

**THE HISTORICAL SOCIETY
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ORAL HISTORY PROGRAM

Hon. Milton Mollen



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THE HISTORICAL SOCIETY OF THE NEW YORK COURTS

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ORAL HISTORY

**Subject: Hon. Milton Mollen
Arbitrator and Mediator, JAMS
Herrick, Feinstein LLP
New York State**

An Interview Conducted by: Hon. Steven Fisher

Date of Interview: July 21, 2009

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

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THE HISTORICAL SOCIETY OF THE NEW YORK COURTS

Oral History Project

INTERVIEWEE: Hon. Milton Mollen

INTERVIEWER: Hon. Steven Fisher

DATES: July 21, 2009

[Begin Audio File 1]

SF: Good morning. My name is Steven Fisher and we're here in accordance with the Oral History Project of the Historical Society of the Courts of the State of New York. I have the pleasure this morning to be interviewing the former distinguished Presiding Justice of the Appellate Division for the Second Judicial Department, former Deputy Mayor, Milton Mollen, for whom many years ago I was privileged to work. Good morning, Judge Mollen, and thank you for participating in this program.

MM: Good morning, Steve. It's good to be here with you.

SF: Let's start, why don't we, at the beginning. Can you tell us when and where you were born?

MM: In New York City, on January 25, 1920.

SF: Can you tell us something about your family?

MM: Yes. I was the first son, the oldest son. Subsequently, I had a younger brother, who was about six years younger than me, and I lived in the City with my father, mother, and my younger brother.

SF: Were there any lawyers in the family?

MM: No. I guess they came to a decision at some point that one would be enough in the family, so I was the anointed one.

SF: Did you go to school here in New York, public school?

MM: Yes, I did. I went to public elementary school and then ultimately to Samuel Tilden High School. That was all before the time I enlisted in the Air Corps, shortly after Pearl Harbor Day.

SF: Did you do well in school?

MM: Reasonably well.

SF: Did you ever think about a career in the law?

[0:02:00]

MM: No, not at that point. I had two major areas of interest and activity, they were reading and sports. I loved to read, and I loved to engage in sports. I played a lot of ball -- sandlot ball and then went out for the basketball team. I played basketball, football and baseball in those years and my ambition at that time, before I went into the military service, was not to become a lawyer but rather to become a teacher. I loved working with kids. To become a teacher and a coach, not at a professional level but at high school or college level, because I liked to work with young people and I loved sports. I wanted to combine the two things and be a teacher as I said, and also coach the youngsters in the various sports.

SF: What year did you graduate from high school?

MM: Nineteen thirty-eight, I believe that was it.

SF: Did you go forward directly, with your education at that time?

MM: No. What I started to do was take some evening courses. That was still in the midst of the so-called Depression, as you may recall. I don't know if you were around that time,

Steve. The Depression was started in October of 1929 and took full force during the '30s, and really never ended until World War II, until the United States entry into the World War. So during the mid and late '30s the country, economically speaking, was still in a very depressed state. So I felt in order to help support the family and also yet, to keep somewhat advancing my education, I would work during the day and go to evening sessions in the evening.

SF: What kind of job did you have?

MM: Well, my dad, before the Depression hit, had a very successful fruit and produce business.

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He had a large store on Broadway and 86th Street, which was a major store at that time, in that field, and I used to help out as a youngster. We used to make deliveries by wagon. I had two major functions, even though I was rather young at that point. One, I'd stay at the register to help take money, give out change, and two was to help make deliveries. We had a horse and wagon and we'd make deliveries to various residences, and one of my big thrills at the time was to ride along in the horse and wagon with another driver and make the deliveries. I was helping out the family in that way.

SF: Then on December 7, 1941, the country was attacked at Pearl Harbor. Where were you and what did you do as a result?

[0:05:02]

MM: I was watching the then Brooklyn Dodgers baseball team play, on that Sunday, December 7th, and I remember hearing the announcement over a loudspeaker, about the attack. We were all in kind of a state of shock and then I thought about what I wanted to do and very

shortly after that, I went down to, I believe it was 39 Whitehall Street, was the address where the recruiting entities were, and I said I wanted to enlist in the Air Corps and Aviation Cadet.

Among my major reading as a youngster, were reading stories about World War I, particularly stories pertaining to the Air Force during those years in World War I, and somehow that had captured my interest, so that's why I decided to enlist in the Air Corps at that point.

[0:06:00]

I went down and I took a battery of tests that they gave; psychological tests, other kinds of tests, and you were graded from anywhere between 1 and 10, 10 being the highest, and in order to qualify for aircrew, generally speaking -- that would include pilot, navigator and bombardier -- you had to score a 7 or better in respective areas on that. I was fortunate in that I scored 7 or better in all three, so I was permitted to choose pilot training at that point. The problem was that at that point, in terms of immediate entry into the Air Corps, was that they didn't have the facilities available. This was shortly after Pearl Harbor Day, and they said this after I had taken the exams and been told I was qualified to go into any one of those particular areas, I had to wait. They told me to wait, they'd call me when they're ready for me.

So I was sworn in actually. I think by the time they went through the formalities it was early April of 1942, and then I was waiting at home to get word when I should report and where to report.

SF: When did word come in?

MM: Well, what happened was a cousin of mine was a camper at a summer camp and I was close to my aunt and uncle and that cousin, and they were going up to visit my cousin at the camp and they asked me if I wanted to go along and I did. While I was up there that weekend, the owners of the camp were looking for additional staffing, because a great many people were going into the military service, and they asked me if I was available and would I like to work for the remainder of the summer there.

[0:08:00]

I said, "Well, I have to go back and check with the people at Whitehall Street, to see if I could get some idea as to when I would be called to go into active duty." So I went back and that Monday, I went up to Whitehall Street and I spoke to the sergeant there who administered the test to me. We'd become kind of friendly because the first time I took the test, they rejected me because of my eyesight. I had something less than 20/20 vision, so I went back home at that point and ate an awful lot of carrots, because I had read somewhere that carrots help the eyesight, and I took the exam again. But I think what was more helpful to me was I had fairly well memorized the chart and when I went back and I took the exam, that's why the sergeant and I developed a relationship. I got through doing fairly well the second time and he said to me, "Sonny, I know what you did, you memorized this chart, you knew it pretty well this time." So he said, "But if you really want to get in that badly, I'm going to approve it." Therefore, he let me in.

So I went back that summer, early July, to ask him whether he thought I would be called into active duty during the summer, and I told him I'd been offered a job for the summer as a counselor in the summer camp, and to work as the athletic director. He said to me,

“Don’t worry about it, you can go back, you won’t be called during the summer.” I guess once he said that, that pretty much ordained that I would be called during the summer.

So I went back there and I was working as a counselor at the camp, and then in early August, I got a phone call from home that there was a telegram to report to Kelly Field, San Antonio, Texas, and that I had to leave within a matter of a couple of days.

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I left the camp and traveled then down to San Antonio, to Kelly Field, which is based right outside of San Antonio, but it wasn’t a totally unproductive month that I spent there in the camp because I met ultimately, my wife-to-be. She was a counselor in the women’s part of the camp and we became quite friendly during that month, and we salvaged our relationship so that it wasn’t a total loss, but I went down to San Antonio, Texas at that point.

SF: So she stayed in New York and you went down to Texas to begin your training.

MM: That’s right.

SF: How long was the training?

MM: Well, I had primary training at Kelly Field, then I went to basic training in Tulsa, Oklahoma, and then finally there, I washed out as a pilot, in that final phase training so to speak.

An interesting sideline, to demonstrate sometimes that mind can win out over matter. The first six times I went up in my flight training and pilot training, in each incident I threw up while I was in the plane. When we landed after the sixth time, the instructor told me that if I got airsick again the next time, I would have to be washed out of the aircrew and I would have to be relegated to ground crew. I never again got airsick in the air, so I

always consider that some manifestation, I'm not sure quite how, but some manifestation of mind over matter, because I made up my mind I wasn't going to get airsick again and I never did again.

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I finished my basic training but then I washed out in the final phase training, but since I had scored seven or better in the other two areas; navigation and bombardier, I was permitted to select one of those to continue training. Otherwise, I would have to become either ground crew or a gunner or a radio technician. Anyway, I chose navigator and I went back to navigation school at Ellington Field in Houston -- near Houston, Texas, and then I graduated from that school. I was pretty much the top of the class there, and I received an assignment which then was considered a pretty choice assignment. I was designated or appointed as squadron navigator at a base in Clovis, New Mexico, and my function there was crews would come through Clovis, which were complete except for one position, navigator, and I would assign navigators to each crew as they came through, before they were going overseas on that. It was considered a pretty choice assignment but I was very restless and that wasn't what I enlisted for.

SF: So, did you get an opportunity to go overseas?

MM: I made an opportunity to go overseas. After I was there for a couple of months, I went to the squadron commander and I said that that was not what I enlisted for, to spend my war years in Clovis, New Mexico. I enjoyed being there but nevertheless, that wasn't what I had gone into the Air Force for. I say Air Force, at that time it was the Army Air Corps. Later on, they created the Air Force as a separate entity. In any event, he tried to dissuade me. He said, "You've got a great assignment here."

[0:14:00]

He didn't quite understand what I wanted to do but in any event, I finally convinced him that that's what I wanted to do, so he said, "All right, you're the squadron navigator, assign yourself to some crew and you'll go out on a crew." I did that very shortly thereafter, I was assigned to a crew, and we went through -- that was a base for what we called final training, preparatory to going overseas on that.

Then, I went through different areas of training and then I received orders, and my wife-to-be, at that time we were not married yet, she had come down to Texas; you had to come down by train in those days because they didn't have commercial flights. We were told that we were flying to Lincoln, Nebraska, which was a staging area, prior to going overseas on that. The other three officers were married at that time and their wives were all there, so we kind of chipped in, bought a car for the four women, and they drove up to Lincoln, Nebraska, which is where we were told to fly to. We flew to Lincoln, which was a final staging area for going overseas. We said goodbye to our women, they to their wives, I to my fiancée -- we were engaged at that point -- and we had to stay on base. It was restricted because it was a staging area for overseas flights and high security, and we couldn't go back, we were restricted to the base. We only were there for about a day, preparatory to taking off to some foreign destination.

[0:15:59]

The day we were supposed to take off, orders came through for me. There were about 30 aircrews at that time at the base. I and one other navigator were taken off our respective flights and told to report to Langley Field, Virginia, for specialized training. So our crews took off and I went to Langley Field.

SF: Leaving your fiancée?

MM: She thought I was in some foreign country by then. We weren't able to communicate even, and she had gone back to New York, thinking I had gone overseas. I was at Langley Field and I arrived there that Friday, and I reported to the commanding officer and he said we were going to go through a course in radar navigation training. The English at that point had invented radar, and prior to that time, when a bombing mission would take place, when the crew would get to the target, if there was clouds there and they couldn't see the target visually, they wouldn't drop on that target. If there were no clouds they would drop -- they would drop the bombs. If not, they would go to a secondary target to see the weather conditions there, and if there were clouds, again they couldn't drop and they'd have to bring the bombs back to the base in England. However, with the invention of radar, we could see through the clouds, so the lead plane, the command plane as they were called, would contain a crew of 12 instead of 10. They'd have a regular pilot, copilot, navigator and bombardier, plus 6 enlisted men, gunners, radio operators, engineers, but those planes which had the radar equipment and which were called Pathfinders would carry a crew of 12. In addition to the normal 10, you would have a radar navigator and you'd have a command pilot that would make the decision as to whether or not to drop by use of the bombsight, the Norden bombsight, or if he didn't think that the visual conditions were favorable, he would direct that we drop by the use of the radar equipment, and then I, as the radar navigator, would drop the bombs.

[0:18:26]

We dropped smoke bombs and the rest of the formation would drop their bombs, based on our smoke bombs on that. So that was the specialized training that I took at Langley Field.

SF: Did you use that training in actual missions?

MM: Yes. Well, after I completed my training, we were assigned to go overseas, and we flew up to Grenier Field in New Hampshire at first, that was the base from which we were flying to England. There, one of the crew members got ill and we were stuck there for a few days but finally, he recovered and we took off and we flew to England, to Prestwick, and then I was assigned to a particular squad. There was a Pathfinder squadron. We would go out and meet the formations at certain points -- agreed upon points -- and then fly the leadership plane. We would fly the planes on the missions and go to the target areas, and then if the visibility was good, we would drop the bombs by way of the bombsight. If the visibility was impaired in any way, by clouds or conditions that existed there, then I, as the radar navigator, would drop the bombs.

SF: What year did you begin flying missions?

MM: In 1944, early 1944 by this time.

SF: And how many missions did you go on?

[0:20:01]

MM: On the fourth mission, which was one of the longest missions at that time, that the Air Force flew, we flew from England, we had -- all the airbases were centered around Norwich, in England, and we flew a mission at that particular time to Munich, which was a very long flight at that time. It was a bombing mission to Munich and we took a lot of anti-aircraft and fighter fire over the target. We dropped our bombs and we started back

again, and we had problems. The plane had been beaten up pretty much by both anti-aircraft and fighter fire, that the German fighters had come up after us, and we were kind of limping back on our own. Usually we fly in formation because the strength and the likelihood of getting back safely was dependent on flying in formation. The combined firepower of all the planes in formation was very important in keeping the fighters at bay and dealing with it. We were kind of limping on our own. We hoped to get back at least to the North Sea, to go up the coast of England, because at that time there was an operation in effect whereby if we bailed out -- if we had to bail out -- if the plane became impossible to fly, the English would send out these small boats and pick us up.

SF: This was before D-Day.

MM: This is before D-Day. Wait a minute no, it was right after D-Day. I was shot down July 11, 1944, on that. I always considered the fact, when people ask me my age, if I want to say how old I am, I measure my birthdays from July 11, 1944, when I kind of feel I was kind of reborn on that day, but that was the date, July 11, 1944.

[0:22:07]

SF: Where was the plane shot down?

MM: Well it went down finally over occupied France. The Germans were still at that part of France, occupied, and we bailed out. Some were killed. Eight actually were killed, four of us got out, bailed out. Three of us landed very close to one another, we went out practically piggyback, and one landed a short distance away. We landed in a French farm field and we could see the German patrol cars were going back and forth looking for survivors, because they had seen the plane apparently going down, but we hid in the farm field.

SF: Were you and the other survivors injured seriously?

MM: Yeah. I had caught some shrapnel and fire in my leg, one leg. I didn't realize how bad it was while I was flying and while I was floating down on the parachute, but what we did, we kind of hid. The French farmers were pretty nice to us. They brought out some bread and cheese and we made a decision. We waited until nightfall and then we would start walking, going towards either Switzerland or Spain, whichever was closer. We always were prepared to go in one direction or the other, and so we were just lying there, waiting for nightfall. When it got dark, I tried to stand up to go preparatory to our taking off and trying to find our way to -- we decided to go to Switzerland, but I couldn't stand on my leg. When I stood up to start walking, there was intense pain.

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I was wearing flying boots and our pilot said he was going to cut the boot off to see how bad it was, and I could see when he cut the boot and he looked at my foot, it was pretty bad and he said, "You can't walk on that." So we had kind of a debate then. They wanted to stay with me and I said, "You can't do me any good, I've got to do one of two things. I have to either get into the hands of a doctor who would fix my leg, so then I could go back on my own, try to get back to Switzerland and back then ultimately to England, or I would see if I can get into the hands of the French Resistance and they would get me medical help and then get me back to the coast and hopefully get me over to England."

SF: The other three had not sustained injuries that prevented them from leaving or walking?

MM: That's right, they weren't hurt. I caught some that came up through the nose of the plane and had gotten to my leg. I didn't realize how bad it was until I tried to stand on it and walk.

SF: What was the result of the debate?

MM: Well, I won the debate, they left. They got back ultimately. I crawled, I couldn't stand on my leg, and it was night, and I crawled, trying to get to a French farmhouse. I finally got to a farmhouse, in rather intense pain but I got there, and the French farmer, I knocked on their window and he opened the door, and then he put me in the barn for the night, and then in the morning he asked me to leave. Not too long before that day, the Germans had issued orders that any Frenchmen helping allied aviators, Americans or English, were to be executed. Of course, some of the Frenchmen had been helping some of us who had had to bail out on that, so I think he was just fearful and he wanted me to leave.

[0:26:06]

I told him I couldn't walk and I asked him to get me a doctor or to get me into the hands of the Resistance. He didn't want to do either one. He brought me some civilian clothes but that was the worst alternative, because if I was caught in civilian clothes, I would be shot as a spy immediately, so I wouldn't take those clothes.

Anyway, we had a debate again. I spoke some French. In those years I could speak French. I'm rusty at it now but in those years, I had taken French, my foreign language French and then Spanish, both. I told him to get me a doctor or to get the Resistance, so he told me he was going to leave and he was going to discuss it with the village priest. I don't know whether he ever did or not but about an hour later a German jeep came into the yard where the barn was, and they came in with machineguns, we had a discussion and I left with them.

SF: They insisted that you come with them, is that right?

MM: Yes.

SF: What happened next?

MM: Well, they took me to some army encampment, they were part of that encampment, and some German lieutenant interrogated me, and he spoke English probably better than I did. It was an interesting conversation because all I would do is give him name, rank, and serial number, because under the Geneva Convention that's all we were required to do. He kept questioning me and that was the only answer I would give him, so finally he told me that he had the option of turning me over. The regular procedure was to turn you over to that unit of the German armed forces to which you belong to.

[0:28:01]

If you were an Air Force person, you would be turned over to the German Luftwaffe. If you were an Army person, you would be turned over to the German Wehrmacht, the Army. If you were a Navy person, you'd be turned over to the German Navy if you were captured. So normally, he would have turned me over to the Luftwaffe, he said, "Or I can turn you over to the Gestapo and that will not go well with you, especially since you're Jewish." We had dog tags and he had looked at my dog tag, and it was marked "H" for Hebrew. You had to have H, P, or C, Catholic, Protestant, or instead of Jewish, they would say Hebrew, H. He saw that I was of the Jewish faith, so he said that he could turn me over to the Gestapo and said that "things will not go well with you."

SF: What information did he want from you?

MM: The group I was connected with, where we were based, information of that kind that would be in my area of knowledge. What I did, what my function was on the plane. I don't think at that point he knew that it was a radar equipped plane, my Pathfinder, because of something I later learned. When he told me what he did, about his option so to

Speak, my approach was that I told him he was a German army officer and I had no doubt that if he was captured, that the only information he would give would be his name, rank and serial number, and that's all I intended to do, that's what I was required to do under the Geneva Convention and nothing more than that, and I did not intend to give him any further information on that. Fortunately, as I discovered later, he turned me over to the Luftwaffe ultimately. I was transported ultimately, to Frankfurt, Germany, where they had an interrogation center, where we went through a similar kind of conversation.

[0:30:00]

SF: Did they provide you with medical assistance?

MM: Not then. They sent me to a place near there, in Lille, France, that was a center place for transportation. From there I was sent to Frankfurt, but in Lille, I was put into some old dungeon and I asked the guard if he could get me some medical help, and he paid no attention to me. I called out again and he told me if I called out a third time he'd shoot me, so I decided to keep quiet and was sent ultimately to Frankfurt. There, I was put into a hospital, after the same kind of interrogation, the same result, but they put me into a hospital for treatment.

SF: Did they threaten you there with the Gestapo?

MM: No, they didn't. Then, after they put me in the hospital, I got some treatment there, and then I was sent to a small convalescent place, where there was an Austrian doctor in charge. It was a small establishment and there, this Austrian doctor was an anti-Nazi. He used to aggravate the guards. Whenever he would hear a sputtering plane up above -- The Germans didn't have enough petrol and enough oil and gas on that, so they used low grade fuel and because of that, when they would fly, especially these were not their top

military planes, they would sputter and you'd hear them, and he would call out to the guards. I still remember very vividly, how he would call out the guards and say, "There goes the last of the Luftwaffe," which I guess aggravated them.

[0:31:53]

Also what happened there, some American sergeant was brought in. In the early days of the radar equipment, we didn't have people who were trained. I was among the first officers to be trained and one of the first navigators to be trained to become a radar navigator. Prior to that, they used to use radio operators, because they had some familiarity with that kind of mechanism on that. This fellow was brought to this convalescent home, and he couldn't walk straight up. When he'd walk, he'd walk holding on to the wall, and he'd put one hand over the other as he was walking for support. I spoke to the doctor -- the doc and I developed a kind of friendly relationship -- and I asked him you know with this sergeant, what kind of problem did he have physically, medically speaking, and he said it was psychological. He had been turned over to the Gestapo and he told us that they in essence tortured him, he gave us some of the details, and then he finally talked. He told him that, he said he just couldn't hold out any more on that, but it had really affected him psychologically as well as physically, and the doctor said that physically, he thought the sergeant could walk on his own, but he couldn't do it, he would have to hold on to the wall and do that.

Anyway, thereafter, I was transferred to the infamous or well-known, Stalag Luft III. That was the prisoner of war camp from which the English, the RAF, and the RCAF -- that's the Royal Canadian Air Force -- and Australians had staged a mass escape. You may recall reading about it some time. A movie was made out of that called *The Great*

Escape. As I recall, 72 of them got out, three got back, the others were all captured, and 50 of them were executed by the Gestapo as an example to all POWs to not try to escape.

[0:34:03]

SF: How long before you arrived that the camp had that great escape occurred?

MM: I think it was about six months, and that's one of the reasons I said they had vacancies there. They had executed 50 of them.

SF: Did you spend the rest of the war at that POW camp?

MM: No, no. I was there until January of '45, and then when the Russian, French started moving from the east to the west, the Germans would let the POW camps be recovered by the -- be taken over by the Russians with one exception: Air Force Officers. They hated the Air Force. I used to read the German newspaper in the prisoner of war camp there, at Stalag Luft III, we had that, and they used to refer to the Air Force as "luft gangsters," (air gangsters) because the only ones who brought the war home to Germany up to that point was the Air Force. The Army was still occupied in France and advancing, in Belgium and France, or in the east, but German land had not yet been invaded by the Allied forces, but the ones who brought home the war to Germany was the Air Force, because we engaged in constant bombardment. The United States Air Corps would bomb during the daytime, with precision bombing, we would go for specific targets. At night, the British Lancasters, their big bombers, would go out and do area bombing. They didn't do specific target bombing as we did, but they would cover an entire area and drop their bombs, so between the two it had an impact. In fact, we had some heavy losses before I was shot down, in the Air Corps, a number of our planes had been shot down when the

Germans had intensified their antiaircraft fire and their fighters, because of the damage being inflicted by the Air Force.

[0:36:06]

Morale was getting somewhat down so the Air Force, or the Air Corps, had some general come up to give us a pep talk. We had a typical American sergeant in the back of the room and I still remember, the general was telling us what a great impact on the morale of the Germans we were having, and how this was contributing to the end of the war and all that, trying to tell us we were doing a great job, and saying what an impact it had on the morale of the Germans. They'd see by day, they'd see the formations of the Americans going out day after day, bombing the targets, and at night being bombed by the British. His point was that we were destroying the morale of the German people. So some sergeant, from the back of the room yells out, as sergeants in battle areas were prone to go, "Hey General, what about our morale?" Because we were having some fairly heavy losses. So the general said, "Well you know, that's a problem." He said, "But the losses still aren't that bad." They were somewhere between, I think 5 and 10% at that time, and he made that point, the general did, but the sergeant said that's great, as long as you're not part of the 5% or the 10% on that.

SF: How did it come that you left this infamous prisoner of war camp?

MM: When the Russian front started moving -- By the way, interesting enough, before I leave that subject finally, when I was captured and I was talking to some of the German guards who spoke English and I spoke a guttural German combination, Yiddish and German, I still remember one of the guards telling me that he knew the war was over, that they were going to lose. He says when day after day, he saw the American Air Force going out on

bombing missions, and they would see the planes going from what we call the IP, initial point, to the target, without ever deviating, just going straight to it. Planes would be shot down by the anti-aircraft or by fighters, the rest of the formation would keep going until they hit the target, and then they recognized I don't know if he would use the word but what he was saying, the inevitability that they couldn't win the war, that this was going to keep on until we prevailed on that.

[0:38:29]

Anyway, coming back to your question, when the Russian front started moving, they would let the POW camps be taken by the Russians. When it came to the Stalag Lufts, the prisons, they would not let particularly the American officers, be retaken -- recaptured by the Russians and sent back, because they saw it, the Germans, that we would be bombing the next day again, so they moved us. We went on a forced march in the middle of January, it was freezing cold. We marched all day, for about 24 hours, until we came to finally some barn, and they put us up in the barn until the next morning, and then a train came and took us to our next destination. I remember that while the forced march was on, I tried to act as one of the marshals, I kept walking up and back, telling them to keep moving, not to stand still, they'd become frozen. I didn't realize how bad it was until we got to the barn. When we got to the barn and we laid down, my body started shaking and I was bouncing, literally bouncing off the floor. One of my roommates from the camp, we went as a unit, we had eight of us in the room, and he was a Danish fellow who had -- when the war started, Denmark was not involved and such -- he went to Canada and he enlisted in the Royal Canadian Air Force, and then he was shot down ultimately, and he was in the room that I was in, in Stalag Luft III. So he got on top of

me, took his shirt off, opened up my shirt and his body heat acted so as to stop me from shivering and shaking, and so I finally stopped.

[0:40:22]

The next morning, they loaded us up in boxcars and trains and sent us to a place near Schleswig-Holstein, near the Danish border, and there was a little town called Tarmstadt, not Darmstadt, which is a fairly large German city, but Tarmstadt. I was there until one day a Canadian and myself -- he was one that was in the room where I had been originally, at Stalag Luft III -- he and I escaped and we got back to -- we were up north and we knew, we would construct -- These fellows were very ingenious, the ones who were in prison for a long time, and they would build radios, and we would get BBC broadcasts from London on that and then periodically, the Abwehr, which was the German Secret Service, would come down and do a surprise visit and search. They'd always end up finding the radio, destroying it, and punishing whoever -- where the room was, where the radio was, but then we'd build another one and kept getting broadcasts. The BBC broadcasts were telling us not to try to escape because the war was coming to an end, but they'd been saying that for some time. In fact, when we wanted to know where the battle lines were, we usually would listen to English propaganda and read the German newspapers for their propaganda, and we'd figure out somewhere between those two was where the actual battle lines were, and that was a fairly accurate way of knowing what was going on.

[0:42:05]

We had done something, made some arrangements whereby we were able to get out, and we started heading towards the Elbe River. We had heard that the English Army was

crossing the Elbe in Northern Germany. We traveled by night and stayed hidden by day, and we finally got there after a few days and then I saw the British Army coming across this little bridge and there was a British major nearby, and we came out of hiding and we identified ourselves, it was very nice. The British Army put us in a jeep with a driver and drove us back across, and then we ended up in Brussels, Belgium, and then we flew from Brussels to London, and then we went to a hospital. This was mandatory, all escaped prisoners would have to go to a hospital for two weeks, for physical and mental examinations, psychological examination.

SF: Did you ever find out what happened to your Danish friend who saved you from freezing?

MM: He finally was released.

SF: Liberated.

MM: Yes, on that. The hospital was interesting, I had an interesting experience. I was there for two weeks and every day for about an hour, I'd be seen by a psychiatrist, and he would talk and he would ask me questions such as, "How do you feel if you were reassigned to flying bombing missions again?" I said, "Well if that's my assignment, that's what I would do." Finally he says, "Well how about if the war ends in Germany, you're assigned to the Pacific, to fly bombing missions there?" I'd give him the same kind of answer. I'd say, "If that's what my assignment is, that's what I would do." We went along that way for two weeks.

[0:43:58]

Finally, when I was leaving, I stopped to say goodbye to him. I stopped in and I remember his name then, it was Major Holtzman, and I said goodbye to him and he said,

“Would you like to see my summary of what I think about you as far as your mental health is concerned?” I said, “Sure, if you’d like to show it to me.” So he shows it to me and the sentence was something like these words: Considering the circumstances this man has undergone, he is abnormally normal in his responses and his reactions to everything. In fact, the book on Jewish contributions to World War II -- they have a publication out at the Museum of Jewish Heritage -- they have 10 chapters devoted and there are only two devoted to New Yorkers; one is addressed to me and one about Judge Roberts¹ also. He was in the infantry when the battlefield commission also had some very interesting experiences. Each chapter had its own title and the title of mine was “Abnormally Normal.”

SF: Now you escaped from the prisoner of war camp that you described. Was that accomplished with the cooperation of any of the guards, is that how that happened?

MM: Yeah, with one guard. I had been for a while, I was a camp interpreter, because I spoke some German, and I talked to some of the Germans, the guards, and one guard, he knew the war was going to end soon, and he was trying to be nice. In essence what I did was I gave him a good conduct note. I gave him a note that I hoped the Gestapo didn’t find on him, because they probably would have executed him, that he was a very cooperative and decent guard. He was helpful to the two of us getting out.

[0:46:01]

SF: So now, as an abnormally normal former prisoner of war, you returned to the United States. Your fiancée was waiting, was she?

¹ Burton B. Roberts, Justice of the Supreme Court of the State of New York, Twelfth Judicial District, 1973 - 1998.

MM: Yes. We had gotten married. What happened was, while I was Langley Field, taking my radar training at that point, I told her to come down. It was the nearest I was to New York since I was in the Air Corps. She took the train down, came down on Christmas Eve, December 24, 1943, she came down on a train, I met her at the train with one of my buddies who flew with us, and I told her let's go, we've got to catch the County Clerk's office before they close. It was like 4:30 and Christmas Eve, and I doubt they wanted to work past. She said, "What are we going to do there?" I said, "We're going to get a marriage certificate and we'll get married." I thought at that time, I wasn't sure whether I was going to England, whether I was going on submarine patrol or what, because Langley Field was also a base for submarine patrol. I said to her, "We're going to get married." So she said, "What will my mother say?" I said, "She'll probably say congratulations."

So we went to the County Clerk's office, I got a marriage certificate. I asked if he knew anybody who could perform the wedding ceremony and he said yeah, there was some judge. He called the judge and I don't know, you're so young Steve, I don't know, but do you remember an old English actor, Errol -- ?

SF: Errol Flynn?

[0:47:58]

MM: Not the dashing guy but a fellow who used to play the role of Buckley. He had bowed legs, a bald head, and spoke with an English accent, and he used to play the role of English butlers. This fellow looked like the personification, like the twin of that actor. So we go there and I had one buddy with me and the judge had his wife, they were the two

witnesses, and my wife and I got married that night and we were staying that time at the Officer's Club there and we had our wedding dinner.

SF: So now you returned as a war veteran, came back to the United States and to your wife. What did you do next?

MM: I was still in the Air Corps at that time. I was assigned to the Ritz Carlton Hotel, Atlantic City. So I come into the City and I wanted to get back to school, I wanted to finish my education. I debated what I wanted to do with my future before I got out. I was debating three things really, thinking of. Going to law school and becoming a lawyer or staying in the Air Corps. They offered me an Army Air Corps commission -- a regular army commission -- I could have stayed in, or to go to the Foreign Service School at Georgetown. They had the premier Foreign Service School at Georgetown University. So I was debating between the three of those things and I took a lot of things into consideration. As far as staying in the Air Corps, I might have enjoyed it but my wife wouldn't have. It's constant moving from base to base, the longest you might stay is two years if you're a career person, and it was not the kind of life that she would have liked to lead and I kind of eliminated that from consideration. Then it was a question of whether I would go to Georgetown and graduate from Foreign Service, take the Foreign Service courses, or take pre-law and then go to law school.

[0:50:06]

I decided to take pre-law and then that entered into my consideration as to where I wanted to go. My wife had graduated while I was in the service, in I guess 1944 I think, she graduated from Brooklyn College. She was a good student, she had gotten good grades through the years when entry into City University was a difficult thing, you had to

have high grades. She had gotten admitted to Brooklyn College and she just graduated, and she was working for A&S as a junior executive. A&S was a very large department store on Fulton Street, right near where St. John's was. I was just debating about whether I wanted to go out of town or I wanted to stay in Brooklyn, but I wanted to be certain that wherever I went, I'd be able to work also. I wanted to earn an income while I was going to school. So I walked in cold, into St. John's, at 96 Schermerhorn Street. In the lower floors, they had the School of Commerce at that time, now it's called the School of Business Administration. I thought that my pre-law should be in the business area, to best equip me for the future as a lawyer, to have some real understanding of economics and the business courses, accounting courses. So I decided to do my undergraduate work in the School of Commerce if they would accept me. The semester had actually started. I was still officially in the Air Corps at that point. I think I got out at the end of October of 1945, but when I came in from Atlantic City, I think it was in either mid or late September and actually, the semester had started, the class had started. I went to see the dean, I still remember his name, Dean Weary, and I explained my circumstance. I was still in uniform -- I was still in the Air Corps.

[0:52:01]

I told him I wanted to start school and that I was going to be separated from the service. By that time, the war in Japan had also ended, by the fall of '45. So he took me in and they registered me for that semester, even though I had missed some of the classes, and I took my pre-law there. At that time, they had a system whereby if you took three years undergrad and then you went to the law school, you could get a combined degree. You'd be entitled to your undergraduate degree at the end of one year of law school, and when

you graduated from law school you'd have both degrees: your undergrad and your law degree.

SF: This was when St. John's was in Brooklyn, not in Queens, where it is now.

MM: That's correct.

SF: And you said you wanted to go and work while you went to college. Did you work?

MM: Yes I did. I worked all the time I was both in college and in law school. My wife, she was working at A&S, right near St. John's, so we'd go down together, we'd see each other, we'd have sometimes a quick lunch together, and because they were so nice to me, they took me in and let me go and participate in this dual course, I went to the undergrad school. But what I decided -- I went there for two years and I was working after school all the time, and then she became pregnant and my son was born during the third year, the beginning of the third year. No, that was in law school when he was born. But I decided, instead of going for three years, I would seek to gain admission after two years, and I applied to the law school for admission after two years because at the rate I was going --

[0:54:00]

When I graduated from law school, I was 30 years old, and normally you're about 25 if you go straight through undergrad and then law school for three years, you're 25 years old. I was going to be 30 as it was, so I was anxious to get out and get going. So I spoke to both the undergrad, the School of Commerce, and the law school to seek admission at the end of the second year. At that time, I was number one in the class in grades, I had done quite well at the School of Commerce, so they made an exception and they took me in with two years of undergrad. I was permitted to do that and practically the first week I started law school, one of my study group -- we had a study group of five, which was

customary -- one of my friends from my study group had gotten a job with Royal Liverpool Insurance Company and worked from 1:00 to 6:00; you were paid on an hourly basis. I didn't want to go evening session, because I wanted to get out as quickly as I could, so I went to full-time session. I'd go in the morning, like 8:00, 7:30, early, and I'd be in school until 12:30, and then I would dash to the subway, take the subway to Fulton and Nassau Street. The Royal Liverpool Office, which I think is 100 or 150 Williams Street, and I would report to work at 1:00. I'd stop at Chock Full, grab a quick lunch for about five minutes, and then go upstairs and report at 1:00 for work.

SF: Working until when?

MM: Until 6:00. I worked five hours, until 6:00. Then I would also, after the first year, I was offered the opportunity to be on the Law Review, and not only that but the second year I was on the editorial board of the Law Review. So I was doing that from 6:00, when I'd get home, I'd work on my Law Review work either at the school or at home, on that.

[0:56:08]

Then in the last year, I was also president of the Student Bar Association. I helped to reinstitute the moot court program. In fact, the school was very gracious to me a number of years ago, about 10 years ago or so -- 10, 15 years ago. They have what they call the Presiding Justice Milton Mollen Moot Court Competition and every year I preside over a moot court competition, along with two sitting judges and myself.

SF: Let me ask you, when you began law school and started studying law, did you know pretty much from the beginning that you had made the right decision? Was the law something that appealed to you?

MM: I loved the law. I've said this when I've spoken to students and sometimes I'm asked by St. John's to address some of the student groups and all that. I have a strong sense of appreciation and loyalty to St. John's, because they were good to me, both at the School of Commerce and at the law school. I said this and sometimes parents send their children to me to discuss their careers, whether they should go to law school and what they should do, and I've said that from the day I entered law school to the present moment, I've never had a single day where I've regretted being a lawyer. I've never felt why did I do this or I've got to do something else. I do a lot of other things but I never regretted having become a lawyer.

SF: Now I know that in addition to being in Law Review and being an editor on Law Review, you graduated very close to the top of your class.

MM: Yeah, right.

SF: You were number three was it?

MM: Somewhere around there, yeah.

SF: What did you do once you graduated from law school?

MM: I graduated cum laude also, from law school.

[0:58:00]

While I was in law school, a very interesting thing happened to me. By the way, as a general proposition, a fundamental aspect of my view about life, I'm very much a fatalist. I've been very fortunate a lot of things have happened. I've been the recipient of a great many examples of good treatment and cooperation from all kinds of people. I've very aware of that and appreciative of that fact. I make my decisions and I have no reason to ever regret any of them on that.

Now, with regard to law school, one day when I'm working at the insurance company, I was working in their accounting department, I got a call from --

(Break in recording)

MM: The dean of the law school. We were very friendly. A very bright and wonderful person and I enjoy our relationship very much. He called me one day and he said that a lawyer friend of his, a bright lawyer friend of his, had called him and asked him to recommend some bright student for a special research job, and he recommended me and he thought that I ought to meet with this lawyer. I said, "Dean, when do I have the time?" I said, "You know my schedule, each day I'm in school from 8:00 to 12:30, and then I work until 6:00, and I go home in about an hour." By that time Scott was born, I had a son there, and I said, "And I have my Law Review work and my responsibilities as president of the Student Bar Association. This was the last year of law school, so I said what am I going to do, I can't even meet with him unless it's a Saturday or Sunday, I don't have any other time to meet with him." So he said, "I think you ought to meet with him." I had a lot of confidence in him and I respected him very much, trusted his judgment, so I met with this fellow by the name of William Mattison, Bill Mattison.

[1:00:03]

That's M-a-t-t-i-s-o-n, it's not M-a-d-i-s-o-n. Who I never met before, and he told me he had this interesting issue. He had been appointed special guardian for some youngster, some infant, by the surrogate, and there was another child represented by another special guardian who was a distinguished lawyer from Manhattan. Bill was from Brooklyn and he was a member of one of the prominent law firms in Brooklyn: Hurley, Gray & Kearney. They represented the Brooklyn diocese, the Catholic diocese, they represented

insurance companies. Mr. Hurley was a well-known litigator. In fact, he made the nominating speech for Senator Lehman,² when Senator Lehman decided to run for the United States Senate. He was asked to be the one who made the nominating speech; he was an orator among other things. Bill Mattison had this issue and he had come up with this theory that would advance the best interests of the child that he was a special guardian for, but when he discussed it with the other lawyer, who was a well-known lawyer with a major law firm in Manhattan, this other lawyer said it would be good for our laws but the law is against us, there's a long history of cases that held the other way. Bill asked me to do some research and then tell him my thinking about the issue. Well, somehow I found the time and I did some research, and then I told him I thought he was correct, that his view of what the law should be was the correct one, but that there were a long string of cases, starting back to 1916 I believe, a famous surrogate, Surrogate Wingate,³ had rendered a decision, and after that all the other surrogates just cited to that case on that issue, and so you had an unbroken series of cases all holding the other way.

[1:02:00]

I told Bill, what I would compare it to, that all of these cases rest on a broken reed. I think I can demonstrate why that's erroneous law, that initial case, that the time has come to go down the right path. He says, "Do a memorandum of law for me and let me see it." So I did a memorandum of law and in essence, he adopted it, made some of his own changes, I guess some minor changes, and lo and behold, the surrogate reversed the whole body of law and went down this path and held in Bill's favor on this thing, and it kind of

² Herbert H. Lehman, United States Senator (NY), 1949 - 1956; Governor of the State of New York, 1932 - 1942; Lieutenant Governor of the State of New York, 1930 - 1932.

³ George Albert Wingate, Kings County Surrogate, 1920 - 1942.

cemented our relationship. We became very close personally. He had a wife and eight children, and his wife passed away from cancer. We've become very close. He married the nurse who took care of his wife ultimately, at St. Patrick's, he was a Catholic, and I was his best man then and drove him out to the airport to take off on their honeymoon. We became very close and what he did was he used me for other matters and he introduced me to Mr. Hurley, the head of the firm, I was told by Appellate Division Justices whom I got to know later on, they considered him one of the finest appellate lawyers in the state, but he wouldn't try a case if you put a gun to his head. I think he had a heart problem, which he never really discussed with me, but he passed away at a young age from a heart attack. He became a member of the Lindsay Administration. He became the Commissioner of Public Works, and then they created a General Service Administration and he had just been promoted to that, and he was making a speech at the Waldorf, in place of the Mayor -- the Mayor couldn't make it -- and he had gone to make the speech and he had a heart attack and passed away.

[1:04:00]

We had become very close friends. In fact, he wanted me to be the executor of his will after I became a judge and I told him I couldn't.

[. . .]

SF: Mr. Hurley, in this firm, became the Corporation Counsel, did he not?

MM: Yes, he did. For a while, he used to use me on assignments. I was like "of counsel" to them after I graduated. He offered me a position with the firm. I didn't mention that in my last year at the law school, two classmates and myself, two members of my study group and I, agreed we would go into partnership together when we graduated, and we

did that. Mr. Hurley offered me a position with the firm but I decided to do this, I promised my two classmates we would do that, so we did that. What happened in the meanwhile, I worked with Mr. Hurley on a trial. He was the lead counsel. He made the opening statement and the summation, and I tried the case for eight days. It was a very interesting election law case and in essence, we made new law. We got a verdict at the Supreme Court, in our favor, and we were affirmed two days later at the Appellate Division, because election cases have to be heard quickly, and then two days later we're in the Court of Appeals, on a Saturday, arguing the appeal, and by a four-to-three vote, we were affirmed in the Court of Appeals as well.

SF: When Mr. Hurley became the Corporation Counsel, he invited you to -- ?

MM: In October of '51, John McGrath,⁴ who had been the Corporation Counsel, resigned, went on to other things, and Mr. Hurley was named by the then Mayor, Mayor Impellitteri,⁵ to be the Corporation Counsel of the City of New York, and he immediately started pressing me to become a member of the staff there.

[1:06:01]

I had not thought at that time, about going into government service. We were trying to build a practice, I and my two partners, and I kept saying no to Mr. Hurley, but he kept after me and finally in February of '52, I said yes. I remember at the time my wife, other relatives, friends, saying "why are going into the Corporation Counsel's Office? You'd be better off in private practice, with your drive and your ability and all of that," and I said, "Well, I'll go in for two years." I said, "I want to get some litigation experience and the Corporation Counsel's Office is a great office for litigation experience," and I said,

⁴ John P. McGrath, Corporation Counsel of the City of New York, 1947 - 1951.

⁵ Vincent Impellitteri, Mayor of the City of New York, 1950 - 1953.

“I’ll learn municipal law, administrative law, and then I’ll leave after two years and resume my private practice.”

SF: How long did you stay?

MM: Forty-two years.

SF: Forty-two years.

MM: Forty-two years. I stayed in public service thereafter, for 42 years.

SF: How long were you with the Corporation Counsel?

MM: Eight years. Mr. Hurley was there one year and then Mayor Wagner⁶ was elected and Mr. Hurley was out. Mayor Wagner appointed Adrian Burke,⁷ later a Judge of the Court of Appeals, as the Corporation Counsel. Generally, we had about 300 lawyers in there. Two hundred were competitive employees who had taken civil service exams, and a hundred of us were what they call exempt employees, appointed, personal appointments of the Corporation Counsel. I was one of the exempts and what Mr. Burke did at the time apparently, those who had supported Mayor Wagner stayed. Those who had supported Mayor Impellitteri in the primary, they were out. There were a handful -- maybe three or four of us -- who had been totally nonpolitical, and he made individual judgments. I didn’t even know at the time, I found out later, he had spoken to the dean of the law school, he had spoken to Mr. Hogan, because I used to do work for Mr. Hogan’s office. I was chief of the penalties division, which worked on certain criminal matters, and Mr. Hogan, for whatever reason, had taken a liking to me and spoke well of me, and I found this out.

⁶ Robert F. Wagner, Mayor of the City of New York, 1954 - 1965.

⁷ Adrian P. Burke, Associate Judge of the New York State Court of Appeals, 1954 - 1973; Corporation Counsel of the City of New York, 1953 - 1954, 1973 - 1974.

[1:08:06]

Then Mr. Burke told me I could stay on. In fact, he appointed me chief of the division and thereafter, Mr. Burke went to the Court of Appeals and he was succeeded by Peter Campbell Brown,⁸ who had been Commissioner of Investigation, and then he was a close friend of the Mayor, and then he became the Corporation Counsel. The front office consisted of the Corporation Counsel, the first assistant and the executive assistant; they were known as the front office, the executive of it. The executive assistant was Dan Scannell, who later went to general counsel of the Transit Authority, there was a vacancy for the position of executive assistant. Mr. Brown decided to appoint me, he worked it out his own way, because I had some tough competition for it at the time, and I became the executive assistant and, in essence, charged the responsibility for overseeing the operation of the Office.

SF: What year did you leave the Corporation Counsel's Office, and what avenue did you pursue?

MM: When I sat as a judge, I used to like -- when I'd ask a lawyer a question, I wanted him to answer the question, then he could tell me anything he wanted in addition to that, but I wanted the answer to my question. I left the office in 1960 but preceding that and leading up to that, when I was executive assistant, I had to write a few important decisions, but what was very important was that Mr. Brown did not like to attend the Mayor's cabinet meetings. He was very close to the mayor and he told me that when he wanted to speak to the Mayor about problems, he would go up to Gracie Mansion and talk to him privately.

SF: This is Mayor Wagner.

⁸ Peter Brown, Corporation Counsel of the City of New York, 1955 - 1958.

MM: That's right. But that he thought it would be good for me to attend the cabinet meetings. Generally they didn't like designees, but Brown was very close to the Mayor and he told the Mayor that he would prefer for me to attend the cabinet meetings on that, so the Mayor got to know me there.

[1:10:02]

I attended the cabinet meetings regularly and the Mayor got to know me. In fact, in 1958, he asked me to -- he offered me the job of Commissioner of Investigation. At that time, I told him I preferred not to, that I was primarily a lawyer, not a politician, and I either wanted to go upward within the Corporation Counsel's Office or outward into practice on that. So he acceded to my wish, he let me off the hook on that.

Meanwhile, there was the so-called Title I scandals, and I played some role in that because there were three or four reporters who kept after Bob Moses⁹ and the way he ran the Slum Clearance Committee in the Title I program, and all that, and what he would do, he'd get applications for sponsorship and he'd put a stamp on it. He bought a stamp and he put a stamp, "confidential," and he wouldn't make the files available to the media. He took the position they were confidential files. Well they kept after him, taking the position they should have been public files. So finally he thought to insulate himself, he would ask for an opinion of the Corporation Counsel, get an official opinion that he didn't have to make the files available. Mr. Tenney,¹⁰ later Judge Tenney, was then the Corporation Counsel, he succeeded Mr. Brown. He asked me to draft the opinion myself

⁹ Robert Moses, Commissioner of the New York City Planning Commission, 1946 - 1960; Chairman of the New York State Council of Parks, 1924 - 1963; Commissioner of the New York City Department of Parks, 1934 - 1960; Commissioner of the New York City Planning Commission, 1946 - 1960.

¹⁰ Charles Henry Tenney, Judge of the United States District Court for the Southern District of New York, 1963 - 1979; Corporation Counsel of the City of New York, 1958 - 1961.

and said, "Normally, we'd send a request for an opinion to the appropriate division." We had about 17 divisions in the Corporation Counsel's Office, and depending on the subject matter of the opinion, it would go to a particular division. On this one, he felt it was important, he asked me to personally work on that opinion, and I did that, and I came to the conclusion that there is no basis for declaring these files to be confidential. They were public records, that there were certain statutes that permitted or required records to be withheld, for example police department records, certain records of the police department, certain records of the Department of Investigation, were held to be confidential by statute. But otherwise, all files were public files, public records.

[1:12:14]

So I did a draft of an opinion and I showed it to Mr. Tenney at that time and he said, "Seems right to me." I said, "Yeah, but I want you to know something, when you send this opinion to Mr. Moses, he's going to fly through the roof." What he's notorious for is his attitude; he wanted things to be done his way. I said, "He's not going to be happy about this." He says, "Are you convinced it's the right opinion?" I said, "Yes, I am, that's the law, that these files should be made public, not be declared confidential." He says, "I'll sign the opinion -- put it in final form and I'll sign it." He signed the opinion and it went out.

Subsequently, you had the New York Times, Clay Knowles, and the Post, Joe Kahn and Bill Haddad, and the World Telegram & Sun, Woody Klein, they all were on a housing beat, and once they had the right to dig into the files, that opened up a Pandora's box for Mr. Moses, enough so that Mayor Wagner brought in some real estate expert, Joe Panuch, P-a-n-u-c-h, who did an investigation and report, and pointed out a lot of errors

in the way the operation was being run, and Mayor Wagner decided to create a new -- eliminate the Slum Clearance Committee and create a new entity called the Housing Redevelopment Board, and he asked me to draft the legislation to create that board. So I submitted the legislation and he asked me to go up there personally to lobby in essence, with the legislative leadership, to get the legislation passed. I got it passed and it was enacted, the Board was created, and the Mayor appointed three persons.

[1:14:00]

The chairman that he appointed had been formerly the Commissioner of Real Estate, took me to lunch one day and asked me to become the general counsel to the Board. I said no. I said, "I'm not interested" and he said, "It will be a considerable increase in salary." I said, "Yeah, but that's not what I'm interested in," and he said, "What is it?" I said, "Well, it's a question of judgment," and he said, "Well, I have got a great deal of confidence in your judgment." I said, "So do I, it's your judgment I question, because I don't consider myself an expert in real estate. I'm a generalist and I'm into a great many things, and I'm not sure I want to be just in one narrow area."

Well, then I got a call from the Mayor. The Mayor called me over and he said, "I want you to take that job." He said, "Two years ago, when I spoke to you about the Department of Investigation, you said you'd rather not. This time I need you in this job." He put it very bluntly, he said, "I want you to be my watchdog. It's important, it disperses an enormous amount of federal, state and city funds, and I want you to go in there as general counsel and keep your eye on it." So I couldn't say no, he had been very good to me, so I went in as general counsel and I was there. Then a year and a half later, he fired the chairman and then he appointed me chairman of the board.

SF: For how long were you chair of the Housing and Redevelopment?

MM: For about two and a half years and then one Sunday, I got a call from the Mayor and he said he was in a meeting at the Gracie Mansion, with Bob Weaver,¹¹ who was then the first black member of the cabinet ever appointed, he was Secretary of HUD. He had been a member of the Board before that, so we kind of knew each other very well, and he said, “We’ve made two decisions; one, we want to create a super position that oversees the expenditure of all housing and development programs in the City, oversee the Housing Authority, the HRB, the Planning Commission, all of these.” He said, “So we’re going to go forward on that because we feel a couple of billion dollars a year go into these programs.” So I said, “Well that sounds like a good idea.”

[1:16:15]

He said, “We’ve made a second decision,” and I said, “What’s that?” He said, “You’re the person who’s going to do that.” He said, “I want to name you to that position, do you have any problem with that?” I said, “No, none at all.” He said, “You’ll work with Ann Roberts,”¹² who was Bob Weaver’s deputy, in charge of the New York region. This was a very bright woman, African American woman who was very knowledgeable about housing and urban affairs, and she and I worked there. The Mayor said, “Work out a structure for this office.” We kept it very small, because I didn’t want to be busy administering my own office. I wanted to be overseeing all the other agencies. He created the position and I just put in a staff of about five people, plus secretaries, but just about five positions.

¹¹ Robert Clifton Weaver, United States Secretary of Housing and Urban Development, 1966 - 1968.

¹² Anne Mason Roberts, Deputy Regional Administrator of the United States Department of Housing and Urban Development, 1962 - 1964, 1966 - 1971.

SF: How long were you in that position?

MM: Well, until the summer of '65. Then, Mayor Wagner had announced publicly that he was not going to run for reelection.

SF: That's when you entered politics, is that right?

MM: To where?

SF: Entered politics.

MM: Well, I don't feel I ever entered politics, but I ran for office. I was never interested -- in fact, Mayor Wagner had spoken to me that if he ran for reelection in '65, that would I be interested in running as part of his ticket. I told him no, I'd rather not. He said, "What would you rather do?" I said, "I'd rather be Deputy Mayor for Operations, some job like that where I can assist in the operations to the agencies and see that your objectives are carried out."

SF: Were there deputy mayors at that time?

MM: Yes, there were.

[1:18:00]

In any event, he decided not to run so that became moot. Then, suddenly a person who I once met in a peculiar way, I got a call from the president of a major printing company, they do a lot of printing for appeals. Charles Young, publishing company, their office is on Chambers Street, and he said he'd like to come see me, so I gave him an appointment. He had some idea to resurrect the printing industry, which at one time had been the second largest industry in New York. The number one industry was the garment industry and the second biggest industry was the printing and publishing industry, and they had been destroyed when Bob Moses put up Washington Square Village -- they destroyed the

small printing businesses, all that were located on Mercer Street and neighboring areas there. They needed to be together in order to be productive and effective on that. So he had this idea of creating an area called Washington Street renewal area, and putting the printing industry there, and I thought it made sense. I spoke to my staff people about it and they agreed ultimately, that it did make sense. They had told him no previously, they'd been negative, that's why he came and called me.

So I called him. I still remember, I called him and I told him that I wanted him to meet with my staff people and start to work on details, and he kept trying to persuade me on the phone. Finally I said, "Don't you know how to take yes as an answer? Have you been taking no for so long, you don't know how to take yes?" I said, "Yes, we'll do it." I didn't even know at that time, he was a close friend of John Lindsay,¹³ and he did the printing for John Lindsay's campaigns.

[1:19:58]

So one day he called me afterwards and he says, "I've got to see you immediately." I said, "Well, I'm on the way to a meeting at City Hall," and he said, "I'll meet you and we'll walk over together." His office is on Chambers Street, so we walked over together and he said, "I want you to meet with John Lindsay and Bob Price, they want to talk to you about running with John Lindsay."

SF: Had you ever met John Lindsay before?

MM: No, never met him before. I knew about him, but I had never met him. I didn't know Bob Price, I never met him. So I said, "It's not important, meeting them because I'm not going to run." I said, "I don't want to embarrass you but word gets out, that somehow words do

¹³ John V. Lindsay, Mayor of the City of New York, 1966 - 1973.

get out usually that I was offered and turned it down, would embarrass them, and I don't want to be perceived in that light." I happen to enjoy government very much, but I make a big distinction between politics and government. I enjoy governing, I enjoy the art of governing, but I despise the political process. Many times, the necessity to raise enormous sums of money to run, the pandering that takes place, things of that kind, that's not my thing and I'm not interested in doing that. So then I got a call and I kept saying no to him.

Wagner, at this point was in Europe. He'd gone to Europe, so I couldn't even discuss it with him. I would have told him immediately what had happened. Then I got a call from Alex Rose¹⁴ on a Friday and he says, "I'd like you to stop up to my office" -- at that time the Liberal Party was located at the Astor Hotel in Manhattan -- "tomorrow, I want to discuss something with you." I said, "I can't, my wife and I are going to some party up in Westchester." He said, "Please, on the way up, stop for a few minutes with me." So I stopped. He was one of the major backers of John Lindsay at that point, and I thought that's what he wanted to talk to me about, and then he tried to sell me on running. I went up there on Saturday and my wife waited in the car, and I told him no, I can't do this to Bob Wagner, I don't want to be in a position -- my loyalty was a personal one to Wagner.

[1:22:04]

So he said, "Well, don't assume what Wagner's going to tell you." He says, "Bob will be back from Europe tomorrow night, Sunday night." He said, "Keep your mind open until you speak to Wagner." So I said, "Okay, I'll keep my mind open on it," and then Sunday night I called Wagner, and then I met with him Monday and I had a series of talks with

¹⁴ Alex Rose, Political Strategist, John Lindsay Mayoral Campaigns, 1965, 1969.

him over the week, and then ultimately, for whatever reason, I decided I'd at least meet with Lindsay and Price. In fact, when I did go meet with them -- I took my wife. We went up there to meet with them on a Friday night and finally I agreed. I told him, I said, "Why do you want me to run? I don't know if I can raise five dollars. I don't like to ask people for money, particularly for my own political purposes, that's something I've never done and I don't look forward to that kind of activity, I'm not interested in that." Well, he says, "You don't need any money, we're going to fund the entire campaign." I didn't know at that time but I found out subsequently that he had gotten a five-million-dollar loan from Nelson Rockefeller,¹⁵ it was a loan or whatever it was, and they never did ask me for any money. I probably raised the lowest amount ever raised for a citywide campaign in the history of the City. When I filed my returns, I think it was like \$12,000, some silly number like that.

SF: You were going to run for Comptroller?

MM: I did.

SF: And who was on the ticket?

MM: Tim Costello,¹⁶ a very nice fellow, a professor at NYU. He was a Liberal Party member and I was a Democrat. What Lindsay wanted to do was run on a fusion ticket. He was a Republican at the time, I was a Democrat, and Costello was a Liberal Party member.

SF: Were you impressed by Mr. Lindsay?

MM: Yes, he was a very dynamic personality and he did. I wouldn't have said yes if I didn't.

[1:24:04]

¹⁵ Nelson A. Rockefeller, Vice-President of the United States, 1974 - 1977; Governor of the State of New York, 1959 - 1973.

¹⁶ Timothy Costello, Deputy Mayor of the City of New York, 1966 - 1972.

SF: Did you enjoy campaigning?

MM: Despised it. I did it. I enjoyed talking to substantive issues on that but other aspects of it, I did not like the process.

SF: And Lindsay won.

MM: Lindsay won by a narrow margin, I lost by a narrow margin, and Costello lost by a large margin. He ran against Frank O'Connor,¹⁷ who was very popular. He lost by a large margin. The last week, Alex Rose said to me they had run polls, and they were pretty accurate as it turned out, and he said that their polls showed Lindsay would probably win by a narrow margin, I would either win or lose by a narrow margin, Costello he said he's running badly behind O'Connor. So he said to me if I could raise \$10,000 for radio ads, one of the cheapest forms of political advertising, that that might make the difference. I said, "I can't do it, I'm not going to ask people for money. I don't like to ask people for money for worthwhile causes, let alone for my political career." So I said, "If the Liberal Party wants to spend \$10,000 they're free to do it, but I'm not going to do it."

SF: So after the election, we had a new mayor in the City and you were free again.

MM: Yes.

SF: What happened next?

MM: Lindsay was very nice to me and he called me in. We were cleaning out our offices and this was on the Thursday, the election had been Tuesday, and Thursday I was cleaning out my office at the hotel and he called me in, he and Bob Price, and he handed me the

¹⁷ Frank D. O'Connor, Associate Justice of the Appellate Division of the Supreme Court, First Judicial Department, 1976 - 1986; Justice of the Supreme Court of the State of New York, First Judicial District, 1968 - 1976; District Attorney of Queens County, 1955 - 1965.

Green Book and he said, "Whatever job you want to take, that's the book that lists all the city officials." I said, "I don't want any job, John."

[1:26:00]

I said, "Scott is ready to go to law school and my daughter is about to enter college. I've been working here, I've had no complaints, I was a high paid city official, but you work from check to check. You don't get a chance to accumulate large sums of money, and so I want to go out and earn some money to make sure my children get their education, finish their education."

SF: But he persuaded you otherwise.

MM: Yeah. A few discussions and finally, I agreed. He said to me that -- he offered me a Criminal Court judgeship. To this day, I'm not certain why he asked me to do it, this idea. I never thought of becoming a judge at that point. It was something that off in the future, I might think about, but I wasn't thinking at that point.

SF: How old were you at the time?

MM: It was 1965, so I was 45. I was born in 1920.

SF: So your whole professional career before that had been executive. You had run part of the Corporation Counsel and the Housing Redevelopment Board. Were you afraid that being a judge would be too staid a position for you?

MM: No. I didn't know enough about it at that point. At the Corporation Counsel's Office, I loved the law. I did some important opinions there, one of them being that one -- the Moses situation. I did one that's kind of a legacy, because up until that point, air rights were not recognized as alienable. Under the Zoning Resolution, you had height restrictions and then the Commissioner of Buildings called me one day -- I think it was

Bernard Gillroy¹⁸ at that point -- and he said that he'd gotten a request for an opinion as to whether a developer could build a building -- the building turned out to be 666 Fifth Avenue, built by the Tishman family, and he wanted to utilize the air rights of the adjacent building, the O'Donnell Library on 53rd Street.

[1:28:05]

He said they had come in with this plan to enable them to go up to a certain height, a skyscraper. They would use the air rights for the O'Donnell Library and as part of it, the O'Donnell Library would pledge they would sell the air rights in essence. They needed the money to build up the library, to do some work there, and they would commit themselves that any structure might thereafter place -- this would be on file with the Building Department. There will be a restriction on their height, because their height would have been utilized to enable 666 Fifth Avenue to go up to the height which it ultimately achieved on that. And at that time, it had never been done before, but I didn't see any reason why it couldn't be done, because it was still within the framework of the Zoning Resolution. It wasn't violating the spirit of the Zoning Resolution. So I drafted an opinion for the Corporation Counsel's signature, which held up that the permit could be granted, including -- and I made certain it would be kept on file at the Building Department, so they would be aware of it for future buildings and all of that. I got a kick out of doing something like that, being creative with the law and accomplished the public purposes and advanced public purposes on that, and I enjoyed that. I thought the judiciary was something in the distant future that I might be interested in.

¹⁸ Bernard Gillroy, Commissioner of New York City Department of Housing and Buildings, 1947 - 1958.

SF: Now you were on the Criminal Court.

MM: When I started out, it was a panel of three, it replaced like the old Special Sessions Court on that, but then we also had trial by individuals also, individual judges.

SF: But no jury trials.

MM: No, we didn't do any jury trials.

SF: Judge, how long did you serve on the Criminal Court?

MM: Approximately two and a half years, from March of 1966 until December 31, 1968.

[1:30:03]

SF: And in '68, you received a nomination for the Supreme Court in Kings County, is that right?

MM: That's correct.

SF: And you were successful in the election, is that right?

MM: Yes, and I took office as a Supreme Court Justice on January 1, 1969.

SF: The Supreme Court in Brooklyn has a criminal term, a civil term, and sometimes they speak separately of the matrimonial term. Where were you assigned?

MM: I was assigned to both Civil and Criminal Term. In fact, after I was elected, prior to my taking office on January 1st, I went up to see Judge McDonald, who was then the Administrative Judge of Kings County, and I told him I would never shirk any assignment and I would never request any special assignment, but I would appreciate, if I could, to get a mix of cases, civil and criminal, and equity cases. I would just prefer not to sit matrimonial cases, because I never relished the thought of having to determine custody cases, things of that kind. I have a thing about kids and I feel very strongly about that, and I just didn't feel like dealing with broken marriages.

SF: Did he accede to your request?

MM: Yes, he was very good to me. I never sat in a matrimonial part. I did sit in both the criminal part and the civil part.

SF: I know that in the criminal part, you presided over what has become known or what was then known as the 13th Division Case.

MM: The 13th Division Case.

SF: That was a case involving police corruption, wasn't that?

MM: Yes it was. You had the vice squad in the 13th Division, consisting of 25 plainclothes officers. Of the 25, 24 were charged with corruption, five of them ended up by pleading guilty before trial, and 19 went to trial.

[1:32:00]

SF: Nineteen codefendants in a single trial?

MM: Yes. Eighteen men and one woman, and all officers in that division. At that time, it probably was the longest trial in the history of Brooklyn, as far as I know. There were extensive hearings, pre-trials, to determine issues of admissibility of evidence, listening to wiretaps, things of that kind.

SF: How long did all the proceedings and the trial take?

MM: About four months.

SF: And was there a verdict?

MM: There was. As I said, what happened was there were 24 of them originally charged. Five of them pleaded guilty, 19 went to trial, and near the end of the trial, one of the lawyers -- We had about 11 lawyers handling these cases, one of them passed out in the courtroom, he had an attack of bleeding ulcers, and he had to be taken to the hospital. He represented

one of the defendants, so at the request of the defendant's counsel, I gave him a severance, and moved that case out, so that 18 officers were presented to the jury, 5 counts each. So that was I guess 19 counts that the jury had to come back on and I charged the jury for 12 hours; 2 hours on the law and 10 hours summarizing the facts. I felt it was such a lengthy trial, that for the jurors' sake, it would have been very difficult to bear in mind all the testimony, so I marshaled the testimony for them and I spent about two hours explaining the law to them.

SF: I should say that I was in the District Attorney's Office, Appeals Bureau, and spoke -- before I knew you personally -- with the assistant who handled that appeal, and said in the 10 hours of marshaling the facts, he found no departures from the record as it stood, which is quite a feat. Were the officers convicted, were they acquitted?

[1:34:11]

MM: Of the 18 verdicts, actually 15 of the officers were convicted, 3 were acquitted. When I would conduct a trial, while the jury would be deliberating -- this is in every trial, I would be thinking to myself, "If this was a non-jury trial, how will I decide the case?" I was just curious to see whether there was a real departure between what the jury would do and what I would do. In my own mind, while the jury was deliberating, I thought based on the evidence -- factually I thought they were all guilty but based on the evidence -- I felt that 16 should be found guilty and 2 should be acquitted because there just wasn't sufficient evidence for those 2 on that. The jury found 15 guilty. Those 15 were 15 of the 16 I would have found guilty. The only departure, there was 1 woman defendant and they found the woman not guilty.

SF: And you would have convicted her.

MM: I might have, because it was a close question. One of the witnesses identified a tall, attractive black woman, and this defendant was a tall, attractive black woman. But they didn't know the name, they never identified her by name. I felt that from a jury viewpoint, they could see it as sufficient proof or they might find not sufficient proof, and apparently the jury decided to find not sufficient proof, and I could understand that. I thought the jury did an excellent job.

SF: You enjoyed your work as a trial judge?

MM: Very much so. As a matter of fact, I was asked twice, well three times actually, by Governor Carey,¹⁹ if I was interested -- he had become Governor in the interim -- whether I was interested in going to the Appellate Division.

[1:36:08]

The first three times he asked me -- there were different vacancies -- I said, "No, I enjoyed being a trial judge very much. I might want to become an appellate judge at some future time but at that time in my career, I enjoyed being a trial judge very much."

SF: And there came a time when you were appointed Administrative Judge, is that correct?

MM: Yes. January 1, 1976, I was appointed the Administrative Judge of all courts in Kings and Richmond County, criminal and civil. Until then, there had been a separate administrative judge for the civil side of the court and for the criminal side of the court, and then Chief Judge Breitel,²⁰ who was then the Chief Judge of the State, and Judge Bartlett,²¹ Dick Bartlett, who was the State Administrative Judge, and the then Presiding Justice Frank

¹⁹ Hugh L. Carey, Governor of the State of New York, 1975 - 1982.

²⁰ Charles D. Breitel, Chief Judge of the New York State Court of Appeals, 1974 - 1978; Associate Judge of the New York State Court of Appeals, 1967 - 1973.

²¹ Richard Bartlett, Chief Administrative Judge of the New York State Unified Court System, 1974 - 1979.

Gulotta,²² whom I ultimately succeeded, the three of them called me in and they told me that they wanted me to become the Administrative Judge and would I be willing to accept that responsibility, and I said yes.

SF: Did you find time as Administrative Judge, to also conduct trials, or was your time consumed entirely with administrative matters?

MM: No, I still keep jurisdiction over certain trials. For example, they set up special parts. Before I became Administrative Judge, they set up special parts to try the cases brought by the then Special Prosecutor Maurice Nadjari. They had one in each county and they asked me to preside over the cases coming out of the Kings County and Queens County in Staten Island. So I still kept jurisdiction of those cases and also, the special nursing home prosecutor Joe Hynes, at that time he had that job, before he became District Attorney of Kings County, and I kept jurisdiction over that case.

[1:38:05]

I presided over the taking of the plea in one of the major cases, the Hollander case, at that point.

SF: Did you enjoy your administrative duties?

MM: At that point, not that particularly. I've enjoyed administration. When I was in City government, I enjoyed the executive responsibilities I had as a division chief and then as an executive assistant, and as chairman of the Housing and Redevelopment Board, I did certain things. One of the big complaints when I was chairman of the Board for example, was the enormous delay in getting a project through from start to completion. Well, I had a chart drawn that charted out every step of the way and then addressed my abilities and

²² Frank A. Gulotta, Presiding Justice of the Appellate Division of the Supreme Court, Second Judicial Department, 1974 - 1977.

my staff's abilities to cutting down the delays in each of the steps. Some of them were fairly simple but nobody had done it before. For example, when we would submit a plan for moving forward in an urban renewal project, it would take about three months to get approval from the City Planning Commission, and then we'd have to go to the State Division of Housing and Community Renewal, and it took about three months there.

What I did was I sent simultaneously, to both offices, our plan, and let them both work on it, and it saved three months' time just by doing that.

SF: But as Administrative Judge of the Supreme Court of Kings County, there were no challenging administrative responsibilities so much.

MM: I tried to maximize trial parts, to keep the courts moving. For example, when I became Administrative Judge, you had special one and special two as two separate parts. Special one was the motion part and they had a pretty heavy workload, but I never stayed on -- I got through with the workload. Practically every day I sat in special one, by 12:00 noon. Special two, you would get all kinds of applications coming in, that you can work on at your leisure. So I thought well, if I can combine those two, I would free up one judge to do trial work on that.

[1:40:07]

What I instituted when I became Administrative Judge, was monthly meetings. I had one meeting with all the judges who worked in the criminal parts and one meeting with all the judges who worked in the civil parts, and I'd ask them what their problems were, what kept them from running as efficiently as they would like to have operated, different things like that. When I brought up the issue of combining special one and two, oh there was a kind of general outcry: "It would be too much of a workload for one judge." So I

decided not to press it at the moment, but I waited until a certain judge, who I knew was a very hardworking judge, was assigned to special one, and I called him in before that assignment started and I said, “Would you be willing to experiment and cover both one and two for a month, and see if you can handle it within the month or is it too much of a workload for one judge? Because I’d like to utilize a second judge to do trial work, to move the trials, instead of the great delays that we’ve been having.” I knew he was a hard worker and he said he’d undertake it, do that, he didn’t mind trying it, and I said, “If it gets too heavy let me know and I’ll relieve you.”

SF: Did it work?

MM: He had it for the full month and it worked and I asked him, “Were you able to deal with it, did you feel you were being overworked or under a lot of stress and strain?” He said no. He says, “I worked from 9:00 to 5:00, but that’s what I get paid to do.” He says, “I didn’t have any problem, I didn’t have to work into the late hours of the night to do it, you just kept busy constantly,” and he says, “It was no big deal.”

SF: And did you institute it for the Court?

MM: The next month, I instituted it for the entire Court and this time nobody protested. I said to them you know, judge so and so has handled it for the past month, he said he was able to do that without any great stress or problem and therefore, I’m asking each of you, you’re assigned to handle both special one and two. Nobody complained, nobody did that.

[1:42:03]

SF: And then there came a time when you were approached again, with an offer to go to the Appellate Division, and this time you accepted. How long did you serve as Administrative Judge?

MM: Well, I started on January 1st, and I was appointed October 22nd of that year, so about 10 months that I served as Administrative Judge, and then Governor Carey called me and told me that he was assigning -- there were three assignments he made that day, to the Appellate Division; myself and Judge O'Connor and Judge Suozzi.²³

SF: Were you junior judge at that time?

MM: I was the junior judge on the Court.

SF: Working at the Appellate Division is very, very different from trial work or administrative work. How did you find doing the work of the Appellate Division?

MM: I loved it. I love the law, I love dealing with legal issues and trying to do the right thing under the law, and I enjoyed it enormously. It was very different. Supreme Court judges -- very few people know the way the Appellate Division functions, until they become part of the Appellate Division. Even the Supreme Court judges, the trial judges, don't have any idea, and as a matter of fact, when I became the Presiding Justice, every time I got a new judge, I would give them an orientation lecture and describe to them how different the work was in the Appellate Division; a much heavier caseload in the Appellate Division than it was in the trial part. I enjoyed it enormously.

SF: And you found both the law and the additional work challenging, right?

²³ Joseph. A. Suozzi, Associate Justice of the Appellate Division of the Supreme Court, Second Judicial Department, 1976 - 1980.

MM: Yes. When I would walk out into the courtroom to preside at the appeals, there I felt I was having impact on the substantive law of the State of New York because the law, some people don't understand.

[1:43:59]

Judge Sotomayor²⁴ made a speech at one point, where she said policy is made at the appellate level, as distinct from the trial level. She didn't mean politics. They tried to turn her around and say that what she means is she should impose her views on the issues. What she meant was judicially speaking, within the framework of the court system, policy is made at the top level, by the Court of Appeals in the first instance, but at the secondary level, by the Appellate Divisions in each of the four departments. When you're a trial judge, you determine the issues between generally two contestants. You have a plaintiff and a defendant, and the decision that you make, if it's not a jury trial, that you as a judge make, it affects those two litigants. But when you decide a case at the Appellate Division level, you're making the law for that department, and even as to the other department, that has certain value also -- discretionary value but it has value on that -- so that you're making the law of the State of New York in that.

When I would walk out on the bench in the Appellate Division, I would look forward to that. I look forward to the issues that were on the calendar, and helping to make the substantive law of the State, to declare the substantive law of the State, bound by precedents, by prior decisions of the Court of Appeals certainly, and by the Appellate Division as well on that, but you are engaging into establishing and in some instances

²⁴ Sonia Sotomayor, Associate Justice of the Supreme Court of the United States, 2009 - ____; Judge of the United States Court of Appeals for the Second Circuit, 1998 - 2009; Judge of the United States District Court for the Southern District of New York, 1992 - 1998.

creating, the law of the State of New York. For example, the first appellate case in the State of New York dealing with the right to die, which you may recall.

SF: As I recall, you played a little bit of a role, you did the first draft of what turned out to be a 73-page opinion ultimately in that, and you made enormous contributions to that decision.

MM: This was the first time the State of New York had addressed that issue. As a matter of fact, this was what was known then as the Brother Fox Case,²⁵ because the person who was ill and was under a respirator and various other life-prolonging mechanisms, was a Christian brother, Brother Fox, and it was known as the Brother Fox Case.

[1:46:14]

The Supreme Court judge in Nassau County had ruled a certain way, that they had the right to terminate his treatment, and the District Attorney of Nassau County took an appeal to our Court. Five days after the appeal was argued, Brother Fox expired, passed away, so the obvious thing, the easy thing to have done was just to say it's now moot. He's dead, so there's no longer any issue before the Court. However, that was a likely event that could occur every time that kind of situation arose, and I knew from discussions I had heard, articles I had read, that doctors and hospital administrators and other affected people, wanted some guidance from the courts on what they could do and what they could not do. And I thought here we had this case, it was a perfect case in many respects, so I decided to address the issues and in fact in this 73-page opinion -- I think it was 73 pages -- the first issue I addressed was the mootness issue; whether or not it was literally a dead issue, a moot issue, or should we address the law anyway, to

²⁵ *Matter of Eichner (Fox)*, 73 AD2d 431 (1980).

provide the kind of guidance and both legal and philosophical approach to dealing with these issues on that.

SF: You decided to go ahead and you brought a unanimous court with you.

MM: I did. The importance of that issue, after I had the opinion fully drafted and was pleased with the way it was, and in fact at the end of it, after we did our first, what I thought was a complete draft, then I thought what it still lacked was guidelines for the future. I asked my then law clerk, that very able fellow by the name of Steve Fisher, to give some thought to drafting a set of guidelines, which we'd work on together to tag it on to the end, to provide guidance to hospital administrators, to the medical profession and to lawyers on that, and we did that.

[1:48:15]

Then, because of the importance of the issue, rather than just rely on the five judges; myself and four other judges who sat on that appeal, I decided to present it to the full Court, the 15 judges of the Appellate Division -- at that time we had 15 judges -- to get any guidance or input from some of them who might have had special knowledge or interest in the issue. Actually, we were making the law for the Second Department, and I wanted to get a feeling, my own sense, a comfort about it, that it really reflected the views of the entire Court, because of the importance of the issue in terms of public interest, as well as interesting legal issues.

We had weekly conferences, you may recall, as you partake in now. Every Wednesday we would meet and all 15 judges would be there. The only excuse that would be accepted was a death certificate; otherwise, they knew they had to be there. We enjoyed the sessions. They were very stimulating and very interesting. We had a lot of repartee and it

was a very interesting and exciting time in my life. Before the meeting of the full Court that Wednesday, I circulated to all the judges of the Court -- not only my 4 colleagues who were on the bench with me on this case, but the other 10 as well -- and I wanted their input when we met on Wednesday, how they felt about it. In fact, one of them I remember, a person of the Catholic faith, asked, "Are we endorsing the concept of euthanasia by this opinion?" I said, "No, we specifically stated that we were not addressing euthanasia, it's not to be considered an opinion which either justifies or challenges the concept of euthanasia." It wasn't involved in that case, on that, and he felt comforted by that because he was concerned about whether or not we were taking a position in support of euthanasia. He was a religious Roman Catholic and he would not have been happy about that, if we were going to take that position.

[1:50:19]

But all 14 -- in addition to myself, I was the fifteenth judge -- agreed. They all thought the opinion was extremely well written and a sound exposition of the law.

When I used to go out on the bench, every time I went on the bench, I enjoyed it enormously. I felt I was helping to interpret and, in some instances, be creative, about the substantive law of the State. When I'd get off the bench and I go back into my chambers, I would address the administrative responsibilities I had. I felt there, I was dealing with the structure of the Court, and I got a great deal of satisfaction out of dealing with both issues; the structure of the court system, to make it work more effectively, not only at the appellate level but the trial level. In addition to being concerned about the Appellate Division, I was concerned about the trial courts and their functioning properly and creatively and productively.

SF: Your administrative responsibilities came with your elevation to the position of Presiding Justice.

MM: Yes.

SF: How long did you serve as an Associate Justice, and how long did you serve as Presiding Justice?

MM: Slightly over a year as an Associate Justice, and then I was a junior judge on the Court, when Governor Carey appointed me as the Presiding Justice of the Appellate Division.

SF: And if I recall correctly, you made sure that even though you had the administrative responsibilities, you sat on cases generally more frequently than was traditional for Presiding Justices.

MM: Yeah. After I became the Presiding Justice, the Chief Clerk would set up the panels. He would send them to me for my review, but I never did them in the first instance, that was a tradition.

[1:52:05]

The Chief Clerk would do it, and do it on a totally nonpolitical basis, on an impersonal basis, but traditionally, they would give the Presiding Justice much less sittings than the other judges, of course with the administrative responsibilities the Presiding Justice had. I told the Chief Clerk not to do that, that I wanted to carry my share of the load in terms of sittings. Well, when I got the schedule for the year, I saw that he had given me a much reduced schedule of sittings, and I called him and I said I want to change that, I want to take on additional sittings. It isn't fair to the other judges, because we had a very heavy caseload in that court.

By the way, the Appellate Division, Second Department of the State of New York, is the busiest appellate court in the United States. That's statistics, that's not just braggadocio on that. It is because we had a very heavy -- that Court now has 22 justices, as you know, instead of the 15 that we had, because of the enormous workload. It has been talked for years about splitting the Second Department to two departments because of the enormous workload of it. So we had an enormous workload, but I always felt I wanted to take my share. I increased the workload in terms of efficiency and productivity. When I had gone there as the Associate Justice, we had 15 cases a day on our calendar. I increased it gradually, first 15 to 18, and I wanted to make appreciable inroads into our caseload. Then we increased it to 20, ultimately to 22 and finally to 25, and there I had to stop because the workload just would become unmanageable beyond that and it would mean that each will not get the real attention it required, so I put a cap on that. What is it now?

[1:54:03]

SF: We start off at 22 and then move to 20, but we only sit with panels of four.

MM: We sat both five and four, it would depend. One of the things I instituted too, was that I put the Court on the circuit. We were the first appellate court to do that. Now it's done by all the departments and the Court of Appeals, but at that time, we started the system where once a month, we'd sit in White Plains, because we had a great many cases that came down from what was known as the Ninth Judicial District, which covered Westchester, Orange, Rockland, Dutchess and Putnam Counties. And then once a month, we would sit in Mineola to take the cases from Suffolk and Nassau, and finally we started sitting in that part, to take the cases from Suffolk County. This was a great, I think, it was a boon to the lawyers because they wouldn't have to travel, let's say from Poughkeepsie,

all the way up from Poughkeepsie, down to Brooklyn, to argue their appeals. The client could go to White Plains, instead of having to come to Brooklyn, and so it was with Mineola and Hyde Park as well on that.

The clerk would take all the cases and put them on the calendar for White Plains, where all the lawyers involved were from the Ninth Judicial District, so that they would be spared the trip to Brooklyn and they would be able to go to White Plains and argue their cases there, and their clients could listen to it, be there and listen to the cases being argued. That was the first time it was ever done in the State. We did it on a regular basis and then ultimately, the other departments have done that, including the Court of Appeals now has done it also.

I looked for ways to show my interest in the trial courts as well. One of the things I did shortly after I became Presiding Justice is I made it my business to visit every one of the nine counties, in addition to Brooklyn. Brooklyn was Kings County. We were based there, and I knew the judges there.

[1:56:10]

In the first couple of months as Presiding Justice, I visited every one of the other nine counties, and when I would do that, I would call the Administrative Judge in advance and tell him I want to meet, in the first instance, with all the judges of that county, in the courtroom, the local Supreme Court building. Then, I'd clear out the judges, I wanted to meet with the legal staff, and not only the legal staff, but the court officers, the stenographers, and the lawyers that worked in those buildings. Thirdly, I would meet with the lawyers and I would tell them, speak to the local bar association offices. If they want to have a luncheon, I'll speak at a luncheon. If they don't want to take time off during

lunch because they're busy running around the courthouses and to clients and all that, then I'll do it at the end of the day as a dinner. If they don't want to eat with me that's fine, they can come to the courthouse at 5:00, when the court day is completed, and then I'll speak to them at the courthouse.

What I did with each group is I would tell them what I perceived to be their responsibilities to the court system, what I perceived to be my responsibility and my desire to help them fulfill their responsibilities. I told them they have an Administrative Judge, in the first instance you deal with the Administrative Judge. If for any reason that doesn't resolve the problem, then you can feel free thereafter to call me, and then I will try to intercede if I think I should.

SF: In those days, when you were doing administration like that, the positions of the Presiding Justice was seemingly of more force and more responsibility, because OCA was relatively new, the Office of Court Administration, and the Chief Administrative Judge, the position of Chief Administrative Judge, had not become as powerful.

[1:58:06]

MM: It was not a constitutional position as it is now.

SF: Right.

MM: At that time, the Chief Administrative Judge served at the sufferance, with the approval of the four Presiding Justices.

SF: Right. In your career at the Appellate Division, and aside from the right to die case and other civil cases, you also I think wrote the opinion affirming the conviction of Jean Harris, in the murder case of Dr. Tarnower.²⁶

²⁶ *People v Harris*, 84 AD2d 63 (1981).

MM: I wrote that opinion, yes.

SF: I think also, in a very important opinion, this gentleman, I forget his name, was --

MM: *People v. Finlayson*?

SF: No. The person who was accused in the Stouffer's fire, do you remember that?

MM: A Guatemalan immigrant, yes.

SF: Right. You wrote an opinion.²⁷ He had been convicted of several murders resulting from that fire.

MM: Twenty-six murders.

SF: And you reversed it on the grounds --

MM: No, no, no, you're half right. What happened was it went to trial before Judge Martin²⁸ in the Westchester Supreme Court. He let the case go to the jury, the jury found the defendant guilty of 26 counts of murder.

SF: And the judge set it aside.

MM: Then Judge Martin set it aside and said there was insufficient proof to sustain the verdict, and he dismissed the indictment. They then had the right to take an appeal.

SF: The prosecution.

MM: If he had not allowed it to go to the jury, if he had just dismissed it at the end of the People's case, it could not be appealed, but by allowing it to go to a jury, he enabled the District Attorney to take an appeal, even though the District Attorney was very unhappy about the reversal. So they took an appeal to our Court and our Court, after intense deliberation -- I caught the case, as we say, it was my case to report on and to write on behalf of the Court.

²⁷ *People v. Marin*, 102 AD2d 14 (1984).

²⁸ Lawrence N. Martin, Judge of the Westchester County Court, 1974 - 1984.

[2:00:04]

We felt that Judge Martin was correct, that there was insufficient proof to establish the defendant's guilt, and we affirmed Judge Martin's decision. In fact, I thought he had taken a lot of what I considered unfair criticism, especially from the media, because they weren't lawyers, they didn't understand the process, and they thought well why did you let it go to the jury if there wasn't enough proof, and he let it go to jury because he wanted to give the District Attorney the opportunity to appeal if either judge was mistaken on that. We came to the conclusion he had been correct and we affirmed the decision. One of my colleagues suggested that we put it out as a per curiam opinion in our court, but I wrote a 22-page opinion and I knew, particularly in terms of the judges or lawyers, and those were our constituents, that they would assume that somebody wrote that opinion and didn't have the courage to put his name to that opinion. You don't do per curiams in 20-page opinions. You might do a paragraph, maybe one page, once in a while you might go a little longer than a page, but you don't do a 22-page by committee, so to speak. So I said no, I'm concerned about the reputation of our Court and if there's going to be any flack on it, whatever will be, it will be.

SF: That concern showed itself also by the fact that I think the Court issues hand downs every week, about 70 or 80 decisions, and each week before they would go out, you would review each and every one of them, including those decisions made by panels of which you were not a part, and you would have this facility to remember whether a particular decision that you were reading in the hand downs of a particular week, was inconsistent with something or not fully consistent with something that the court had said a year before or more. You had an incredible facility and memory to do that.

[2:02:24]

MM: I felt very strongly that it's important for a court to be consistent, because otherwise, the lawyers and the public, the members of the public will have grievances or problems, would know whether they're right or they're wrong. They had the right to rely on decisions of the appellate courts as to what the law was. I felt also, in my view about the centrality of the court function. I felt we were a central court. We weren't four or five different groups of four or five judges coming to differing opinions. We would drive the lawyers crazy and some people might say well that's good, but we'd also drive the public crazy if they didn't know what the law was. So I felt we had to be consistent. If we came to a conclusion that what we had decided previously was wrong, we should say so, but at least acknowledge what the law had been and now state what it is. But to have different panels go off in different directions would leave the court really -- and leave the public and the lawyers not knowing what our view of the law was, and ultimately, we had to decide the law. You see that probably 95% of the cases are finally decided at the Appellate Division level, not at the Court of Appeals level, which is the highest court in the State, but rather at the appellate divisional level. The Court of Appeals handles somewhere slightly about 150 cases a year. We handle thousands of cases a year, and so we make the law in the first instance, then as I said earlier, the trial judge decides the rights between two individuals or two corporations or whatever they may be, usually two, sometimes there would be three but that's it.

[2:04:08]

When the Appellate Division makes a decision, that becomes the law, unless it's reversed by the Court of Appeals or by that same Appellate Division, based on subsequent events.

That's not commonly understood but that's what happens. When I was Associate Justice, before I became Presiding Justice, we would get the hand downs, as you know, on a Wednesday afternoon, and we'd have until Sunday night to raise any issues that we wanted, because Monday it would go to the printers. When I was still an Associate Justice, I would read the entire hand downs, which might be as many as 200 cases. I would read them between Wednesday and Sunday, and if something troubled me about one of them, if it was inconsistent with some prior decision of our Court, I would go to the reporting judge and I'd say by the way, you know on that case, and I would tell him what my concern was.

I remember one instance, the reporting judge said to me, because we were departing from what had been previously the law, he said we did that because, there's some special reason why we did it, but the opinion didn't say that. So I said, "Well fine, what you say makes sense, but if you just write, add a sentence or two to explain why we're departing from the prior decisions, then it makes sense. Otherwise, we're going to drive lawyers crazy, they're going to think we changed the course of the law."

SF: And you would make suggestions like that even though you were junior to the judge you were speaking to?

MM: Well the first time it came to my attention, what I was doing, I took it as a given that every judge did that. So one day I was speaking to the reporting judge and I made the point that I did, and we had a good discussion about the law. When it was all over he said to me, "Do you read every opinion in the hand downs?" I said, "Yes, doesn't everybody?" He says no. He says, "I read the decisions where I'm on the bench, to make certain that they're correct and that they express the position that we took, but I don't

read what all the other benches are doing.” I said, “Well to me, a concern is, do we have two benches that are going off in inconsistent positions?” I said, “That’s bad law, that’s wrong, it leaves people not knowing what the law is.” I said, “I am concerned about the Court as a whole.”

[2:06:15]

That centrality of the court position was a very important issue to me throughout, both as an Associate Justice of the Court and then ultimately as the Presiding Justice, and I took pains. We had one case I remember, I was on one panel, and there was another panel taking a concurrent case, and we had one position in my Court, we were unanimous and going in one direction, and the other panel was three-to-two, going in the other direction. So at our Wednesday conference I brought that up and I saw it addressed, and I read all the cases and I said, “We have these two, we’ve got to take one position or the other, we can’t drive the public crazy and the lawyers crazy by coming down on the same day with two decisions; one going right and one going left. We’ve got to go in the same direction.” So therefore I said, “We have all 15 here, let’s get the thinking of all 15 of us, which is the correct expression of the law.” Well, for whatever reasons, they decided the one that I was on was the correct one, they were going to do that, and then one of the other judges of the three -- it was three-to-two going the other way -- we still had to deal with that decision. One of the other judges, in fact was my predecessor, he had been Presiding Justice and he understood the importance of what I was trying to do and he said he’ll change his vote to go along with the majority, so both decisions were consistent, and yet the other opposing viewpoint was still heard by the two votes who voted against that one, on that other panel, and that automatically gave the lawyer the right to go to the Court of

Appeals if he wanted to, because if you have two votes, as you know, if you have two votes, it counted as a matter of right in most instances, to be able to go to the Court of Appeals.

[2:08:00]

The point is, we had a central position taken on behalf of the entire Court and yet at the same time, we preserved the integrity of the votes.

SF: Because of your legal abilities and your administrative talents, you were, one year, nominated by the commission as one of the candidates to become the Chief Judge of the State. You did not get that appointment. Then, I just want to point out that when you became Presiding Justice, there were a couple of other former Presiding Justices. Justice Gulotta.

MM: Justice Rabin.²⁹

SF: [Samuel] Rabin. Because you could serve on the court with certifications until the end of the year, when you turned 76, but you could not serve as Presiding Justice beyond the year that you turn 70. You elected not to stay on the Court after your term expired at the age of 70.

MM: Well it hadn't expired yet but it was --

SF: You left before that, to take a position outside of the court system, as Deputy Mayor to Mayor Dinkins,³⁰ is that right?

MM: Yeah, the Deputy Mayor for Public Safety and Criminal Justice position. Yes, but you alluded to another fact which I was very pleased that we were able to do. In terms of

²⁹ Samuel Rabin, Associate Judge of the Court of Appeals, 1974; Presiding Justice of the Appellate Division of the Supreme Court, Second Judicial Department, 1971 - 1974.

³⁰ David Norman Dinkins, Mayor of the City of New York, 1990 - 1993.

appointment to our Court, the Appellate Division, there was a screening committee, which would submit the names to the Governor, Governor Carey at that time, and he would decide who to appoint. When I became presiding judge, I believe the majority of the Court had been Republicans, appointed by Governor Rockefeller, because he had been Governor for about 20 years and he had made a lot of appointments to our Court, but they were very able people, the overwhelming majority of them were very able people.

[2:10:07]

What I helped convince the Governor, and he was very good in that respect, I didn't have to twist his arm to do it, was to retain all of these judges who had been appointed by Rockefeller. When their terms expired or they reached 70 years of age and the question whether they could continue on for these additional six years that you mentioned, they had come to me, they said they would like to stay, to continue on the Court, and I assured them I would speak to the Governor, and I did, and he promised me that he would reappoint them all and he reappointed every one of them. Some of them were very fine judges and he reappointed every one of them, whether they were Republicans or Democrats.

SF: What was it like to serve as Presiding Justice in a court where say two of the judges over whom you exercised authority had previously been Presiding Justices; one of them your Presiding Justice when you first came to the Court.

MM: It did not present a real problem. It had to be dealt with sensitively and at all times, I showed my respect, which I had for them. I manifested that in all public occasions. If we were at some public thing we were at to speak and they were present, I always

acknowledged their presence first as former Presiding Justices. They were both appointed originally by Governor Rockefeller; Judge Gulotta and Judge Rabin, and I treated them with great respect at all times, and I didn't find it a problem. I felt it could conceivably be a problem but it never became a problem, first of all because they cooperated fully and were totally loyal fulfilling their responsibilities to me and to our general court structure. But I will tell you that that was one of the reasons, when I contemplated whether I'd want to stay on for six years afterwards, and I didn't know who was going to be my successor at that point, but I felt I had been Presiding Justice for probably the longest tenure of any Presiding Justice up to that point. I was there for about 12 and a half years as Presiding Justice. I was there a total of 14 years.

[2:12:13]

I felt that I was a very much what you might call an activist Presiding Justice. I worked very closely with my colleagues, I respected them enormously, and I considered our Court a court, a unified court, and I worked very hard to engender that kind of spirit among the 15 of us. I felt that no matter what I might do to try to get into the background as just another judge on the Court, that there was a history, there was a practice of coming to me for advice or guidance or things of that nature, that would be very difficult, it would be awkward for my successor to have to deal with that. Now, whether consciously or subconsciously, a number of the other justices might still look to me for leadership and for guidance, and I felt that that would be inappropriate. We had a new Presiding Justice, he was entitled, he or she if it was a woman, would be entitled to have the entire support of our Court, so I thought the best thing for me to do when my term would expire -- I left a little in advance of that but my original decision, I didn't expect

the offer from the Mayor and he really asked me very urgently to join him in his administration, so I decided to do that. I decided that I would clear out of the way and let the new Presiding Justice have total freedom to provide the kind of leadership the court needs, without any cleavages for any reason, whether they're well meant or not. So I made that fundamental decision.

SF: You were a judge for about 24 or 25 years.

MM: Twenty-four years.

SF: Twenty-four years, and then suddenly you were out of the court system, back in an executive position: Deputy Mayor for Public Safety. Was it much of a shock for you to leave the court system, to leave the position of judge?

[2:14:14]

MM: No. I enjoyed it enormously. I have had some wonderful positions, a number of which we've touched upon, some which came after the Court, so in my life I've been very fortunate, in my professional life. I've had some wonderful positions, up to the present day, and I'm asked frequently, which of all the wonderful jobs I've had, which was my favorite one, which was the one I enjoyed most of all. I've never had to think twice about that. The 12 and a half years or so that I spent as Presiding Justice of the Appellate Division clearly stands out in my sensibility and my mind as the greatest job I've ever had. I loved it, I loved every moment of it. It was at times difficult, it was at times, took a great deal of work, a great deal of responsibility, but I was blessed with having a wonderful group of colleagues. I had a great group of colleagues during my time, I had a great staff at the Court, we had a very fine staff of people, day in and day out, who did a

tremendous job at the Court. Of all the positions I've ever held, that was my favorite position.

By the way, without in any way denigrating the fact that it was only for two different days, I had the honor of sitting on the Court of Appeals on two occasions. I was asked by the then Chief Judge, would I be willing to come up to Albany. They said they lacked a quorum because three judges had to recuse themselves and could not sit on the case for various reasons, and I was asked to come up there and sit by designation, on the Court of Appeals. They were very good to me too up there. The first case I sat on was a unanimous decision, the five of us, and they asked me if I would like to write the opinion for the Court, and I very much appreciated the opportunity and the honor of being able to speak on behalf of the Court of Appeals, and I wrote an opinion, which is kind of becoming one of the leading cases in the law for damages, particularly consequential damages, and it's quite frequently cited or quoted.³¹

[2:16:22]

The next time, I had a rather unusual situation. I went up there and this was the DES case,³² involved the drug which caused enormous damage to women at that point and again, there were five of us, and on the basic, the most important issue, we were unanimous, that is putting into place the principle of market share responsibility. If a woman went out to buy this drug -- went into a pharmacy to buy it, there were different manufacturers who made it. She wouldn't know which manufacturer produced that particular pill that they took, that caused enormous damage to the women who did use it. Somebody had produced that thing that's caused this enormous damage and yet she

³¹ *Kenford Co. v County of Erie*, 73 NY2d 312 (1989).

³² *Hymowitz v Eli Lilly & Co.*, 73 NY2d 487 (1989).

couldn't pick out which one it was. So the first state that did this was California, and New York was the second state. We adopted what is known as the common market share principle on that, and said that all the producers of that pill that sold in that market, would be held liable on that, proportionately.

SF: Based upon their market share?

MM: Based upon their market share of that particular product. We were unanimous, we held on that. Among others, there were two subsidiary issues that the majority went one way and I -- the interloper, the guest of the Court so to speak -- felt strongly that we should have gone the other way, because in one instance, I felt in fairness to the defendant. In one instance, the manufacturer had submitted an affidavit that he had never sold a pill east of the Mississippi. He was a small producer in California, never sold it in the New York market and therefore was not part of the market in New York, so therefore, he shouldn't have been held liable for the market share. He had no share, he had zero share, and therefore he shouldn't be liable. It's a matter of a sense of fairness on that.

[2:18:30]

The majority, the others, did not agree with me, so I had to decide, I as a guest member of the Court, am I going to disagree? In fact, the opinion was then written by the Chief Judge of the Court on that, but I felt strongly that that was a matter of essential fairness. Secondly, there's a statute which provided for joint and several liability. Clearly, I thought imposed joint and several liability, which is important to the plaintiffs, so they can get full recovery on that, and for one reason or another, the majority was going the other way on that and didn't adopt that approach. So I felt, do I just keep quiet, because I knew the case was not going any higher. We were the highest court in the State and I

didn't think it was going to the United States Supreme Court, but then I felt professionally, my own sense of responsibility and personal integrity, I didn't agree with them on that, so I concurred, in the basic decision, on the market share part of the opinion, but I dissented on the other two aspects and presented my reasons why I disagreed with them and went that way on that. But I appreciated very much, the experience of being able to be involved in matters of that importance.

SF: I take it though, that you would rather, leaving aside for a moment the position of Chief Judge, that you would rather have been Presiding Justice of the Appellate Division, as you were, than an Associate Judge of the Court of Appeals?

[2:20:11]

MM: I was asked twice by Governors, whether I was interested in accepting appointment to the Court of Appeals as an Associate Judge, and I told them no, I preferred to remain where I was, as Presiding Justice of the Appellate Division, for a number of reasons. I loved the Court, I loved the work, I loved the colleagues, and I was very happy there. The process, if you sat in the Court of Appeals, you would go up to Albany for either two weeks or three weeks, then you'd come back down for two weeks, then you'd go back up for three weeks, and back and forth, and there were a number of aspects of it that I just felt I preferred to remain on the Appellate Division.

SF: And in your life after the judiciary, you were Deputy Mayor for Public Safety, you brought in the -- what was it called, the "Safe City, Safe Streets"?

MM: I oversaw the preparation and the passage of the Safe Streets, Safe City program, which all police commissioners since then have attributed a great deal of credit to that program, for the effectiveness in dealing with crime in the City.

SF: And then you chaired --

MM: Because it gave them the resources that they needed, the amount of police officers. The subtitle for Safe Streets, Safe City, was Cops and Kids, because we not only provided for a substantial increase in the number of police officers that we had, but we also provided -- I looked at the criminal justice system as a perfect example of the old saying, "No chain is stronger than its weakest link," on that. We had a whole link. You had the police officer, the first instance, goes out and protects the people and makes arrest and all that, and then you need Assistant District Attorneys to process the case, to prepare the complaint, the indictment, and then go to trial and get the conviction if the person is guilty.

[2:22:19]

Then you have the probation department, you have the parole system, you have the prisons, the correctional system; all of them are links in the system of justice and if you had weakness in some link, it would affect all the other links. It would delay the process if you didn't have sufficient personnel. For Safe Streets, Safe City, while people most appreciated and understandably, the increase in police officers on the street to protect them, there were additional benefits in strengthening the entire criminal justice system, so that it could function more effectively, and that had delayed justice, which sometimes results in injustice. We improved the entire system but not only that, we provided the funds for community centers to be opened in the evenings so that kids would be kept off the street, doing various programs: sports programs, recreational programs, vocational programs, things of that kind. We just felt if you were going to treat problems of crime,

you had to deal with it from a number of different facets, and that's what we tried to do and I think to a great extent succeeded.

SF: Judge, after your tenure as Deputy Mayor of Public Safety, you were appointed to head a commission, which came to be known as the Mollen Commission, investigating allegations of police corruption. That made headlines, not only in New York but afterwards, probably all over the world. I know you've been invited to speak on questions of police corruption in a variety of nations all over the world.

[2:24:07]

Could you tell us what your recollections are about that appointment and the responsibilities and functioning of the Mollen Commission?

MM: All right. I had left the Mayor's Office in March of 1992. I promised the mayor two years when I accepted the appointment and it was exactly two years, from March of '90 to March of '92, that I left. I left because I had been offered the opportunity to open up the New York office of a company known as JAMS, Judicial Arbitration Mediation Service, which was the foremost for-profit organization dealing with arbitration and mediation services. They had been throughout the country. They started out in California, they were up and down the coast of California, they're out in Chicago, in Boston, Philadelphia now, Texas, I think four offices in Texas, and they wanted to come to New York, they had not been in New York.

I met them at the request of a friend. I didn't know what the purpose of the meeting was but we had a discussion about the likelihood of such an office being successful in New York City. I gave them my thoughts and my viewpoints, what the problems might be, what I thought were the advantages of doing it, the potential that it presented. That

evening, the friend who had set up the lunch meeting called me and said that they were very anxious to have me head up the office in New York. They had made a decision to go ahead with opening an office in New York and they wanted me to head it.

So after some deliberation and some discussions, and they offered me a very fair deal, a three-year contract, I decided to do it. I informed the Mayor, and he was fine about it. I promised him two years and I had given him two years, and then he decided to have a going away party for me. It came about in I guess June, at Gracie Mansion.

[2:26:22]

SF: This is Mayor Dinkins.

MM: Yes. In, I think it was late May of that year, there had been a great deal of publicity about the arrest of an officer by the name of Michael Dowd, and four other New York City police officers, as well as one former police officer. They were not arrested by New York City police, they were arrested by Suffolk County detectives, as a result of a wiretap conversation which indicated that Officer Dowd was having some kind of relationship with drug dealers on that. There was a great deal of concern that the Mayor had, as well as other people, that was this a widespread problem or was it a unique problem which had no other ramifications or other aspects to it. He decided that he had best have someone investigate thoroughly, whether or not this was a widespread problem or whether it was a very narrow problem.

In any event, at the conclusion of this party that he had for me at Gracie Mansion, after everybody had gone, he said, "I want to talk" -- and my wife was there with me, and he said, "Let's go downstairs." He had an office in the basement at the Gracie Mansion, and we went down there and he told me he wants me to investigate the problem, the situation,

and I said, “No, I can’t do that, I just signed a three-year contract, I have responsibilities and I just can’t do it.” He says, “I don’t care how you structure it but I want you to be the head of it and to oversee it.”

[2:28:03]

So I said, “Well let me think about it” and then a couple days thereafter, I told him what we might do, if he wanted to do it that way, was to create a commission, say a five member commission, a nonpolitical basis, representative of Democrat and Republican Party, of people with expertise in the area. I would be willing to serve as the chairman of that commission and we’d have a full-time staff. We would do it part-time, so I could fulfill my responsibility under my contract with JAMS, and the other people I would get would be people who would not disassociate themselves from their respective areas of endeavor and we would have a full-time staff which would do the basic work, overseen by the commissioners. He said, “Fine, if it takes that to get you to do it, we’ll do it that way.” So we created a commission to investigate. The formal name was the Commission to Investigate Allegations of Corruption Within the Police Department. It became known, as you indicated, by the Mollen Commission name. I guess it was easier to do it that way, just as the Knapp Commission had done in the early 1970s.

And I went about selecting the other four commissioners. I wanted to make certain that it was perceived as a nonpolitical endeavor, and certainly not a whitewash of anything, and I had to pick people who were knowledgeable, experienced, and persons known for their integrity. I asked for example, Judge Tyler,³³ Harold Tyler, who had been the Deputy Attorney General of the United States and then a federal District Court Judge, and was

³³ Harold R. Tyler, Jr., Deputy Attorney General of the United States Department, 1975 - 1977; Judge of the United States District Court for the Southern District of New York, 1962 - 1975.

now the managing partner at the law firm of Patterson, Belknap, Webb & Tyler, and highly regarded, a member of the Republican Party and highly regarded. He agreed to serve and I was very fortunate to have him, because he was a wonderful fellow commissioner.

[2:30:08]

Then I asked Judge Harold Baer.³⁴ He had been a State Supreme Court Justice for 10 years and he decided to leave the State Supreme Court. Sometime around that time he had put in for a federal district court appointment, but he had not heard anything and he had kind of given up on that. He was coming into JAMS as my deputy, in running JAMS, and also became a member of this commission. He was a member of the Liberal Party. Then there was the Chief Administrative Judge of the State of New York, Judge Herbert Evans.³⁵ He had been vice chairman of the Housing and Redevelopment Board when I was the chairman of that board. He was a Democrat, an African American.

SF: He was no longer Chief Administrative Judge at that time, was he? He was still Chief Administrative Judge?

MM: No, I think he no longer was. He had been but he no longer was, you are correct. He was a person held in high regard in many circles, and I asked him if he would agree to serve, and he did. Then, as the final commissioner, I had Judge Tyler, who was a Republican, Judge Evans and I were Democrats, Judge Baer was a Liberal Party member, and there was a fellow by the name of Rod Lankler, who had been chief of the homicide bureau in

³⁴ Harold Baer, Jr., Judge of the United States District Court for the Southern District of New York, 1994 - 2004; Justice of the Supreme Court of the State of New York, First Judicial District, 1982 - 1992.

³⁵ Herbert B. Evans, Chief Administrative Judge of the New York State Unified Court System, 1979 - 1983; Associate Justice of the Appellate Division of the Supreme Court, First Judicial Department, 1977 - 1983; Chairman of the New York City Housing and Redevelopment Board, 1965 - 1966.

the New York District Attorney's Office, and a wonderful person, a very able lawyer, and in fact he had been the deputy to Bob Fiske,³⁶ a very highly regarded lawyer who had been the original Whitewater investigator, and he appointed Rod as his deputy. In fact, Rod was the one who conducted the investigation into the circumstances surrounding Vincent Foster's death in Washington, and Rod was a registered Republican, so it fit into my desire to have a nonpolitical, nonpartisan approach to the fulfillment of our responsibilities.

[2:32:19]

All four of them agreed to serve. Not only that, but I had suggested and they all agreed, that we would serve pro bono, that we would not accept any salary, because we were doing it part-time, and that we would have a full-time staff that would be paid. As our chief counsel, I got a phone call from Bob Morgenthau,³⁷ the District Attorney of New York County, one of the great legends of law enforcement, and Bob highly recommended a fellow by the name of Joe Armao,³⁸ to be our chief counsel. He had spent seven years -- When he graduated from Harvard Law School, he spent seven years in the New York County District Attorney's Office, and he had just left to go into private practice. So I asked Mr. Morgenthau, "What makes you think he'd be willing to come back in and work full-time on our commission?" and he says, "I think he'd be interested." I said, "Well if he's interested, let him call me, I'd be glad to interview him."

I did interview him and I would describe Joe Armao as a bulldog with enormous intellect. He came out of Howard Beach, he was brought up in Howard Beach. He attended

³⁶ Robert B. Fiske, Jr., Independent Counsel, Whitewater Investigation, 1994.

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

³⁸ Joseph P. Armao, Chief Counsel of the Mollen Commission, 1992 - 1994.

Columbia University, and I think he graduated magna cum laude. Yes, I think that was it, magna cum laude from Columbia. He had gotten a scholarship to Oxford and he graduated from Oxford, got a Master's degree with honors from Oxford. He came back to the United States and attended Harvard Law School, and he graduated magna cum laude or summa cum laude, from Harvard Law School, and then he'd gone into the District Attorney's Office, and he handled some notable cases there: a case involving organized crime, a case involving labor unions, corrupt labor unions, and he spent seven years there and now he had just gone into private practice.

[2:34:19]

I asked him, was he really interested in doing this kind of work and he made it very clear that he was truly serious about wanting to do that. So I spoke to my fellow commissioners and we all agreed he would be ideal from our viewpoint, totally not political, a law enforcement background, a brilliant mind. He had proven that in a variety of responsibilities over a number of years. So we offered him the position, which he accepted, and then we got another, a retired, I believe he was a former police lieutenant, to be our chief investigator, Brian Carroll,³⁹ a very able investigator and a very first rate intellect, of absolute integrity, and we filled in all the key positions. I took a woman lawyer who applied for the chief counsel's job, I told her she could be the deputy chief counsel and she accepted that. She was with a law firm, she was I think with the Paul Weiss law firm, and she served as deputy chief counsel.

We put together an excellent staff, a small staff but excellent staff. We were going to function, performing our responsibilities on behalf of the City, so I had called Katie

³⁹ Brian M. Carroll, Chief Investigator for the Mollen Commission, 1992 - 1994.

Lapp,⁴⁰ who was then with the Criminal Justice Coordinator's office -- she was then the Criminal Justice Coordinator, and I told her. She had been my law clerk at one time and then my chief of staff when I was Deputy Mayor for Public Safety, and I asked her if she could arrange to have the Department of Real Estate find us some space for our staff.

[2:36:07]

I got a call from the deputy commissioner of real estate, who called me to tell me he had some ideal space for us, and I said, "Oh, where is that?" He said, "345 Park Avenue." Well, I was speaking to him from 345 Park Avenue, the JAMS office was at 345 Park Avenue, I negotiated the lease there, on the eighth floor. So I said, "What floor is the space available?" This person said the eighth floor. The other half of the floor had been vacated by a law firm, Fulbright & Jaworski, which had been there, they still had their nameplate up there, but they had vacated that to go elsewhere. I didn't bother telling the deputy commissioner why, but to myself I said, "I can't do that, end up with space on Park Avenue, immediately adjacent to my office where I was working. It would be fodder for certain people who wanted to criticize the operation," so I said no, no. I said, "Isn't there some space that the City has, which either pays rent or it owns, which is not being used now, where I can put our staff into?" I said, "That would be much more preferable." Well, finally he got back to me with space at 17 Battery Place, and that was on the third floor if I recall correctly. They had some space which was perfect for us, the size that we wanted. What had happened was the City at one time had intended to use that space for one of the smaller agencies in the City and then they had changed their mind, but they

⁴⁰ Katherine Lapp, New York City Criminal Justice Coordinator, 1994 - 1997.

were already committed to a two-year lease, and they had no use for the space. So it would not add any cost to the City for us to take that space, so we took that space.

[2:38:00]

SF: Once you had your members and your staff and your space and you were ready to go, how many witnesses did you call to testify before the Mollen Commission?

MM: A great many, a great many. We discovered a number of things. I got great cooperation from all the other law enforcement agencies. I'm a great believer in cooperation among all levels of law enforcement, including all jurisdictions. One of the things I did with Armao was he of course knew the New York County District Attorney's Office and Mr. Morgenthau, but I set up nine additional meetings for him, and I took him around myself personally, to each of the five District Attorneys. He knew Mr. Morgenthau of course, the other four he did not know, and I had a meeting with each one of them, Joe and myself. I introduced him to them, introduced them to him, and I told each one of them that we would like to work cooperatively with them. If any of our investigations intrude on anything they were doing, then let me know and we would back off, and similarly, I would expect cooperation from them on anything we were doing on that.

SF: Did all of them agree?

MM: Yes. In addition to the five District Attorneys, I set up meetings with the United States Attorney for the Southern District, who was at that time, Otto Obermaier,⁴¹ and the United States Attorney for the Eastern District at that time, Andy Maloney.⁴² I also set up meetings with the agent in charge of the New York office of the FBI, Jim Fox,⁴³ who was

⁴¹ Otto G. Obermaier, United States Attorney for the Southern District of New York, 1989 - 1993.

⁴² Andrew J. Maloney, United States Attorney for the Eastern District of New York, 1986 - 1992.

⁴³ James M. Fox, Head of the New York Office of the Federal Bureau of Investigation, 1987 - 1993.

a wonderful person we worked with very closely, and also with the head of the Drug Enforcement Administration, Bob Bryden, a fellow from Texas who was in charge of the New York office, and also with the Internal Revenue Service, which I needed the cooperation of the Internal Revenue Service on such things as tax returns and things of that type.

[2:40:14]

Every one of them promised to cooperate. Not only that, but because the City had severe financial problems at the time, I was trying to beg, borrow, I would say steal, but personnel from each of them, and they were very cooperative. I wanted a Spanish speaking person, because we were dealing with drug dealing and a lot of it was done with people of Hispanic background in some instances, so Bob Bryden gave me a former police officer who had joined the DEA, and spoke Spanish. He assigned him to work with me. He kept paying him on the federal payroll but assigned him to work with me. Andy Maloney gave me one of his top people, Johnny Franks, an Assistant U.S. Attorney, to work with us, and each one cooperated fully and we went about our business, gathering evidence and working towards it.

When we thought we had enough to warrant it, we made a decision to have public hearings. It was interesting that a number of people came back to me, because these things have a way of coming back, that we would never hold a public hearing, that somehow the police would endeavor to stop public hearings from going forward and would convince the Mayor to convince me to not have it. Well, I would say that the people who said that had mistaken the idea about two people. One was the Mayor, because he never intruded, never interfered, let us do our thing. I kept him apprised,

generally speaking, on that, and he never asked me to forego public hearings, and probably if he had asked, we still would have gone forward, the Commission would have done what we thought was appropriate, that we felt was appropriate to bring out certain facts to the public.

[2:42:07]

I say that despite the fact that I had, I think a very keen sense of responsibility regarding the public view of the Police Department. One thing that we did not want to do is in any way hurt, certainly not destroy or even hurt the morale of the police officers. Most of the time, when we had a press conference or I spoke on radio or TV, I would start out by saying, because we believed it to be a fact, that the overwhelming majority of police officers are not corrupt. As a matter of fact, probably the biggest victim of the corrupt cop was the honest cop, because they were tarred with that brush even though there was no basis for it. What I was sensitive to was to not do anything which would impair or destroy the morale within the Police Department. I felt it was important for the Police Department and it was certainly important for the people of the City, to have a Police Department in whom they had confidence in terms of dealing with crime and the safety of the public.

SF: When you went forward with the public hearings, did you meet much resistance from the Police Department? Did they try to dissuade you?

MM: Nobody tried to dissuade me. Nobody spoke to me about not going forward. Did I hear rumors? I heard rumors at different times that the Police Department or the Police Commissioner, might try to stop public hearings from going forward. I was never told by anyone, including the Mayor, that anybody tried to stop us from holding the public

hearings. We had two weeks of public hearings. We had full day coverage by New York One, Channel 1, and we had extensive coverage by all the other media.

SF: How many witnesses testified over those two weeks would you say?

[2:44:02]

MM: Well, we probably had, I would think somewhere between fifty and a hundred.

SF: And thousands of documents.

MM: Yeah, a great many documents. Joe Armao did a great job presenting it and we, the commissioners, would interject our own questions in the course of the hearings, and we think presented a very graphic picture of what existed in terms of corruption, but also what did not exist. It wasn't as widespread as some elements of the media would attempt to make it appear.

SF: How long after the conclusion of the public hearings did you issue your report?

MM: It was close to a year, a little less than a year I think. Intervening by the way, by the time of our hearings, we had one other event occur which again, resulted in a great deal of publicity and public knowledge. My chief counsel, Joe Armao and our chief investigator, Brian Carroll, came to see me one day, and they said there was a particular police officer about whom the Internal Affairs Bureau had had repeated complaints about corruption -- this was before the creation of our Commission -- and that repeatedly, the Bureau came back and said unsubstantiated, and nobody did anything about it. He was a police officer in the 30th Precinct, which became known, as a result of what occurred subsequently, as the "Dirty Thirty."

So Joe and Brian said to me that they had this idea. When they did their surveillance of him -- because they had him under surveillance -- they noticed that many days during the

course of his duties, he would stop into a particular store, a grocery store, a small grocery store, sometimes referred to as a bodega, up on Amsterdam Avenue, and would spend some time in there, and then when he would come out, he wasn't carrying bundles of groceries. So they suspected that he was going in there for certain reasons.

[2:46:24]

The store was a small one, so that if we put an agent in there, he would stand out like a sore thumb, so we felt that wasn't the way we could find out what's going on in there. But they had the thought that there is thing that you may know or heard of, the food stamp scam, whereby individuals who receive food stamps, the food stamp recipient could not use the food stamps for liquor or tobacco. That's why they call it food stamps, it was supposed to be used for food, but some of them had other desires and needs, and so they thought if this owner of this store was one who was susceptible to it and we could get him to do that, which was done we knew, to some degree fairly commonly done. What they would do, for example, a person would come with a hundred dollars' worth of food stamps, give it to the grocery store owner, and he would give him back, say 50 or 60 dollars in cash, and they could buy whatever they want with it, including alcohol, drugs or whatever else, cigarettes, which they could not do with the food stamps. We felt if he did that and we caught him doing that, we would arrest him and charge him with a crime, and then use that as leverage to get him to tell us what goes on with Officer Nova. The cop was George Nova, N-o-v-a, what he would do when he came into that store.

[2:48:00]

I thought it was a great idea and I said, "All right, I guess in order to accomplish that, we have to get the cooperation of the Federal Government, because the food stamp program

is under the jurisdiction of the United States Department of Agriculture,” and in addition to that, if he’s going to be charged with a crime, it would have to be a federal crime, so we would need the U.S. Attorney’s Office on that. So we embarked on that program. I had a meeting with Mary Jo White,⁴⁴ who was then the United States Attorney, and I told her what we needed, and she agreed to cooperate. Ultimately, the grocery store owner did engage in a food stamp scam that we had set up and once he was arrested, he flipped, as the saying goes, he gave us Nova and what went on there, and then once Nova, there was like a long plateau of dominoes, one after another went down, to the extent that we ultimately arrested 33 individuals, police officers from the 30th Precinct alone, and I think ultimately either 30 or 31 of them pleaded guilty or were found guilty on that, and of course by then the Police Commissioner at the time that that took place was Bill Bratton,⁴⁵ had become Police Commissioner. Mayor Giuliani⁴⁶ was in office at that point.

I periodically briefed Mayor Giuliani as to what we were doing, with private briefings, I and members of my commission, to let him know what was happening. So, all these officers arrested at one time led to headlines, “THE DIRTY THIRTY” and things of that type.

SF: And all this was after the public hearings.

MM: This was after the public hearings.

[2:50:01]

⁴⁴ Mary Jo White, United States Attorney of the Southern District of New York, 1993 - 2002.

⁴⁵ William J. Bratton, Commissioner of the New York City Police Department, 1994 - 1996, 2014 - 2016.

⁴⁶ Rudolph W. Giuliani, Mayor of the City of New York, 1994 - 2001.

Really, it was a good finale for the investigation. I am convinced and I said this on numerous public occasions, as I said a little while ago, that the vast majority of police officers were not corrupt. However, we had what I considered pockets of corruption, generally associated with the drug trade. There is so much money as a result of the drug business and they were able to get their hooks in so to speak, into sometimes susceptible young police officers who were struggling. I don't condone what they did but it made the picture somewhat more understandable.

SF: And drugs were what was involved with Nova and the bodega?

MM: Yes. So as I said, that showed, that was an example of what happened in certain areas of the City. Again, as I said, basically associated with drug trades.

SF: When the report of the Mollen Commission came out, it was well received, was it not?

MM: Yes it was.

SF: And you as a result, have been asked, as I said earlier, to address the subject of police corruption in many forums throughout the world.

MM: And the drug trade, yes. I was asked by the UN, to co-chair a conference in New Delhi, India. The conference was sponsored by the United Nations and the government of India, and the Chief Justice of the Indian Supreme Court, and I, were the co-chairs of the meeting in New Delhi. It was an international meeting. I went down and testified in Philadelphia, I was asked by one of the councilmen, would I come and testify about some of the problems that confronted us in New York, because they believed they had some similar problems there.

[2:52:02]

I remember having a lengthy conversation on the telephone with a Chicago commission that had been established, and they wanted my perspective and views about something that they were doing. We got a great deal of attention. I was asked to be a speaker at an international conference in Australia; however, there was a change of administration in Australia and the conference was canceled, so I didn't get there. They had a parliamentary commission in Australia, that came to the United States, and they interviewed me at some length as to what we were doing. In fact, when they issued a report, it was a royal commission in Australia, they had a number of references to what we had done in New York, that they used as a kind of reference point for what they were trying to do.

SF: So after the Mollen Commission, that was sort of the last time you served in a public capacity, other than service on say the Mayor's judiciary committee and so on, is that correct?

MM: No. I do serve presently, on the Mayor's Committee on the Judiciary, on the advisory committee, but in addition to that, at one point I was asked by the then presiding officer of the Nassau County Legislature to investigate what he believed was an inappropriate program of insurance to the detriment of the county. When he asked me to do it, Bruce Blakeman⁴⁷ -- who I had gotten to know otherwise -- he came in one day, he had to see me, it was very urgent, and he wanted me to head an investigation into this insurance scam in Nassau County, and I told him that I didn't understand why he wanted me. He was a Republican, and Republicans had dominated control of the Nassau County

⁴⁷ Bruce A. Blakeman, Commissioner of the Port Authority of New York & New Jersey, 2001 - 2009; Presiding Officer of the Port Authority Board, 1996 - 1999.

Legislature from the day that Nassau County was created, until that moment, and they at that time had 14 Republicans and 5 Democrats on their county legislature.

[2:54:15]

I told him, I said, “I don’t view this as a political issue but I am a registered Democrat.” I said, “And I’m a New Yorker, I’m not a Nassau resident.” He said, “Those are two reasons why I’d like you to come in and do it. We think that you’ll do it in a fair and objective way.”

SF: And you did that.

MM: And we did that. As a result of which, when we finished, I issued a report in that case and did it with the combined cooperation of the Republicans and Democrats in the county legislature. I issued a report and I recommended -- The next day, I was going to present a copy of the report to the District Attorney of Nassau County, at that time Denis Dillon,⁴⁸ and the United States Attorney for the Eastern District, they had a Long Island office. I called in advance, Mr. Dillon and the United States Attorney at that time was Loretta Lynch,⁴⁹ and I told them that I proposed to do this and did they have any problem with it, and they said no, do whatever you think is appropriate, and we issued the report. Subsequently, the United States Attorney’s Office indicted, I believe it was 11 individuals, including former deputy county executive from Nassau County, the former Republican Leader of Suffolk County, who was the insurance agent who had put together this plan. Eleven people were indicted, 10 of them were convicted either by way of plea or trial. One person we had not mentioned in our report, he was an accountant who had

⁴⁸ Denis E. Dillon, District Attorney of Nassau County, 1974 - 2005.

⁴⁹ Loretta Elizabeth Lynch, Attorney General of United States, 2015 - 2017.

not come to my attention, he was the only one acquitted and all the other 10 were basically people who we had mentioned in our report, were convicted.

[2:56:01]

SF: After that and now, your principal activities involve arbitration and the private practice of law. Is that right?

MM: Yes. I also was appointed by a federal judge, as -- the title is corruption counsel. I had a corruption officer who did it full-time, I was corruption counsel, and we cleaned up what was then the most corrupt union probably, certainly in the City if not in the country. It was a Teamsters local which was controlled totally by John Gotti and his crime family, and the old Gambino family, and we cleaned it up in record time, and then provided for election of officers in the free and democratic union.

SF: You continue to be the compliance.

MM: Still. It was a four-year appointment originally, that was 14 years ago, and every three years now, the union and the U.S. Attorney's Office jointly have made application for extension of our tenure. The corruption investigator, I'm the corruption counsel. The corruption investigator is now called investigating officer, and investigating counsel, was Bob Machado, a former police lieutenant who had been on the staff of the Mollen Commission. He was appointed by Judge Platt.⁵⁰ I was appointed by Judge Platt as the corruption counsel, he was appointed as the corruption officer, and he works at it full-time, I work at it as necessary, and as I said, we cleaned up that union pretty much in record time for a corrupt union. In addition to that, I'm now kind of in-house ethical practices counsel for the ILA International, to again deal with issues of corruption.

⁵⁰ Thomas Collier Platt, Jr., Senior Judge of the United States District Court for the Eastern District of New York, 2001 - 2017; Judge of the United States District Court for the Eastern District of New York, 1974 - 2001.

[2:58:05]

One other thing in that vein, I got a call from the town supervisor of the town of Babylon. They had awarded a five-year contract for waste control, to a company that was allegedly controlled by a member of a crime family, and there has been a good deal of publicity about it. District Attorney Jim Catterson,⁵¹ who was then the District Attorney of Suffolk County, had sought to prosecute, and I think he indicted, a number of town officials. The town supervisor asked -- the five-year contract was coming to a close and he asked would I head up a commission, a three-member commission, to review the applications for a new contract, and then make our recommendations to the town authorities, to do so, make certain that someone was free of any taint of corruption. I said I would agree to do it if at least one, if not both, of the other commissioners, were very knowledgeable about waste disposal. I wanted to make certain that we had, among the three of us, the technical knowledge required to know how to make an appropriate choice, and he gave me that. He certainly appointed two very good people; a woman and a man, who were both very knowledgeable and helpful. We issued a report recommending that the new contract be awarded at that time, to the best of the applicants, Waste Management, Incorporated, and I've heard no negative reports about that since then. That was in the year 2000.

SF: I know that you practice along with your son, Scott Mollen, who is one of the most successful attorneys in the City, and your daughter is involved in education. I know your wife has --

[3:00:10]

MM: She was a schoolteacher.

⁵¹ James M. Catterson, Jr., District Attorney of Suffolk County, 1989 - 2001.

SF: She was a schoolteacher and passed away several years ago.

MM: In 1995.

SF: And as you approach your ninetieth birthday, you seem as active as ever, and let's hope that you will continue to find challenging endeavors and serve the public. We are certainly very, very grateful for you sharing your amazing story with us.

MM: Thank you. Until this year, I didn't do one this year, but in prior years, I argued in the Court of Appeals, and enjoyed that experience enormously.

SF: Well, I'm sure you'll do that many times in the future.

MM: Well, I don't know how many. It's been a wonderful opportunity to review some of the more interesting aspects of my career, and I've enjoyed it enormously. Thank you, Steve.

[End of Audio File 1]