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**ORAL HISTORY PROGRAM**

**Michael Francis McEneney. Esq.**



*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: Michael Francis McEneney, Esq.  
Office of Court Administration  
New York State**

**An Interview Conducted by: Marjorie S. McCoy, Esq.**

**Date of Interview: May 18, 2010**

**Location of interview: Office of Court Administration, 25 Beaver Street, New York  
City, New York**

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

**Oral History Project**

**INTERVIEWEE: Michael Francis McEneney, Esq.**

**INTERVIEWER: Marjorie S. McCoy, Esq.**

**DATES: May 18, 2010**

**[Begin Audio File]**

MM: Hello. My name is Marjorie McCoy and, until recently, I was the Deputy Clerk of the New York State Court of Appeals. Today is May 18, 2010, and we are in New York City at the Office of Court Administration on Beaver Street. I have with me today, Michael Francis McEneney, whom I have known for 50 years. Mike has had a long and storied career in judicial administration in the State of New York. I've known Mike since I was about five, because he worked with my father Tom McCoy from 1957 or so to 1973. When Mike and I talk this morning, our focus is going to be on the early years of the Court Administration in the State of New York. Hi, Mike.

MF: Hi, Marge.

MM: Mike, why don't you start by just giving us a quick rundown of the different titles that you've had? From my understanding, you started as a messenger and rose practically to the top of court administration.

MF: I did, Marge. I started in March of 1957, as a clerk messenger, and I was the 13th employee of the newly founded Judicial Conference. My next title was assistant counsel, when asked by Chief Judge Desmond to serve in that capacity. I later became assistant deputy counsel, then deputy counsel. Then I became the director of education and training, the first director in the organization, then followed by the director of management and planning, and I held both titles together. And then Chief Judge Cooke asked me to head up the Office of Director of Court Operational Services, which position I held until I retired in 1995.

MM: So that's a total of?

MF: Thirty seven and a half years.

MM: Do you remember how much you were paid when you first started?

MF: I took a cut in pay to come. I was paid thirty-eight hundred dollars a year. I had left the New York City Police Department, where I was making four thousand dollars a year.

[00:02:13]

MM: And when you began, you said that you were the thirteenth employee.

MF: Yes, that's correct, that's my recollection. Judge John B. Johnston was the state administrator, your father Tom McCoy was counsel, Jim Sharp was assistant counsel. Larry Marcus joined about the same time, was the second assistant counsel. Then, Ernestine Barish was the chief statistician. Mrs. Higgins was the secretary, as was Pauline Garvey. Emil Verderber, who was the statistics clerk, he also came over from the judicial counsel. Then, Al Delaney was the executive officer, and then me.

MM: So there were 13 of you then, and when you left OCA, do you have an idea of how many employees?

MFM: Well, we admitted to about 500. At one point as the Director of Office of Court Operation Services about 200 people reported to me between here and Albany.

MM: And am I correct, that you have continued involvement with court administration and the courts doing since your retirement?

MFM: Yes, yes, I never miss a party, and I also am available for history. I field a number of calls from the judges, clerks, and others, and I have remained a member of the Criminal Jury Instruction Committee, which we founded back with Nat Sobel and Lyman Smith.

[00:04:09]

MM: And you also never miss a wake.

MFM: That's right, a wake or a funeral or the party after.

MM: Let's go back and tell us how you decided to go to law school, and then also how you came to work at what was then known as the Judicial Conference.

MFM: As you mentioned before, I was a graduate of Manhattan College, and at that time, Korea was going on. I was there from 1949 to 1953, and at that time, in order to keep your deferment, you had to take a test that was given by the government, at least once a year. It was a true/false, multiple choice type thing. You also had to maintain your grades, but if you did not achieve a grade of at least 70 on this exam, you lost your deferment.

A very good friend of mine's father was a lieutenant in the New York City Police Department, he worked in the detective division, the main desk, down at

headquarters, and on his meal break, he'd go over to the Department of Civil Service in the city and see what exams were posted, that we might be eligible to take. He'd take the applications, bring them home, have us fill them out, and filed them. But sometimes, I think he filled them out and filed them without us. Then he would tell us on Friday night, that we would be taking an exam Saturday morning, much to our dismay, you'd miss a party or something like that. But as a result, by the time I graduated, I was on the New York State Police list, New York City Police Department, New York City Fire Department, the New York City Clerk's list and the New York City Assistant Accountant list. So, when I graduated, I was working as a school bus driver for the Riverdale Country School, and I also worked in the dean's office at the college.

[00:06:02]

When we went out on interviews and we would get to the second interview, and of course it would be "what's your draft status?" Being one of the youngest lads in the class, I had a 2S, which was student deferment, and they'd say, "OK, when you finish your obligation -- your military obligation -- come back and see us." So, one day my mother said to me, "Look, we sent you to college but not to be a school bus driver, and you've always thought you might want to go to law school, why not try now?"

My father had a good friend, Jim Clynes, who was a deputy clerk with the Appellate Division, First Department, but also an adjunct at New York Law School. Dad called him; Jim called me, he said, "Get a transcript for Manhattan, and go down and see the registrar." I did. This was about the middle of July, and

Connie welcomed me, looked over my transcript, left the office, came back, and told me that classes start in September, and the tuition was \$218 a semester.

So now I needed a job downtown because Manhattan College is up in Riverdale, as you know, and one of those exams I'd taken -- the clerk's exam -- had an opening at the police department for a clerk. So, my uncle, who was working in the city, my uncle Ed, spoke to the powers that be and I got the job. It paid \$1,875 a year. I took it.

I went to law school from 9:00 in the morning until noon, and then from 12:15 , I worked at the police headquarters at 240 Centre Street, from 12:15 to 5:00, I worked in the Chief Clerk's Office and from 5:00 to 8:00, in the Correspondence Bureau of the Detective Division. This was going fine until about October 3rd, when I got a notice from the draft board that my deferment had been revoked, and I was now 1A.

[00:08:03]

Being a young law student, of course, I appealed. I appeared before the board, pled my case that I had the deferment and the last day for paying tuition without penalty was October 1st, that I had done that, and please, could I have a deferment until at least the year is completed. In the course of the discussion, one of the gentlemen at the end of the table said to me, "Young man, what means more to you, your country or money?" I said money and that was the end of it. November 19, 1953, at Whitehall Street, off I went to Fort Dix. I spent the time, even though Korea was on, it was just about winding down at that time, ended up over in Germany, making the world safe for democracy one Brauhaus at a time.

I returned to New York after one year, 11 months and 22 days in the service.

MM: But who's counting?

MF: That's right. While I was away, my father had died on the way to Mass and three weeks after I got home, my mother died at the age of 50. So, it was my brother and I and our uncle living together, and I went back to the Police Department in January of 1956. Now prior to this, Steve Kennedy, at that time, was the Police Commissioner, and he had finished high school, completed college and law school while being a police officer in New York City. He realized what that cost the Department and he would no longer permit the split tours or waive the Academy for those in law school. So, I had to continue law school at night and one of those other tests I had taken, the assistant accountant, I was appointed on that list at the sum of four-thousand dollars a year and continued that until March of 1957.

[00:10:04]

Around January of 1957, Jim Clynes, the fellow who got me into law school, said, "Michael, you should not stay in the Police Department, going to law school at night. A friend of mine, Tom McCoy, has an opening at the Judicial Conference, go see him." So I did and Jimmy, having given me good advice in the past, I took his advice. Tom offered me the job, a cut in pay, thirty-eight hundred dollars a year, but I took it and I said, "Gee, this will be great, when I finish law school, I'll have a great resume, and off I'll go."

We were married in June of that year and I continued working at the Judicial Conference as a clerk messenger, all the way through law school and of course the rest is history. I retired in August of 1995.

MM: That's a great story.

MF: That's where it all began.

MM: Mike, you mentioned you were one of thirteen people in the original office of the Judicial Conference. Talk a little bit more about some of those people. Tell us about Judge Johnston and how he came to be the state administrator.

MF: Judge Johnston had been a Justice of the Supreme Court. At one time, he was in Congress, and later he was elected to the Supreme Court. Then he was designated as an Associate Justice of the Appellate Division, Second Department, where he served until he reached the mandatory age of 70. Then he was appointed an official referee and served in that capacity until he was appointed as the first State Administrator of the Judicial Conference in 1955. He was a formidable man. He was a great raconteur and looked like a mean bulldog but had a heart of gold.

[00:12:00]

One of the things, as a law student, I was the first one in, and the *Law Journal* --

MM: When you first went into the office?

MF: In the morning, I'd get the mail and distribute the mail, but the *Law Journal* had the case of the day on the front page. After a couple of months, he said to me, "I want you to read that before I get the *Law Journal* in the morning." Then he'd ask me in and have me recite on the case, and if I didn't do it correctly he'd give it to me and say, "Read it again, then come in." Now, he did not like his picture taken,

but Larry Marcus, who was then assistant counsel, had bought one of these spy type cameras -- Larry was a great guy for gadgets -- and it was about the size of a cigarette lighter. So one day, he snapped a number of black and white pictures of Judge Johnston, and that's the one we have now, the only pictures we have of him, as a matter of fact, as the state administrator, and we'll make those available later.

MM: Did Judge Johnston know those pictures were taken?

MFM: No, he did not.

MM: He never knew.

MFM: He never knew the pictures were taken and we never put them up until after he had gone to his eternal reward. He also was a collector of umbrellas. Whenever it rained, he'd say, "Can I borrow your umbrella?" And of course, we'd all say sure. He lived in the Towers Hotel over in Brooklyn, and the umbrella never came back. But he was always very jovial, a great storyteller. He was born in Scotland, and his wife was a Catholic girl. And he used to talk about during the campaigns, that the Sunday before election day, a group would gather outside the late Mass, which would be the one most attended, and mention the opponent and say, "Did you hear? I understand that when he was in Canada, he burned down a convent with eight nuns in it." This rumor would spread throughout the neighborhood and by the time the poor opponent found out about, the election was over.

[00:14:00]

MM: And this was a story he told on himself?

MF: Well, he didn't admit that he was the one starting it, but he reported that that did happen. He also had a boat that he kept out there in Brooklyn in the marina, and he used to complain he didn't get to use it often enough. He was very, very studious about the law. He was very loyal to Chief Judge Conway, who had appointed him, and tried to carry out Judge Conway's mandate of doing justice and improving the court system. Of course at that time, the emphasis of administration was on civil matter. There didn't seem to be a problem or a backlog on the criminal side of the law.

MM: Times have changed.

MF: They have, they have. Judge Johnston was one to question when advice was given to him. He could change his mind and he often did after a good argument. Of course, the counsel, your father Tom McCoy --

MM: Before you move off Judge Johnston, just for one second, do you know what it was about Judge Johnston that led Judge Conway to appoint him?

MF: Well, one of the things, when he was Associate Judge, he oversaw the construction of the Appellate Division Courthouse at 45 Monroe Place. Again, I cannot verify this, but I do believe that they needed a little bit more space than the plot allowed for, and Judge Johnston convinced the architect that it would be all right to go over the line, which they did and the courthouse still stands.

[00:16:00]

He also was very interested in court administration and in justice, and that got Judge Conway's attention. Another story that I remember very vividly. At that time, court employees, state employees and city employees were not covered by

social security, but social security was offered and those that were not covered that were eligible were able to pay back a number of quarters and start collecting. One morning, he called me into his office and gave me a check, and I recall it was about eleven hundred dollars, a lot of money at that time, and he had told me to go down to the social security office down on lower Broadway, and showed me how much the check was and said, "Remember, now this is one of the best investments I'm ever going to make."

So I brought the check down and got a receipt, handed it in, and about six months later he called me in and showed me that he had gotten a check from social security, for back social security, of three-thousand, two hundred dollars.

MM: Wow.

MF: So that was -- and of course collected social security from then on, until he died.

MM: Tell us about some of the other people in the original office.

MF: Well, your dad, Tom McCoy, was the counsel, and the way the office was set up, the state administrator's office was on the Brooklyn Bridge side of 270 Broadway, and there was a door to the counsel's office, so they could see each other during the day. Tom was a great writer, was a fine lawyer, and he did most of the drafting of the reports and special projects that we did. Tom had a sense of humor which he kept hidden. We always felt that Mrs. McCoy was the one that had the great sense of humor, and Dad was always frowning.

[00:18:00]

MM: Do you mean in the office or outside of the office?

MFM: Outside the office. At that time, we had very little in-office parties. It took a few years before I was able to get the parties moved into the office.

MM: Change the atmosphere.

MFM: Change the atmosphere. Al Delaney was the administrative officer. Al came from Brooklyn, had worked in Albany during the War, and he had vast experience with the bureaucracy of the State, and he was the one who set up the payroll, set up the budget operation for this fledgling organization. Al was very devoted to your Dad, a good sense of humor, and he knew, as we say, knew his way around, and that got the organization going and kept us at it.

The secretaries, Pauline Garvey, was Dad's secretary and Ann Higgins was Judge Johnston's secretary. They were both classically trained secretaries of the time. Great taking shorthand, great on the phone, very protective of their bosses and very, very nice ladies. Neither one of them had any children. Mrs. Higgins was a widow. Pauline's husband was a lieutenant in the New York City Police Department, and they were very devoted to each other.

Ernestine Barish was the chief statistician. She had been employed by the Judicial Council before, for many years, going back to the '30s. Ernestine was a very assertive lady, you never had any question about what was on her mind, and she was insistent that statistics be correct.

[00:20:11]

She was assisted by Emil Verderber. Emil was a very interesting fellow. He had survived the Battle of the Bulge, in a tank outfit, and he decided to get a Master's in economics at NYU at night. He was a very, very good student and we spent

hours discussing the theories that his professors were teaching on economics, and of course disagreed with most of them, but Emil was successful and did get his degree. In fact, he married late, and he married one of the keypunch operators, as a matter of fact.

MM: Nice.

MFM: Emil retired about the same time I did, and he is still around. Then, Larry Marcus. Larry went to Dartmouth and Harvard, of course Dad, Harvard as well, and Larry, towards the end of the War in Italy was flying P-38s. P-38s airplanes, if you remember them, had two fuselages with the pilot's seat in the middle of the wing, and the propellers turned opposite to each other. A very difficult airplane to fly, because if one engine quit, you tend to flip the plane over. They were really young hotshots that flew these planes and Larry did that well and survived it. He lost the tips of propellers a couple of times but was able to bring the planes back. Larry, as I said before, was a great fellow for gadgets, a great interest in mechanics, and really was the one leading us into the mechanical age.

[00:22:05]

MM: Henceforth, the technological age.

MFM: Exactly.

MM: Eventually.

MFM: Exactly. Larry was the one who talked Judge Johnston and your father into going forward and getting the IBM machines to keep track of statistics. We started out in 1956/57, with two keypunch operators; Maria Tesarero? and Peggy Costa, and they had an 083 sorter and a 401 accounting machine. Larry created the punch

cards that were given the courts to fill out, rather than the old paper forms. As a result, we claimed that we could now keep track of not only what was being disposed of, but also what was coming in and what was pending, and it worked very well.

MM: Could you describe what the computer looked like? I have a very clear memory of when I was little coming in with my family to see this wonder. Why don't you describe it.

MF: The sorter was interesting. The cards that we used were 80-column punch cards. You could set the sorter to sort alphabetically or numerically, and what we did at that time, was we'd sort the cards by court. The 401 accounting machine was, I would say maybe about six feet wide, two and a half feet deep, and maybe about four feet high. It took the wide, fanfold paper, and how it was programmed was by using a board with wires, and you had a book that told you if you connected this hole to that hole, what it would read.

[00:24:21]

Larry Marcus would stay up at night and he programmed the board. We had a different board for each type of statistic we were running.

MM: Was Larry self-taught?

MF: Larry was self-taught. Emil Verderber also learned to some extent the program sorter, and this led to a little later on to the Judicial Conference becoming the repository for retainer and closing statements from the Appellate Division's First, Second and Fourth Departments, but more on that later.

MM: Anybody else in the office that you want to talk about at this point?

MF: At this point, I think that about covers the main actors and actresses.

MM: Mike, you mentioned before, the Judicial Council. Can you talk about how the courts were being administered in the mid-1950s that led to the forming of the Judicial Conference?

MF: Sure. The Judicial Council was more the counterpoint of the Law Revision Commission on the civil side. They did studies on such things as civil practice, CPA, and the judiciary law. The administration of the courts was run by the Appellate Division and by the courts themselves. Each court really was a domain unto itself. They set their rules of court, they set the times of court, and made the assignments between and among themselves, with the oversight, what there was, by the Appellate Divisions.

[00:26:12]

MM: So there was no uniformity necessarily within a judicial department or among the judicial departments across the state.

MF: Very little, very little uniformity. The PJs, Presiding Justices, would talk, particularly Judge Beldock and Judge Botein, in the First and Second Departments, but there was very little unanimity. It was all, this is the way we've done it. Then, the Tweed Commission --

MM: Before you move to that, tell us who was on the Judicial Council, who sat on that.

MF: The Judicial Council was again, the Chief Judge, and the PJs, and representatives of the trial courts, judges.

MM: So, although they met together, it was not with the aim of a uniform administration. It was more... your words --

MF: It was more to regulate the practice and procedures. In other words, to improve the practice and procedures in the civil law, the civil side, as we used to call it, the adjective law of the State. They did great studies. It was under the Judicial Council that class actions, the father of the class action study was made by Adolph Hamburger, but I think Lester Sachs, the name of the administrator of the Judicial Council, would not permit professors to attach their name to the studies. Paid them not too well, but if they insisted on the name, they didn't get paid for it. So that while the federal class action statute is based basically on Adolph Hamburger's work, he got very little credit for it over the years.

MM: When we were talking before filming the other day, you also mentioned to me, Board of Judges. Is that something that we should talk about now?

[00:28:05]

MF: Yes. At this time, in the First Department, for example, the Board of Judges at 60 Centre Street, Justice James B.M. McNally was the Chair at that time.

MM: And he was?

MF: He was a Justice of the Supreme Court and he was the Chair of the Board of Judges, elected by the judges. At that time, in the First Department, the Supreme Court judges were paid by the City of New York, and so were the court employees in the City of New York.. Now, the Board of Judges went to the Board of Estimate. The Board of Estimate was the equivalent to the City Council today in fixing the budget. They would submit a budget to the Board of Estimate, and if the Board didn't approve it, they would enter an order, and they had what they

called mandatory powers. When the judges signed the order, that's what the City had to pay. They did not abuse that power, but they used it with great aplomb.

MM: I cut you off before, when you were going to begin to talk about the Tweed Commission.

MF: The Tweed Commission was formed to study the Judiciary Article and to improve the administration of the courts. Harrison Tweed was a well-known attorney, very active with the New York City Bar Association. In fact, there's a room there named after him. People that served with him were, Bill Lynch was his counsel, Roger Hunting was also on that staff, and they were the ones that were working on the constitutional amendment, the one that eventually passed, that became effective September 1, 1962.

[00:30:00]

They were also the ones that drafted the legislation to create the Judicial Conference.

MM: Am I right, the Judicial Conference had started informally, parallel to the Tweed Commission, or was it --

MF: The Tweed Commission legislation that they suggested, drafted, started the Judicial Conference in 1955. That's when the Judicial Conference replaced the Judicial Council. Some administrative duties were given to the Judicial Conference at that time, and that was the beginning of what we know today as the Administration of the Courts, which led to eventually, a unified court system.

MM: Am I correct, that around the same time, or as a result of the Tweed Commission, and the constitutional amendments, there was also a revision of all the unconsolidated laws? Is that connected?

MF: Well that was recommended. In other words, that came of course a little later, with the CPLR. That was an outgrowth of that, with Jack Weinstein, then a professor at Columbia Law School, and Harold Korn and Dan Dissler were the principal architects of that. Numerous public hearings were held under the auspices of the Tweed Commission, to bring about the revision of the CPA.

MM: We'll talk about that, and the criminal code a little -- in a little bit more. Could you describe what was happening nationally in terms of judicial administration. Was New York in the forefront, was it lagging behind the other states?

MF: In some matters, it was lagging behind; in others, it was in the forefront. Vanderbilt in New Jersey was leading the charge as far as --

MM: He was the Chief Justice?

[00:32:02]

MF: He was the Chief Justice in New Jersey, and he came up with the different ideas. He was coming up with pushing for an appointed judiciary, as opposed to the elected, which we had in New York. He had various ideas of regulating the terms of court and also the assignment of judges. New York was slow to do that, but we eventually got on the bandwagon. Now, at the time of the Tweed Commission, the Judicial Conference was asked to draw up its recommendations, asked by the Governor to draw up its recommendations for court reform, and they did. One of the judicial reports sets it

forth and surprisingly enough, many of the recommendations they made, made it to the reorganization in 1962. Two of the things that did not make it was bringing the Court of Claims into the -- merging them into the Supreme Court, and merging the Surrogates Court into the Supreme Court. Many of the others, the establishment of the Family Court, consolidation of the courts in New York City, merging the County Courts in New York City, the four counties and General Sessions in New York, the criminal felony courts into the Supreme Court. They were the ones that eventually were enacted.

MM: Now, Judge Johnston remained with the Judicial Conference, for is it five years?

MF: Five years I believe, until his death. As I said, one day he was found dead in his hotel room over at the Towers Hotel.

MM: And then the appointment of his successor was determined by whom?

MF: By the Chief Judge in consultation with the Presiding Justices.

[00:34:02]

MM: We've talked informally, about some of the extraordinary achievements of the Judicial Conference. You've already alluded to the change in the Civil Code. Why don't you talk a little bit more about that?

MF: All right. As I mentioned, Jack Weinstein was the lead draftsman of the CPLR. The CPA had been its predecessor.

MM: That was the Civil Practice Act.

MF: The Civil Practice Act, and the Field Code, in a hundred years, were almost the same. The task force took a different view of it, and they broke the practice act into sections and rules, and the idea was that the sections would be more

substantive, if you will, on the procedures side, and the rules would be more fluid. What they envisioned was that the Legislature would have the power to change either the law or the rules, but the Judicial Conference was given the power to change the rules.

MM: What kind of things fell into rules, as compared to laws?

MF: Well, for example, I guess 4533 comes to mind, about what would be needed, admission of evidence in a small claims proceeding. The 3212, under the summary judgment. The more closely procedural type things. As a result, what would happen, if the Judicial Conference, with its advisory committee, submitted a resolution to the Legislature by February 1st. It would automatically become law, unless the Legislature, by joint resolution, decided to disapprove. This was used rarely but used a number of times, until later on, when the Judiciary Article, the judiciary law, was revised, and that power was taken away.

[00:36:18]

MM: Why was that?

MF: Not really sure. It was horse trading back and forth, when the administrative structure of the courts were being set up, some jealousy I think. But of course --

MM: Jealousy between the two branches?

MF: Between the two branches. What we should look at is that the CPLR became enacted. It was deferred for a year when the Legislature refused to go along with some of the changes that Judge Weinstein felt was the heart of the revision. Of course, I had mentioned Judge Weinstein, he was Professor Weinstein then, Jack is now a Senior Judge in the Eastern District of New York, and never shy to make

a point. At that time, he was not shy either and withdrew. As a result, the entire Civil Practice Law Rules, was turned over to the Finance Committee of the Senate, to finally revise. Bob Bentley, from Arcade, New York, and Ray Hackbarth from Syracuse, were the two staff members of the Finance Committee who oversaw the final enactment, and that's where the dead man statute came back in.

MM: Explain.

MF: The dead man statute, 4519, as I recall, provides that any conversations or transactions between the deceased and the person cannot be introduced because the decedent cannot come to court.

MM: And Judge Weinstein had not included that in the new CPR?

MF: Had not included it. Most academics opposed it, they thought it was antiquated, but it's still with us today.

[00:38:06]

MM: Because of the Finance Committee?

MF: The Finance Committee wanted it, and I think Austin Erwin was the Chairman of the Finance Committee at that time, and many of the legislators, many of the trial lawyers, wanted it.

MM: I see.

MF: So that's why that -- and that's what happened. Then, when the CPLR was enacted, the Judicial Conference was authorized to have an advisory committee to keep track of the amendments and keep the Civil Practice Law and Rules modernized, and there was an appropriation for that. As a result, both Bill Bulman

and I were appointed counsel to the CPLR Advisory Committee, and we, for the first time, received raises -- substantial raises -- which were very welcomed.

MM: And you continued with the CPLR Committee for how long?

MF: I continued that committee for many years, until I believe I became the Director of Education and Training in 1974 or '75. Bill remained as counsel and John Brosnan, who had joined us, has also stayed with the CPLR Advisory Committee. The Advisory Committee, the first Chair of the Advisory Committee was Bill Jackson, who was the son of Justice Jackson of the United States Supreme Court, who was a partner at Milbank, Tweed. Dave Peck, the former PJ of the Appellate Division, First Department, served on the Committee. Ray Hackbarth served on the committee, and I have a list, I don't recall all, but it was a very prestigious group. George Pratt was another member.

This committee filed a report each year by February 1st with the Legislature, keeping in mind their ability to recommend the amendment to the rules, and continued that schedule even after that power was revoked. Bill was a very, very --

[00:40:14]

MM: This is Bill Jackson.

MF: Bill Jackson was a very, very hard worker, a great lawyer, and I recall vividly, Bill Bulman and I meeting in his brownstone on the Upper East Side, on Christmas Eve to finalize the annual report of the CPLR Advisory Committee, while his wife and daughter scurried about, trying to get him off for a celebration.

He really devoted himself and did an awful lot for the improvement of the practice.

MM: Am I correct, there's a somewhat similar story in terms of the Criminal Procedure Law as well?

MF: Yes. When the Criminal Procedure Law became the CPL, under the Bartlett Commission, which oversaw both the Penal Law and the Criminal Procedure Law revisions, the Criminal Law Advisory Committee was set up. Pat Wall was the first Chair, and Bill Bulman and I served as counsel to that Committee. That was again, such people as Pete McQuillen, one of the foremost experts on criminal law, he was a member of that Committee, and Pete Preiser, Dick Denzer, and all these people.

MM: Dick Bartlett, was he involved?

MF: Well, Dick Bartlett did not sit on the Advisory Committee, but Dick had his fine hand in everything. Dick was known as "the fox," and he was well named.

MM: You told me a fascinating story about the beginnings of the Court on the Judiciary, which is the predecessor to the Commission on Judicial Conduct.

[00:42:05]

MF: Yes. There was a case out in Brooklyn, and I believe the defendant was the fellow by the name of Morsari, a young man who had been accused of killing a man by the name of Butler. The case was originally before Nat Sobel, who was one of the county judges at that time, but ended up before Judge Leibowitz.

MM: In the same courthouse?

MF: In the same courthouse. Judge Sobel tried a large number of cases each year, was known as very fair, very just. On the other hand, Judge Leibowitz had a reputation for being very stern and very unforgiving. The *Morsari* case ended up with Judge Leibowitz, for some reason which I was not quite clear, and Judge Sobel and Leibowitz had a public discussion in the hallway. Allegedly, one spat upon the other, the newspaper at the time played it up very big and it was the scandal of the time.

MM: What year was this?

MF: This was 1958 or '59. I believe it was 1959. The Judicial Conference had the power to convene a court on the Judiciary, so they held hearings at 270 Broadway in the conference room and brought in the assistant district attorneys -- Hoey was one of them -- and the defense attorneys, some of the court personnel who witnessed the discussion.

MM: Both judges were charged?

MF: Both judges were under investigation and as a result, the Judicial Conference decided to convene the Court on the Judiciary for both of them, it was the Leibowitz-Sobel matter.

[00:44:02]

Now, up to that date, a Court of Judiciary was in the Judiciary Article, in the judiciary law. It had never been convened. I had just finished law school and my civil practice instructor, Professor, Dr. Reich, had spent an hour on the Court on the Judiciary in our practice course.

MM: In terms of what it should be and how it should operate?

MF: Right. I thought that made a lot of sense. So, when we were -- Larry Marcus, Bill Bulman and I were told, well now we have to draw up how to convene the court, Bill and I went over to see Dr. Reich, and explained to him what we were about to do, and it was confidential, and we said, "What are the procedures?" He smiled and he said, "Mike, when you do it we'll find out." So, we went back and we drew up the orders, and it then came time to serve them. I still wasn't admitted to practice, Bill Bulman was, so we were given the task to serve Judge Sobel and Judge Leibowitz with the findings of the Judicial Conference, that the court was going to be convened.

So we trekked down to Brooklyn, and Bill walked in first and said to Judge Leibowitz, "Judge Leibowitz, I'm Bill Bulman; Mike McEneny has something for you." Judge Leibowitz's staff was very uncordial to say the least. They originally weren't going to let us in the room. He took them, growled, and we left, and we went over to Judge Sobel, and Judge Sobel stood up, welcomed us in, asked if we wanted a cup of coffee. We served him and of course, Judge Sobel and I became lifelong friends after that encounter. The Court was convened and it handed out a censure for both of them, and after that it was convened a few more times.

[00:46:08]

MM: And was it convened following the procedures that you and Larry and Bill had advised?

MF: Yes, yes they were. Fortunately, there was no precedent for anybody to throw in our face that we had overlooked. So that was one of the accomplishments. Judge Conway left at the end of that year, reaching the mandatory age of 70.

MM: Mike, among the other many accomplishments of the early Judicial Conference was the development of judicial education. Could you walk us through that?

MF: Yes. There was a push throughout the nation, to improve the education of judges, and through the impetus of the National Center for State Courts, there was a seminar approach, and there were some federal funds available. At that time, your father was the chief administrator and a classmate of his from Harvard, I think his name was Rod Perkins, was the counsel to General Electric. Now, General Electric had a training facility up at Crotonville, New York. Crotonville is where 9A meets 9, off in the hills, very hard to find, and Tom was able to get GE to permit us to use the facility for a four-day conference. We were the only ones, other than GE employees, who were ever allowed to use that.

Now, it was put together with approximately 100 judges -- mostly judges of the Supreme Court -- and were divided into four groups, and there were four panels on different aspects of the law, and on the panels were both judges, law professors, law deans, and there was a law professor who acted as reporter assigned to each group.

[00:48:15]

Now, each group circulated around, and so everybody had the same presentations, and ended up with a summary session in the morning of the last day. Such great legal minds of the time, Maury Rosenberg from Columbia, Dave Kochery from

Buffalo, Sam Hesson from Albany, Herb Peterfreund from NYU, Joe Bellacosa from St. John's, Joe McLaughlin from Fordham, Dave Siegel from St. John's, Peter Thornton from Brooklyn Law, Jerry Prince from Brooklyn Law. Jerry Prince was the author of *Richardson on Evidence*. These people were brought together and put together one of the finest models of judicial education in the country.

Now, interesting, as you know, the State of New York is not too pleased to be supplying alcoholic beverages, other nice things, but when we arranged with GE, and Treadway was the one who managed the residence hall, there was one set price, which included the use of the entire facility.

MM: You mean when you paid for food and lodging, you had use of the whole facility.

MF: The whole facility, and part of that was a recreation hall, and the recreation room had some ping-pong and some pool tables. Now, it is claimed that more judicial education was dispensed in the recreation building sometimes, than in the seminars.

[00:50:07]

Crotonville started in 1962 and became one of the most sought after invitations for the next 20 years.

MM: So originally, the judges were invited to attend.

MF: Correct. The Presiding Justices of the Appellate Divisions allocated the number to each of the judicial districts, and then the judges, the administrative judges, would select those that would come. In the beginning, only the judges could stay at the facility. The faculty had to stay down the road, oh about three miles, at a small,

nondescript motel. That had its upside and downside. The downside was somebody had to drive from Crotonville to the motel. One night, Pete Thornton, who was from Brooklyn Law School, later ran the summer program for Notre Dame in England, Peter had one eye, and Peter was the designated driver. We were going down 9A, and he said he closed the -- "Oops, I closed the wrong eye." But we made it and years later, when they put an extension on Crotonville, the faculty was permitted to stay at the facility.

MM: Do you remember what the reaction was of that first group of judges, at the end of the conference?

MF: Surprise at having been treated so well, the accommodations being so well, the staff being so gracious, and the caliber of the professors. The evaluations were extremely positive.

MM: What was your role in putting that together?

[00:52:01]

MF: The original one with Professor Kochery and Professor Rosenberg from Columbia was to assemble the materials that they wanted. We put a Crotonville book, a three-ring binder together, one section for each panel. Of course we had to obtain the permission of the copyright holders in order to do that, and my job was to collate those. And then also, through the years, the Supreme Court, as you know, would hand down their decisions right around June, when the conference was being held, as with the Court of Appeals. My main function was to hold my breath that no significant decision came down that would throw out our entire premise. That was my role.

Later on, my role increased when Rosenberg stepped aside and Kochery became the coordinator. He and I would select the academics and the judges, in consultation with your father, as to who would serve on the various panels.

MM: Did appellate judges participate, either as presenters or as students?

MF: Yes, some more than others. Judge Beldock often appeared, the Presiding Justice of the Appellate Division, Second Department. I don't think Judge Botein ever did. Doc Larkin from the Third Department was a frequent contributor, but usually it was the trial judges who were the contributors. Judge Breitel attended during his term, Judge Cooke attended when he was on the Appellate Division, chaired panels, when he was on the Appellate Division. Judge Hopkins from the Second Department was a frequent chair of the panels, but generally it was the trial judges.

There were many memorable moments at Crotonville. The night that Joe McLaughlin was to become Dean of Fordham Law School at midnight, we had a cake, which we celebrated way into the morning. There were many other occasions that were celebrated. There was a judge from the First Department, Judge Gold, who at night would stand and tell jokes, and he could tell jokes all night, two nights in a row, and never repeat himself, and never one was off color. Judge Beldock, who had had a stroke, but had been Juilliard trained, would sit at the piano and play with one hand, and you never knew he was playing with one hand. Ed Thompson, the former Fire Commissioner and Administrative Judge of the Civil Court, used to regale us with parodies of some of us. "Alice Blue Gown" was "My Black Gown," sung at the drop of a hat, asked or not. Dave Ross, who

was the Administrative Judge for the City of New York, used to hold court with his judges. Judge Ross's use of the King's English was limited, but it was a language that everyone understood.

There were nights -- we always had a member of the state police, BCI, a fellow assigned, just to make sure everybody was safe and sound, and one of the long serving BCI fellows was Dave Harding, who later became the head of the detail for Malcolm Wilson, when he was Governor, and later on, when he left, he went with Malcolm to the Bank of New York.

[00:56:13]

One night, in the recreation room, one of the judges had a little bit too much celebration and took umbrage with the then Chief Administrative Judge, Judge Bartlett, and decided to take a swing. Harding was there, I was there, I stepped in-between, took a couple of blows, and quieted them down and I went to Dave Harding, I said, "Dave, what did you do? You're here to protect us and I take the shot." He says, "Look, Mike, if he hit me, I would have had to lock him up, with you, you'll be all right." So there were many interesting nights.

[00:58:14]

I was the first up the next morning, to introduce the program, one of those mornings we were holding on to the podium, to keep the room still.

MM: And how much of that did my father know?

MF: Very little. We used to put him to bed early. I shared a suite with your father and we made sure that Larry Marcus and he shared their bathroom, Al Delaney the other. Dad was not too encouraging of the consumption of alcoholic beverage. Ee

had speakers, originally at lunch and dinner, and Dad was very impatient on the dais that if he was fed, he wanted to get started, even though the rest of the attendees had not been fed. We convinced Kay, who was in charge of the dining room, convinced her to serve the dais last.

We had great speakers. We had then Senator Keating, when he was trying to arrange the freedom of the hostages, before, and then later became a judge of the Court of Appeals. Father Drinan, S.J., before he was put out of the House of Representatives by Rome. Bob Moses spoke at lunch one day. Moses brought his own podium and once he found out there was press in the room, he handed out a speech and he just read it. He would not comment any further.

[01:00:16]

MM: Wow.

MF: We had Father Finley, who was the President of Fordham. I remember him speaking, he was retired at the time, and talking to judges now, who are in their sixties and on, about euthanasia, and saying that that has my attention because I'm getting to the age where I'm becoming a burden to the order, and I'd rather that He decide when I go, rather than my superior. That was one of the discussions that went through, leading up eventually of course, to the legalization of abortion in New York, which was hotly contested, which we were there for as well.

MM: Who made the decision or how was it decided to have press at judicial seminars?

MF: We tried not to have them but somebody leaked that Moses was going to be there.

MM: Oh, so it was for the speech, not for the sessions.

MF: No. We would not let them in the sessions at all, and we rarely let them in for the speeches. It was an idea, to let the judges talk frankly and let their hair down, without embarrassing themselves or being embarrassed.

MM: Sure.

MF: Bill Buckley spoke one time and we counted the number of words he made up in the course of his remarks. We had, as I say, Tom Clark, when he stepped down from the United States Supreme Court to let Ramsey become the Attorney General.

MM: And he himself was a big proponent of judicial administration, right, Justice Clark?

MF: Judicial administration and judicial education as well.

[01:02:00]

We had, you know, really great speakers, mostly selected by your father. He had a way of convincing to come and speak. One of the premier chairs of various panels, criminal law particular was Lyman Smith. Lyman Smith had a great knack of bringing the law down to the level, so the common man could understand. He also had quite a sense of humor. GE used to provide us with clock radios, and they were always the latest, but you needed a degree in at least electrical engineering to figure out how to set them and turn them off. Lyman, at one point, read from the directions one day, to the amusement of many.

Milt Gershenson was another reporter who had numerous stories of a humorous nature, that regaled. So, it was really, as I say, the premier educational program. At that time, we were running a program separately for the Family Court judges,

for the Surrogates, for the County Court judges, and of course our vast educational program, the town and village justices.

MM: And would those seminars be held in all localities?

MF: Usually the county judges and Family Court judges and Surrogates, we held either at the Gideon Putnam, the Sagamore, or Cooperstown. Usually, at hotels, I was there as the first director of education and training, to put the education programs together, and also to convince the judges to stay and listen. I carried a bosun's pipe to get their attention, and some of them still remind me of that.

[01:04:03]

MM: Something we also talked about, it's not necessarily as sensational in some ways as the Crotonville seminars, either in terms of the wild stories or in terms of what was accomplished nationwide with judicial education, but the topic of reclassification. Can you talk about, first of all what that was, why it was necessary, and how it went forward?

MF: Yes. The court system, prior to 1955, prior to 1960 really, was really balkanized, if you will. The localities paid, outside the City of New York, the salaries, not only of the judges but of the court personnel themselves. There were very few judicial employees on the State payroll, on the State budget. It was the Court of Appeals, the Court of Claims, and parts of the Supreme Court judge's salaries, outside the City of New York. There was a study done, by the Judicial Council, I think, in conjunction with the Tweed Commission. The judiciary law used to set forth the title and duties of many of the court personnel; court reporters, court clerks. They found that in each locality, the duties of the titles were different and

the pay scale was different. So, the Judicial Conference did a study of the various titles on the State payroll, and they did that around 1956/57. Shortly thereafter, they adopted some rules; after the amendments of 1962, they adopted rules that provided for time and leave.

[01:06:06]

There were rules for grievance procedures, time and leave rules, and career service rules, and they became effective in October of 1964. Before that, most of the Civil Courts closed for the summer, anywhere from Memorial Day to Labor Day, with a skeleton force for emergency motions, and people had vacations. It was felt that this was a modern age, not an agrarian society any more, and people should work, so they cut the vacations back to approximately six weeks for the maximum, and that of course upset some of the people, like teachers, that had different jobs during the summer. So, the senior court officers, those were the court officers that served in the Supreme Courts throughout the city particularly, decided to bring a lawsuit, and they hired Bill Kunstler, William Kunstler.

MM: Explain who he is.

MF: Bill Kunstler, besides being my professor at the law school for equity pleading, was one of the leading civil rights lawyers, that was the firm of Kunstler, Kunstler, and Kinoy. Kunstler was the one who tried the cause rather than the case. The first case of notoriety was the *Worthy* case, a fellow who had been charged with visiting Cuba without permission of the State Department. Bill tried that down in Virginia, as I recall, great notoriety, and as a result, he was hired by the Berrigans, by the Catonsville Nine, most of which cases he lost.

[01:08:08]

MM: And those were all during the Vietnam era.

MFM: Vietnam.

MM: Anti-draft.

MFM: Well, it was anti-draft, anti-war, and it was also just anti-authority.

MM: So Bill Kunstler brought suit on behalf of the senior court officers?

MFM: And it was brought before a three-judge bench, over in the Southern District, and it was very difficult getting him to focus on discovery.

MM: Do you remember what their claim was?

MFM: The claim was a violation of their prior practice and constitutional rights, it impaired their right of contract. He got up, I second seated Larry Marcus. We went over to the three judge bench and Bill got up, and he was an eloquent speaker, very, with long hair and waving, and he went on a great length about the *Dartmouth College* case. Larry and I are looking at each other and trying to remember what the *Dartmouth College* case had to do with time and leave rules. So, expected to respond to your opponent's argument, Larry writes me a note and says, "If you think of something, write it down." So he stands up and says, "Your Honors, I know I should respond to my opponent's argument, but I wish to defer." One judge turns to the other, and in a whisper, he says, "Good. I didn't know what the hell he was talking about." So I wrote a big note to Larry, "Sit down." He said a few words, sat down, and of course the case was thrown out. That was just the precursor of years of litigation, but mostly in the state courts.

[01:10:01]

Most of the classifications went through and that was when we tried to define, through desk audits, what the actual job did.

MM: What was being done in the locality, and how it transferred over into --

MF: A system. What we tried to do is come up with a group of titles that actually described what was actually being performed by the various people in the courthouse. In other words, what the clerk of the trial part did, as opposed to the clerk in the back office.

MM: So across the state, people were moving from being paid by the City of Poughkeepsie, or the county of Dutchess, to -- were the remaining paid by the localities at this time? So, we were just classifying.

MF: At this point, we were just trying to classify them, and we started in the City of New York, because that's where the large numbers were and where the disparity was. It affected people, because we put the titles into a pay scale, a pay grid, with a range, so it affected people's expectations. It diminished no one's salary but maybe diminished their expectations. So the number of appeals brought through Article 78 contesting these were legion. At that time, there was a librarian in 60 Centre Street, Jack Boyle, a very, very bright attorney, another Manhattan College graduate, and Jack was a soft touch. So the clerk, who might not be a lawyer, would come to the library to look up the law, and Jack would say, "What are you doing?" Jack, truth be known, drew the papers, and they were pro se, his name never appeared on anything, but they became so similar, that when I'd need an adjournment, I'd call Jack and I'd say, "Hey, in the *Gavin* case, we need another

two weeks. "Why are you calling me?" I said, "Come on, Jack." And then Gavin would call me back and say it was all right.

[01:12:13]

So, he probably shouldn't have been doing it, but it did lend some, at least, rationale to the pleadings that came, and some of them were successful and some of them we won.

MM: How did probation services play into this?

MF: At that time, probation, particularly in the City of New York, was under the Judiciary. In the city of New York, the Department of Probation was headed by a fellow, by John Wallace, and they not only had the typical duties of probation, but they also ran Spofford House and Manida Hall, which were the detention facilities, Spofford for boys and Manida for women or girls. It was, as you can imagine, very difficult to keep order and keep a dedicated staff in these. John Wallace was a great student and really knew the ins and outs of social aspects of probation, and tried very hard to instill that in the staff, but at one point there was a strike, and it was in December.

MM: Of probation officers?

MF: Of the people, the staff at Manida Hall and Spofford, and they refused to come to work. And we, John Sheehan, who was working with us as the labor relations officer, we obtained an injunction to stop the strike and send them back to work. Harold Stevens was the Presiding Justice of the Appellate Division, First Department, at that time, jurisdiction laid, for both of them being up in the Bronx,

and John and I went up, in the snow, to serve the leaders, but John Wallace kept begging us to hold off, because he was going to settle it.

[01:14:19]

At that time, Issy Dollinger was the District Attorney, but Burt Roberts was the first assistant district attorney. Burt heard about it and came over and sat there, and was ready to help any way he could, but Burt, impatient then as impatient now, said, "Come on, let's get going." John kept prevailing that he wouldn't. Harold Stevens got on the phone with me and says, "Mike, give them a half hour, then no matter what John says, serve it and go home." Well, 25 minutes later, they agreed to go back to work, and we didn't have to serve it. Burt was disappointed that there wasn't an opportunity to stand before the press and extol how law and order had been restored. But that led to thinking that maybe probation was more of an executive function than a judicial function. Of course right now, we're looking the other way again, but it made sense.

The probation officers were a tough group to supervise because on one hand, they were reporting to the court, but on the other hand, they were representing what the defendant had to say. So it was between a rock and a hard place

MM: Sure, sure. Mike, the Judicial Conference had responsibilities as well, with regard to court facilities, correct?

MF: Well, we did to some extent. The first foray into that was the Judicial Conference.

At that time, a member of the Judicial Conference was James B.M. McNally, who as I mentioned before, was chairman of the Board of Judges at 60 Centre Street, First Department. He was also a member of the Judicial Conference. He

commissioned an architect to draft signs, "In God We Trust," that could be mounted in every courtroom throughout the state. He came up with three or four designs that the Judicial Conference approved, and adopted a resolution that asked every court throughout the state to put that up, and eventually, 90 percent of the courthouses have that. That was one of his proud accomplishments.

MM: One of the ones he himself indicated that he was proud of.

MFM: That's right. Later on, when he went to the Appellate Division, I would meet him and he'd say, "Are the signs up?" He was a very regal man himself, every day had a fresh boutonniere, well into his seventies, used to box every day, at the New York AC. So, he showed his soft side by insisting that that take place. So that led, later on, to the interest in court facilities, when your Dad hired Prakash. Prakash Yerawadekar, an architect, trained in England, came. Prakash led us through some of the more difficult times of courthouse restoration, courthouse construction.

MM: I can imagine that the passage of the Rockefeller Drug Laws had a huge impact on court facilities, on court administration, and generally on everybody in the court system.

MFM: It did.

[01:18:00]

No one thought the laws were going to pass, but once they did, it was clear that they were going to cause a great increase in the number of felony trials.

MM: Can you explain what the Rockefeller Drug Laws were?

MFM: The Rockefeller Drug Laws provided for life sentences for possession or sale of relatively small quantities of controlled substances. The definition of those change

with the culture on the street, but cocaine, crack cocaine, were the two most prevalent ones. Marijuana, in large amounts, also led to draconian sentences, and the problem was that the judge had no discretion. If the defendant was found guilty of a crime, the sentencing law gave him no chance for probation or for a lesser term, and as a result, there were very few pleas because of the sentences that would be meted out.

Now, in order to meet the number of judges, the constitution limits the number of Supreme Court justices that could be elected from any judicial district. I believe it's one every 50,000 in population, or any fraction over 35,000. Clearly, many of the county districts, where the influx of the cases would be, could not meet that, but the Court of Claims Act, and the constitution provided a judge of the Court of Claims could be assigned to the Supreme Court, as acting justice of the Supreme Court. So the governor seized on that provision and amended the Court of Claims Act by adding Paragraph B, which initially added 19 additional judges.

[01:20:00]

Now, the judges had to be confirmed by the Senate, appointed, no election, appointed by the Governor, and then were assigned by the Administrative Board, in conjunction with the PJs, to hear these felony cases. Now, you not only needed a place for them to sit, but you needed a place for them to hold the court, so this led to the facilities.

We also had to do a training program for them, because many of these judges came from Family Court, from Civil Court, from various backgrounds, and together, Larry Marcus and myself, together with Judge McQuillan, put together a

program. Pete Preiser, who was one of the drafters of the statute, Dick Uviller, and Mike Juviller up at Fordham, and we outlined a crash course that would be three weeks. We got together up at Fordham in Joe McLaughlin's office, and we're hashing it out, and Arch Murray came as an emissary of the Governor and says, "The Governor only will allow two weeks of training."

MM: Meaning he wanted the courts up and running.

MF: Up and running that quickly, not three weeks but two weeks. I remember Dick Uviller sitting back and saying well, "How much reversible error can they commit in a week?" But anyway, the course went then, from early morning to about eight o'clock at night, and we put together a program and the judges then went out. Now, Prakash was brought in to help build the courthouses. Now, you need prison steel, which is very hard to come by, it takes a long time to forge, and that held things up, but Prakash developed contacts throughout the country where prison steel was being made for other jurisdictions, he was able to waylay.

[01:22:00]

So, for example, at 111 Centre Street, which was then the Civil Court Building, was split and made into principally Criminal Court to try felony cases, and this required dividing hallways for prisoner access and throughout the state. I don't recall the exact number of courtrooms that were created, but my recollection is 32, within a six month period.

MM: And of course they had to be staffed as well, you just didn't need a judge.

MF: Exactly. You not only needed court reporters, you needed court officers and we needed the court clerks, and we recruited them from both the civil side and the

criminal side. The cases, of course waiting for the cases, the indictments, to come through, these judges then were trying the ordinary, run of the mill, criminal indictments that we were facing at the time, to clear the calendar so we could handle the influx. Of course, the defense bar was not happy with this arrangement, because there were cases being tried and pleas were being not as easy to come by, and of course they challenged the constitutionality of the Court of Claims judges sitting on the Supreme Court. It went up to the Court of Appeals, and I think SAIS was the defendant and it was upheld, the constitution was upheld, and now I think we're up to Paragraph F. So there's a large number of Court of Claims judges acting supreme throughout the state.

MM: Who have moved beyond Rockefeller Drug Laws cases, correct?

MF: Correct, correct, and that soon happened, because some of the judges who were appointed to the Court of Claims, their facility for handling the drug cases were not as facile as handling, let's say an ordinary homicide case. So therefore, the judge that was duly elected, would be handling the drug cases, while the Court of Claims judge would be handling the normal calendar.

[01:24:13]

MM: Looking back, do you think that the executive and legislative branches didn't appreciate the impact on the courts, or they didn't care?

MF: I don't know if they didn't care, but they felt that we over-blew what the impact would be, and in fact we underestimated what the impact would be. Concomitant with the drug laws of course, was the starting -- I guess it was the Narcotic Addiction Control Commission. Irv Lang was the counsel to that, and the idea

was to divert people and to prevent the drugs going on, and for a while they were funded, but then the funding dropped off and the funding went from the DAC and NAC, to those organizations, back to funding the trial and the prosecution of the criminal cases.

MM: Mike, we know that society's ills eventually end up in court. Can you give us a sense of how drug-related issues have continued to play out in the New York State court system since the time of the original Rockefeller Drug Laws?

MF: Well, they played out many different ways. They affected, in the domestic relations area, many of the children were so-called "the crack babies." And then the abuse, the domestic abuse, grew out of the drug era, and as a result, the court system, under Judge Kaye, started the Domestic Relations Courts. We also started courts to address the petty offenders, like the Midtown Court, where people that were pickpockets, people that were doing minor larcenies in the Midtown area, rather than be brought down to Centre Street, were brought to the Midtown Court, where we had all the social workers, probation, drug counselors, people who could help them, welfare, to stop this chain.

[01:26:25]

Then, later on, we developed the Drug Courts themselves, and the District Attorney in Kings County Joe Hynes was one of the pioneers in this where, while he was very strict on crime, he also felt that these offenders -- these first time drug users particularly -- needed help, and if they got help, it would be much more helpful to society and much cheaper for government, if they could be treated, rather than go on to be incarcerated. It worked out reasonably well in the

experiments out in Kings County, where a person would be picked up for possession of a fairly substantial amount of a controlled substance, would be diverted to this drug court, where there would be counselors, probation, and maybe even residential treatment centers. The case would be put on, with the defendant's acceptance, agreement, and his counsel's agreement, put on hold, and if he completed the drug program, whether it be residential or a Daytop or something similar, the charges would be dismissed. It took a long time for the public, and the press particularly, to buy into this, because the theory in the Rockefeller area was these are killing our kids, these are killing our people, they're killing each other, we have to just lock them up and throw the key away.

[01:28:08]

MM: Mm-hmm.

MF: The press kept at that and it was very similar with the death penalty, that the only way to stop this crime spree was to have the death penalty and therefore, people wouldn't do it. One thing that everybody fails to realize, when somebody is going to kill somebody, he's not thinking what's going to happen, he's not thinking about going to court. So I've been convinced for years, that the death penalty was never a deterrent. It was retribution and of course, Judge McNally one time at a seminar for newly elected judges said, "One thing about the death penalty, it stops recidivism." He said it half in jest, but Marcia Chambers, a reporter for the *New York Times*, had it on the front page of the Metropolitan Section.

But the drug courts, the neighborhood community courts, that we have now, out in Red Hook as well, are finally coming to address people's social issues and trying to prevent the really draconian results of the Rockefeller years.

MM: I'm really struck, as you've spoken today, Mike, about how innovative and creative people involved in court administration have had to be from the beginning. When you described about, you know, when there were 13 people in the office and Larry Marcus, who was an attorney, is programming at night, all the way up through the development and the growth and the synergy of people sharing expertise and sharing ideas and sharing energy and sharing commitment, with the development of a more professionalized court administration, atmosphere, and structure. But it's still the same theme, that society keeps bringing problems.

[01:30:12]

The other branches of government keep presenting challenges and problems to the court system, and those who are committed, first to the Judicial Conference and now to the Office of Court Administration, are daily struggling with how could we meet this in a way that not only is just, but solves the problem.

MF: It is and really, what brought us into the modern age, if you will, was when Chief Judge Breitel appointed Dick Bartlett as the first state administrative judge, Chief Administrative Judge to succeed your father. Dick, as I referred to before, was known as "the fox," and he was very persuasive. Dick was the one that did something that none of us, who'd been laboring in the orchard of administration, ever thought was possible. He convinced the four Presiding Justices of the

Appellate Division, to vest their power, the day-to-day administration, in the Chief Administrator and the Chief Judge.

MM: No small task.

MFM: No small task, not done by statute, done by administrative order, and it worked. I mean, it was something that we, who grew up in court administration, knew the Appellate Division and the Appellate Division justices jealously guarded every piece of administration, so much so that the clerk in the Appellate Division had to be a higher grade than the clerk in the Supreme Court. The court officer in the Appellate Division was a higher rank than the court officer... So, for them to give the Chief Judge and the Chief Administrator the power over that was really a dramatic change, and that's what brought us to where we are today.

[01:32:06]

Judge Bartlett, an amazing man, a series of five-year plans, whether it be Dean of the Albany Law School or Chair of the Penal Law Revision Commission or Chief Administrative Judge, really, I think is one of the lions of court administration.

MM: You've worked with many, many extraordinary people. One of them I'd like you to talk about is Carmen Ciparick.

MFM: Carmen Ciparick came to us, her name at that time, her maiden name was Carmen Beauchamp. Carmen was working for Legal Aid in the Bronx. The Judicial Conference had, I believe seven deputy and assistant counsel. There was an opening, and your Dad had impressed upon us, being the father of a number of daughters, that women's place in the law had arrived. We did have, before Carmen arrived, a woman, Irene Soffer, who was the first woman assistant

counsel. She left for greener pastures and we advertised and Carmen came. Now at that time, of course the staff was small, we had a committee type interview.

What happened was we'd post the position, get the resumes, each member of the staff would review the resumes, come up with a recommendation of those to be interviewed. Larry Marcus and your father, Tom, would OK them, and we'd call them in. We had a conference room, and we'd all sit around the conference room, with the candidate at the foot of the table, or the head if you will, and we'd have their resume and we'd ask questions, ask them for a statement. The reason for this was it was such a small group and our duties were interchangeable. We wanted to make sure everybody could work together.

[01:34:00]

Carmen appeared, very self-assured, and don't forget, the people there, you know, as I said, I had served in Germany, Bill Bowman in the United States Army, John Brosnan overseas, and so we weren't the normal college crowd, the Legal Aid group, that Carmen had dealt with. But as a young lady from Washington Heights, she could handle herself. She came through the interview in flying colors, so we offered the job and she accepted it.

One day, she was doing the retainer and closing work, which was the junior assistant's duty, and was quite boring and quite laborious, but she asked for more.

MM: More work?

MF: More work and more challenging work, which was unusual for assistant counsel at that time. The big thing was to learn what you were doing and then hope. We had just established the Family Court Rules and Advisory Committee, and Jack

Isaacs was the counsel, and we needed someone to liaison between the Committee and the office, and we gave Carmen that assignment, and she was doing very well. Jack became ill at a critical stage and eventually he died, but Carmen took over and kept that Committee going and did a wonderful job.

Carmen, as I mentioned before, we teased her a lot, being the only woman on staff. We did refer to her as a girl once in a while, and we did also tease her about her ethnicity. We thought she was French, Beauchamp. A couple of guys from the Bronx, thought she was French, but it turned out, of course, she had a great heritage from Puerto Rico. She was never one to give up. She gave as much as we gave at her and moved on to do an awful lot of interesting things.

[01:36:22]

We had a federal case come up, *Tomasita Negron* in the Southern District of New York. Nobody wanted it; Carmen volunteered and took it and did such a great job that in the opinion, the judge complimented her on how she handled the case. Of course, Carmen then went on, was a star, and became counsel to the Criminal Court of the City of New York, under Judge David Ross, and then went on to become a judge of the Criminal Court, judge of the Supreme Court under extreme conditions. The Bronx had just broken from the First District, became the Twelfth Judicial District, and the people running the nominations neglected to read the election law closely enough and failed to file the petitions. So, she had to run as an Independent and won. Later, Governor Cuomo appointed her as the Associate Judge of the Court of Appeals, and as we say, the rest is history.

MM: The rest is history. How much credit do you take for her ascension?

MF: Well, she gives me a lot more probably than I deserve, but anyone who asks, she introduces me as the one who started the whole thing in the judicial branch of government. A wonderful lady and a very competent lawyer.

MM: Tell me what you're proudest of.

MF: What I'm proudest of. Probably proudest of Crotonville, proudest of surviving all those years without one day of having tenure, and having met and served some wonderful people. I served, when you look back at the chief judges, all --

[0:38:17]

MM: How many did you serve under?

MF: Well, it started with Judge Conway, Judge Desmond, Judge Fuld, Judge Breitel, Judge Cooke, Judge Wachtler, and Judge Kaye. Each one, as I like to say, never got wise to me, and I was able to stay. I also was proud of the fact that I was able to help people. I was always available for people. I used to arrive early, comparatively early, eight, eight-thirty, and rarely left before seven at night. So, I was always there before the judge went on the bench and I was there when he went off the bench. I answered such questions as where's my license plate or can I get another law clerk.

MM: Your remembrances of Judge Ciparick are a great illustration of how the personnel of the court system has changed over the years. Can you talk a little bit about that?

MF: Yes. It brings me back to Crotonville. Crotonville, Joe McLaughlin declared, was a monastic approach, because it was all men. There were suites of four, there was no accommodation for women. Once they built an addition, a second addition, we

did have single rooms. Before that, down in New York, Judge Margaret Magnum used to call me every year and say, “Well, Mike, I can’t come to Crotonville, but I want the material.” So every year, I’d get her the material and she’d be satisfied, nearly satisfied.

[0:40:09]

Then, when the addition was put on, I got a list from the Fourth Department, of prospective invitees, and I overlooked that on two of them were Mary Dolores Denman and Ann Mikoll. I sent the invitation out, over your Dad’s signature, and then oops. Well, we decided that broke the barrier. So those were the first two women to attend Crotonville, Judge Fuld was the Chief Judge at the time.

MM: They were probably just the right ones to break the barrier too, right?

MF: Yes. They were dressed to the nines and really added a lot to the discussion, and of course we became very friendly with them ever since. But then, after that, the floodgates opened and we had women there, and then in New York City, the Civil Court bench started to expand and more and more women were elected to that. The Supreme Court bench was slower to come on with women, and outside the City, the number of women, it took a long time before they came in. But also, the number of minorities started, both in the Civil Court, and then appointed as judges of the Criminal Court and the Family Court, and it became more and more diverse. Under Chief Judge Wachtler, we had established the Commission on Minorities in the Courts, but also one on Women in the Courts. They brought to the forefront, the fact that, you know, the old boys’ network was still functioning.

[0:42:01]

MM: Mm-hmm.

MF: Now, you'll find that, I think, the majority of judges in the civil court are women, a good portion of women at the Criminal Court are women, and Family Court are women. Family Court was first to increase the number of women outside the City as well. Now, you'll find that the Supreme Court and Surrogates, there were a fair number of women in those, which are different. But the jurisprudence, as a result of all this, surprisingly enough has not changed. We're still doing justice, sure we bring a different perspective to it, and of course as you know, after a while, the majority of the Court of Appeals were women, and it was still the premier appellate court in the country. I am the father of three daughters, and I don't find that surprising at all.

MM: At the same time that the bench was becoming more diverse, I assume that the employees of the Office of Court Administration as well were increasingly becoming more diverse, and there was actually an outreach. Am I correct?

MF: There was a very wide outreach. In fact, with the exams that were being offered, like for court officer or for court assistant, the entrance exams, we went out and had free seminars and lectured for the people on subjects that they might expect to find on the exams, to help, and usually in minority neighborhoods, to try to help them to achieve high enough grades, marks, on the exams. The exams also themselves were looked at to try to be gender neutral and to be neutral as far as race is concerned. A very difficult concept. As you know, it's still being litigated in the federal court here, under the fire department rule. We felt, you know, those

that were administering the test, really felt it was not prejudicial in any way, but yet, we had to change.

[0:44:24]

MM: One of the difficult issues that the court system faces today is the issue of judicial salary. Have judicial salaries always been an issue and a sticking point, and what has been your knowledge and part in that?

MF: Not always. Back when I started, back in 1957, the Chief Judge of the City Court of New York was paid \$25,000 a year. Now, he drove a Cadillac, and that was a lot of money. At that time, we'd sit, and we ate lunch in a place called Nelly's, one flight down, on Nassau Street, and Bill Bulman, myself, some of his classmates from St. John's, and we say, "Gee, if we could be making \$10,000 a year, that would be a lot." So I mention that to give you an idea of the spread. Now, unfortunately, over the years, the spread between the judge's salary and the lawyer's salary, just -- the judges stayed still and the lawyers started to pass them.

MM: Do you mean lawyers practicing outside the court system or also employees of the court system?

MF: Later on, employees in the court system. Now, when I was working, administering the payroll, we had a policy that for unrepresented employees, they could not -- their salary could not exceed that of a judge. Many years, the union that represented employees, did, salaries did pass, and some of the court assistants, law assistants, were making more than the judges they were working for. That was always demoralizing to the judges.

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We've worked for years, trying every way to keep the judges' salary in a parity, but once it got tied with the Legislature's salaries, and that happened, I guess, in the late '50s, early '60s, that every time the judges got a raise, the legislators got a raise. Now, the legislature was a part-time legislature. At that time, they were only in session three months a year. April 1st, April 5th, they were all out, on the way home, and whether they were lawyers, undertakers or anything else, they had the rest of their career, but the judges were limited. We did a number of bills over the years and got parity for judges, but it was always one step behind, and we never did catch up, for any length of time, with the Federal Judiciary, which has a much lighter caseload and much more commodious accommodations and more staff.

MM: Do you see this getting resolved in the Legislature?

MF: Not in this fiscal crisis, I do not. What Judge Kaye and Judge Lippman did, by coming up with the stipend, I mean it was an innovative way. They took a lot of heat for it but it did help, but of course it's not pensionable and that's a problem that many of the judges' faces. Many of the judges now are leaving in their mid to late sixties, for a number of reasons, and one is the death gamble. In other words, if they retire and take an option where their spouse will get the same as they do or what, it's all right, but if they die in office, they get a lump sum, and in this day and age, a lump sum based on the salary is not that much. So, we're losing a lot of good judges, seasoned judges, who ordinarily would stay around past 70, you know, the Supreme Court judges, and are leaving now because of this.

[0:48:12]

MM: And that has a trickle-down effect, because there is, I believe, an internal policy that the higher, unrepresented personnel of the Unified Court System, or the individual courts, are not going to surpass the judges as well.

MF: Exactly.

MM: There's a huge number of attorneys working in the court system, at top management positions, who have been frozen for many years as well.

MF: That's correct. Many of them now, there's talk of an incentive, and many of them are just waiting to leave, which is going to hurt the administration of justice, because these are the seasoned people, the people that have labored 30 years, 35 years, in the system, know the system, and are devoted to it.

MM: Right.

MF: It's very hard to replace that.

MM: Well I'm sure it was very hard to replace you as well, you are irreplaceable.

MF: Well, some say things went much smoother, the parties mightn't have been as much fun.

MM: You mean since you're gone?

MF: Yeah.

MM: I don't think so. Any last thoughts? Anything that you were hoping to talk about that we didn't touch on?

MF: I don't know, some of the things, retainer and closings, which was quite a -- in the negligent cases, which was quite an accomplishment, which we did touch on, but it's 50 years this year. Some of the reclassifications that went on, some of the battles that went on with that. The labor negotiations, the great accomplishments

of getting every employee in the state, from the county, city payrolls, onto the state payroll, on the same day we accomplished that, everybody got a check.

Maybe not the right check but everybody got a check.

[0:50:04]

MM: What year was that?

MFM: That was the Unified Budget Act of 1976, I believe, and it was, I believe it was April 12th, was the magic day.

MM: To be precise.

MFM: Right. That was, I think a great accomplishment, which very few people understood the magnitude of the job, because you've got to remember, there's 61 cities outside the City of New York, there are 57 counties outside the city of New York, and each one had their own payroll system, their own titles, and union representation. We were dealing at one time, I think, with 158 separate bargaining units. So, it was, I think, one of the great accomplishments, Cy Gordon and many of the people that put that together, Terry Collins, Jeanie Colucci, I mean it was something that had never been accomplished by government before, with such accuracy.

MM: Mike, thank you for your comments and your memories and your insights, and above all, thank you for your service to the people of New York.

MFM: Well, thank you, Marge, for putting up with me even when you were a little girl.

MM: Glad to do it.

**[End of Audio File]**