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ORAL HISTORY PROGRAM

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

Part V: Chief Judge of the New York Court of Appeals (2009-2015)



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 31, 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 31, 2018

[Begin Audio File Part 3]

AG: On December 31, 2008, Chief Judge Kaye retired due to the age 70 limitation in our State Constitution. On January 13, 2009, Governor David Paterson nominated you to become the next Chief Judge. The following month, you were confirmed by the State Senate. What are your memories and impressions of that whole process: applying for the position; being interviewed by the Commission on Judicial Nomination; coming out as one of the seven finalists; then being interviewed by the Governor; and, finally being confirmed by the Senate? Quite a process, isn't it?

JL: Yes, I remember it as a long pull. Deciding to do it, making sure that's what I wanted to do, filling out this lengthy application. You remember, Tony, when I was doing that.

AG: Yes.

JL: Putting together the pieces. Getting the recommendations. In effect, writing essays on why you're doing this, why you're qualified, getting little pieces of your background together that you might not have at your fingertips, because it's quite an extensive application. I remember it was also hard because when you

have a vacancy, particularly in the Chief Judge's position, there's always a lot of speculation and people asking you about it, and you're trying to not make a big deal, because it's so premature. So, completing the application was an effort in and of itself. Then waiting for the interview, and there's a statutory framework timetable for all of this to be completed. I seem to remember that the interview was at Patterson Belknap, because I think Steve Younger was the counsel --

AG: Steve Younger was counsel, sure.

JL: -- to the Nomination Commission. I remember sitting in the waiting room, waiting to go in. I think Steve came and got me. I had prepared quite carefully and studiously for this interview and tried to anticipate what kind of questions they might ask about my background, about my judicial philosophy, about my cases, about this particular job of Chief Judge and the dual nature of it, which was both administrative and adjudicative. The administrative, obviously, was second nature to me, but still, there were all kinds of issues that might come up in that context about my views on some of the big administrative issues of the day. And on the adjudicative side, making sure that I went over the cases, certainly the ones that I had written in the Appellate Division, and being ready to talk about my judicial philosophy. The way I do these kinds of things is that I get in my head what I want to say. I don't do anything without preparing, although I like it to feel spontaneous, but by the same token, I know what I'd like to get out during the interview. I remember being able to do that, because what they do at the Nomination Commission, at least in the past, is they always give you about three to five minutes to say what you want to say at the beginning.

[00:04:26]

AG: Right.

JL: I had it kind of worked out in my head, if I got that opportunity, what I was going to say about why I was qualified, or the most qualified, for this job. I had that opportunity and I used it to go through all the things that I'd done on an administrative level, and my adjudicative qualifications, and then opened it up to a lot of questions. I knew I had done pretty well. You know instinctively when you don't do well and when you do well.

AG: Right.

JL: We're all our own worst critics, and we often go over and over our performances. I should've said this, I shouldn't have said that. But I was quite familiar with the subject matter and certainly with a lot of the issues they asked about. This was a unique interview for the Nomination Commission, because they were dealing with the next Chief Judge, who also is the head of the Unified Court System, the head of the judicial branch of government. I was, again, extremely well versed in the administrative part of that job, and whatever they asked me about the cases, I certainly was able to do a strong job of recounting them and what they were all about. So, bottom line, I felt good about it. I don't remember exactly, but I'm guessing the interview was maybe 20 minutes to half an hour. I think they allowed a half an hour for each of these, a little less or a little more. So I felt good coming out of that, but then comes the worst part of the process -- waiting to see if you're one of the seven names that came out of the Commission. Meanwhile,

everyone is asking you about it, and speculating on who applied and who might be among the seven names, because the process is confidential.

AG: Yes.

[00:06:47]

JL: But the *Law Journal*, everyone in the legal community, they're always trying to figure out who applied. In any event, they finally came out with the seven names, which included – I don't know if I could name all of them – but included Gene Pigott and Ted Jones from the Court of Appeals, Evan Davis a lawyer from outside the Court. I'm trying to think who else came out of the panel. Now, Tony, I'm a lot older than you are.

AG: Yes.

JL: Who were the other three names? We had one, two, three... The two from the Court of Appeals and Evan Davis, so four, counting me.

AG: I'm sorry, Judge, I don't recall. [*The remaining candidates nominated by the Commission for the office of Chief Judge were Hon. Steven W. Fisher, Associate Justice of the Appellate Division, Second Department, and attorneys George F. Carpinello and Peter L. Zimroth*]

[00:08:13]

JL: The main thing about the list was not the seven names that came out, but the striking lack of gender and other kinds of diversity. There were no women on the list, and my dear friend, Carmen Ciparick, who was a Latina and sitting on the Court already, did not come out. So you had no women, no Hispanics, seven men, one of whom was an African American, Ted Jones.

AG: Right.

JL: That did cause some controversy.

AG: There was an outcry.

JL: There was an outcry about it, the lack of diversity, and of course, as someone who came out, it was kind of frustrating because I had no control over that.

AG: Sure, it's awkward.

JL: It was awkward, and especially with Carmen, who was, and is to this day, my dear, dear friend. The lack of any women obviously was an issue. There were a lot of complaints from the minority community, from women's groups, and the Governor made a statement. He was under pressure about it and he said that even though he thought the candidates on the list were excellent, he was concerned about the lack of women and Hispanics. The Governor asked the Attorney General to take a look at legal options for expanding the list but ultimately he said that he could not ignore the recommendations on the list.

AG: The Attorney General being Andrew Cuomo at that time.

[00:10:13]

JL: Andrew Cuomo at the time. Andrew Cuomo did a review, and I forgot exactly what he said, but the bottom line was that the legal options were very limited. In fact, his father, Governor Mario Cuomo, had once asked for a new list when he didn't like the list, because there was a lack of diversity once before, but while he was able to get prospective reforms to expand the number of candidates recommended by the Commission, he was not able to choose from a new list. So, in the end, I think Governor Paterson quite correctly came out and said that it

was his legal duty to choose from the list of seven, even though he felt strongly it would be better if there was more diversity. And no one was saying – and believe me, I didn't feel that way – that the seven who came out were not completely qualified at the highest level, but they were saying it needs to be more diverse. There was a lot of talk at the time, as to who the Governor would select. Some people thought Judge Ted Jones, an African-American, might be the Governor's choice, or Gene Pigott, who had been a lot senior to Ted on the Court, or Evan Davis who had been the President of the City Bar.

As part of the process, you go through interviews with all these different bar associations. I'm pretty sure I was the only one who came out of every bar association as the highest qualified, which makes you feel good, whatever the different ratings are. Evan Davis and I came out as something like extraordinarily well qualified by the City Bar. It's a tension filled period, going to all these groups, in a very short period of time: to the State Bar, the City Bar, the minority bars. I got a very good reception, again rated at the highest level. Then you go and interview with the Governor, at least that was the process with this Governor. I went and interviewed with Paterson, and I may have mentioned this before. He said later, that I was giving him the full court press, and that he knew me so well from when he was in the Senate --

AG: He said it was funny – you were trying too hard.

JL: Right, that it was ironic that – this is his story, not mine – that he had already made up his mind that he was going to appoint me the Chief Judge, but I was

approaching it like I never met this man in my life and as if he knew nothing about me. He thought it was humorous. In any event, finally after all of that, the Governor announces my appointment in a press conference in Albany.

AG: At which your wife fainted.

JL: At which my wife fainted, and there is, I'm sure, video evidence of that. What happened is he had my wife and my children stand in back as he made this announcement, and I think it was during his remarks, they had these bright lights, and if you're not used to standing there in front of the bright lights... In the middle of his remarks, she keels over, and Paterson says, "Well, we'll take a break."

[00:14:04]

AG: We'll take a break.

JL: They bring in security people, whoever, bring her into the back, and I'm looking around and I'm going, "Oh my God, what's going on here, where's my lovely Amy?" They're giving her smelling salts and she says, "No, I'm fine, I'm fine." She said, "Haven't eaten anything today and all the bright lights," and she just did a nosedive. But she was fine. So we came back out and they put her in a chair. Paterson made some joke, I can't remember exactly, something like, "Oh, she does that all the time whenever Jonathan speaks." Even though I think he was the one speaking at the time.

AG: He was very funny.

JL: He was very funny. He was a very funny guy with a great sense of humor. The timing of my nomination was at the same time that Caroline Kennedy was trying

to get appointed by the Governor to the vacant United States Senate seat, and there was all kinds of speculation in the press. So at the press conference, he had a lot of questions about Caroline Kennedy.

AG: I forgot about that, but you're right.

JL: And there was some speculation about whether the two things were related. Who was going to get the U.S. Senate appointment, and who was going to get the Chief Judge of the Court of Appeals? So, a very interesting time, and once again there's that political overlay no matter what you do. So, at this press conference announcing me as his nominee for Chief Judge, it's all about the politics swirling around Caroline Kennedy at that time.

[00:16:03]

So, we go through that and then we get to what should have been the easy part, which was confirmation by the State Senate. The Democrats had just taken over and the State Senate had a number of minority legislators who had recently come into leadership positions. John Sampson was the Majority Leader of the Senate and he was basically holding up my nomination because of the diversity issue, not because of me. He said, "I have a lot of respect for Judge Lippman," but he was holding it up because of a lack of minority representation in the candidates coming out of the Nomination Commission. This went on for a while. I think there was a 30-day period by which the Senate had to pass on the nomination and finally, on the 30th day, they did. I believe the confirmation hearing and passage by the full Senate took place on the same day. At the confirmation hearing everyone was saying, "Judge, you're over-qualified, Judge you're terrific." One or

two of them did raise the issue of the lack of diversity and the nomination process, but they were very complimentary to me in terms of recognizing my efforts to promote diversity in the court system. There were very few substantive questions. Mostly they acknowledged how qualified I was and took the opportunity to talk about their issues of concern regarding the courts and the justice system.

[00:18:00]

There was a woman who had come to speak at the previous confirmations for Susan Read and Richard Wesley, and she had a number of general grievances against the Unified Court System, which she spoke about. So, a little bit of a circus.

AG: Yes.

JL: Even though it should have been the most simple, straightforward thing. In any event, it was unanimous at the Judiciary Committee and everyone was very complimentary, including on the floor of the Senate. You have your family, your wife and your kids sitting up in the balcony of the Senate and everybody is saying very lovely things. I was confirmed. I think there were one or two votes, maybe three votes, who abstained on the grounds that even though they thought Judge Lippman was terrific they didn't think the process was what it should have been, but it was virtually unanimous. Everyone was saying these glowing things, I have the transcript somewhere. It's nice when people say nice things about you.

AG: Sure.

JL: So, it was a great day, a great experience, with the usual bumps in the road that come from anything political. What I was pleased with was that none of this was

about my qualifications. Everyone agreed that I was very well qualified, and there were front page articles, big articles in the *Times*, and other papers. I did feel good about myself. My family felt good about it, and it was one of the great days, when you get confirmed to be the Chief Judge of the State of New York.

[00:20:13]

AG: Yes, memorable.

JL: Memorable, and not too many people can say that. So, it was a long process. I think it's something you have to prepare for, which I did every step of the way. You also have to be prepared for unforeseen things that come up during the process. In my case, this unexpected thing involved my friend, more than my friend, my lifetime friend, Judge Ciparick. When that list came out, and she was not on it and I was, I was really thinking more of her than myself. I expected both of us to come out. She and I went out that night.

AG: Is that right?

JL: To have a drink or two, and so we could commiserate. So, it was kind of bittersweet. Again, I was so pleased to be on the report, but when it first happened and she didn't come out... We'd always talked about being on the high court together.

AG: Right.

JL: And eventually we were.

AG: Well, you were the first person since way back in the 19th century to become the Chief Judge of the Court of Appeals without first having been a Judge of the

Court of Appeals. Not only that, but you joined a court that was full of veteran judges. Your Senior Associate Judge was Carmen Beauchamp Ciparick and you had Associate Judges Victoria Graffeo, Susan Read, Robert Smith, Eugene Pigott, and Ted Jones, Jr.

[00:22:14]

JL: Right.

AG: So what kind of reception did they give you? Can you describe the personality of that Court --

JL: Sure.

AG: -- and the challenges that you had, taking on the role of the Chief Judge, the first among equals.

JL: Well, first of all, the day I was confirmed, when I came down to the Court, my dear friend, Carmen Ciparick, arranged a celebration in the lobby of the Court, with champagne and sweets, and with all the Judges and all the staff. She was the Acting Chief Judge as the Senior Associate, and this was so typical of her.

AG: I was just going to say, how typically gracious of her.

JL: Gracious and lovely, especially under the circumstances we just talked about. But she was so happy for me and so happy we'd be together, after all these years, on the high court. I remember sitting with her in taxis, going to events, from events, because we were always on the same track, and her saying to me, "Oh, it would be so great if we could sit one day on the high court together." So, she arranged a celebration with all the Judges, everybody was there, the staff, it was great. Certainly, I was well aware that other judges had applied from the Court, really

three of them: Jones, Pigott and Carmen. I realized that I would be sitting in the middle seat that many of them wanted, but remember, I had a history with this kind of thing, because at the Appellate Division, it was the same thing, where it had been something like a hundred years since someone came from outside the Court to lead it. I was well aware of all of that, and I made sure, as I did at the Appellate Division, to take charge of the Court on day one, and that means when I sat on the bench (and you're always in the middle seat in the Court of Appeals, as opposed to the Appellate Division, which has different panels where often the PJ is not sitting on a given day), I did the same thing, show that you know what you're doing, earn your chops. They were all very gracious and lovely and there wasn't one sour note.

AG: Really?

[00:24:32]

JL: On the Appellate Division, there were a few sour notes, people who just couldn't get it out of their system that they wanted to be the P.J. Here, everyone was lovely and wonderful, and it was such an interesting court. Judge Ciparick was the Senior Associate, the second woman to sit on the high court, the first Latina. She had a background like my own, in the sense that we both, for the most part -- she had done a little Legal Aid work first -- grew up in the Unified Court System. By the time she retired I believe she had served 19 years on the Court, so when I took over she certainly had been on the Court for more than a decade.

AG: Yes.

JL: Extremely knowledgeable, knew every conceivable kind of case that could come to the court. When I think of Carmen, I think of someone with a very practical, pragmatic bent, despite the fact that she was a real scholar in certain respects, certainly on the criminal side, where she had been the chief law assistant of the New York City Criminal Court. She knew her stuff, but it was not in her nature to be a person who homed in on the micro side. She's a macro person who was interested in doing the right thing, and very pragmatic and practical. Often, before I got there, she was on the same side of cases with Judge Kaye, but she certainly stood on her own as a stalwart on the liberal side of the equation, if you want to put it in those terms. I would say Carmen Ciparick is pro-human being. And cared about people. One of the great judges, and I'll stop saying that because I could say that about every one of the judges that we'll talk about. Who else? Vicki Graffeo, you know we do everything in order of seniority, so going to Vicki, she was the most studious of judges. She did her homework better than all of us put together. She was meticulous in her preparation, she was very disciplined in her work, wrote great decisions. Everyone respected, listened to Vicki at conference. She was something to behold, a person who just earned that respect by her hard work and her conscientious nature, and her knowledge. She had served in the legislative branch, so she had a good understanding of that part of our caseload, all those cases that come in with bills or suits between the branches of government. Vicki was great.

[00:28:08]

Susan Read was also great to work with. I knew Susan very well because Susan had, in essence, worked with me when she was the Presiding Justice of the Court of Claims and I was the Chief Administrative Judge. So, we knew each other, respected each other, liked each other. Susan also had an interesting background. She had executive experience in addition to judicial, as Deputy Counsel to Governor Pataki.

AG: Right.

JL: I knew her very well from those days. Again, highly respected, did her due diligence, worked at a very high level, and like Vicki she was a fixture in the Albany area. Susan's chambers were on the way to the elevator to go down to the courtroom, so of course we would often stop in on the way down if she wasn't gone yet, to chat about the cases that were coming on, or whatever. It was a delight to work with Susan again after all those years.

Gene, Eugene Pigott, we had worked together when he was the Presiding Justice of the Fourth Department and I was the Chief Administrative Judge. We had a few disagreements when Judith was the Chief and Gene was the PJ, where there was some tension at times. The PJs were members of the administrative board and rightfully had their own policy views, but Gene and I always had a good relationship, and despite the fact that I was Judith's emissary on some issues where they differed, we were always good pals. That was Gene's expression, he would say, "How are you doing, pal?" That was his way. Gene brought a great upstate, western part of the State perspective to the Court.

[00:30:14]

JL: He was the one person from the western part of the State, though that would change later with Eugene Fahey joining him on the Court. Gene Pigott was very knowledgeable, a strong background in county government as the Erie County Attorney, and very knowledgeable about politics, which was good since a lot of us were babes in the wilderness when it came to politics. He had been a trial lawyer, so had great experiential background. He would always do these hypotheticals from the western part of the State, often with the Buffalo Bills, so people would remember them. Gene was great, he brought a lot of good things to the Court, a lifetime of experience. Then let's see, who was the next in line at that point?

AG: Was it Bob Smith or Ted Jones?

JL: It was Bob. Bob was the next in seniority, and Bob was a brilliant lawyer.

AG: Yes.

JL: He came to the Court directly from private practice, had been a partner in Paul Weiss, and then ran his own private practice. He was a Pataki appointee, very conservative. Bob was, I would say, almost a Libertarian in his views, but absolutely a spectacular judge, a great intellect. He was one of those people, when Bob Smith talks, we listened. He was very into the procedural aspects of the Court's work, found it interesting. As much as he had strong views on major cases and areas of the law, he was into a lot of the technical things on motions and motions for leave for appeal, and into the history of the Court and how we came up with those internal rules. He would always be – what should I say? – fencing,

with Andy Klein, our Consultation Clerk, and Stuart Cohen, the Clerk of the Court, over all kinds of jurisdictional issues.

[00:32:51]

JL: Very into all of that. Bob was great to work with. He did all his reports at conference on handwritten yellow pages, which was great. Bob and I often came together in that way where the right and the left sometimes meet. And Bob, being a Libertarian, there were many cases that we kind of met together. Bob was a strong, conservative voice on the Court, but yet a person of great principle, and if that required that he be on the so-called liberal side or left side of a particular decision, he could care less.

AG: Right.

JL: And then of course there's my brother, the fabulous, and we all felt that way, Ted Jones, who was the loveliest man you will ever meet in the history of the world.

AG: Right.

JL: Teddy was, Teddy is -- well, how I knew him, he also worked with me. I made him the Administrative Judge in Brooklyn, and Ted was just a great human being, practical, saw the big picture on cases, not an ideologue in any way. Ted was so down to earth, and he had also been a practicing lawyer, as Gene had been. He was also a Vietnam veteran and had served there, as Gene also had. So, he had a lot of things going for him, but he had practiced law and what I remember most about the cases we had with Teddy is that he would always tell the greatest stories. The way Gene told stories about Buffalo, he would tell stories about

Brooklyn and practicing law there, and then he'd diverge into other things about Brooklyn.

[00:34:48]

Ted was a great storyteller, and all of them, Gene, Ted, Carmen, it was a great court, we not only spent time in conference and the courthouse together, we socialized together. We ate dinner out every night, and many of us would go out for a cocktail or a drink on certain nights of the week near the end of the session – a lot of camaraderie. It was a very strong court. Again, if you're into the conservative-liberal thing, it was a four-to-three split: four Pataki appointees versus three Democratic appointees by different Democratic Governors. So that was the natural split in the court, but when you got to the cases, we didn't look at ourselves as Democrats or Republicans, or liberals or conservatives, and there was always a good mix on the cases and sometimes surprising results.

AG: It didn't take long for you to make a significant impact on the Court in your first year, with a series of high profile, four-to-three decisions, including *People v. Weaver*, where your majority opinion declared it was unconstitutional for the police to install a GPS tracking device in a suspect's car without first getting a warrant. What do you remember about that case and what was it like later to have your same position vindicated by the United States Supreme Court, albeit in a different case [*United States v. Jones*, 565 U.S. 400 (2012)], with Justice Sonia Sotomayor actually citing your opinion in *People v. Weaver*?

JL: Well, it was a great case. It was the first interplay of modern science and changing technology with constitutional rights and liberties that we faced on the Court,

certainly in my tenure there. It was a basic issue of people's privacy rights and intrusion of government and government technology, on individuals. If the government had suspicion that you did something wrong, they could secretly attach a GPS to your car and follow you everywhere that you went. That case, when I wrote the majority decision for the three other judges – Gene Pigott came over to join the three democratic appointees, and that was how we were able to get a four-to-three majority – I talked about the implications of allowing the government to constantly follow you around like that, even in your most intimate moments, whether it was with your family or involving your health.

AG: Or religious practices.

JL: Yes, religious, even your sexual practices. Anywhere you went, the government could track you, to everything you did in life, and the potential for abuse, it was scary, at least to some of us, and that four-to-three decision was a major, major case. The police, law enforcement types, were very upset, because they felt it worked against them on terrorism issues. Some of them wouldn't talk to me for writing the majority decision. Even people I was friendly with, they felt so strongly that it was, again, a security/terrorism prevention kind of thing, but we in the majority felt very strongly that it was a question of human beings having certain very basic rights of privacy, and not to have Big Brother watching you all the time.

[00:38:41]

And of course when Sonia Sotomayor did cite the case in her decision, and by the way it was nine-to-nothing in the Supreme Court, the case was *Jones* [United

States v. Jones 565 US 400 (2012) (installation of a GPS tracking device on a motor vehicle constitutes a search under the Fourth Amendment)], it was a lesson to me, about being firm in your convictions, even where you're unsure of yourself to a certain degree, if you believe you're doing the right thing. When you're vindicated like that, and you know you did the right thing, and it's nine-to-nothing at the Supreme Court --

AG: – a conservative Supreme Court –

JL: across the spectrum of judicial philosophies there on such a major case, it was quite satisfying. And that set a pattern, certainly in that first year, of a lot of four-to-three cases where, again – and it was covered in the press and I think it had some validity – at least one judge from the more conservative side would come over to the more liberal side, or from the Republican to the Democratic, and that's how we got a lot of four-to-threes in that first year, and that's why the *New York Times* did a front page, right hand column, the lead column, saying, “NEW CHIEF JUDGE LEADS COURT IN LIBERAL DIRECTION.” That was that first year, and there were a lot of those four-threes, where it seemed the Court was moving more towards what one might call a liberal position.

[00:40:16]

AG: Well, another one of those landmarks, another 2009 case, was *Skelos v. Paterson*, in which your majority opinion effectively broke the major deadlock in the State Senate and altered the balance of power, when you confirmed the power of Governor Paterson to appoint someone to fill the vacancy of Lieutenant Governor,

with the Lieutenant Governor essentially becoming the tie breaking vote in the Senate, which had been evenly split between Democrats and Republicans.

JL: Right.

AG: Did you have any trepidation about that, so early in your tenure, the Court of Appeals getting involved in such a sensitive, interbranch controversy?

JL: In short, yes.

AG: Yes.

JL: Paterson had just appointed me, and then you get into this case, Paterson versus the Republican leadership of the Senate. The Republicans felt that Paterson was not authorized to fill the Lieutenant Governor vacancy under the Constitution, in a rare case such as this, where Spitzer resigned and Lieutenant Governor Paterson became the Governor and there was no Lieutenant Governor. Again, in a four-to-three decision, and this time Judge Read came over, and in fact, I don't think I'm telling tales out of school by saying that when Susan came to me and said that she was going to go with the position that I was taking, that he did have the power, I was very, very -- my jaw dropped, because I thought that case would go four-to-three the other way. But Judge Read came over, because Judge Read was a believer in executive authority, having worked in the executive branch, and I think she would tell you when you do her oral history -- we didn't do it yet, right? -- I think she'll tell you that her feeling was that if one position is at least as good as the other legally, then you should defer to the executive branch. So, she joined my opinion, and it was a collaborative opinion of all four of us, and she put her two cents in absolutely, finding that Paterson did have the right to appoint

under the Constitution, but it did get us into a political sphere which we were not comfortable with. But we are the court of last resort in these battles between the branches of government, and we had to meet our constitutional responsibility and resolve this difficult dispute. So, it was a great case and an interesting case – again, very early on.

[00:43:02]

AG: Yes, also in 2009. Okay, and then in 2010, *Hurrell-Haring v. State of New York*, another four-to-three case in which your majority opinion found that indigent defendants who are not being represented by counsel at arraignment were entitled to pursue a claim that their constitutional right to counsel was being denied under *Gideon v. Wainwright*. Tell us a little bit about that case and the significant impact that it has had, and actually is still having, on New York's indigent criminal defense system.

JL: Without question. That's another four-to-three vote where one of the more conservative judges came over, in this case Judge Graffeo. Judge Graffeo had a great interest in access to justice. She and I worked together on a lot of those issues on the administrative side, and she came over with the more liberal or Democratic judges, on this issue of ensuring adequate, appropriate, quality indigent criminal defense representation. Basically, the thrust of the decision, of my opinion, was that the representation was so bad because of a lack of funding that it was like having no representation at all. So, it was a constructive lack of representation, even though, theoretically, these people were represented, but in reality, the counties didn't have money to ensure something as basic as having a

lawyer at your arraignment -- it's a county-based system for delivering defense services and the counties didn't have money to really carry out the promise of *Gideon v. Wainwright*, the seminal case about indigent defense representation. Our decision has had a dramatic effect in improving the system.

[00:44:51]

As a result of this four-to-three decision, there was a settlement with the State, resulting in legislation that ultimately brought all of the counties in the state up to constitutional standards, with the State Indigent Legal Services Board being the one that implemented the new standards and distributed the additional monies that were appropriated for defense representation.

AG: With the State making a commitment to greater funding as well.

JL: Exactly, the State definitely making a commitment to greater funding. So it's had a dramatic effect, and the situation is getting better and better. That lawsuit was brought by five counties, but what followed was, what about the other 57 counties, don't they have to be up to constitutional standards as well? And the answer, of course, is yes. So, it was a great case, another one of those four-to-threes, and another one that had a dramatic impact on the State, and an issue that I certainly, on the policy side, cared greatly about, but it's important that you separate the two roles of deciding what's legally required versus what you'd like to see happen as a policy matter. By statute, the Chief Judge heads the State's Indigent Legal Services Board, and so with occupying those two roles, policy as opposed to legal, you've got to be careful not to let them overlap. Again, not that you're addressing these legal issues without regard to your

lifetime experience working in the judicial system, but they were two different roles for me, and they had to be – and they were – kept separate and respected. I'm very pleased with the impact that *Hurrell-Harring* has had on improving access to justice. That was a most important case for our State.

AG: Well, I've mentioned a few cases that received a lot of public attention, but are there any other cases from your time sitting on the Court of Appeals that really stand out for you today as being significant or memorable in some way?

JL: I mentioned a bunch and usually the ones you tend to mention, as I remember my dear predecessor always saying, "The ones that you wrote always stick out in your mind, especially if you're in the majority." Well, a couple, a few more. There was a case called *Save the Pine Bush*, which was an environmental case that had to do with widening the ability of people to sue on environmental violations. There had been a longstanding case on standing that Chief Judge Kaye had written, but Bob Smith and I got together, coming from somewhat different directions, and we led a majority that, in a divided Court with a couple of individual opinions, modified the standing requirements to make it easier to sue environmentally. Again, don't give too much credence to this liberal/conservative, Democratic/Republican stuff. When we're on the Court, we're not looking at it that way. It may play out that way, but this was one case where everyone was all over the place and Bob and I managed to forge a consensus. And it was a fun case. It was funny because we started out uninformed about all these environmental creatures and endangered species like the blue toad frog, or something, but it was brought by an environmental group who wanted to save this particular area, and it was very

serious, and the number of different species affected was so interesting, because none of us were that familiar with this toad or that butterfly or that snake, or whatever the hell it was. We had a good time with the case, and I think it was a good result.

[00:48:57]

There was a case called *Runner v. New York Stock Exchange*, which was a unanimous court, that really broke the dam on Labor Law section 240 cases and started a new trend of giving more expansive protections to injured workers. I very politely found a way of saying that the old Court had gotten it wrong, and that the statute had not been interpreted as broadly as the text might indicate, meaning: “I don’t know what they were thinking, but this statute protects workers.” It had to do with a gravity related accident of a person falling down stairs, with a kind of chain involved that was not adequate to the task and pulled the worker down the stairs and injured him. We greatly widened the scope of protection of workers, holding that the Labor Law was not limited to injuries from falls or from falling items. I remember that case got a lot of attention because it changed the landscape on Labor Law cases. Many of us thought that the prior court had been very narrow and rigid in its application of the Labor Law, which is designed to protect the worker.

[00:50:16]

There was a case called *People v. Buchanan*, which was about a defendant who was forced to wear a stun belt during his trial, in front of the jury.

AG: Really?

JL: I wrote a strong decision, saying that that's a violation of his constitutional rights, because it's damning.

AG: Prejudicial.

JL: The jury would think, from day one, that the person was guilty, just because they had to put this on.

AG: It makes the defendant look so dangerous.

JL: It makes him look dangerous, so unfair, not right. Again, the rights of the individual, at least in my mind, are so important, particularly in criminal cases. *People v. Adrian Thomas*. It was an upstate case where a defendant confessed after being interrogated for like nine hours or more, with only one break, and we held that the confession was coerced and his due process rights were violated because he was so worn down that he couldn't think straight. This was not fairness or justice, and we threw out the conviction. The last couple of cases were not necessarily that split. I think *Buchanan* had Read dissenting, but *Adrian Thomas* was unanimous.

Then I guess there was one other case on the criminal side, *People v. Mothersell*, where there was some kind of all-persons-present warrant issued to search a particular club or property, and the police came in with that warrant and strip searched everybody on the premises. Again, this is a question of individual privacy rights and liberties, and we found that it was an unreasonable search under the Fourth Amendment, that the strip search was an extraordinary intrusion that needed to be supported by a more specific warrant, a more specific factual

basis, to support a reasonable suspicion that people were hiding contraband on their persons.

So that's a sample of some of the cases. There were so many others, civil and criminal. You know what I'd mention that was a great case, and I think it was in the first year? It had to do with the Barclays arena in Brooklyn, and the eminent domain proceeding.

AG: *Atlantic Yards.*

JL: *Atlantic Yards.*

AG: That's right.

JL: That was to allow the Barclays arena to be built. Remember, there were holdouts, like one little building in the middle of what was going to be this vast arena, and we upheld, I think unanimously, [*the vote was 6-1, with Judge Robert Smith dissenting*] the right of the State to condemn the remaining private properties on the grounds that the area was blighted and that the takings would serve an important public purpose. I wrote it for the majority. We all had our doubts, it was really a close question under the Constitution, but we finally decided that it did pass constitutional muster and that all the predicates of eminent domain, where you can't take away someone's property without due process, et cetera, were met. What that case showed me, and I think is interesting in the education of a judge, is that while we follow the law first and foremost, we also look at the broader context, which in that case was the progress, the future of the City. This was such an important project, and while we found, obviously, on legal and constitutional grounds, that they could build the arena, we were not unaware of the broader

picture, of how important this project was. In fact, it has led to the revitalization of that part of Brooklyn. Any of us who have been to the Barclays arena, it's the biggest thing in the world, everything around there is thriving. The courts played such a critical role, and yet you have to weigh the rights of the individual, in this case the little guy who was holding out, against the State's enormous power of eminent domain, to make sure there's no abuse. That was a very controversial case, but we did approve it, and I feel good about it years later, that the result really had a dramatic positive impact, as so many of the cases we've talked about have had, on the life and times of our City and State.

AG: Well, you mentioned already that the Court of Appeals during your tenure, at least early on, was made up of a majority of Pataki appointees.

JL: Yes.

AG: Republicans. Yet you were able, time and again, in very significant cases, to forge a majority, sometimes a narrow one. What was that process like, bringing people together, forging consensus, within a Court where you had judges with a really broad spectrum of ideological backgrounds and approaches?

JL: Look, I'm not pretentious enough to believe that I'm the only person in the world who could have done that or that it was all because of me. Judges follow their own dictates, their own philosophies. I do think, like anything else, that judges are human beings, and I think interpersonal relations are very important. I think being able to talk to your colleagues, whether it's in private or in conference, in a way that triggers their emotions, their instincts, is very important. I don't think there's any magic to it. I don't think that I'm the only person who has done or could do

this. I think that each case is different, each judge follows their own stars and norms, their judicial philosophy, but I think being able to deal with people is important, and being able to connect and feel a camaraderie, not even necessarily as friends or that kind of thing, but a camaraderie in terms of we're all in this together, and we're trying to achieve something important and positive for our institution, progress in our society, evolution of the law. So that's how those things happen. We always say, if you get four votes, you're right on the law, you know?

[00:57:11]

AG: Yes. That's how it works.

JL: What was ironic about that particular time, and stop me if I said this in some earlier sessions, when the *New York Times* did that story about, oh, Chief Judge Lippman is moving the Court in a liberal direction, my more conservative colleagues said, "What? That's what's happening in this Court?" And they were very careful after that, because none of us wants to be perceived as being led by the nose in any direction. We're all doing what we think is right in each case. But after that article, it caused a little awkwardness -- the worst thing the *Times* could have done, to help me get majorities in the Court, was to say I'm bringing the conservative judges in a liberal direction. It was kind of, "Oh God, why did they need to say that?" Because we didn't look at it that way. We don't look at our work like we're going in a liberal or a conservative direction. We look at each case, and what's right on the law and what's the just result in that case. But it was great [laughs], terrific. And then after the article people said, "Oh, that's not

what's happening here, we're not going to let that happen here." It was interesting.

AG: Yes.

JL: And fun.

AG: Well, as time went on, of course, there was quite a bit of turnover towards the second part of your tenure as Chief Judge.

JL: As there always is.

AG: Yes. With the addition of four new judges: Jenny Rivera, Sheila Abdus-Salaam, Leslie Stein, Eugene Fahey, as well as some extended periods where the Court had to operate with less than the full complement. Can you talk about what the challenges were in dealing with that kind of turnover and working without the full complement?

JL: Well let me say -- let's take the second point first. We had a time when we were dealing with five judges rather than seven, and what that means is you have to have four out of five judges in agreement on any case. But there's an example of how the Court pulls together and maybe you put aside your judicial philosophy if you're a little more liberal or more conservative or whatever. We knew we had to move the business of the Court, that one of our primary functions was to decide appeals in a timely fashion, and therefore people compromised more, that's what happened. We put aside rigidity and emphasized flexibility. Where normally we might have written a dissent, but it would mean a three-to-two split and we knew we had to get to four, the majority might make some concessions to allow one of the dissenters to go along with them and get to four.

[01:00:05]

I think we talked about – or maybe we will later – about how Chief Judge Kaye really valued consensus and unanimity on the Court. When you're dealing with five judges, almost by necessity you have to emphasize consensus. You know I don't agree with that in general. I believe in strong majorities in the strongest sense, even if it means inviting a dissent, but here the Court pulled together, and I thought it was a great lesson in how we put the institution above all else.

AG: I was just going to say that shows a lot of respect by the Judges for the institutional well-being of the Court in order to put aside some of their personal preferences whenever they could.

JL: And that's exactly what happened. Again, drawing on their great life and judicial experience for the greater good of the Court. As for the new Judges, new blood is good. Any institution gains by having new vantage points, new views of things, new life experiences. So, of the new Judges, let's see, we're talking about four. Jenny Rivera was an academic when she came to the Court. I think it's fair to say that we bonded immediately. She was from my neck of the woods, the Lower East Side, she was a Latina, and we felt a real kinship on a lot of issues. She was a real advocate, being an academic and a leader in the Hispanic community, and because of some of my initiatives as the Chief Judge and as the Chief Administrative Judge, we felt a natural affinity for each other, were very supportive of each other. We were very close friends on the Court, our chambers actually -- as they had been with the earlier Latina on the Court, Judge Ciparick -- were right next door to each other, and we would talk a lot.

[01:02:12]

Jenny brought a new and distinct viewpoint to the Court, that of the academic, and that's why diversity is so wonderful on the Court. Jenny had to work through every case from an academic perspective, and it was refreshing to watch that process. She was a very hard worker, she would work way into the night, and I'd try to, as the Chief Judge, try to hold her back from doing that because she'd be tired during the day. A great, great addition to the Court and a great friend of mine, and it was terrific when I shared that time as next-door neighbors with Jenny.

After Jenny was the lovely, the gentle and terrific Sheila Abdus-Salaam. A more graceful and elegant human being you wouldn't find, whether that be in the courthouse or at dinner. I knew her for many years from her time as a Justice of the Supreme Court, and on the Appellate Division, in New York City. As an African American woman – the first African American woman on the Court – she was a landmark appointment by Governor Andrew Cuomo. She was a scholar who had also been a trial judge. A person, again, of great, great elegance, who wrote very well, a tremendous addition to the Court, whom we all loved and respected. Of course, the tragic ending of her life is something we all remember and live with. My memories of her, aside from her obvious skill set, her great skills on the bench and in the conference room, was her elegance and grace as a human being. I remember very well the dinners with her, that soft smile, that lovely manner of hers. We miss her. I miss her to this day.

[01:04:54]

Leslie Stein, I think Fahey and Stein came in almost exactly at the same time, but she may have been confirmed first.

AG: I think so.

JL: She was senior. Leslie had practiced matrimonial law for many years, was an Albany City Court Judge, ultimately a Supreme Court Justice, sat on the Appellate Division, Third Department, knew her way around. I knew her pretty well from the courts, liked her, smart, experienced, a lovely person, an Albany fixture. She grew up in Westchester but lives in the Albany area, another great addition to the Court. Didn't fit into any particular ideological category, she brought more of a case to case kind of approach. Very hard worker, took her responsibilities very seriously and wrote terrific decisions. A really stellar judge who contributed greatly to the Court and is still contributing to the Court. Again, not an ideologue. She's kind of very much case to case, and that's the greatest compliment you can pay a judge, is that they do justice in each and every case.

[01:06:28]

And, of course, Gene Fahey, a terrific human being, has his heart on his sleeve so to speak, comes out of the Buffalo area. For a brief time, we had two Buffalonians on the high court. He had a background as a tort lawyer, which I think is valuable, working for insurance companies, although he was always sensitive to the rights of plaintiffs. Loved him as a colleague, great to work with, super smart, super conscientious, and a historian, greatly interested in the history of the courts -- apropos, he's now on the Board of the Historical Society. Gene is very much a people person, just what you'd call a Prince, just a great person, great to talk to

about cases, great to talk to off the bench, a great addition to the Court, a really terrific Judge. I think what's interesting, as you'll see from these little thumbnail sketches, is how everyone brings something special to the Court. Gene Fahey, not that dissimilar from Gene Pigott, had been in the political world. He was, I think, on the Buffalo Common Council and ran for mayor of Buffalo. He understood that world, and how so many of the cases that come to us may not be political per se but have a political tinge to them that you can't ignore.

[01:08:18]

So, everyone brings something unique in their life experience to the Court. We've been very lucky in New York with the constitutional amendments of the '70s that created the Commission on Judicial Nomination and the whole merit selection process, which has been very, very good to us. In my view, the different dust-ups and criticisms of the Nomination Commission over the years have been unfair. They've done a great job. You know, there's always someone saying they don't have enough prosecutors, they don't have enough defense people, they don't have minorities, they don't have enough people with commercial experience. Every time, there's a different criticism of the list of names that comes out, and people are entitled to that criticism, please don't get me wrong, but the Commission does it on merit, which is what this system is supposed to do. They do have to, obviously, take note of diversity in every different way: legal disciplines, race, gender, geography. And they do. They have done a terrific job and despite the criticism the quality of the judges on the Court of Appeals has been excellent, due

in large measure to the constitutional reforms of the '70s that created the Nomination Commission and merit selection at the high court level.

[01:10:00]

AG: It has worked well, I agree.

JL: It's worked wonderfully, in my view.

AG: Let's talk about some of the changes that took place at the Court of Appeals under your leadership. Observers of the Court immediately noticed an increase in the number of separate writings and dissents after you became Chief Judge.

JL: We touched on that a little bit.

AG: Yes, and I think you've expressed some opinions yourself on whether it's preferable for an appellate court to speak with one voice, as it very frequently did under Chief Judge Kaye, while other people believe that the distillation of different views is helpful for the bar and for judges out there. I think we already know your view, but do you care to comment further on that?

JL: Yes. I think it's all about the common law. This is a common law court and the evolution of the common law, in my view, works much better with strong majorities and strong dissents, because if you believe the law is different, then you plant your flag, and then years later maybe your view becomes the majority view, but the law can't evolve if you water down everything you say in order to get a unanimous view. And don't get me wrong, I have tremendous respect for my predecessor, Judge Kaye's view on that. My view is different. To me, you try so hard to get unanimity that you don't say much, and I think you ought to strongly say what the law is and if you disagree, you ought to strongly say that too. To be

quite frank, I think it was disappointing to both of us that we disagreed on that.

Some of that came out in another article in the *New York Times*, which was about the number of dissents in the Lippman Court as opposed to the Kaye Court.

[01:12:08]

AG: Right.

JL: I was not Judith Kaye and Judith Kaye was not Jonathan Lippman, even though for a time we were so close professionally that it seemed like Judith Kaye and Jonathan Lippman were always on the same wavelength. But I think we've talked about it a little bit, that when you're the number two, you carry out the vision of the number one. But here I was the Chief Judge and that was my view, and it got a lot of attention because I think it's -- and Judith and I both recognized this -- it's an important issue for an appellate court. What is your goal? Is the goal on every case where you have two totally defensible ways of looking at it to keep going around that table of the seven judges and say, "Well, would you give in on this, and would you give in on that?" and "What if we say it this way and then we could all be together?" To me, your kernel of something important to say is getting smaller and smaller. Instead of having a decision that covers the law and what it is, you're compromising to get unanimity. I was quoted somewhere as saying, "I'm a results-oriented person, and the result I'm looking for is not unanimity." That's the way I felt about it. That didn't push my buttons, to get a unanimous court. I was happy when we had a unanimous court and everybody agreed, as long as the decision said something.

[01:14:00]

AG: Right.

JL: But I'm not happy if we have a unanimous decision and we're dodging the real legal issue, or fudging it or not making clear what the law is.

AG: Which leaves judges, lower court judges and lawyers often frustrated.

JL: Yes, because they can't figure out what in the world the Court is talking about. On the other hand, I understand the benefit of consensus. That's a terrific thing, especially if there's consensus where you're saying something meaningful about the law, but if you can't do that with unanimity then say what you're saying in a strong way and have the minority say what they're saying in a strong way. I was a big dissenter in the Court. I wasn't alone, there were other judges who dissented a lot, but I think what was unusual is that as a Chief Judge I was dissenting a lot, because some people view the Chief Judge's role as seeking consensus and unanimity. I believe that in terms of the way the court operates – the institution – we seek consensus. In the development of the law, I don't think necessarily that that's my role, and that's why I dissented so often, certainly on matters of principle. Look, Hugh Jones, former great Court of Appeals Judge, wrote a well-known article on when you dissent and when you don't, and I think Hugh Jones would agree with this. When it's a matter of principle, you dissent. If it's something that is more technical or not something which is going to have a great impact on the law or on the people of the State and you need to compromise, of course we should compromise. It's a collegial court and we did compromise. We did then, and they do today, and that's important, but when it's a matter of principle and relates to the law and what it should be, you should stand up and

dissent. It's a very interesting article by Hugh Jones that I would say, if anything, leans towards the Judith Kaye approach, which is to strive for consensus and limit dissent. But in its significant part, about when and why you dissent, I think it also supports the philosophy that I have, which is if it matters, you dissent; you don't sit on your duff and just say, "All right, I'll go along." Sometimes you do that, if it really is not, in my view, something that's so important. So that's why I dissented so often, because to me I thought it was important for the evolution of the law and for the people of this State.

[01:17:02]

AG: Shortly after you became Chief Judge, observers of the Court noted another change, an increase in the number of criminal appeals that were being heard by the Court of Appeals. Was that an intentional development? And if so, why?

JL: It was very, very intentional.

AG: Okay.

JL: And another distinction between the Lippman Court and the Kaye Court. When I came in, I noticed that there were very few criminal appeals being granted. We talked a little bit before about the Appellate Division and how I felt that the defense lawyers were not being treated with respect and dignity. Well, here, I thought the Court was sending a wrong message by granting so few criminal appeals. There was an unfortunate perception that criminal defendants had almost no chance to get their cases up to our state's highest court. It doesn't mean you're going to win by getting there, but you should feel that everyone has a chance at justice, even the person with the least money, the least resources, criminal

defendants, people of color, everyone should get their chance at the Court of Appeals. So I made a public issue about it in the *Law Journal*, and I made it an issue internally with the other judges. It got a little bit awkward with the written coverage of the issue, what with the Chief Judge talking about it so publicly at the same time that they were pointing out the particular judges who had very low leave grant rates.

AG: On the criminal side.

[01:18:45]

JL: And unnamed criminal defense attorneys were quoted saying unflattering things about those judges. It became awkward, just like when the papers were saying, oh, I'm leading them in one direction or another. But I felt it was very important for the Court, because it touched on a seminal issue of equal justice; it doesn't matter whether you're old, whether you're young, whether you're rich, whether you're poor, whether you're black, whether you're white, everyone is entitled to equal justice.

AG: Yes.

JL: And if you can't grant even one percent of the criminal leave applications that come to the Court, there's something wrong and you're sending the wrong message. So over time we wound up with a five percent or four percent grant rate, and the perception changed, and people started to say, "Oh yeah, we can have our day in court at the Court of Appeals, everyone can get their chance." That was very important to me, very intentional, because equal justice is the most

fundamental principle of what the courts and the justice system are all about. And we made great progress as a Court.

[01:20:03]

AG: Okay, now I'm going to interject something, because I'm pretty sure you'll agree with me on this, which is you couldn't have accomplished all that you've accomplished without really good, strong support staff and people who worked with you, and for you, over the years. Can you talk a little bit about those people, about your law clerks?

JL: Sure.

AG: Your support staff, the institutional people at the Court of Appeals who were with you throughout your tenure.

JL: Well, I only wish I could name them all, but I won't because there isn't enough video film left for the Historical Society to go through all of my clerks and the clerks of the court. Obviously, there's the old adage about any judge who has a law clerk who isn't smarter than the judge is making a great mistake, but it is absolutely true. The judge doesn't operate in a vacuum. Maybe there's a judge here or there who ignores their clerks and goes about their merry way, but not to any degree. Every judge, to some degree, is a reflection of the support that he or she has. I'll just mention two of the clerks that I had, because I brought them over to the Court of Appeals from the Appellate Division, and that's Jennifer O'Friel and Nat Rudykoff. Jennifer O'Friel worked for me at the Appellate Division. She was a law clerk and my Executive Assistant there, and Jenn was great and works for Chief Judge DiFiore now. Jenn was kind of the lead clerk and she also helped

me out on the administrative side and ran the shop for us. Aside from writing great draft memos, opinions and reports, Jennifer had worked for Judge Ciparick and had a great institutional knowledge of the Court, which is terribly important for a clerk and for the judge. She was a wonderful law clerk, family to me, a great lawyer who really did a beautiful work product, but it was based on a deep institutional knowledge and experience. You know about that, Tony, you worked for Judge Ciparick also, up at the Court, and when you've been there and understand what the Court is all about, what goes into resolving the cases, you bring so much to the judge, and Jennifer, both on a professional and personal level, was someone who I could bounce things off of about how the Court worked, and on the legal side, she drafted beautiful reports and writings. She was invaluable.

[01:23:51]

Nat Rudykoff, who also worked for me at the Appellate Division, had a great knowledge of the intermediate appellate courts, the Appellate Divisions. Nat brought that institutional knowledge to me at the Appellate Division and then at the Court of Appeals, where he had sort of a little bit of a different expertise than Jennifer had. Nat was a great writer, an eloquent writer, and it reflects very well on the Chief Judge, or on any judge, when you have a clerk that can do that. Nat was someone who was a wordsmith in every sense. Sometimes, when he was drafting something for me, he'd put esoteric words into the draft decision and I'd actually have to say, "Nat, what in the world does that mean?" He was a brilliant

lawyer and a craftsman, and Nat also was just totally invaluable on a personal and professional level.

[01:24:56]

Jennifer and Nat were with me for the whole time at the Appellate Division and the Court of Appeals, but the other clerks rotated in and out after a year. All of them were great, and again, I don't want to mention one without mentioning all of them, but I would rotate them from year to year.

AG: So there ended up being quite a few.

JL: Yes, there ended up being quite a few, and we liked to have clerks that came with some experience from a law firm; not that we didn't take some straight from law school, but most had some experience. They were all terrific and I felt they were so smart, that they broke in very quickly, and it was good to keep having – since I had two permanent clerks, in effect, with Jenn and Nat – that it was good to rotate and get different, fresh blood coming in. Again, they were so smart and so quick that they came up to speed almost overnight. We were fortunate enough, at the high court, at least during my tenure, that the Chief could have four clerks and everyone else had three. Again, you're only as good, to some degree, as your support staff. You can be the most brilliant judge in the world, but if you don't have people you can depend on, you're not going to shine the way you should. And then, of course, the support staff of the Court of Appeals is a small family. What a gem of a Court. I was fortunate to have -- and again, I won't mention all the people at the Court,

AG: Too many.

[01:26:42]

JL: But in particular, of course, I had Stuart Cohen and Andy Klein and John Asiello as the Chief Clerks under my tenure. I bonded with all of them, loved them all. They are your first line of defense in the running of the Court and the running of the courtroom, for that matter. They were all terrific, both on the jurisdictional questions that the clerks know best, much better than the judges, even though Bob Smith might disagree on that particular point, and on the way the Court ran, on the protocol, on the process, on how you deal with a crisis relating to the Court of Appeals, your interaction at the Court of Appeals with the rest of the court system, and in dealing with the organized bar. The Clerks of the Court are essential players, as were -- and I don't know whether we went into this -- Cathy Wolfe, for a brief time, and John McConnell, in my time, as the Clerks at the Appellate Division, First Department -- spectacular clerks. John is now Counsel to the Office of Court Administration and someone who, to this day, I call all the time to ask questions about issues with the judiciary and the legal system.

[01:28:13]

Getting back to the Court of Appeals, of those three clerks, Andy was with me the longest, but they were all spectacular and essential to the history of the Court that we so greatly value. While the Court revolves around the judges, the Clerks are, if not the equal of the judges, certainly essential in every way to the well-being of the Court, and to its history and development.

AG: As you know, there are a lot of court watchers out there, lawyers and academics, many of them close observers, who like to follow the Court's work, follow the

Court's trends. In particular, they love to characterize, categorize, maybe try to pigeonhole and typecast a judge with regard to that judge's jurisprudential philosophy, but this is your chance now. How would you characterize your jurisprudential philosophy on the Court of Appeals?

JL: Certainly, I had a strong concern for the rights of the individual, in both the criminal and civil domains. On the criminal side, paramount for me were individual liberties – individual liberty, period – and the seriousness with which we cherish and protect all the rights that individuals have under the constitution, especially when a person's liberty is being taken away from them. On the civil side, I had a strong concern for the individual and the individual's right to access the courts in the pursuit of justice. People say we live in a litigious society, and we do, but that's part of who we are as a people, and so it's critical for everyone to have equal access to the courts and our system of justice – again, regardless of the amount of money in their pocket or the color of their skin. Our courts and the rule of law are the envy of the world and what makes us different from so many other places, but it all rests on the idea of equal justice, and the public believing and having confidence that every single person has a meaningful ability to access the courts and pursue justice. These were the concerns that permeated my judicial philosophy. As judges, we follow the law, it's the most important thing we do, but we also have to do justice, and it's that balance of making sure, at every turn, that you're following the law and yet pursuing justice and achieving just results, that reflects your judicial philosophy. Yes, case by case, follow the law, because we don't make the law, we apply the law, but at the same time, pursuing justice for

everybody, making sure that every person, the little guy as well as the big guy, stands equal before the law in every kind of case and circumstance you could imagine. That's my judicial philosophy. It's pursuing equal justice for everyone, treating the weak and the powerful alike, within the umbrella of the law and what the law requires in each case, and I don't think the two things are mutually exclusive. The people who say that you can follow the four corners of the law and not look at right and wrong, and justice and injustice, I think they get it wrong, especially with regard to a high court like ours, which is the court of last resort in almost every case. It's our job to follow the law, of course, but above all else we're supposed to do justice – again, in the context of the rule of law and our very defined role as the nonpolitical branch of government. That was my judicial philosophy, my philosophy in general, and what I've tried to do as a judge and as a person who worked in the court system pretty much my whole professional life – pursue justice!

[End of Audio File]