It is not a county agency because there are three counties that share Lake George. So the state agency was created primarily through the initiative of Judge Morehouse who had been an Assemblyman from Essex County and then County Chair. Unhappily, he ended up in jail, but he did get the Park Commission going.

SPY: It acts like a mini-EDC?

RJB: No, it's more like an arm of the Conservation Department, which is especially focused on Lake George. We are subject to APA review in some of our functions. As an example, the proposal we had to use a chemical to fight millfoil was not approved by the Park Agency, and frankly, the staff recommended approval. It would have been approved except that Governor Pataki had a different idea. It's wonderful how just a clearing of the throat on the second floor resulted in an important governmental action down the line. That's what happened.

I've enjoyed that kind of work. It's not the most popular kind of work imaginable because people don't like regulation. But I also had a very interesting case with APA which really developed a life of its own – the Vilardo case. That involved the APA issuing a permit for a subdivision. My client had a property wholly surrounded by the subdivision, but not in the subdivision. They took the position that the regulations that applied to the other properties, applied to the Vilardo property as well. We went to the Appellate Division twice. Finally I noticed – after having been on this litigation for over

3 years – little regulations of the APA that every permit that is issued has to be filed in the County Clerk’s Office within 60 days, indexed against the party affected.

SS: Wow.

RJB: I had to stand before the Appellate Division and say I had a sign once which certainly applies to this and that is “if it weren’t for the last minute, many important things would never get done.” At the last minute, like yesterday, I discovered that little provision in APA’s regulations. End of case. I wish I could tell you that was the end of the Vilardo’s troubles, but it’s not.

Anyhow, Pan Am 103, I think I mentioned before, I represented a family who lost their father, mother and two little kids. We still haven’t been paid the last installment and I’m skeptical that we ever will. My role in that case was calling my friend Lee Kriendler, who went to law school with me. I turned the case over to him and we were local counsel dealing with the family.

The Oak Mitsui case was a trade secret case in which Gould claimed that Oak Mitsui had stolen its trade secret process involving the copper plating of other metals. I became involved as local counsel because there was a plant in Glens Falls and part of the case was in the Northern District. It was a fascinating litigation.

And there was some of the run-of-the-mill stuff. Some of the estate litigation I’ve been involved with included the David Smith Estate many years ago before I met the firm the first time.

SPY: That was how you met your partner.

RJB: That's exactly right. That's exactly how I met Alan Clark. I got to know him well. The mix of practice is wonderful. At this moment I'm more of a consultant and advisor. I still have three or four files that I'm the billing partner for. If God is good to me, I will have none by summer's end. The mix has been wonderful. One of the things I should absolutely say is that my firm has been wonderfully supportive to me in allowing me to be involved in a lot of pro bono stuff, all the Bar Association stuff and all the Bar Foundation stuff. It takes a lot of time. I think there is a certain value to the law firm in having my name involved with Bar Association activities. But they have been very supportive in that respect.

SPY: The typical law firm is not as supportive of that kind of work. Why is your firm so generous?

RJB: Well, there may be a selfishness involved. Bartlett is involved so I don't have to be involved. They may feel that my involvement over the last 20 years has fulfilled the firm's commitment. At this moment, I'm trying to get other members of my firm more active in the Bar Association. They have been very active in the County Bar. Anyway, it's been a wonderful life with wonderful opportunities which were not of my making. I have been associated with a wonderful bunch of people at every stage of my career, in the law school, the court system and in practice. I am very fortunate. I had a lot of fun along the way. I don't race the sailboat anymore, but I love to watch others race their sailboats. I have a lot to be grateful for.

SPY: There are many people who are grateful to you for helping shape their careers. There is this word called mentoring that seems to be lost today in today's profession. What role does that play in your life?

RJB: I have tried to make myself available to younger people who have an interest in our profession. I try to make myself available to young lawyers in the firm who may not be happy there. With some regularity people come to the firm and after two or three years, they come to see me and say, "you know I'm not really happy doing what I'm doing and I don't see an opportunity in this firm for me." I have tried consistently to take the view of encouraging them to look at other opportunities. The hiring decision of a firm is not that you come with us and in seven or eight years you'll be a partner. It's come with us and we'll take a good look at you in the next four or five years then maybe you'll become a partner. That should be reciprocated on the other side with respect to their trying out what the practice represents in our firm for them. If it doesn't work, they should not be discouraged from seeking other things.

I can think of one example in particular. I hated to see the young man leave but I talked with him fairly recently and he could not be happier doing what he's doing. He was not happy at our firm. This is one of the nice things about our profession. There are so many different opportunities and so many different uses for lawyer skills and lawyer talents. Some of them are not even in the practice. I think of the number of CEOs, for example, who are lawyers. Of course, Dick Parsons is the most obvious example from where we are sitting. But it's true. There are lots of opportunities. I remember a number of years ago telling someone about whether he or she might want to go to law school: "Don't go to law school if you really don't plan to be a lawyer. It's not worth the pain." I'm not so

sure I'd say that today because it does develop habits of thought and analysis that are useful in a number of different settings. I think I am more sympathetic toward law school being viewed as good training for a lot of different things besides the practice of law than I was 20 years ago.

SPY: You're one of the rare lawyers who has practiced litigation at a very high level but has also done transactional work, and trusts and estates work. How did you come to be such a generalist in today's world?

RJB: That is the mark of a small town lawyer. You don't have the luxury of experts in all the fields so you become sort of a half-baked expert yourself. I have done some wonderful litigation in the trusts and estates area, but it was litigation.

A dear friend of mine had a will drawn by a New York City lawyer. I was named Executor. When he died, they could not find the will. I had a copy which the lawyer sent me. But I had sent him the original. I produced the copy. He said, "well, apparently the firm had moved, and they did a big clean out." We didn't know what had happened to the original so I had to offer for probate a copy of the will. It was before New York County Surrogate, Renee Roth.

I didn't appear before her personally. We took testimony before one of the law clerks which I guess is pretty common. We had to prove the last will, and we did. But there were all kinds of complications. A son who had sort of disappeared hired a good lawyer in Philadelphia and brought another suit. So we had a lot of fun. We finally got the will established. In fact, that was a fascinating case.

There was another case that related to that in a way which I did for Peter Preiser and that was the case of a man – Connie D’Urso – who disappeared in his boat in the Atlantic.

We had to prove his death. I went before the Surrogate in Westchester County. That was an interesting challenge. For all we know he was in the Grand Cayman with his girlfriend.

It is amazing the variety of problems that have to be resolved in the legal system. They get resolved. It is obviously not as happy for some people as for others. A lawyer is a lawyer. If you try to do it honestly, honorably and with integrity, it is a very rewarding role just to have been a participant. I have sure enjoyed it.

SPY: The legal rags are all awash with stories about marketing and how lawyers should market themselves. Can you describe how these various different cases would come to you in Glens Falls?

RJB: They came to me because of the contacts I had. I can tell you for example that about two significant cases. I haven’t mentioned the Birnbaum Estate, but that’s another whole world. I have been litigating that estate for years. One case came to me because of Judge Breitel. I was just leaving the law school. Someone contacted him and wanted a recommendation for a lawyer to represent their client in the Northern District. Judge Brietel gave them my name and that was a representation that went on for several years. The Stokowski case came about because of my representation of Skip Muller. The Pan Am 103 case – I’m not entirely sure how that came to me except that I know that all the lawyers in Essex County were chasing that case. I think they decided to escape by going to Glens Falls. I got the call that they wanted to talk to me about the case. The APA, the

Vilardo and Mollie Cole cases came to me from Essex County again. I'm not sure who recommended me. There were days when I wish they hadn't. But anyhow, overall that's been my experience.

I guess it may have had something to do with something I said to you, Steve, many years ago. You may not remember it. You were debating your choice of law schools. I said something to the effect that Albany's a good fit for you. You'll do well there. You're pretty certain to be a big frog in a little pond there, as opposed to being lost in the huge context of a big place.

SPY: I remember that advice well.

RJB: I have kind of enjoyed being a well-known lawyer in Glens Falls. That's something that might not have happened elsewhere. This really started before law school. I shouldn't say that, it started before I was in practice because the year I took as a Community Ambassador, I had a column in the paper every week for about 12 weeks recounting my experience in France and some travels I did outside France. That may be better known in the public than other lawyers my age with my experience. I guess it's fair to say that my reputation has probably been inflated somewhat beyond the truth of the matter.

SPY: Something you touched on was that when you returned to the firm. You got re-involved in the Bar Association. What kind of work did you do in the last 25 years that made you so satisfied with the Bar Association?

RJB: I think I mentioned, that Hugh Jones had been Chair of the Fellows of the New York State Bar Foundation. As I recall, that was my first involvement, succeeding him as

Chair of the Fellows. Then I went on the Board of the Foundation and ended up being President for three years. That was an important involvement.

SPY: What kind of work does the Foundation do?

RJB: The Foundation raises funds and supports projects and programs that are otherwise not funded. It is the charitable arm of the Bar Association. Its function has expanded considerably. It expanded more during Bob Haig's time than any other. He succeeded me as President. Bob is really a gung-ho guy and a little less reticent about asking for money than I was probably in my day. But it has grown considerably. We support a whole bunch of pro bono efforts across the state. It has supported diversity. It supported a number of desirable goals that the Bar Association itself can't support.

Beyond that, I was in the House of Delegates representing my County at the Bar and took an active role there. I think I mentioned somewhere back in the earlier part of this process that I was actually Secretary of the Executive Committee back when Stuart Scott was President, which is ancient history. That was an activity I had early on. I was the second Chair of the Criminal Justice Section. I have been on any number of panels over the years for the Bar Association and currently, for example, I run the State Bar Committee with respect to the bar exam. I am on the State Bar Committee with respect to mandatory retirement of judges and I participated by telephone yesterday. I have been on Chief Judge Kaye's Commission on the Future of the Courts and we're about to submit a report. I have been active on the Historical Society. When Al Rosenblatt put that together I agreed to be Vice-President. I just declined being re-nominated to the

Board. I am going to have to do a lot more of that next year. My endurance level is not what it was. But it has been a wonderful experience.

SPY: How about the ABA?

RJB: On the ABA, I was in the House of Delegates going way back. My first involvement with the ABA was the committee to see that judicial standards were implemented. Governor Love from Colorado was Chair and I was Vice Chair of that committee. We met all over the country. Usually we met in connection with the annual meeting. That was my first involvement with the ABA that I can recall. As I said I was in the House for four years. That is really the extent of my involvement with the ABA. I have been somewhat involved with the Senior Lawyers but not really. I was on the committee a few years ago. But it's been a wonderful experience.

SPY: You have also been involved with the Second Circuit Judicial Conference up in Lake George. How did that come about?

RJB: I was in the Federal Bar Council years ago. I used to go down for the dinners in New York. I have always practiced in the federal courts, more than most of the lawyers in Glens Falls I think. That's the luck of the draw. I guess it could be said that practicing in the federal courts is daunting for many local lawyers and they don't think they are up to it. I think they feel they have to learn a great deal they don't know. It's not true of course. It's not that different from state court so I never hesitated to take matters to federal court and I got to know a lot of the judges. Then they moved their location for the judicial conferences. I attended the conferences early on, mostly in connection with other responsibilities. For example, I attended the judicial conference in Manchester, Vermont

many years ago. I served on a panel discussing McNaughton with a judge from New Jersey whose name escapes me now. Herb Wechsler got me into that. Then I participated in another panel, I think it was in Hershey, Pennsylvania. I know it was outside the Circuit. They joked about that. When they moved to Lake George I became sort of the local go-to guy for a variety of problems. I enjoyed those associations very much. The Circuit office has frequently asked me for help with local problems of one kind or another. I've been glad to do that. But it's been enjoyable. Of course, I remember the Chief Judges in the Second Circuit, Will Feinberg, Ralph Winter more recently, Jimmy Oakes, and of course, John Walker. It's a fun venture and I won't be worried about CLE credits this time.

SPY: We want to connect a dot with regard to the Board of Social Welfare. Maybe you could describe your connection with Hugh Jones when he was Chairman.

RJB: I believe I first met Hugh in the mid 1960's when I was in the Legislature and he was Chair of the Board of Social Welfare, and the Medicare/Medicaid issue came up. Hugh was very much involved in negotiations with the Governor's office and with the leadership of the Legislature. At that time, Tony Travia was the Democratic Speaker of the Assembly. I believe Earl Bridges was the Majority Leader of the Senate, on the Republican side. Anyhow, Hugh played a very prominent role in the negotiations which led to our, adopting our New York Medicaid legislation. My hindsight is that we pointed much too high to begin with. It has seemed to haunt us ever since because the formulations that we put in place then have not been cut back. On the contrary, they have expanded. And we're in a funding mess with respect to accounting responsibility, state responsibility, and federal responsibility. It's going to have to be addressed sooner or

later. Having said that, Hugh's role was that he explained the position of the Board, and very articulately. I don't really remember what their position was. But he was actively involved. That's how I first really got to know him.

SPY: Do you remember also a meeting you had in Glens Falls when Hugh Jones, Mike Gabrielli and Wachtler were beginning the "Vote for All Three" campaign.

RJB: Yes, I do recall. My recollection is as follows. There was a political event in Warren County, a dinner to be attended by several hundred people. It was to feature our three candidates for the Court of Appeals. Prior to the dinner, my recollection is the afternoon before dinner, I met with Hugh, Mike and Sol to discuss campaign strategy. I don't recall who initiated the meeting. From that point on, I became involved on behalf of Hugh. Although they ran together, they had separate apparatuses and separate committees. It was not that I was pushing Hugh as against the three of them but I signed on to help Hugh get a majority of the vote. From that point on, I was actively involved in Hugh's campaign in our part of the state.

SS: What excites you about the future? What do you want to accomplish?

RJB: Earlier, Steve asked why didn't you try something else besides practicing law at some point. I think I want to keep my hand in it. Nobody reads advance sheets anymore. I used to love to do that. I want to keep my hand in it and keep informed. I am going to keep my connection with the firm in some way. For the protection of the public, I am going to terminate my practice of law within the year which is a prudent decision. I have picked February 2008 because that will be the end of my current certification without further CLE. If I just starve myself of CLE credits for the rest of the year, my retirement

will be assured. I think that's the way to go. I have looked into what being a retired lawyer means in the context of licensing and practice. I found out that they will certify that you are retired. You may not represent clients for a fee. You may do pro bono work and be active in bar association work. It means that, while I can continue to have an office at the firm, I will no longer be involved in firm matters. If partners of mine want to come and pick what's left of my brain over this issue or that, there is nothing wrong with that. But I can't hold myself out as a lawyer looking for work, in effect. I think maybe that's where I want to be.

Claire and I, hopefully, will regain some semblance of good health. I certainly feel pretty well right now. There's more traveling to be done, more birds to be watched and more boating to be done on Lake George. So we won't lack for things to do. It is amazing how busy you can be doing nothing. It really is incredible.

I find on vacations, for example, I don't have enough time in the day to do everything I want to do. I'd just as soon not have contracted pneumonia in Vienna, but that was a great trip up to that point. We were celebrating Mozart's 215th birthday. We heard a lot of wonderful music, and visited all these places associated with Mozart's life, and with Beethoven and Franz Schubert. It was just a great vacation. We want to do more of that.

I'd like to go back to Israel. I'd love to go right back to Tantur where we were before, which is an ecumenical center in Jerusalem but right near the Bethlehem gate. I don't know that there is anything I can do to help bring peace to that very troubled area, but I have a strong point of view about it. I really do believe that Jerusalem – that is the old City of Jerusalem – needs to be internationalized. We have three major faiths there, all

with vital faith-related issues. Just imagine that on the site of Herod's Temple is where the Muslims believe that Mohammed ascended into Heaven. And that's where the Dome of the Rock is. It's a very holy place for the Jews. The Wailing Wall is the foundation of Herod's Temple. It certainly is of equal if not greater importance to Christians as Bethlehem, the birthplace of Jesus and Jerusalem, the place of crucifixion. I think that it's hard to believe that it will be solved, but it's got to be solved somehow. It's all confused with politics of course, which drives so much of what's going on in the Middle East. I'd love to go back there. It's a longer comment than I meant to make about that. If our health is good, we'll return there. Claire's only caveat is it can't be any place where they require inoculations.

SPY: Well, picking up on your thoughts about retirement, one of the raging debates in the profession is about mandatory retirement and law firm policies of mandating retirements at particular ages. The same is true of the judiciary. You recorded a few years past the age of 65 in a very productive law firm life. What are your thoughts about mandatory retirement versus phased retirement?

RJB: I understand the economic dynamics that produce mandatory retirement. But I think that it's a shame to turn out perfectly competent people just because there are younger people with sharp elbows who want to make room for themselves. That is really what it is all about. I don't know how to manage that. Firm practices have changed so dramatically. Steve, how many firms are there in New York with over 100 lawyers? There are 100, at least. That's incredible. The dynamics of running a firm like that are so different from the biggest firm in Glens Falls that it's hard to have a sense of what is right or wrong or what will work or won't work at larger firms. But I think it's too bad not to have to at

least make arrangements for lawyers when they pass whatever the age is beyond which they don't participate in firm management so as to take advantage of their experience in a way that still leaves room for younger lawyers to grow and assume authority in the firms. It's worked well for me. I think a very important that older people have to understand is that they have to make room for other people. So they can't be too full of themselves with respect to the position we have in the firm.

One of my partners has the title of President of the firm. I guess somewhere back in the dim and distant past, we had officers of the P.C. By God, I think he's still President. You only know this when he puts out a press release about something. Anyhow, the point I want to make is that there is a way to participate in the firm activities and the life of the firm without continuing to crown yourself as the chief pooh-bah. You've got to do it with a bit of grace. That gives the sense to younger lawyers of when is that old rascal ever going to get out of here because there will never be room for me to move up until he does. But there's a way to do that. Back to something I said earlier in this process, it is terribly important for all of us not to take ourselves too seriously.

SPY: Your career has defined itself by the amount of public service that you have done. What do you think led you to spend so much time in public service? What was it that drove you there?

RJB: Well, I don't know. Somebody might say ego. I was always interested in government as a kid. I was interested in student government, and active in it. I think my first role was class president. I may have been homeroom representative when I was in 8th grade. Anyhow, I was always interested in it. It's a mix of things I think. First of all, to be good

at representing any group, you have to be committed to doing what is right for the group in the sense of being in service to them, as opposed to forming and shaping a policy. You hope they'll like it. I think it's a desire to achieve and a desire to have recognition. It certainly plays a role. I would not weight that too heavily, but I think that's part of it. I also think that if you have some talent in the area of persuasion, and you have some skills at conveying your ideas and persuading other people to agree with your ideas, those are all characteristics that are helpful and useful to someone in the political process. Yet this isn't all political in the typical sense.

When it came to the court system, my involvement in the court system probably came out of a multitude of drives. I don't think I gave you this line before, but I had been interviewed and proposed for a Northern District judgeship position. The judiciary bill never passed that year. It was when Jack Javits was our Senator and I knew him quite well. And so Judge-to-be Bartlett died on the vine on that venture.

Then when they created those two new judgeships in the state system as part of the Rockefeller drug bill, my County Chairman, Carl DeSantis, who was also my best friend, called me up and said, "Hey, forget that federal business. Here's a state judgeship and let's move on it, let's do something about it." I replied, "Ah, I'm not so sure, whatever you think." "What the heck do you mean?" he said. "You had me running all over the place chasing that federal judgeship, and now you don't want to be a state judge? Come on!" So that's something. I did decide it was a silly distinction and I am very glad I went ahead and became a state judge. I'm sorry I didn't spend a little more time on the bench doing real judge work instead of chasing other judges. But that is how things worked out.

SPY: You're one of the rarest of lawyers who has served in, really, all three branches of government. The Legislature, the Judiciary, and advising the Governor, not to mention running a non-profit educational institution and a law practice. Which aspect of government did you find the most interesting?

RJB: I don't think of the Judiciary as being government. But of course it's the third and very important branch. Lord knows we need that. I just read a letter to the editor, or something to that effect, that whoever are these judges who weren't even elected telling us how to run government. They have a lot of nerve. There was a complete lack of understanding of the balance of power that our Constitutional Congress gave us, for which we should be very grateful. It is incredible. Although the motivation for the system, evolved from the Constitutional Convention in 1787, it was not necessarily that people wanted to create for posterity security the best possible system. It was devised as a matter of compromise with all kinds of competing interests.

The system works well in a sense. Being a part of the Judiciary was a very fulfilling role for me, in spite of the unpleasant moments of being the first Chief Administrative Judge. There were more than a few of those. I like the legislative process a lot. I enjoy the give and take of debate. I was blessed with a wonderful responsibility of the Penal Law Commission, and to argue for our bills on the floor. I had a good rate of success in doing that. So that was very fulfilling. I probably had the least attachment to the Executive Branch, but I enjoyed the role I had, which was trying to bring some unity to our criminal justice apparatus.

I think about how things have changed. Of course, the drug laws have a lot to do with the change. I saw in the paper the other day that Governor Spitzer is looking for prisons to close. I'm all for that. When Pete Preiser was Commissioner of Corrections, I think he might have had as many as 13,000 inmates. Now it's 74-75,000 which is totally different. My role in the Executive Branch was to try to be a coordinator of the various pieces of the criminal justice system and try to make sense out of the whole as opposed to the function of governing. That was very challenging, but a different kind of challenge. I guess the role I like best in our system is that of citizen lawyer.

SPY: You mentioned Governor Spitzer. He was fond of saying that on Day 1 everything in Albany would change. You've seen a lot happen in Albany. What are your views of what will and won't change in Albany in the next year?

RJB: I think he's laid out a blueprint which may be overly ambitious. But that is better than being an overachiever with a small goal. I have hopes that he'll bring about significant changes in the way business is done. It came up on the Comptroller appointment, but that is not surprising. I think if it did nothing else, it should remind him that he needs to be very precise in the agreements he reaches. There was a question of whether it was five or up to five. You can't give legislative leaders an opening for them to improvise on an agreement. I think that's what happened here. But I mentioned earlier today when I talked to Sandy, I think the method of filling a vacancy for those two jobs needs to be changed. There have been very few occasions in history where we have had to do that. The last one I remember is when Jack Javits became U.S. Senator. Louie Lefkowitz was selected as Attorney General by the Legislature that succeeded him. That was a very

political thing. Louie hadn't yet become the people's lawyer. He was the Republican party lawyer. I think we need to change that.

But back to the general picture. Change won't come about in a day. It won't come about with one budget. But I am hopeful that Eliot Spitzer will continue to be an independent leader who tries to improve the ethical climate in Albany. It needs improving. At the same time I hope he serves as best as anyone can the competing needs of the City and the rest of the State, Long Island and Buffalo. It's a huge state. Very diverse. I think it's more diverse than California. It's considerable. With all that's in this state, it is not easy to try to make a rational working whole out of it. But I have hopes for Spitzer. I know him. I like him. He has asked me to serve on the Judicial Nominating Committee for the Third Department. He has asked me to fill out the papers and see what happens. I think the way in which the Legislature has been doing business is not good. As to member items, even though my part of the state has been a great beneficiary of member items, it's not the way to do business. There's no rational allocation of state funds, just for example, as between fire companies. Think about this: this so-and-so gets \$100,000 to help the XYZ Volunteer Fire Company buy a new engine. What a way to run a government. The \$100,000 is given because he or she as a member of the Assembly and is entitled to some money without really evaluating what the need of that fire company is as against all fire companies. And on it goes. I'd like to an end to them – member items – and I hope it will happen now. We've been great beneficiaries of that because Joe Bruno is from Glens Falls and he hasn't forgotten his roots. We haven't done quite as well as Rensselaer County, but we do pretty well. But I don't think it's right. And I think some of those things will come to an end.

SPY: There are some parallels to 25 years ago when we had a Governor heading the state who was interested in courts.

RJB: Yep.

SPY: And we had a Governor pushing for court reform. What are the lessons that you would draw from that experience 25 years ago? And what relevance does it have to today's push for court reform?

RJB: Assuming court reform to be the restructuring of the courts and a better system for selection of judges as the two pieces, further steps toward realizing those goals will not come without strong gubernatorial leadership. That's what happened before. I don't know anything about Hugh Carey's background that suggested that this was an important issue to him. There was a commission led by Cy Vance. That was certainly influential in getting him to commit himself. Judah Gribetz was his counsel. I think Judah played an important role. Anyhow, Hugh Carey took the bit in his teeth and said, "We're going to have some constitutional amendments on court reform, and Legislature, if you won't do it yourself, I'm going to call a special session." And he did. It was only because he did that it happened. It's only because he called that special session. He called it in the summertime. Catch your bus to Albany and start talking about court reform. It's fair to say that the leaders of either house were not enthusiastic. The leader of the Assembly was either Steingut or Fink, I can't remember which. But they were not at all interested. They liked the current arrangement. It's because of Hugh Carey's leadership in combination with Chief Judge Breitel who for the first time said to the legislative leaders, "I want to address the Legislature. I want to give the State of the Judiciary message."

Charlie was only about 5 foot 6, but he was 6 foot 10 when it came to being a leader. It was that combination of a Governor wanting to stick his neck out and not wait, as Mario always wanted to do, for a Constitutional Convention and a chief judge who was committed, plus a partnership where they worked together. Now Judge Kaye and George Pataki worked reasonably well together. Not too bad. But I don't think Pataki had any interest in real court reform.

SPY: How do you get a Legislature who is more interested in having their friends go through the elective process become convinced to go into an appointive process?

RJB: Well, I'm not sure that it can all be done at once. The Chief Judge is pushing and will be recommending a so-called structural reorganization in place. That is to say the judges will continue to be elected as they are now. But maybe that's the first step. Then we really have to have a mobilization of organizations of the state who support this.

Let me go back to the earlier court reform method. We voted in Amendments 1, 2 and 3, which were the Court of Appeals, Judicial Conduct Commission, the Judicial Nominating Commission, and of course court administration. We had an extremely active League of Women's Voters, who I'm sorry to say, have pretty much disappeared from the political scene. My sister's very active in the League in Florida. She says it's disappearing down there. Up here it's kind of gone. That was a strong force. Citizens Union was another strong force. You can call them do-good bleeding-heart people if you want to, but these were all good government people. They all put their shoulder to the wheel when it came to court reform. And that will have to happen again. I don't know how it's going to be mobilized.

I think it needs to be taken in chunks. I think court restructuring is first. There is one thing in the proposal for the future of the courts that I'm disappointed in. It doesn't deal adequately with the lower court structure. In the year 2006, we shouldn't have lay judges. Lay judges may mean somebody who went to high school and maybe they didn't. I think we need a system that uses legally educated judges throughout the state.

SPY: How do you answer people who say, "Now I just have three lawyers up in Hamilton County"?"

RJB: Hamilton County is the most sparsely populated county. They have one three-hat judge. What they would need to do is form a district court which may not have judges from Hamilton County. There are lots of other ways. Hamilton doesn't elect an assemblyman. Hamilton and Fulton together elect a member of the Assembly. So a district court could be formed for Hamilton and Fulton. What you could do with the district court system, is that the District Court Judge could call court Tuesdays and Thursdays in Indian Lake, and Monday, Wednesday and Friday in Gloversville, for example. He would serve those two counties pretty decently. Arraignments would have to be dealt with somehow. But these days, when somebody's arrested, they put them in the back of the Sheriff's car. So that can be done.

One fault I have to find with the commission on the Future of the Courts report is that it is too oriented toward civil litigation. We have to think about improving the administration of justice in the criminal area.

SPY: You talked about court restructuring. What are the forces that are calling out for reform?

RJB: There are a number of different and not necessarily parallel forces urging a court merger. Let me take people who want to do something about Family Court. Family Court has always been the stepchild of the court system. It was only created in 1962, and was formerly known as Children's Court. Current Family Court was formed in 1962, I believe. It's underfunded, traditionally. It's been a half court/half social service agency. Nothing would be healthier for the Family Court than to have the high and mighty JSCs sit there on a regular basis. Then you'd see what was done about the cracks in the plaster, the windows that won't open, and all the other problems. I really mean that.

I hesitate to get into this because it's a sore subject, but I concluded at the end of this very long life that I'm not in favor of specialized courts. I think we get better justice out of good judges handling all kinds of cases. I think that it would be good for the Family Court, for other judges to sit there and for Family Court Judges to sit elsewhere. So often the specialized experience means specialized bias. It's just human nature, I'm sorry to say. And so from the Family Court point of view, it would be an elevated thing for the Family Court to bring the resources of the court system more fully to bear on the problems of Family Court. As to Surrogate's Court, there's no reason whatsoever to have a separate probate court. The notion that you need expertise there is baloney. The only people who need to be expert are the courts. The decisions that Surrogates make are not that different in kind than the decisions the Supreme Court Judges make. In fact, you can file a case in Supreme Court or in Surrogates Court. That assumes a certain level of confidence in the Supreme Court to handle. I think doing away with that distinction is unnecessary. I think it's a question of manpower. We have a body of judges who can be used in a number of different parts doing a number of different things. I think it's healthy

for the system, healthy for the litigants, and healthy for the parties. I would concentrate on that merger before I worried about selection.

You know, judicial selection is changing in a different way. The Torres case, which threw out the current judicial convention system, can be implemented without adopting a primary by making the convention system a real convention system instead of a cover-up for county leaders to pick the candidates, which is what it is now. I am hopeful that the recommendations of the Feerick Commission, on which I sat – that’s another thing we haven’t talked about by the way, the work of that commission – will be paid attention to by the Legislature in repairing the judicial convention system. The main ingredients are you serve for multiple year terms, staggered terms, so that you really do develop a group of convention delegates who have some independence from the political apparatus. Such independence is created only by a little distance, and by a little tenure, so that they’re not elected on primary day, which is now the system, in order to vote a week later for the candidates. Where do you suppose those candidates come from?

I really ticked off some of my friends with a talk I gave at the Association of the Bar a number of years ago. Someone asked me how I came to be a Supreme Court Judge. I regret it, somehow, because even my best friend, DeSantis, wouldn’t speak to me for a while. I said that I became a Supreme Court Judge by reason of a luncheon that I helped pay for at the Howard Johnson restaurant in Glens Falls when the County Chairs got together and agreed I should be a Supreme Court Judge. And that’s really true.

The convention system is all a sham. But it is possible to devise that system in a way that will insulate it from – not from all political influence which will never happen – but from direct control of party leaders, when they are picking the candidate.

SPY: How do you feel about judicial appointments?

RJB: They need to work better. Let me give an example. I haven't thought about it in a while, but I think part of the problem is the source of appointment of members of the screening committees. Take the Judicial Nominating Commission for the Court of Appeals. Governors have been able to have their candidates nominated. And then of course they appoint them. Joe Bellacosa is an example. Joe didn't come naturally to mind for the Commission, but Mario Cuomo was very much for him. Lo and behold, he was nominated. The Governor has a very strong voice on that Commission – maybe too strong a voice. And there ought to be more thought given to building in protections against governors getting the Commission to name the people they want to appoint.

SPY: You have been blessed to have had lots of opportunities in your career. Is there any way that you would like your career to be remembered?

RJB: “He tried hard.” I guess it's the difference between taking your responsibilities seriously. That sounds a little pompous. But I certainly was serious about the fact that I had responsibilities. They had to be worked at. Without being coy, we're all here to help one another. I've been blessed with the opportunities I've had to serve in a whole variety of capacities, all of which hopefully improve the common people. I'd like to be remembered as somebody who tried.

SPY: You and Claire are also very blessed to have a wonderful family and great kids. Any messages you have for them?

RJB: I have to say that Amy and I got into a discussion last week, and I apparently sounded as I did 40 years ago. She said, “Dad, for God’s sake, I’m 52 years old.” So, thanks for being so supportive. Claire, of course, has been the stabilizer on our ship. We’ve been on the rocks more than once. It’s nice to be married to a lady who’s also your best friend.

SPY: Anything else that you want to add?

RJB: I don’t think so.

SPY: I must say, that it’s been a pleasure to have had this opportunity.

SS: An honor.

SPY: It’s been an honor.

SS: It is an honor to sit here and listen to you. I could listen to you from now until doomsday.

RJB: You’re sweet to say so.

SS: It is so fascinating. No, you are truly a giant.

RJB: Well, I have had lots of opportunities. I think I told you this earlier about the speech I made to the Rotary about things that are important. A lot of it is not being afraid to take on challenges even though there may be some question of what you’re being put up to. That’s still very important. Try to work with people who are at least as smart as you are and hopefully smarter. Finally, don’t take yourself too seriously.

SS: You know what – I wouldn't have anticipated your answer when Steve posed a question to you of why you were dedicated to public service. What comes to mind is that you love people.

RJB: Oh, I do, that's right.

SS: And they love you back.

RJB: And I've had a lot of fun. Gosh, almighty. When you think about all the great fun I've had. I can tell you that this sounds almost sacrilegious. You're not supposed to have fun in the military. But I had fun in the Air Force. I really did. I remember one night we had Bedcheck Charlie come over. That's nothing more than a North Korean biplane, and probably the equivalent of a crop duster airplane – with a couple of 500 pound or 250 pound bombs strapped under that wing. He'd come out and dump them in a rice field somewhere off base. But it was just to harass the palace, so they'd get a little groggy when they took off the next morning. And I was in with Skeets Gallagher – he was our C.O. – playing bridge, and something came up. I forgot what the heck it was. Gallagher started to laugh and he couldn't stop. I thought he was going to have a heart attack. The point is, in the middle of all this hubbub, life goes on. You continue to enjoy other people, and have a good time. I'm serious about this.

RICHARD J. BARTLETT ORAL HISTORY

March 4, 2015 – Session 5

Hon. Richard J. Bartlett (RJB)
Patricia E. Watkins, Esq. (PEW)
Stephen P. Younger, Esq. (SPY)

SPY: We are here for Session Number 5 of the continuing oral history of Richard J. Bartlett.

Judge Bartlett is in his favorite homestead – maybe his second favorite homestead compared to the lake – at 2 Potter Street in Glens Falls with Patricia Watkins, his law partner, and I, Stephen Younger, am here in my office at Patterson Belknap in New York City. Unfortunately, Professor Sandy Stevenson could not join us but she sends her best. I just want to start by saying what an honor it has been to be able to have this time together and to share.

RJB: I have been honored to have you so there.

SPY: So the first thing – and we covered a lot of this in detail, but I just wanted to get your sense of your – some of your fondest recollections of Glens Falls. And you can pick any ones that you want to.

RJB: Well, I first ran for elective office here for member of Assembly and it was the same year that Nelson Rockefeller first ran for Governor. That was 1958, I guess, yeah. It was the Governor's first run, so he started his first term January 1, 1959, and I started my first term with the legislature that year. Ozzie Heck was Speaker, only briefly and he was followed by Joe Carlino. Then eventually, the Democrats took control of the Assembly and I was in the minority for a while. Anyhow, I was reelected four times because of one

of the elections was for one year as part of reapportionment. So, even though I served eight years, I think I ran five times.

In 1967, there was a Constitutional Convention and in '66 I decided that I wanted to pull up stakes and run for member from the Assembly and so I ran and was elected a delegate to the Constitutional Convention. I served that one year in that role. Bob McMillen, who is one of my partners here in Glens Falls, was a member of my staff on the recommendation of Ralph Semerad, the Dean of the Law School. During the Constitutional Convention, I had a generally good relationship with Rockefeller's staff. The Governor asked me to serve as his Criminal Justice Coordinator which had a specific role in the Safe Streets Act, and he put me in charge of the Criminal Justice Planning Board. I agreed and they set up an office down at 100 State Street. I had meetings there for the Criminal Justice Planning Board and the Crime Control Council. I was the coordinator and I did that for a few years. Then I got behind on three important cases that I had to get to so I asked the Governor to be relieved of my duties. By the way, I think my pay at that time, which we acknowledged to be part-time, it might have been \$20,000. I am not sure, either \$18,000 or \$20,000.

SPY: And can I just interject? We have a lot of these details in the chapters already. One of the things I wanted to ask is, given those times seeing politics, government, law what do you think the role of a lawyer is in those settings?

RJB: Well, of course one of the things I have always felt keenly about is that if you are a lawyer on the executive side of government, of the state government, you've got to make it clear that you have one client and that's the constituency. You can't split that role.

The Attorney General had a different view. Louie Lefkowitz believed, at least he articulated, that he was a people's lawyer, as against the government lawyer. That caused some problems when Bob Abrams was Attorney General because at one point there was a position that the Governor and Abrams didn't share, and he thought his duty was to his constituency which he viewed, as Louis did, as the people who voted for him. I thought that was a divided loyalty. I did not think that the Attorney General was elected to represent "the people" as opposed to the government. I conveyed that to Bob Abrams a couple of times, and of course Louie was outraged when he found out that that was my view. I may have talked about this before, Steve, I can't remember.

SPY: Yeah, I think we've talked about some of these and I think it's helpful to understand. One of the things I want to go back to is you talked about your law partner, McMillen. Maybe we could go back to the law firm. What are the memories of what's now known as Bartlett Pontiff Stewart and Rhodes and your law partners and friends there that you want to remember the most?

RJB: Well, of course what happened was that would have been my law firm when I was in the government. The name of the firm then was Clark, Bartlett & Caffry. And I was in that firm... I had been... Just hold it a second, Steve, I am trying to catch my breath here.

SPY: OK, take your time. It's not a race.

RJB: Well, what happened was, I told this story before and I think it is in our notes, but I am not sure, but, this law firm grew out of the famous matrimonial. I represented Jean Pond, I mean Jean Smith, and Al Clark represented David Smith the sculptor. We appeared before every darn judge in all of New York, battling over custody, visitation rights,

support and every issue you can think of. And the beginning of the firm was a result of, followed a hearing before Willard Best who was the JSC down in Fulton, in Montgomery County. Jean had flown up from Washington. We drove down to the hearing. It was a difficult hearing. David put on a big emotional display. Anyhow, that night, or late that afternoon, we got back to Glens Falls, and I think Jean, I am quite sure Jean stayed at the hotel, the Queensbury. The night before we went down, and she had two or three hours before she had to leave for the airport and fly back to Washington, we were in the lounge of the hotel and had just ordered a drink when a voice said “do you mind if I join you?” It was Al Clark. He said, “I need a drink after today.” So he joined us, had his drink and we all ended up, with Jean heading for the Albany airport. She had a rental I think, and headed back to Washington. Al Clark and I were having a drink together after she left. I think next he said, Al said, “do you know if it weren’t for that darn Smith case, we could practice law together,” something like that.

SPY: And as they say, the rest was history, right? And how about the firm today? How do you describe the firm today and how you feel about the role it plays in the community?

RJB: That’s right. Well, it has been a major law firm here for a long time, I would say Trish, wouldn’t you? It’s the dominant firm. And although I haven’t participated actively for a few years now, I’ve always enjoyed my colleagues. As you might expect, a good law firm is made up of strong personalities and there have been moments of disagreement and contention. Thank God I don’t go to those meetings anymore. They just had one the other day. But anyhow, I think 22 lawyers? 21 lawyers and that is far and away the biggest in town.

SPY: And to talk about the town, can you describe for us Glens Falls, what it is today, and contrast it with the Glens Falls that you grew up in?

RJB: Well, Glens Falls today is a more sophisticated place. I just got out of a very good hospital, which is important to the community and central to its services to the area. We've got two strong banks, at least two, and NBT also. The library is very important also. The library here serves Glens Falls and the surrounding areas and is supported by the taxpayers. It gives very good service and it performs very well in its services to the community.

SPY: You left such a mark on the courts. What are the biggest challenges for the courts today?

RJB: Well the challenge is to maintain the quality of the court system, the quality of justice. Hold it a second.

Well, I think frankly that Jonathan Lippman is on the right page most of the time. I remember when I came in as Chief Administrative Judge, I was elected to the Supreme Court in the fall of '73 and then I was appointed to the vacancy that had been created by statute. So Nelson picked me for the vacancy and appointed me in the interim, and then I was elected to that post in November. They didn't have a place for me in the calendar up here in the assignment of judges so I went from the Third Department to the Second Department to sit in Dutchess County. And that's when I got to know Al Rosenblatt. Dutchess County had a serious problem – with about 30 incarcerated defendants who had been in jail without disposition for over a year. They wanted to get the jail cleaned out, and I worked down there with that assignment. It might surprise you for me to say that I developed a very good relationship with Rosenblatt. He was the prosecutor after all. But

in the course of that three month experience in Dutchess, we ended up being very good friends. He's actually coming up to see me. From that assignment, I may have chaired the Penal Law Commission, but I learned more about how criminal justice works from that experience in Dutchess than I had in my whole practice.

SPY: You have seen so many changes in the legal profession. What advice would you give to young lawyers today?

RJB: The advice I would give to a young lawyer is to get as broad an experience as possible. He or she will have some choices to make in choosing the particular career path they are going to follow.

SPY: You have been very fortunate in your life and career. What experiences have you enjoyed most in your career?

RJB: Steve, they now have put up a hospital bed for me in my bedroom, and yesterday they moved in Claire's portrait. So I am under her watchful eye. I think I have enjoyed being in the variety of roles I have had. Whether it sums up to being a much better lawyer or not, I am not sure, but I sure have enjoyed the political role, bar examiner's role, Penal Law Commission. All those enterprises were meaningful to me and more importantly made me a more informed and broader person. There is not much I would have done over differently. I sure wish some results would have been different.

SPY: Personal relationships have been very important to you. Do you have any final thoughts for us?

RJB: I think not. It's been a wonderful ride, and I have made so many wonderful friendships and two of them are with me right now. Trish and you. It has been a life and when I look back that I wouldn't lead much differently. Hopefully better, that's all. I enjoyed it so much because of the people like you.

SPY: Dick, I can say it has been a real privilege for us to participate in your oral history and having you as a mentor and friend.

RJB: Well, thanks very much and I enjoyed rethinking some of these old ones. Thank you very much.

SPY: You have had an extraordinary career and it has been an honor to play a small role in it.

RJB: Hey, no, I represent a collection of very good people and it has been my honor to do so.