

**THE HISTORICAL SOCIETY OF THE NEW YORK COURTS**

**ORAL HISTORY PROGRAM**

**Hon. Jonathan Lippman**  
**Former Chief Judge of the State of New York**

**Part III: Longest-Serving Chief Administrative Judge in New York State History  
(1996-2009)**

**Part IV: Presiding Justice of the Appellate Division, First Department (2007-2009)**



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

**THE HISTORICAL SOCIETY OF THE NEW YORK COURTS**

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**ORAL HISTORY**

**Subject: Hon. Jonathan Lippman  
Former Chief Judge of the New York State Court of Appeals; Appellate Division,  
First Department; New York State Courts; Latham and Watkins LLP  
New York State**

**An Interview Conducted by: Antonio Galvao, Esq.**

**Date of Interview: July 25, 2018**

**Location of interview: New York City office of Latham and Watkins LLP**

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**THE HISTORICAL SOCIETY OF THE NEW YORK COURTS****Oral History Project****INTERVIEWEE: Hon. Jonathan Lippman****INTERVIEWER: Antonio Galvao, Esq.****DATES: July 25, 2018****[Begin Audio File Part 2]**

AG: So, during your tenure as Chief Administrative Judge, the New York State Courts became national leaders in many areas, but perhaps most notably with regard to problem-solving courts. Can you tell us a little bit about the problem-solving revolution, which you helped to implement, and what it means today for the modern day delivery of justice?

JL: Sure. Problem-solving courts were certainly one of the signature initiatives of Chief Judge Kaye. In fact, they actually were just getting started during Chief Judge Wachtler's tenure, but it was Judge Kaye who really brought them to fruition. The Midtown Community Court was the first one of these problem-solving courts, which are designed to address the underlying reasons, such as drug addiction, why a defendant is in court, and what the best outcome might be to serve society and the defendant – for example, dismissal of the charges upon the defendant successfully completing drug treatment and staying out of trouble. In other words, we don't just look at 20 cases and go through all the legal rituals and motions and then dismiss those cases and say we did our jobs without tackling the problems leading to the criminal behavior. That's not justice. Rather, we ask why

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is that person in court, and at the end of that person's court experience, what was the outcome? Did it help the human being, did it help society? The Community Court in Midtown was really the first example of that approach and there were a number of people who were involved. Judge Robert Keating, who just passed away, was instrumental in those early days, and John Feinblatt from the Center for Court Innovation was also instrumental in the early planning and in developing the concept. First there was a community court and then there were drug courts and domestic violence courts and mental health courts, but they were all built around that same concept of getting judges, court staff and the prosecution and defense to focus on why is the person in court and can we stop that vicious cycle of people coming in and out of the criminal justice system over and over again, without ever solving the underlying problems that are causing their criminal behavior.

AG: Right.

[00:02:19]

JL: So it was a nontraditional way of looking at the role of the courts, and Judge Kaye was a champion of that approach and popularized it around the country. Sometimes they call them boutique courts, experimental courts, but the idea ultimately is to take the lessons learned from those courts and then implement them in an economy of scale context -- in our high-volume courts. So it was a great concept around the country, very much copied. Drug courts, in particular, became the rage in those years, because drug abuse was such a problem and it was fueling crime and so much social dysfunction, and the idea was to get the

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problem at its roots, to treat the human being, who is not really a criminal but hooked on drugs, and give that person, that defendant, the tough love and the services and support they need to break the habit and become a useful citizen. But again, the idea also flowered in all these other areas.

AG: And it's become standard operating procedure all across the country today.

JL: Very much followed in court systems around the country.

AG: As Chief Administrative Judge, you also implemented many other interesting and, shall we say, nontraditional reforms, like trying to strengthen judicial elections in New York State and enhancing lawyer civility and professionalism. What do you remember about those efforts?

[00:04:07]

JL: Well, strengthening judicial elections was interesting because we sort of tiptoed into the political world with that.

AG: Sure.

JL: Chief Judge Kaye and I were concerned, obviously, with the selection of judges. There had been a lot of criticism at the time about the political convention system in New York, which is how Supreme Court Justices are selected to appear on the ballot. You know, in New York, the Supreme Court is not supreme, the Court of Appeals is supreme. The Supreme Court is the general jurisdiction trial court and the nominees for that court are basically picked by the political parties at conventions around the State. Eventually, there was a lawsuit challenging that system that went all the way up to the Supreme Court.

AG: That's right. New York State Board of Elections versus Lopez-Torres.

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JL: And the U.S. Supreme Court upheld the constitutionality of that system. But in any event, Chief Judge Kaye and I weren't trying to overturn the system, but to make it more transparent, more accessible to the public. We appointed a commission headed by John Feerick from Fordham Law School, to take a look at all of this. He came up with a series of recommendations and he tried to put people who had some political background on the commission too. John understood that you can't do something that was a frontal attack on the political system, but rather you had to try to kind of cajole them, to make them see that this would be a better system for everyone in the long run. So, with the Feerick Commission, while it was difficult because the political people and our own Supreme Court Justices were skeptical and, of course, there was controversy, it was still a fight worth having. We actually made some gains and sensitized the political leaders that you can't just nominate judges because it's the politically good thing to do. They have to be nominated based on their experience and qualifications, and the public has to have confidence in who's on the ballot, and that's what we were trying to accomplish. It was a very interesting experience because Judith and I and John Feerick, again, we kind of just gravitated into this complex political world and managed to make some improvements in the system despite how difficult it is to bring about change when you come up against the entrenched political interests. For example, we got legislation requiring more campaign and financial disclosures by Supreme Court candidates, we created independent qualifications commissions to screen Supreme Court candidates and even got many of the political leaders to start following those recommendations,

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and a number of other measures that improved the process.

[00:06:40]

AG: What about the Craco Committee, what do you remember about that?

JL: Well, with Craco we riled up a different constituency that was very important to us, and that's the lawyers. Lou Craco, who I think we mentioned in the last session, was a very distinguished lawyer at Willkie Farr who headed up a commission that Chief Judge Kaye appointed with a lot of white shoe lawyers from the big firms. The bar associations, not necessarily the City Bar but more the State Bar, felt that we were intruding on the prerogatives of lawyers with the statement of clients rights and standards of civility and mandatory CLE and all the attention we focused on lawyer ethics and the attorney-client relationship, like when you do a letter of engagement, what language should be in there?

AG: Right.

JL: You know, Tony, you were involved in some of that.

AG: Like the CLE.

JL: Yes, CLE, all the things where the bar, to some degree, felt we were lecturing to them from up above and that they were the masters of the profession. And, of course, the answer was, yes, you do control your own practice, but at the same time the court system is responsible for regulating the legal profession and so it's more than appropriate for us to make sure that the public has confidence in the legal profession. That was not the first time we had butted heads a little bit with the profession, if you remember the matrimonial rules that we talked about, but that was just one section of the bar, while on this piece with Craco it was the



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entire bar, and it did cause some friction. We got over it and I think the leadership of the organized bar today would say that the Craco reforms were a really good thing for the bar, one of the best things we ever did together to better our profession and to better the standing of the bar.

AG: Absolutely.

JL: See the bar is integral to the judiciary. They're our closest ally, but yet there are times where as the legal regulator the judiciary sometimes has to take steps that they're not totally in agreement with. We try to consult them, talk to them. We'll talk a little bit later on about when I was Chief Judge and some of the things that, again, put them very much almost in open rebellion, but in the end, we both understand that we're partners, and the justice system and the legal system can't survive without that partnership of the judiciary and the bar.

AG: And, today, all those Craco reforms are just totally part of the legal landscape, totally accepted, and no one even thinks about them anymore. It would be hard to think about our legal profession in New York State without CLE, letters of engagement and standards of civility.

JL: But you know what? Standards of civility was a particularly fun part of it, because some lawyers are very hard-nosed practitioners and we felt that there was a certain level of civil discourse that needed to be upheld. It was very funny, with some lawyers mocking us in the most, I wouldn't say uncivil, but not necessarily politic way, about the rules of civility, so it was funny. But, yes, most of those reforms are not only common practice in New York today but around the country.

[00:10:22]

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AG: Absolutely. I think it became standard practice for you and Chief Judge Kaye to sort of reach out to the bar in terms of forming commissions and making sure to formally bring them into the process of reform. Can you talk a little bit about that?

JL: That was our standard operating procedure. We used to joke about it, you know. I roasted her one time at the City Bar, in the Twelfth Night program, and I would joke about Judith Kaye, with her commission for this and her commission for that, and commissions on top of commissions... And that was her way of moving the ball forward. We did a number of them in those days, not only the couple that we've mentioned already, but the great, legendary Burt Roberts who did the Cameras in the Courts Commission, which was so interesting and caused a lot of controversy in Albany. And Sheila Birnbaum, the iconic Sheila Birnbaum, one of the great lawyers, particularly women lawyers, in the United States of America, who headed our commission on fiduciary appointments. There had been a kind of mini-scandal about judges appointing lawyers to lucrative fiduciary positions based on favoritism and political connections. Sheila dived into that very difficult area, and we issued new rules that brought transparency to that process and put limits on who could be appointed and how much they could earn. Again, most of those commissions played a central role in moving our reform agenda during the Kaye years. That was really her way. She didn't like to impose, or do things by fiat. Some later Chief Judge – I forgot his name – maybe did a little bit more by fiat and got himself into a little more trouble, but she was very much determined to try and do it through a collaborative process, and I think it was helpful, in

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particular with the bar associations, which as we talked about, are such vital partners and collaborators who we needed. Even if it was something that the bar was not going to be ecstatic about, we needed to pursue it as part of a process where we worked together to develop these new ideas and turn them into specific programs that made sense for the court system and the lawyers and the legal system.

[00:12:47]

AG: Well, one of the defining and, of course, very sobering moments of your tenure as Chief Administrative Judge was September 11, 2001, when, as you certainly know, three of our own Court Officers lost their lives at Five World Trade Center, when they were trying to assist in the rescue efforts. Our downtown courts were closed for a long time.

JL: Yes.

AG: What do you remember, what are your memories of that particular day and the immediate aftermath?

JL: Well, there are two things that stick out in my mind. One is obviously, which sticks in everyone's mind, where you were on 9/11. Where I was, was up in the State Capitol, in Albany. I had driven up on that beautiful fall morning.

AG: It was.

JL: It was just gorgeous, not a cloud in the sky and we're all saying "grateful to be alive" and "what a wonderful day." And, of course, after I got to Albany, I was speaking at . . . I'm trying to think of the meeting. I think it had something to do with Legal Services.

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AG: Access to Justice.

JL: Yes, Access to Justice, exactly right. It happened right at the end of the meeting and I have this memory of when I got back to the OCA offices in Albany, the TVs were on and everyone was trying to figure out what happened, was it a mistake, what was going on with the planes and the tower. At the beginning, it seemed that the plane accidentally went into the first tower and, of course, when it dawned on the commentators that it was some kind of attack, and that was conveyed to the public, we were all in a state of shock.

[00:14:51]

I particularly remember, from a personal and professional level, worrying. We had a courthouse in the World Trade Center, the Court of Claims was located there, with a lot of our judges and court staff, and of course, on a personal level, I had a son who was clerking in the Federal Courts, just a few blocks from where all of this was happening. So I remember twofold, trying to figure out what the impact on the court system was or would be, and of course, trying every minute to reach my son by cell phone. I kept calling and calling, and I asked my secretary, while I was in the middle of meetings, to try and figure out what to do, to keep calling and calling. I could not find him initially but eventually I found him on his way uptown, where he lived, on the Upper East Side. He had stopped, with a number of others who were walking uptown, because they were telling everyone to get out of the downtown area, and he told me the horrifying story, I mean quickly, because again, I'm in Albany, he's there. So he was trying to get out of the area as the police were suggesting. This poor kid, who was a young lawyer,

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clerking in the Southern District of New York, walking out of the subway that morning and looking up, and he sees people throwing themselves out of the World Trade Center. That vision, the way he described it -- and I can't talk about it even now without feeling the emotion go through me -- was so vivid and is still so vivid in my mind, and I couldn't get it out of my head. So it's this combination that everyone had, of your professional life and your personal life being impacted by this terrible tragedy.

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For the court system as we moved forward, I set up an emergency headquarters. I had a White Plains chambers then and a New York City chambers. Obviously, our Beaver Street office south of the world trade center area was closed, so we had an emergency headquarters in the White Plains chambers, and we had all the top Administrative Judges and Public Safety Officials crowded together in that small space trying to keep the court system running in lower Manhattan -- how to do arraignments and emergency matters, and what you do with the courts closed in that downtown area, and what you do with juries, and the different multitude of operational issues that go into running a busy court system in the middle of the most dire of circumstances.

The other vision in my mind, and I can't get it out of my mind to this day, and I don't know whether Judge Kaye, when she did her oral history, talked about this at all. I remember being with Judith during a search for our three lost court officers by the fire department and the police, because our Officers had been seen by others at certain points. And if you remember, during those days, they felt

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there were pockets of air beneath the World Trade, where maybe people could still be alive and found. So what happened, I remember going with the Chief Judge, and Chief Matt O'Reilly, who was the head of security for the Unified Court System in those days, and walking around in ash, underneath the World Trade Center. The fire people and the police took us, to show us the last place where our Officers were seen and where they were looking for them and, literally, there was ash, this white ash, up to our waist, walking there. They're showing us how they put the dates and the times on pillars in places where any of the court officers had last been seen, and where they had searched in pockets around those areas. We came out and we were covered with this soot, with this light grayish-white ash, soot, I can't even describe it, after wading through it with these brave guys, these fire people, who were guiding us through. Again, what a moment, you couldn't forget it if you tried.

But you know, the court system was not unique. There were people in every walk of life who were so impacted. Here, of course, where we lost so many first responders and innocent victims, and in D.C., with the Defense Department. It was something I could never forget and, certainly, from the perspective of being the chief operating officer of this institution charged with guarding all the freedoms and rights and liberties which make us different from every other place in the world, and which these people were trying to undermine and destroy, it was important to get our courts up and running again as soon as possible, which we certainly did.

AG: Yes.

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[00:20:24]

JL: You know, this idea of equal justice, I think that this was in some way a target of all this terrorism. They were attacking the symbols of our way of life, our freedoms, our financial and business institutions and, of course, it's the rule of law and our legal system and our courts which provide the foundation for all of it, and why our country is so strong, because we don't have to resort to violence and terrorism to resolve our personal and societal differences. That's what makes us so unique.

AG: During your time as the Chief Administrative Judge, you also embarked on another very interesting adventure, you ran for office as a Justice of the Supreme Court in the Ninth Judicial District.

JL: "Interesting" in quotes, yes.

AG: You once described it as "politics as a contact sport." What do you remember about that whole experience?

JL: I try to block it out of my mind, but I do remember it well.

AG: It was fun, wasn't it?

JL: In certain ways it was fun, in other ways it was not. The problem for me was that I was the Chief Administrative Judge, dealing with all of the players in Albany, Republicans and Democrats, and I'm sure we'll talk about that later, and I was going to run as a Democrat, but I insisted that given my role leading the judiciary and working with both parties that I needed to be neutral and nonpartisan, so I wanted to be cross-endorsed by the different parties. And even though I had a lot of visibility as the Chief Administrative Judge, and I was known by everybody,

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no one in this political world is going to hand anything to you on a silver platter, so contact sport is an understatement.

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So, having to deal with the political folks and all the different parties, this was in the Ninth Judicial District, which is Westchester, Orange, Dutchess, Rockland and Putnam counties, and trying to get the cross endorsement, it was an uncomfortable situation. We talked a little bit last time about this overlay of politics and the justice system, and how you've got to be independent, and yet the courts are part of the political system and it's all around you and you can't have your nose up in the air, especially if you want to run for an elected judgeship. So doing that and doing it in a way that publicly maintained my independence and neutrality was not so easy.

The first time I ran, I almost got a cross endorsement but at the last second it didn't happen, and I withdrew as a candidate at the very last second. The second time, I did succeed, but there were all kinds of issues during the course of it. I joke with my successor, Janet DiFiore, Chief Judge DiFiore, about how we were both candidates north of the city that year, she for the District Attorney in Westchester and me for a Supreme Court Justice position. We would go to these meetings together, or lunches or whatever it was, and you're dealing with the politicians, and we were both cringing, you know? And again, believe me, I like politicians, I find them warm and loyal people, but they have their own interests and sometimes they're at variance with the issues of a nonpartisan, independent, neutral judiciary. It was so funny, we would make eye contact sometimes and



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we'd both be looking at each other and we just didn't know what to do, whether to hide under the table or continue the conversations. So it was kind of, again, sticking your tippy toe into the waters of politics. It was a great experience, I wouldn't change it for the world; election night, the victory party, doing it, getting it done, all the things you have to do as a candidate, but the best part is going to these different communities in the Ninth Judicial District, and talking to real live people and voters who were going to vote for you for this office. It's more participatory, it's more real democracy. And we may wind up talking about this later, the whole elected versus appointed judges debate. Most of us agree that ideally, the appointive system is better, but it's all dependent on the appointing authority to make it truly merit based. I think in New York, and this has always been my position, that our mixed elective and appointive system works well. The elected system has produced some great judges; Cardozo was an elected Justice of the Supreme Court. Ideally, you would think that the appointive system might produce more merit-based judges, but in practice, not necessarily so. Again, I'm a supporter of our mixed system, and I admire the appointive system, but running for office is not like going into a room with 12 white shoe lawyers who ask you a couple of questions, they put the stamp of approval and the executive appoints you. This is going to the people, and I really felt that way, and you feel what elections are all about. Those people who are such harsh critics of the elective system should go through that kind of process, and they'd see it's not all black and white.

AG: Right.

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JL: There's a lot to be said for the elective system, and for the appointive system, and again, my position was really Judge Kaye's position too, that our mixed system works well.

AG: So now you're elected to the Supreme Court but you're still the Chief Administrative Judge. You chose to take on a part-time caseload and on top of that, I believe you were even appointed to the Appellate Term of the Supreme Court, which had an additional caseload. How did you manage to balance your new adjudicative duties with one of the most demanding jobs in the world?

JL: Well, I'd say with difficulty. You're overwhelmed with these administrative things that are 24 hours a day, seven days a week, and yet, you're on the bench, first as a Court of Claims Judge and then as a Supreme Court Justice. I tried to make sure that I personally got the adjudicative experience, that if the Governor had appointed me to the court or I was elected by the people, I should be judging as well as administering. So, I had a law clerk who helped me with organizing the hearings and moving cases and writing decisions. And I think it was a good thing for the administrative head of the court system to be a part of what the judges do, and it helped me in my administrative role, to really understand what's happening to the working judges on the front lines, sitting on the bench each and every day. I didn't want them to feel, I didn't want it to be the case, that, oh, what does he know, he's sitting there at the OCA headquarters or in his chambers while we're out on the hustings. And I think it helps you, when you're trying to lead judges, to have them feel that you're one of them, and you're not some bureaucrat who doesn't understand what they go through every day. So it was an invaluable

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experience for me. It was difficult to balance it, but I did my best to take as much of a caseload as I could, without suffering at the other end, because again, a judge should be a judge, and you can't be, "No I don't do that, I just have the title." So, it was well worth it, and I very much enjoyed it.

[00:30:15]

I might say, too, the brief time in the Appellate Term that you mentioned, after I became a Supreme Court Justice, because you couldn't be on that court without being a Supreme Court Justice, it let me get my feet wet in appellate judging. It gave me a sense of what that was all about. I was doing some trial judge work and then I also did some appellate work, and it was very good experience for me as a lawyer, as a judge, and as an administrator.

AG: As the Chief Administrative Judge, you're really the face of the court system in Albany, and in dealing with the executive and the legislative branches on a host of critical issues: the judiciary budget, legislative reforms, judicial salaries. Give us some reflections on some of the personalities and the people that you dealt with in the Pataki administration, the Spitzer administration, in the legislature. You had Shelly Silver, Dean Skelos, big, big names. What do you remember?

JL: Joe Bruno.

AG: Joe Bruno, that's right, and so many others. Tell us a little bit about those times.

JL: Well, interesting. With the Governors first, I liked Pataki a lot. We talked a little bit about him, he was very much in attack mode on the high court, and sometimes on the trial judges, for not being tough enough on crime, but he was a very warm human being, a nice guy, easy to talk to.

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AG: Okay.

[00:32:00]

JL: He was, in my view, someone who didn't take himself that seriously. I mean, he knew he was the governor and he had august responsibilities, don't get me wrong, but he was a lovely guy, you could talk to him. He was helpful to me in my career -- he appointed me to the Court of Claims. He was supportive as I moved up through the ranks and became a Supreme Court Justice. I liked him even though he was the opposite party. Remember, I told you the story, I was virtually the first judge he appointed.

AG: Yes.

JL: Out of nowhere. It almost got me and him into a lot of trouble. He was great. Spitzer, I knew very well from the years when he was the Attorney General and I was the Chief Administrative Judge. We worked closely together. I worked closely with his counsel, David Nocenti. Eliot was a person who really cared about the judiciary, he came to all our events, Law Day and the State of the Judiciary, very focused on judicial issues. He was also helpful to me in my own personal career. He appointed me to be the Presiding Justice of the Appellate Division, First Department.

AG: Right.

JL: And just to show you his interest in all things judicial, when I was appointed he interviewed all the candidates himself and he would ask about specific cases. Very much a lawyer's interview, a judge's interview, whatever you want to call it. Liked him personally. Again, he had his problems later. When Judith was still the

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Chief Judge and he became the Governor, she crossed swords with him about the salary issue. She was looking to get a salary increase for judges who had gone more than ten years without one, and when we get to my tenure as the Chief Judge we can talk about how that ultimately happened, but it was very difficult back then. But I had a wonderful relationship with him, and she did too, aside from this one issue. Liked him a lot and was as shocked as everybody else when the problems arose.

[00:34:32]

Paterson, I knew very well. When I was the Chief Administrative Judge, my job was really to lobby, not officially, but on behalf of the judiciary. David Paterson was the Minority Leader of the State Senate, and no one paid too much attention to the minority leaders in the two houses, but I knew that sometimes we needed them for our legislation or whatever. I would always come visit him and we had a great relationship. He was visually impaired, but we had these great conversations because he really listened. Because he couldn't see so well, he listened very much to the cadence of your voice and could sort of sense what you were all about from your voice, because he didn't have the sight, the acuity. Then, ultimately, he appointed me to be the Chief Judge and I think I can jump ahead on this one issue.

AG: Sure.

JL: Even though we'll talk about it later.

AG: We can go this way.

JL: When he interviewed me for Chief Judge, it was very interesting because I knew,

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while everyone was campaigning for the position, that we had this unbelievable relationship going back to when no one paid any attention to him.

AG: Right.

[00:36:10]

JL: And I just had this feeling in my gut that this guy, who knew me in some ways better than most people, because he really listened to what I was all about, I had this real sense that I was going to be appointed the Chief Judge.

AG: Really?

JL: He tells the story that when I came in to interview with him, I had my whole thing, what we call a spiel, on why I should be the Chief Judge, and he was thinking to himself, the way he tells this story, "Why is he going through all this? I know him like a book. He can say three words and he's going to be the Chief Judge." You know, when he tells it, it's funny, he's a very funny guy, great sense of humor.

AG: Right.

JL: I was very disappointed when he left office, because I so enjoyed him and thought a lot of him. So those were the governors I served with, and to tell you the truth, I also served, as the Deputy Chief Administrator, with Cuomo, Sr. Mario Cuomo was an interesting guy. I don't want to make our interview more lengthy but this is such a great story. I will talk about Cuomo, Jr. when we get to when I'm the Chief Judge, after Paterson left. Cuomo Sr., you know, eventually lost to Pataki, when he was going what, for his fourth term? So what happens is, I'm the Deputy Chief Administrator, I'm a green kid, I don't know anything. I'm sitting there

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when Matt Crosson was still the Chief Administrator, and one day, it's near the end of the year, the end of Mario Cuomo's term as the Governor, and it's like one of the last days. I get a call, I'm sitting in my office, everyone is on vacation, I'm there, the low person on the totem pole, I'm holding down the fort, and they say, "Governor Cuomo is on the phone," and I immediately start to go, "What does Governor Cuomo want from me?" I'm this green kid, I didn't know anything. All right, I get on the phone, and he was calling, ostensibly, about his press person that he wanted to recommend to us for a job. That was the ostensible reason for the call, but then he started talking to me about anything and everything, about his life, my life, government, Albany. This went on for over an hour.

AG: Wow.

[00:39:13]

JL: I'm sitting there, saying to myself, "I'm talking to the Governor of the State of New York!" On and on. And the reason was, he was on his way out. They all wanted to talk to the new guy, not the Governor who is leaving in a day. He had no one to talk to, so anybody he could find, he was talking to. So, I found him very human, and very interesting, and I think he had a core set of principles. All right, so that was important, because it was a great conversation. Anyway, so the legislative leaders. Silver, I knew, we had grown up in the same community, on the Lower East Side. Our families knew of each other. His father ran a textile store over on the Lower East Side, my father was the head of the co-op down there, and I didn't really know the kid. I knew he was one of the kids in the shul, in the back of the shul, a fat little guy. He lost weight.

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AG: Is that right?

[00:40:21]

JL: Yes. He was very heavy in those early years. So what happened is when I came up to Albany, as the Deputy Chief Administrator, I went to what used to be called the judiciary dinner, with the leaders of the legislature, legislative members and some of the judges and leaders in the judiciary. So we're at this dinner with Silver and different chairs of the committees, and Silver looks at me and says, "You're Ralph Lippman's son," and I said yes. He said, "I'm Shelly Silver from the Lower East Side, we went to the same temple," all this stuff.

AG: Like you didn't know.

JL: Yeah, exactly. Oh, I knew who he was. Of course, even then, he was a rising star in the Legislature, and he right away took great personal pride that another Lower East Sider was in a leadership role in the judiciary, as he was gaining power in the legislature. So you know, that was the beginning of our knowing each other, having a real friendship, and he was very helpful to the judiciary at various times, with our budget. In those years, it was kind of a tug-of-war between Republicans, who were always trying to cut our budget, because you had a Democratic Chief Judge, and the Democratic Assembly, which was the person at the courthouse door stopping them. He was always very supportive of me personally and professionally, and again, had such great pride, because the Lower East Side is a very clannish place. I was long gone from the Lower East Side by that time, but he took great personal pride and satisfaction in my success, all the way through my becoming the Chief Judge.



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[00:42:22]

Joe Bruno was an interesting person, he was before Skelos. He was an upstate person, from the Albany area in general. He loved the horses, he was up at Saratoga a lot. He was a very courtly guy. He always treated Judge Kaye, when she was the Chief, very graciously, in a very courtly manner. He was kind of a “what you see is what you get” character. His word was his bond. If he told you, I’ll support this or he told you I won’t support this, you could take it to the bank, you knew exactly where he stood. We had a very good relationship with him, even though sometimes they tried to cut our budget or whatever. He liked Judith, he liked me. To this day, I meet him sometimes, he’s got a place in Manhattan, and always the warmest of greetings. When you went up to the racetrack in Saratoga, of course you’d always meet Joe, and he was, again, so gracious and lovely. Then he was replaced by Skelos, a Nassau County guy, and the reason I know him well, and I’ll bring in another character who ultimately became a judge from that Long Island world, was Jim Lack, who was the Chair of the Senate Judiciary Committee and ultimately became a Court of Claims Judge. Jim was a very close personal friend of mine, and our entree to get a lot of legislation through and to help us with the other Long Island members like Skelos, who ultimately took Bruno’s place. I liked Dean. Again, the irony is that Dean and Shelly, at a later point, obviously had their problems, but Dean was gracious, warm and, particularly when Gail Prudenti became the Chief Administrative Judge and I was the Chief later on, he was very kind and responsive to us and a very nice guy. I liked him a lot. I’m trying to think who else was up there in

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leadership roles over the years. Lack, Chair of Judiciary. Helene Weinstein.

AG: For a long time.

JL: Chair of the Assembly Judiciary Committee, a staunch supporter of the judiciary, our budget, of me, she was wonderful to work with. Senator Bonacic, later on, was the Senate Judiciary Chair, and I had a little bit of a tough time with Bonacic. He was, in my view, a little harder on a Democratic judiciary, but he was a good guy -- I spoke on his behalf a number of times, at different meetings he had, but we had a little more tension with him. When Jim Lack was there, it was like having my brother as the Senate Judiciary Chair, but I liked Bonacic too. So that was some of the cast of characters in the executive and the legislative branches, and don't forget the governors' counsel, everyone from Mike Finnegan to Jim McGuire to Alphonso David. I knew all of them, worked well with all of them, really liked them a lot. Dean Fuleihan on the Democratic side. A lot of great people.

Spitzer's successor, I dealt with, Andrew Cuomo, when he was the Attorney General, and we had a good relationship. Tom DiNapoli, the comptroller, was one of my dear friends. So as you can see, I'm not one of those people who looks askance at political people. I think they're warm, they're loyal, they're well meaning and you can't let the few bad instances that come up color your view of everybody who works in that world. Public service is an honor and the best people should be doing it, and I'm just afraid, with the scandals and inappropriate behavior that's come up over the years, particularly on the legislative side, that it covers everyone with a broad brush and I think we shouldn't do that. I think that

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we should respect public officials who are elected by the people, and it's important that we do so.

AG: As if you didn't have enough on your plate as Chief Administrative Judge, somewhere along the line you started to take on responsibilities and eventually served as president of the National Conference of State Court Administrators (COSCA), and you began to take on more of a national profile. Why was that and what did you get out of your involvement in court issues at the national level?

[00:48:00]

JL: Well, I loved it, and to this day I'm still involved in justice issues at the national level. I think the New York courts were doing a lot of innovative and interesting things and the other states looked to us, to some degree, for leadership. I was one of the few state court administrators who was a judge, so it particularly gave me maybe a little more credibility. They saw that the New York courts, again, were doing so many things that were unheard of in other parts of the country, so almost by osmosis, I started to take a leadership role in that organization, COSCA, and eventually became its president. I liked the people I met there. You know, I'm not, at least I don't view myself, as a pretentious person. I was the Chief Administrative Judge, and almost all of the others were nonjudicial people, but it didn't make a bit of difference. Some of my dearest friends to this day are either present or former court administrators around the country from our COSCA days.

JL: It was a great part of my life, I very much enjoyed that time and we always learned something new. Again, when I was the Chief, and I was on the

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Conference of Chief Justices (CCJ), it was the same thing. You learn something when you see what others are doing, even if New York is miles ahead in many respects. I was just speaking, in fact yesterday, to Chief Judge DiFiore, and we were talking about that, how you can pick up an idea, a new approach, and learn something every day when you go to those national meetings and you mix with people from other states. Those were broadening experiences for myself and Amy, who would accompany me, because every year, the meetings of the Chief Administrators and the Chief Justices were held in a different state, as it is with Attorney Generals and Legislators, and we got to see a good part of the country where we'd never been and we gained more of an appreciation for this great country, with all its diversity, and people who we'd otherwise never meet in our lives who became some of our great friends, from places where we never would have gone. So it was terrific on both a professional and personal level.

AG: So you had just an amazing, incredible marathon run as the Chief Administrative Judge, presided over a period of great change. When you look back on that whole period, what are you most proud of today, what really sticks with you?

JL: Well, we talked about this a little bit before. Those years were part of a partnership for me. Again, as you say, I rose to some prominence here in the State and nationally, but it was because Judith Kaye had really created this partnership for us, and she gave me that visibility, not only honoring me by picking me to be the Chief Administrative Judge, but then showcasing me and giving me credit for so many things, and allowing me the freedom to come up with the ideas that fueled a lot of those initiatives. As a person who had roots in every aspect of the

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court system, I was proud to be able to come up with ideas that became major initiatives of ours. We both loved that partnership, and so I'm proud of everything that she did, that we did together, everything from jury reform to legal ethics to matrimonials to problem solving courts, fiduciary reforms, to everything and anything that you could imagine.

[00:52:22]

She was a great reformer. When she first started doing her thing, you know the newspapers did features saying, "the great reformer." There were a number of things that didn't come to fruition but there were a number of things that did, and I guess I'm just proud of everything we did together in those years. I don't distinguish myself from Judge Kaye when it comes to those earlier years. People were surprised later, including Chief Judge Kaye herself, and we'll talk about it, that when I became the Chief Judge, well it wasn't just Judith Kaye II, but during those years as Chief Administrative Judge, it was one of the great times in my life, to work with the spectacular Judith Kaye, who was a role model not only in New York, for women and for lawyers, but for chief judges around the country. That's what I'm proud of, being able to have that ability to work so closely with somebody who you greatly admire and respect, and yet, who treated me as an equal -- although, as I always said, she was the senior partner, to be sure. But that was the highlight of those years, that relationship and the things we were able to accomplish together. You know, what's funny about the relationship with Judge Kaye, again we were partners in every sense, but certainly we each had our own strengths and weaknesses. Judith was an inspirational speaker with a lofty vision.

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But remember that I had grown up in the court system and Judith had been a practicing lawyer, and she didn't really have tentacles into the judiciary or the legislative and executive sides. She had come out of private practice and burst onto the scene, the first woman on the Court of Appeals, the first woman Chief Judge, but I was the one who had the hooks into the system and a lot of the judges felt, unfairly in my view, that she was removed from them and that she was aloof. "Oh, the practicing lawyer, what does she know about us?" I had grown up with all of them and had all these relationships in the system, so I was really able to put some of that to rest and to translate her lofty vision and ideals into direct talk for the judges and explain why the things we were doing were important to them. And with the legislature, too. And I think it was different for me when I became the Chief because I already knew all these people, and I wasn't going to waste that asset. But when I had been the deputy in the past administration, before Judge Kaye, having grown up in that world of the judiciary with the overlay of politics that we talked about earlier, I had so many relationships in the legislature that it became my job to really get in there and be the "lobbyist" for the judiciary. But that wasn't what Chief Judge Kaye did. We brought her in, at a certain point, when it was important. When it was crunch time for our budget and Joe Bruno had to be seen, Judith Kaye would bring him flowers, which she did every time she saw him, she knew it pleased him, and we would do that, and she would close the deal. I was more the nuts and bolts guy in particular relationships, while she had a wonderful grace and presence about her and a real sense of the role of the Chief Judge in terms of the other branches of state government. We were different

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but our personalities complemented each other. Mine was much more proactive, from knowing the janitor in the legislature to the leaders, I related to people and again, she was this, as we talked about earlier, this magnificent...

[00:57:00]

AG: Elegant.

JL: Elegant person who would impress everybody, but someone needed to be sort of in the trenches, coming in and laying the groundwork and saying bluntly: listen, Shelly Silver or Joe Bruno, or Jim Lack, this is what we need, and the Chief is going to come in tomorrow and don't you say something to the Chief that's going to offend her. And we did it with the judges too. With all of the commissions and reforms that we talked about, the judges didn't always like it, many of them didn't like it at all, and I was sort of the go-between. She's really okay, you know, she's actually trying to make your life better in the long run.

AG: Right.

JL: That kind of thing. So again, it was great, but that's what made the relationship work, because we each had different strengths and personalities. Again, Judith Kaye knew how to leverage her role and her standing as the Chief Judge and could come up against any audience, anywhere, and bowl them over, say just the right thing, be funny and lofty and inspiring and come off as the most impressive human being, judge and woman.

[00:58:12]

AG: So, one last question for you as Chief Administrative Judge. I often heard you describe your job as "moving mountains." Let's face it, you certainly did your

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share to alter the landscape of our justice system over the years, but at the same time, there's got to be issues and areas now that you look back on and you know what, the mountains did not budge.

JL: Oh, you better believe it.

AG: Yeah? Do you feel some lingering disappointment at not having done better in any particular area?

JL: Well, yes. One that still sticks out today, and this was Chief Judge Kaye's great, very high profile initiative, and I was again the messenger, the person in the legislature, was court restructuring or merger. That had started years before under Wachtler, and before that, going back to previous Chiefs. Why do we have all these different trial courts? Depending on how you count them, there are nine or eleven trial courts in the Unified Court System. Certainly, we could be more efficient and save money if we had, which has been the trend around the country, one or two sets of trial courts. As I mentioned before, Judith was the great reformer, and this was her biggest initiative. We had the support of coalitions of people from around the State, she gave speeches in New York and around the country, we had the editorial boards behind us, but we could not budge what we considered to be the more parochial interests. One, the political people wanted to keep making Supreme Court judgeships. We talked about that before, how they didn't want anything that would upset their control over Supreme Court elected judgeships. Then, the Supreme Court Justices themselves, their Association, was very powerful, and they opposed it tooth and nail. I'd say one of our biggest disappointments, one of my biggest disappointments, was not being able to get



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that through, because it was literally her most important initiative and we just couldn't get there. First of all, I must have personally, and Tony, you were involved in some of this, devised six different plans over the years for merging the courts, with Marc Bloustein, who was our legislative counsel in Albany.

AG: Yes.

[01:00:54]

JL: We would try every variation on the theme, hoping what didn't work one year might work the next. One year, we got one house to approve it and the other didn't, so we were constantly changing and trying to find the right formula for success. Prior to Chief Judge Kaye, I think it was under Wachtler, there was one year when we got two houses to approve it, and what happened? It never became law because it was a constitutional amendment and it had to be approved by two consecutive separately elected legislatures. They had it approved by both houses one year and the next year it was not approved. So, it wasn't only Judith Kaye who couldn't get it done, but she made it her mission as the Chief Judge and so it was disappointing when we never got it done. But I think in the end it added to the legend of Judith Kaye, that even though she never was able to do it, she had this bold vision that she never gave up on.

The other main thing, and there were others too, but the other main thing I'd point to was the judicial salary issue, which tortured her. I believe we got the only salary increases during those years right at the very beginning of her tenure.

[01:02:17]

AG: Yes, I think around '96, and then again '99, and then that was it.

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JL: That was it. Remember, she was the Chief Judge for 15 years. By the end of her tenure, judges had not had a raise for almost 12 years, and the judges were crazed, the morale was in the dumpster. They wanted to send their kids to college and some of them had not had an increase during their professional lifespans on the bench. It tortured Judith. And remember, I was the guy who was going to the legislature, and it tortured me, but she took it personally, that she could not get this pay raise, and it was so disappointing. The judges, remember we talked about this, some of them viewed her as kind of aloof, that she didn't come to them and talk with them? They were meanwhile grousing about all of her initiatives, with the commissions, and saying, "But she can't get me a pay raise." And again, I was up in the legislature nonstop, but it was just one thing after another. Pataki and Silver had an agreement and then they fought and it fell apart. Spitzer said we're going to do it and then something came up, I can't remember with who, it involved the Senate, and it fell apart. Oh, every year there was a new attempt and every year we failed, and that was a terrible disappointment. I wanted her so much to succeed and feel good, and to the last day, this was the one thing, even more than restructuring, that just made her life miserable, because she knew underneath that the judges were grousing about it and complaining. Look, all bureaucracies, all institutions are parochial, and while we think New York judges are the greatest in the country, they still worry about their salary and their parking spot.

AG: Sure.

[01:04:33]

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JL: All the things that normal human beings worry about. This was sticking in their craw and making her miserable. So it wasn't all flowers and roses, and we did have some things that we just could not do no matter what we did... And look, the victories were great, jury reform, for example, we were able to get major reforms through the legislature, ending sequestration of jurors. There are lots of things that we got done, but lots of things that were tough. And of course, the judiciary budget was always a struggle, as we talked about. A real struggle, some years better than others. Sometimes we would get despondent about some of this, because that's the bread and butter. When you're running the court system, you've got to have the resources to do it. But all in all, as the Chief Administrative Judge during the Kaye years, I think the court system really evolved and changed for the better. I think Judith Kaye did deserve the title of the great reformer but, again, we couldn't achieve everything we wanted. There were some things that just left us unhappy.

[01:06:01]

AG: Couldn't move those mountains.

JL: No. Sometimes we moved them, sometimes we budged them, and sometimes they wouldn't give an inch.

AG: No, no. Well then, in May of 2007, Governor Spitzer appointed you to serve as the Presiding Justice of the Appellate Division, First Department, a storied appellate court with a great history. What was it like, after all those years as an administrator primarily, to suddenly immerse yourself in the jurisprudential work and life of an appellate court? What were the challenges for you?

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JL: Well, it was challenging to say the least. Spitzer appointed me and I had been the Chief Administrative Judge, and I had done a number of major decisions on the Supreme Court and on the Appellate Term, but I had never been on that Court. I don't remember the statistics, but there hadn't been a person to sit in the middle seat as the Presiding Justice who did not come from that Court, for over 100 years. And you had a lot of people from that Court who were applying to be the Presiding Justice. There were articles all over the *Law Journal* speculating on who was going to be the PJ. Spitzer appointed me and there were articles in the *Law Journal* with other members of the court publicly saying things like, "who is this guy, he's an administrator and how's he becoming the Presiding Justice of our court? Not right, not fair, you know we've been working in this court all these years."

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So you parachute into the middle seat and then you have all the people in the court who also wanted to be the PJ, and there is some unhappiness. You also had, in addition to some of the judges like Judge Saxe, Andrias and some of the others who wanted to be the PJ, there was also the Governor's ex-counsel, Judge McGuire, who I had a great relationship with when he was the counsel, and who wanted in some shape or form to be the PJ. So it wasn't the easiest thing, especially since I sort of came in to ride herd on that Court. One of the reasons that the Governor appointed me is that they had tremendous backlogs of like 300 matters, some of them years old. There had been friction in the Court between the Democratic judges from the city and the Pataki judges, Republicans, who had

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been appointed, many of them, from outside the First Department, and there was sort of a culture clash, and that slowed down the decisional work of the Court and resulted in some of those delays. So, the way I viewed it, my job was to some degree to directly confront the backlog but not to get down to a petty level of frick and frack. I thought the most important thing that I could do was to come in and show that I knew what I was doing, be able to sit in that middle seat and handle myself, even though I had never sat on the Appellate Division, First Department, in that gorgeous, lustrous courtroom on Madison Avenue and 25th Street, and that's exactly what I did. I did my homework. I had sat on an appellate court, I'd been in the Appellate Term, and I studied and did what I needed to do. When I came in that first day, I was running that courtroom. I knew what to do, I knew what questions to ask, I knew my cases, and I wanted to demonstrate I was in charge.

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When I came in, I met with each of the judges individually and whether they were happy or unhappy, I tried to win them over -- and I think it's one of my strong points, is interpersonal relationships. Some of them were very well disposed to begin with and the others who had a beef, I tried to win them over and basically conveyed the idea that this is one court and we all have to be together and work together for the common good of the institution, and that the court was in an extreme position to some degree, by having all these backlogs. I talked to them about how we owed it to the people that we served, the litigants, the bar, to get rid of that backlog. What happened was, that first summer I was there after I'd come

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in, I think, in May.

AG: It was May, yeah.

JL: So, I sat a few times, but pretty soon we were into the Summer when the Court doesn't have regular sittings, and I used that time in the summer to devise a sort of game plan as to what to do with the backlog and how to move forward and hit the ground running in September. By well within a year, there were already articles saying Judge Lippman has done away with the backlog in the Appellate Division, First Department, and I think by the end of that first year we had hardly any cases left, maybe a few.

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We had changed the culture, through a combination, again, of being able to demonstrate that I was there because I belonged there and could handle myself. Also, I didn't, as many PJs did, take a lesser load because I was the PJ. I took, if anything, more than anybody else in the Court. I showed them that I could handle the adjudicative side, and at the same time I instituted new procedures and practices to target the backlogs, and I let them know who was the Presiding Justice. I had what we called old case conference days every Monday, every Monday morning. I'd bring them into my chambers, the judges who were assigned to every old case pending in the Court, and basically the message got through that we can't allow this, the culture has to change here. I did that but I also got them -- which they appreciated -- more law assistant help, more court attorney help, to draft decisions for them, in addition to their own law clerks. So, in addition to trying to exercise leadership, I wanted to show them that I could

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produce resources that would help the Court. We were able to turn the Court around in relatively short order.

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I was in the Appellate Division for a little less than two years, and I think in those two years we made tremendous progress. I think there was no one who, after that initial period, was complaining about my being the Presiding Justice. I think people understood why I was the Presiding Justice, particularly when we managed to solve the problems that had been plaguing that Court. So, it was great, I loved the Appellate Division, First Department, I loved being in that area, Flatiron area of the city, the beautiful courthouse, it was wonderful. To be the head of what ultimately was a collegial appellate court, is a great job and I loved it, and I think it was a natural next stage from being the Chief Administrative Judge. I went from a very substantial, significant leadership position, to being the Presiding Justice of the Appellate Division.

AG: Who are some of the judges that really stand out in your mind today, from that Court?

JL: Well, I think that's a good question. I love Judge Mazzaelli. She was my partner there, she was one of the most senior judges and we had a great friendship. We were law assistants, as they were called in those days, going back to when she came into the court system, I believe in 1972.

AG: Wow.

JL: So we had a long history and relationship together. Let's see, there are so many great characters. Jim McGuire, who I mentioned before, had been the counsel to

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Pataki, and while we had such a wonderful relationship back then, he had been one of the people who aspired to be the PJ, but in short order I think we got back to being on all fours with each other. Jim's a terrific lawyer, his work product was superb, and I greatly enjoyed working with him.

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We had George Marlow, who was the ethics maven of the court system. George and I had a wonderful relationship going back for a hundred years. Judge Saxe and Judge Andrias, who I mentioned, who had been in the Court for very long periods of time and were a little miffed when I became the PJ, we ended up having strong relationships and we worked extremely well together. Gene Nardelli, a very dear friend of mine to this day, a warm and gracious and courtly judge, who I loved working with. Peter Tom, who was the acting PJ for a long time before I got there, and Peter, I had known him for 100 years, and Peter was always tremendously supportive. John Buckley, who had been the PJ before me, and was helpful to my becoming the PJ. I had a lot of respect and affection for John.

AG: A real old timer there was Judge Sullivan.

JL: Judge Sullivan, a legend in his own time. Joe was an expert in so many different fields -- in criminal law, insurance law, so many other things. Joe was the oracle. Joe sort of bridged the divide between the Pataki judges and the older Democratic judges from the city. Joe was sort of a more conservative Democrat from the Bronx and a brilliant judge who everyone respected, admired, and the Court very much looked to him for leadership.



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[01:18:28]

There were younger judges who came near the end, Dianne Renwick and some of the others, who brought new life to the Court. And shortly before I got there, John Sweeney, the judge from Putnam County, appointed by Pataki, who is still there at the Court and a terrific judge. Jimmy Catterson of Suffolk County, a great sense of humor, talented judge and a singular character who I feel very warmly toward. So they were all great and, again, it didn't mean that we didn't have our moments, but in general, I found them totally supportive and mutually supportive of each other, and it was a wonderful experience. It really prepared me, in so many ways, to become the Chief Judge, because I was managing an appellate court that's more like 20 people, a great experience for ultimately managing a seven-person high court.

AG: Sure.

JL: I think one more thing with the Appellate Division, I just want to take a minute to acknowledge the other PJs who I served with at that time. In particular, Tony Cardona, up in the Third Department, was one of my all-time favorites, a brother, compadre. At that time, Tony was the PJ. Guy Mangano, who was the PJ in Brooklyn, became a dear friend of mine and a great supporter. We had worked closely when I was the Chief Administrative Judge. And of course his successor, Gail Prudenti, who is one of my dearest friends to this day, brought a totally different feel to the Second Department. She was fabulous and ultimately became my Chief Administrative Judge. Gail and I had such a great time conspiring together when we were the PJs and Judith was the Chief Judge. Hank Scudder

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was the PJ in the Fourth Department, and he was great too, loyal and supportive. You know, there was great camaraderie among the different PJs, and so that was interesting. I enjoyed that time and again all these relationships that develop over a lifetime, that come from different parts of your professional experience, but being the PJ of the First Department was a great job. Some people would have said why would anyone in the world give up being the Presiding Justice of the First Department? I could understand why people might say that.

AG: So why would they?

JL: Well, that's a good question, because what happened is that prior to my becoming the PJ, when Judith's term was about to end as Chief Judge, there was a point there where I started to think maybe I could be the Chief Judge. Judith wasn't quite 70, I think she was 68, and even though she could apply to continue as the Chief Judge, she really didn't want to, her husband didn't want her to, and she gave every indication she was going to leave. At the point, I had been the Chief Administrative Judge for 12 years, I was running the court system with Judith Kaye. Some people thought I was the eighth judge on the Court of Appeals because I was there all the time. I started thinking about it, you know? I never really particularly thought about it earlier, but I mean, in the later years, I was suddenly thinking, "What in the world am I going to do when I leave being the Chief Administrative Judge after 12 years?" I could go back to being a Justice in the Supreme Court, which I was at that point, but I said, maybe I should apply to be the Chief Judge. It was a longshot, because I wasn't on the high court.

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But then Judith changed her mind. Stephen, her husband, died. She realized that she really loved being the Chief Judge and she decided, at the last moment, that she was going to seek reappointment until she hit the age 70 mandatory retirement, which was another year and three quarters or something. The First Department vacancy had come up in the meantime, so when she applied, that's when I said, "Gee, you know what, I'm going to apply to be the PJ." The PJ decision came from her staying on. So, it started out, "I'm going to try to be the Chief Judge and jump from the Chief Administrative Judge, but if that doesn't work out, maybe I'll just leave." After all, it's hard when you've been in charge of the whole judiciary to suddenly go back to being a sitting judge. But when Judith decided to stay, I decided to take a shot at being the PJ.

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Then, by the time she was really leaving, since it had already crossed my mind at an earlier point that, "Gee, maybe I should try and be the Chief Judge," now it seemed like a natural move, especially now that I had the experience of being the PJ of the premiere, in my view, intermediate appellate court in the State, and by that time I had done a lot of decisional work and written some notable decisions in the Appellate Division. It was very tempting to think about what I could accomplish as the Chief Judge, both on the adjudicative and administrative side, especially because no one understood better than I did what that position was all about due to this great partnership I had with Judge Kaye for so many years. Yes, it was her agenda, but I was greatly contributing to it when I was the Chief Administrative Judge, and, gee, what could I do in that position myself, given all

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my experience running the courts and now on the appellate bench? I really did think that being the Presiding Justice of the Appellate Division was the most fabulous, spectacular role I could have, but in some ways, you know the expression, the “thrill of the hunt,” it was too great for me to let that opportunity pass by. Life goes on and if you don’t think boldly -- you know, it’s a cliché but it’s true -- if you don’t seize the moment and be everything that you can be, life’s going to pass you by. So I did apply and even though I loved the adjudicative work and the management work in the First Department, and we had some great cases there, I knew that the caseload at the Court of Appeals was going to be equally terrific.

[01:26:26]

AG: Before we get you to the Court of Appeals and Chief Judge, you did do, as you mentioned before, some significant adjudicative work at the Appellate Division, and I think we should touch on that. If I may start, I find this interesting. I was told that one of your favorite cases, maybe your favorite case at the Appellate Division, was an assumption of risk case, *Roberts v. Boys and Girls Republic*, involving a parent who got hit in the head by a kid swinging a baseball bat during baseball practice. Tell us why you really enjoyed that case.

JL: Well, because it was a “busman’s holiday,” as they say. What could be better than to have a baseball case? It just tickled my fancy that now we’re going to have something dealing with sports so directly. Later, at the Court of Appeals, there were golf cases, there were lots of fascinating issues -- but baseball was my passion. It was a typical situation that everyone could relate to, parents at the

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baseball game, standing around. I remember exactly where the parent was, by the third-base line, and he gets hit in the head, and they're alleging in some way that lack of supervision caused this and we ultimately found there was assumption of risk. I think what's interesting about it is that, later on, I was very much viewed, rightly or wrongly, as someone who was sensitive to access to the courts and plaintiffs' rights on the civil cases.

[01:28:08]

This particular decision, which I still think was totally right, basically said that you're out of luck, you assumed the risk. It did have some importance in this whole area of assumption of risk. My "friends" in the negligence bar did not like that decision. I'm sure later on we'll talk about lots of other decisions that dealt with civil justice in various ways, but getting my teeth into a case in something that was my hobby just tickled me, and it was such an interesting case again, for the average person, because it's something we can all relate to as parents. It was not such a cut and dry case, but I think it was right. It was a great case, I loved it.

AG: You had a very significant case at the First Department, *Nash v. Port Authority of New York*, arising from the first World Trade Center bombing in the early '90s.

You found that the landlord failed to meet its duty to keep the parking garage in a reasonably safe condition, and you upheld a jury determination finding the landlord 68% liable. Interestingly, ultimately, your decision was reversed by your new colleagues at the Court of Appeals.

JL: Right.

AG: Tell us about the case and whether that ended up being an awkward experience in

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Albany.

[01:30:03]

JL: Well, it was a great case. I'm very proud of that decision and still think it was the right decision despite the fact that there were four votes at the Court of Appeals that ultimately went in the other direction. It was unusual because you're talking about an event where obviously terrorists had done this damage to the World Trade Center, and yet what was the responsibility of the port authority for not securing the garage where this happened, and who was negligent? There was a question of contributory negligence, who was responsible, and how much? We found, in a very long and difficult decision, that the majority of fault was with the port authority and the minority responsibility was the terrorists. This, in a sense, defied common sense, and on another level, was absolutely the right thing to do. In the *New York Post*, I was vilified by some people, who said how could it be, if the terrorists did this, that you're letting people sue the port authority? The *New York Post*, a very conservative newspaper, editorialized it exactly right, in a rare case where they supported a plaintiff's recovery. We were upholding a jury verdict that the port authority was 68 percent liable because of how negligent they were with ignoring a catastrophic security vulnerability in their parking garage, which was like an open invitation to any terrorist. So it was a case that blurred a lot of distinctions, but hopefully it's a mark of my adjudicative work, then and later on, that I wasn't afraid to think outside of the box, even though the easiest and most conventional thing to do was to say, "oh, this was caused by terrorists, why are you suing these guys?" They left that place, in the jury's view, and in my

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view, wide open to the terrorists getting into the garage and then with the explosion people were hurt and commercial properties were damaged. Yes, it was a little awkward later, when I was already on the Court of Appeals, and they reversed it, but I didn't know anything about it until it was publicly released because, ethically, I was strictly recused from any consideration and stayed out of it, didn't come anywhere near it.

[01:33:06]

AG: Of course.

JL: It was really a close question. They had to bring, I think it was two judges, on to the Court, and vouch them in to hear the case, and it totally turned on whether those two judges would rule the same way I had down below, in which case we would have been affirmed. What ultimately happened was one of the two judges would have affirmed, but the other judge ruled the other way. So while I understand the Court better than anybody, and that the Court of Appeals determines what the law of the State of New York is, I felt comfortable with that decision. Yes, a little awkward, but not uncomfortable. It was judges viewing the law the way they felt was right. I wasn't defensive or parochial about it, I stayed out of the way, and that's what happened. The Court of Appeals was always right, is always right -- except in that case.

[01:34:20]

AG: Except that time. [laughs]

JL: Yeah.

AG: Any other cases from your time at the Appellate Division that stand out in your

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mind?

JL: Well, we had lots of good cases, but *Nash* and the baseball case, for very different reasons, really stand out. I think what did happen at the Appellate Division, which I would mention, is not a specific case, but I think I started to carve out who I was adjudicatively, what I was all about. I think because I came from this administrative role, and even though I had done a number of trial cases, people really didn't know what I was about from a legal perspective. When I came in, I felt like a lot of the criminal defense organizations didn't get a lot of respect from some members of our bench, because often, when you have an appeal by a Legal Aid organization, it's not necessarily the best legal case in the world. They're fighting hard for their client, they're doing God's work, they're not being paid anything, they're helping defendants who can't help themselves, can't afford representation, and yet some judges were dismissive. When these people came before them, they sort of belittled the issues in the case, they'd say why are you here and what is this...? And I was very unhappy with that, and certainly I talked to the other judges about it, and when I was presiding, I made sure that that never happened. I treated them with respect and dignity, and particularly the criminal defense bar came to understand that I was someone who was concerned with individual liberties and making sure everybody got their day in court. So, in a lot of the criminal matters – the other two cases we talked about were civil -- they started to see that, whether they won or lost, here was someone who was concerned with making sure that everyone got their chance at justice, and that the scales of lady justice are always balanced, and that I wouldn't stand for the



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defense community to be treated that way. I think prosecutors became cognizant of that fact as well, and that if you're going to seek justice and uphold the law, it's important that the defense bar have the resources to be able to try their cases or bring their appeals on a level playing field. So, I think I set a tone there – and in individual cases, too – where people started to understand what I was all about and what I stood for.

[End of Audio File]