



INSTITUTE *of* JUDICIAL
ADMINISTRATION
NYU SCHOOL OF LAW

NEW YORK UNIVERSITY SCHOOL OF LAW –
INSTITUTE OF JUDICIAL ADMINISTRATION (IJA)
Oral History of Distinguished American Judges

Hon. Dennis G. Jacobs '73
U.S. Court of Appeals for the Second Circuit

An Interview with Former Law Clerk
Sally Pritchard,
Chief of Staff, Tishman Speyer

December 1, 2025

All rights in this oral history interview belong to New York University. Quoting or excerpting of this oral history interview is permitted as long as the quotation or excerpt is limited to fair use as defined by law. For quotations, excerpts or other uses that exceed fair use, permission must be obtained from the Institute of Judicial Administration (IJA) at, Wilf Hall, 139 Macdougal Street, Room 420, New York 10012, or ija.admin@nyu.edu, and should identify the specific passages to be quoted, intended use, and identification of the user. Any permission granted will comply with agreements made with the interviewees and/or interviewers who participated in this oral history. All permitted uses must cite and give proper credit to: IJA Oral History of Distinguished American Judges, Institute of Judicial Administration, NYU School of Law, Judge Dennis Jacobs: An Interview with Sally Pritchard, December 1, 2025.

**THE TRANSCRIPT SHALL CONTROL OVER THE VIDEO FOR ANY PERMITTED USE IN ACCORDANCE WITH THE ABOVE PARAGRAPH. Any differences in the transcript from the video reflect post-interview clarifications made by the participants or IJA. Footnotes are solely for the reader's information; no representation is made as to the accuracy or completeness of any of such footnotes.*

1 [START RECORDING]

2 00:00:18 SALLY PRITCHARD: Judge Jacobs, thank you for meeting with
3 me today. I am, as you know, Sally Pritchard. As your
4 former clerk I am so pleased to conduct your oral history
5 at the Institute of Judicial Administration here at NYU
6 School of Law, your alma mater.

7 JUDGE JACOBS: I'm very flattered to be part of this
8 program and delighted to spend the day with you.

9 PRITCHARD: Judge, you've spent your entire life in New
10 York City. From your perspective, how has the city shaped
11 you?

12 00:00:48 JUDGE JACOBS: You know, it takes about three months for
13 somebody who comes to New York to become a New Yorker.
14 And I'm somebody who's just been here. I was born here,
15 and I've never been out of it for more than one month at
16 a time. And then that was in force because I was on
17 trial. It's more my country. I mean, if I could live
18 somewhere else, I would have considered doing that, but I
19 don't think I can. I don't view myself as trapped here,
20 but I view myself as living in a small, vibrant country.
21 When I, when I spent my early years as a child, I was in
22 a very small neighborhood. And I think most New Yorkers
23 live in small neighborhoods. I, my parents lived on 96th
24 Street between Amsterdam and Columbus, on the west side.

25

26 00:01:39 And, I went to elementary school on 95th Street at West
27 End, like three blocks away. My father had his business
28 like a block and a half from that. And so, although I
29 grew up in New York City, I actually grew up in a very,
30 in a very small place. And my life has been an accretion
31 of different neighborhoods and different aspects of the
32 city. I'm not a New Yorker in the sense of being a
33 sophisticate, although probably I'm a snob without
34 knowing it. But I'm not a New Yorker who is addicted to
35 the theater, who spends all day in museums. But what I
36 love about the city and what keeps me here is the sheer
37 random stimulus of it. You can walk down any street and
38 it's interesting.

39 00:02:36 And of course, the people are interesting as well. New
40 York, New York was founded by the Dutch, and they were
41 very tolerant to people. And New York has always been a
42 tolerant place where all kinds of different people get
43 together. You walk down the street. It's interesting.
44 PRITCHARD: You mentioned your school at 95th and West
45 End. Could you talk a little bit about where you went to
46 school?

47 00:03:05 JUDGE JACOBS: Well, the elementary school was called,
48 it's still called, the Emily Dickinson School. And what's
49 interesting about that is they, they taught us poems by
50 Emily Dickinson, who's a very considerable poet. And,
51 ever since then, I have read poetry. It's a thing that I,

52 that I do. From there we moved to Queens, and, and then I
53 went to junior high school, and I went to Forest Hills
54 High School and Queens College. So I really have attended
55 public schools in New York from kindergarten through
56 college. And it didn't cost much.

57 00:03:50 PRITCHARD: And you had an older brother. Could you talk
58 about him?

59 JUDGE JACOBS: Barry was three years older than me. We
60 were in a nuclear family of four people, my folks and my
61 brother and me. Barry, Barry was extraordinarily bright.
62 Everything came easy to him. He was, he had, like, 150
63 IQ. But I never really competed with him or was envious
64 of him because our interests never overlapped.

65 00:04:24 He was a, a science person, and I could never learn
66 physics, math, or chemistry. He, he became an eye
67 surgeon, and I faint at the sight of blood. I never, his
68 brilliance was a big relief to me because it meant that I
69 was, like, the lesser light in the family. And that was
70 fine with me because it removed a lot of pressure.

71 00:04:52 And I think that, I think pressure is damaging unless you
72 can, you know, live up to it. And at the time, I just
73 couldn't. So, we were two brothers. Totally different. We
74 loved each other. And he's been gone since 2012. But we
75 never really competed with each other.

76

77 PRITCHARD: Judge, you mentioned you're not enjoying
78 physics, math or, I believe, chemistry. What kind of
79 student were you in school?

80 00:05:25 JUDGE JACOBS: Not a good one. Not until I got to law
81 school that I actually became a first-class student. I
82 couldn't learn math, and I couldn't learn chemistry or
83 physics. Many years after I graduated from high school,
84 an old friend from high school came to town. We hadn't
85 seen each other in decades. He, he was a science person,
86 and he became a psychiatrist in Michigan.

87 00:06:02 And as we reminisced about our days in high school, he
88 said, "you know, Dennis," he says, "I remember you used
89 to say, you don't believe that matter consists of atoms
90 with electrons going, flying, around a nucleus." And he
91 laughed. And I said, "Louis, I still don't." As for, as
92 for math, because I didn't do it well, I came up with a
93 00:06:35 theorem, Jacob's theorem, that if you had a column of
94 numbers long enough, it could be added up accurately
95 twice, with a different result. And I said, I've proven
96 it because I've done it. So, I was really, I would say a
97 poor person, because I excelled in English. But that was
98 much later. When I was in elementary school, I was in
99 trouble. I had, I had a stutter, which now manifests
100 itself as a little stammer. And, and I had trouble
101 reading. But both those things ultimately turned out to

102 be positive influences. In order to deal with the
103 stutter, my, my
104 00:07:34 teacher sent me to a speech therapy course, and we sat in
105 the speech therapy course – I must have been about eight
106 or nine – and the teacher was taking these five or six of
107 us through sentences with S's in them. And as I sat
108 there, I thought, well, that's not really, that's not
109 really for me. Afterwards I went up to the teacher and I
110 said, as you know, I have a stammer, I have a stutter, I
111 don't, I don't have a lisp. So, I really don't think that
112 all of these sentences with S's are really going to be
113 helpful for me. And she said, "don't worry." She said,
114 00:08:20 "it will. This is what you need." And it was a
115 revelation. I think most kids at some point get the
116 revelation that their teachers are not intelligent or
117 that some of them are not intelligent. And that gives you
118 tremendous sense of confidence that deep down, you're
119 smart. My other deficit was I was a late, a late reader.
120 I don't know why, somebody thought it was a form of
121 dyslexia, but it had certainly left me. But, I never read
122 a book until I was in junior high school. But when I was
123 in elementary school, everyone was asked to stand up and
124 00:09:09 give a book report. So, I stood up and I couldn't really
125 give a book report because I hadn't read a book. So, what
126 I would do is I would make up a book. I would make up a
127 book that I'd read, complete with a title and an author,

128 and I would describe the experience of, of reading it.
129 And I suppose now, the teacher must have known I was
130 doing this. But if I was the teacher, I would have
131 applauded it. And one of those books was *Photography of*
132 *New York from the Air* with text about what you're looking
133 at. And I remember giving that book report, making it up
134 entirely. And so many years later, I was at the Strand
135 Bookstore and on the remainder table I saw a book doing
136 exactly that. And I thought, that's really amazing.
137 00:10:05 And I thought of buying it. But then I thought, I've
138 already read it. I should add that being a slow reader
139 has not been a problem. I, I never accelerated to be able
140 to read very quickly. My wife is, she can read a book in
141 half a day, but if you're a lawyer, it's a good thing. I
142 mean, I will read a contract from the first words down to
143 the signatures, and, and I don't accelerate through it.
144 So, it's terrific for comprehension.
145 00:10:44 And, and I think it makes a good lawyer. So, all of these
146 problems I had when I was a kid, they turned out to be
147 things I grew out of. I think most kids grow out of their
148 problems.
149 PRITCHARD: Judge, in school and high school, who was your
150 most influential teacher?
151 00:11:06 JUDGE JACOBS: Well, when I was in high school, I was on
152 the student newspaper: Forest Hills High School Beacon.
153 And the faculty advisor was James J. Kernan. And Kernan

154 liked what I was producing, and he practically gave me a,
155 a column in the newspaper. But his tremendous influence
156 on me was he said, "if you want to know how to write,
157 read The New Yorker." So, in 1959, I subscribed
158 00:11:37 to The New Yorker. And, and he said, "in particular, read
159 the works of E.B. White." And that has been tremendously
160 influential, because E.B. White is a terrific writer. His
161 stuff still stands up. And that was great advice. Not to
162 mention that it was advice given to a kid who deduced
163 from that that my teacher cared about me and about my
164 writing. So, I'll always remember Mr. Kernan with, with
165 affection.

166 00:12:18 PRITCHARD: After college, you earned a master's degree in
167 English literature here at NYU. What was your area of
168 focus in your master's program?

169 JUDGE JACOBS: I took a lot of survey courses because I, I
170 wanted to have a frame of reference in English literature
171 and centuries. Toward the end, my focus became the

172 00:12:42 Victorian novel, which I, I still read them. They're
173 still compelling. And that was my area. I had other areas
174 of focus, but that was, that was my concentration. It was
175 unwise because when I wanted to get a job teaching in
176 college, it wasn't great that I studied Victorian novel.

177 00:13:12 Victorian novel scholars were thick on the ground and
178 nobody had a vacancy for that.

179 PRITCHARD: What about the Victorian novel appealed to
180 you?

181 JUDGE JACOBS: Well, the Victorian period appealed to me
182 because the Victorians were very like us. They were
183 living in a time of tremendous technological and
184 sociological flux. And they were never able quite to
185 catch up, to make the transitions that their creativity
186 and inventiveness was creating. I mean, you had, the
187 Industrial Revolution was producing a large, powerful
188 middle class, parliament was being opened to, to
189 minorities, and you had gigantic developments in
190 00:14:06 transportation: the, the railroads. And then soon after,
191 ocean liners, and the, the telegraph, the, the
192 transatlantic cable, and these seemed like amenities.
193 These are desirable things, but it's not easy for
194 hidebound society to adjust to them. And every society is
195 hidebound because every society has expectations and
196 orientations. And, and they lived in an era like our own,
197 00:14:50 where we don't seem to be able to catch up with the
198 improvements and excitements that are being generated
199 around us.

200 PRITCHARD: Who was your favorite novelist?

201 00:15:01 JUDGE JACOBS: Then and now it's, it's Trollope. And, for
202 different reasons. Trollope is a great novelist for
203 lawyers. The first book I read by him, *The Warden*,

204 deals with all kinds of issues that lawyers deal with.
205 Then later he wrote a novel called *Orley Farm*, which
206 dealt with property law. He was criticized for that book
207 because lawyers who specialized in it said he didn't
208 understand it and his legal premise was wrong. So later
209 when he did another legal novel, *The Eustace Diamonds*,
210 he, he retained a solicitor to give him a, an opinion
211 about the legal issue that was at the heart of the case.
212 00:16:03 And it's printed in the book as if to say, "don't
213 criticize me now." I think that Trollope dealt with
214 important questions of how to conduct yourself as a, as a
215 gentleman. And that includes how to conduct oneself as a
216 woman who has to make decisions not only about personal
217 life, but about, about morals and character. He was a
218 very practical person, by the way. He was a, he was a
219 high official in the postal system. He invented the
220 pillar box: little red boxes you see all over London.
221 00:16:50 PRITCHARD: While you were in graduate school you taught
222 English at Queen's College and I think elsewhere. Can you
223 talk a little bit about your experience as a teacher?
224 JUDGE JACOBS: Well, I didn't teach for long and, and I
225 didn't think I was all that good at it. A friend who
226 overheard two students talking about whether to take my
227 class heard one of them say, "well, he's very funny,
228 00:17:16 but he's a very tough grader." I was happy to hear that I
229 was amusing the class, because fighting the boredom of

230 your students is one of the first challenges the teacher
231 has. But I thought I was a high grader considering the
232 material that, that I was grading. Which just goes to
233 show how you can assume that, that there's some absolute
234 standard. There isn't.

235 00:17:48 PRITCHARD: And you taught at one point outside the city.
236 Will you talk about that experience?

237 JUDGE JACOBS: Well, I taught in 1966, I think it was.
238 The, there was a lot of ferment in the civil rights
239 movement. I was not a player in it, but everybody in my
240 generation was committed to it one way or the other. And
241 I was invited to, to go to, to Texas, to Texas A&M as
242 part of a program that was sending eastern English
243 students to tutor students who were entering freshman
244 classes at predominantly Black universities. I went to
245 Prairie View A&M. And again, I didn't think I was all
246 that good, but I do know I helped at least one student.

247 00:18:52 And now, in retrospect, I think that's probably all most
248 teachers really achieve in the course of a, a few months
249 of teaching.

250 PRITCHARD: Could you talk about the one student you
251 helped there?

252 00:19:04 JUDGE JACOBS: Yes. She um, she was writing beautifully,
253 but she needed, she needed editing. She was extremely
254 ambitious. She was very smart. And um, and she had a lot
255 of personal charm that was not showing up in her writing.

256 So I was, I was working with her the limited amount of
257 time that, that we had because I had, like, seven or
258 eight other students.

259 PRITCHARD: Judge, to you, what is the lasting value of a
260 liberal arts education?

261 00:19:39 JUDGE JACOBS: I think a liberal arts education gives you
262 a frame of reference. You know, generally speaking, when
263 things happened, and, you know, when important works were
264 created and what impact they had. But the lasting value,
265 which is what you're asking about, is it lets you know
266 what you want to read next, and what you want to listen
267 to next, and what you want to see next. And if you have
268 the, the grounding of a frame of reference, then
269 everything you're seeing and everything you're reading
270 and everything you're listening to is adding to your
271 frame of reference and enlarging your life.

272 00:20:28 PRITCHARD: Earlier in our conversation, you mentioned the
273 influence that learning poetry at a young age had on your
274 thinking and on your writing. How did studying the
275 Victorian novel and your graduate work in English
276 influence your writing as a judge?

277 JUDGE JACOBS: I wouldn't want to say that my writing has
278 any fictional characteristics to it, but I think that
279 when you read excellent narrative, when you read
280 excellent prose, you become self-critical. And I consider
281 that I'm an indifferent writer, but an excellent editor.

282 I, I shape things. And when you read good poetry, you are
283 experiencing a tremendous compression of language and,
284 and different techniques for conveying thoughts and
285 feelings. And, when you read novels, you're picking up
286 the pace of narrative. And when you read the great prose
287 00:21:37 writers, you know what works in the way of argument and
288 exposition. And that's all I – it's really all I can say
289 about it. I've just spent five years reading literature.
290 I have to say that when I went to law school, I thought
291 they were wasted. I thought, well, now I'm going to learn
292 a profession and, and those years of reading were a form
293 of idleness and waste, but not at all.

294 00:22:11 For one thing, I don't think anybody wastes time. I think
295 everybody uses time. But, I certainly have used the five
296 years in which I read poetry and novels and, and
297 expository prose. I can't write like Gibbon. I can't have
298 narrative pace like Macaulay. I can't lay out a powerful
299 argument like John Henry Newman. But I've read them, and
300 I know what they do, and I know where I fall short when I
301 edit my own stuff.

302 00:22:48 PRITCHARD: Why did you leave academia for law school?
303 JUDGE JACOBS: Unemployment. As I said earlier, my field
304 of study, Victorian literature, was really not much in
305 demand. And well, while I was teaching, four or five of
306 my fellow teachers, young beginners, were leaving the
307 profession for much the reason I felt pushed out, to go

308 to law school, and it seemed like a good idea at the
309 time. And, when I took the LSATs, for the folks who
310 graded it thought I would make a good lawyer.

311 00:23:40 So I thought, that's a good idea. So, I crossed the, I
312 crossed Washington Square from the graduate school, where
313 I spent five years, to, to NYU law school.

314 00:23:57 PRITCHARD: Which professors at NYU influenced you most as
315 a lawyer?

316 JUDGE JACOBS: A lot of them. But two stand out. I took
317 contracts, which is the first course you take with
318 Sylvester Petro.¹ He was a powerful intellect. He was an
319 eccentric thinker. And he was very good at the Socratic
320 method, which, as you know, is not a game that two can
321 play. It's a contact sport. And, he had an approach to
322 00:24:38 his students that suggested that we, we were lazy and we
323 were unfocused, and we were ignorant. And one day,
324 He called us lotus eaters. Because I, because I knew
325 something about literature, I knew what that meant. It
326 meant we were lazy and drugging ourselves. So the
327 following day, a bunch of us stopped at a flower shop
328 around the corner and picked up fronds. And when the
329 class began, we just sat there kind of munching away at
330 these things and Sylvester Petro didn't say a word.

¹ [Sylvester J. Petro](#), (1917 - 2007) taught labor, antitrust, contract, and constitutional law at the NYU School of Law from 1950 to 1972.

331 00:25:28 He knew what we were doing and he wasn't going to give us
332 the satisfaction of, of even noticing it. He also taught
333 labor law, which I took. He had a very eccentric view of
334 labor law. Generally speaking, he thought that, that many
335 of the 1930s enactments represented an American
336 development of the popular – of the fashion for fascism
337 that was all around the world in Turkey and in Europe
338 00:26:07 and South America. I've always tried to live up to the,
339 the intellectual honesty that Sylvester Petro had.
340 There's a second professor who was really important to me
341 and that, he taught legal history: John Phillip Reid.² I
342 remember his class very well. One segment of it was about
343 slavery, and he had us reading opinions. Perfectly good
344 sound property opinions that made perfect sense. Only it
345 had the arresting and evil feature that the property was
346 human. And I remember being stunned by that.

347 00:27:12 How law can be technically sound and yet, and yet evil.
348 The other part of his course that I enjoyed a lot was
349 mining law. These were a bunch of rough and ready guys
350 out in the West prospecting for gold. And they had a
351 problem because they all had their little patches of
352 land. And if you found gold close to somebody else's
353 property, they kept an eye on you because they didn't
354 want you taking any gold from their property. And they

² [John Phillip Reid](#) (1930 - 2022), was a leading scholar of American legal and constitutional history, teaching at the NYU School of Law for over fifty years, and compiling an oeuvre of twenty-six books and one hundred articles.

355 had to develop a way of dealing with this because it
356 really wasn't fair. If I found gold and was going here,
357 00:27:59 why should the person next door know that gold is right
358 there? So, the rule was that if you were going down or on
359 a level, you could follow the vein, but if it started
360 going up, it belonged to the person in the next
361 allotment. These very sophisticated legal arrangements
362 made by people who were not only not lawyers, but they
363 were all carrying guns and, and it was a revelation how
364 00:28:32 ordinary people, using the term to mean non-lawyers, can
365 come up with their own guiding principles of how to, how
366 to deal with legal matters that are very important to
367 them. It was a terrific course.

368 PRITCHARD: How did you meet your wife, Judith?

369 JUDGE JACOBS: Well, when I was uh, when I had to find a
370 cheap apartment to go to Moscow, one of my dear friends,
371 Manny, found me a \$70 a month apartment in his building.
372 00:29:12 It wasn't much, but it was \$70 a month. And he, he lived
373 there as well and he was dating Judith. And one day, as
374 he was coming up the stairs, it was a walk up and I was
375 going down, he introduced me to Judith and I felt at the
376 time that this person was going to be really important to
377 me. And, we, we hit it off. I mean, we just, it was
378 magical. And it solved all of our social problems because
379 we loved each other. And it's now been fifty-some odd

380 years since we've been married. And I think we still find
381 each other exciting.

382 00:30:02 PRITCHARD: Are you still friends with Manny?

383 JUDGE JACOBS: Yes. He's, he's a good friend and, and a
384 better friend, I think, for knowing that he did bring us
385 together.

386 PRITCHARD: Judge, I would like to ask you my favorite
387 interview question now, which is tell me about the jobs
388 that are not on your resume.

389 00:30:21 JUDGE JACOBS: Before I was nominated, the FBI conducts a
390 thoroughgoing investigation of you to find out if you're
391 suitable. I got a call from my father who had retired to
392 Florida, and he, he was happy the FBI had come by and
393 talked to him. And in the course of the conversation, he
394 said, "Dennis," he said, "what did you do in 1966
395 summer?" I said, "I don't, I don't think I remember." And
396 he said, "oh, I didn't either. I told them you really
397 didn't like working much." So, I said, "dad, why would
398 you say such a thing?" And he said, "well, it was the FBI
399 and they were asking" and in retrospect, he was right.

400 00:31:11 When I was a teenager, a job was found for me by my
401 uncle, who was a, an executive, the comptroller at
402 Abraham and Straus department stores. And it seemed odd
403 to me because I never asked for a job. It was somebody's
404 inspiration that Dennis ought to have a job. So,

405 Saturdays I would go, and I would, I would do filing of
406 invoices. And, and I really hated it.

407 00:31:48 I would do it letter by letter. But when I got to the
408 T's, I was thrown off because they, they had a lot of
409 clothing and they had teeny tots and tiny tots and tots
410 and teens and tip top and the, the alphabetization was
411 driving me crazy. And I realized from that job that I
412 have got to make a living doing something that doesn't
413 bore me. That was, that was a revelation.

414 00:32:25 Fortunately, after the Christmas rush, I was let go. I
415 couldn't have been happier. It was wonderful. I had taken
416 the job, I had done the job, and now I was free of the
417 job. I was back to idleness. There were other jobs that
418 that, that I did. But the one that was probably the most

419 00:32:53 important to me was as a messenger. I worked for the Jet
420 Messenger Company on 42nd Street, which catered mainly to
421 the advertising industry. And the advertising industry is
422 an industry that operates under huge pressure. This has
423 to be gotten there immediately – yesterday. So, I was one
424 of a cadre of four or five guys. We would, we would go
425 out and we would hustle things from one place to the
426 other. And I was all over the city.

427 00:33:25 And as I traveled around the city by subway and bus,
428 sometimes trotting, I was noticing what an incredible
429 built environment this is. And I began noticing that the
430 buildings were from different eras in different styles.

431 The different neighborhoods had different
432 characteristics. I got to really know the city that I
433 already loved. And that's probably my only hobby at the
434 00:34:01 moment is, is New York City and its history. So that's
435 what I got from being a Jet messenger.

436 00:34:08 PRITCHARD: What's your favorite building in the city?

437 JUDGE JACOBS: Well, it's the, it's the Woolworth Tower.
438 I, I work in the federal courthouse, which is designed by
439 Cass Gilbert, and he designed a number of other great
440 buildings in the city. And one of them is the Woolworth
441 Tower, which was built in 1913 and was the tallest
442 building until 1929 or so, when the, when the Chrysler
443 Building topped out. It is, it's Gothic.

444 00:34:43 It's probably the biggest Gothic building in the world.
445 And I see it regularly when I, when I go to work. It's
446 been outstripped by other buildings. But if you look at
447 it, it still thinks it's the tallest building in the
448 city.

449 00:35:04 PRITCHARD: It's amazing how different it is from the
450 Supreme Court building, the range that Cass Gilbert had,
451 right?

452 JUDGE JACOBS: Yes. He, he also designed the Supreme Court
453 building in Washington, which actually went up at the
454 same time. And there are certain design elements that
455 are, that are in common to it. But I, I've worked in his
456 building now for decades, and I appreciate it.

457 00:35:35 PRITCHARD: Judge, are there any contemporary buildings in
458 New York City you admire?

459 JUDGE JACOBS: Well, the, the Gehry building with its
460 wind-shaped surfaces, down, I think on John Street,³ is,
461 is a fabulous building. And I've been watching the, the
462 JPMorgan building go up on Park Avenue. At first, I was
463 sort of doubtful about the fact that it looms out there
464 on about six or seven pylons, but I, I've just been
465 reading that it, that it had to be that way because
466 there's trains underneath, and there are only a few
467 places where this huge building could possibly be
468 supported. So I've come to the conclusion that it's a

469 00:36:26 triumph. And, I'm looking forward to, to seeing it. When
470 I was working with the renovation of the federal
471 courthouse, I expressed an interest in the, the Hearst
472 building which was going up on 57th Street and Eighth
473 Avenue. And one of the construction people said his firm
474 is involved in it. "Would you like to go?" So Judith and
475 I went and, and we saw it while it was being constructed,
476 and it was, it was simply amazing.

477 00:37:09 Although, I have to say, we were on a high floor with
478 nothing but orange netting around the perimeter. So we
479 were hugging each other. But, that, that building is, is
480 fabulous.

³ Judge Jacobs refers to the Beekman Tower designed by Frank Gehry at 8 Spruce Street in the Financial District.

481 00:37:23 PRITCHARD: And that's the one with the pedestal from the
482 1920s that William Randolph Hearst built?

483 JUDGE JACOBS: There was a pedestal which was designed to
484 be the base of a skyscraper that was never built because
485 the Depression intervened. And it's a flamboyant base.
486 And, so, Norman Foster, I think is the architect, built a
487 completely modern building that rises out of it. How the
488 two things work together, I don't know, but you have to
489 be there, and it does.

490 00:38:00 PRITCHARD: Judge, after law school, you joined Simpson
491 Thacher & Bartlett. What led you to that firm in
492 particular?

493 JUDGE JACOBS: In law school the big firms look pretty
494 much all alike. They're actually more all alike than they
495 00:38:17 admit and I was interviewing a whole bunch of them. And
496 at Simpson Thacher, I interviewed with Conrad Harper, who
497 is probably a young partner at the time. He eventually
498 became president of the association, the Bar of the City
499 of New York. And what we talked about was Edith Wharton
500 and Henry James. And, we had a great conversation. And I
501 thought, if that firm is filled with people like this,
502 that's where I want to be. Of course it was not filled
503 with people like Conrad. Conrad, in fact, was the only
504 one. But I was not disappointed. I found the environment
505 there to be supportive.

506 00:39:11 And, and people were teaching all the time. And since I
507 knew almost nothing, I was learning very very fast.

508 PRITCHARD: Who were your mentors at Simpson Thacher?

509 00:39:25 JUDGE JACOBS: I did a lot of close work with Pete
510 Schlesinger, who, one day, took a draft of what I had
511 done in a brief, sat me down, and tore it to pieces in
512 front of my eyes. And when that happens, you have this
513 00:39:48 desire to grab it back and say, "yes, yes, I know, I see
514 now what you're doing." And I did. he was a wonderful
515 editor. He trusted me to do what I was barely capable of
516 doing. I worked very closely with Barry Ostrager,⁴ who was
517 only a year or two ahead of me, but was a brilliant
518 talent as a lawyer with a lot of sense of, of strategy,
519 which is not how I was approaching law.

520 00:40:26 I, I was more a successful law student who was learning
521 to be a lawyer. Everyone was influenced by Roy Reardon
522 who was the head of the litigation department. And
523 everyone was influenced by the head of the firm, Whitney
524 North Seymour.⁵ He had been head of the American Bar
525 Association, and he was the most senior person there. And
526 he had this wonderful manner. I was like the most junior
527 person there and he was the most senior person there.

⁴ Barry R. Ostrager served for eight years as a New York State Supreme Court Justice in the Commercial Division, retiring in 2023. Prior to joining the bench, he led the litigation department at Simpson Thacher & Bartlett.

⁵ [Whitney North Seymour Sr.](#) led Simpson Thacher & Bartlett for over fifty years, served as an official of the Legal Aid Society, The Carnegie Endowment for International Peace, and Freedom House, and argued over fifty cases before the Supreme Court of the United States.

528 00:41:04 But when he asked me to do something, he would say,
529 "Dennis, d'you suppose you could find some time to do
530 this for me?" Whatever I was doing for him, I was doing
531 him a favor, and it is one of these really gracious
532 things. You never acknowledge the fact that he's paying
533 my salary, or that he has an eminence that I could not
534 have dreamt of achieving. There was just this
535 courtliness, this, this gentility that I don't think I've
536 achieved. But I tried to.

537 00:41:42 PRITCHARD: A gentleman out of Trollope.

538 JUDGE JACOBS: A gentleman out of Trollope.

539 PRITCHARD: Judge, how did you become interested in
540 insurance and reinsurance law at Simpson Thacher?

541 00:41:51 JUDGE JACOBS: In my career at Simpson Thacher, there were
542 things that I stopped doing because I didn't like doing
543 it. One was corporate law. I was a corporate lawyer for a
544 couple of years and I didn't like it because you, you
545 couldn't change anything. If this indenture worked five
546 years ago, why would you change it? It got through the
547 various regulatory agencies. And all I was doing, I
548 thought, was, as a junior person in the corporate
549 department, was just changing the names of the banks and
550 the names of the investors and the, and the issue.

551 00:42:30 And I never really got involved in the exciting part of
552 corporate law, which is negotiating deals. So I got out
553 of that and I got into litigation. I did general

554 litigation. At a certain point I wanted to get out of
555 securities law because it was largely class actions. And
556 I didn't respond to, to class actions.

557 00:42:58 I thought there was a lot of wheels spinning. There was
558 never a trial. There were a lot of, there's a lot of
559 billing. And around that time, my friend Barry Ostrager
560 and Mary Kay Vyskocil,⁶ both of whom became distinguished
561 judges, had developed an, an insurance practice, and I
562 joined that. It was growing.

563 00:43:31 And I loved insurance law because it is contract law. Not
564 only that, but it's contract law in which the contract,
565 if you represent the insurance company, is always
566 construed against your client. That meant it was as close
567 to pure contract law as you could find. That's as it
568 should be. People buy insurance to insulate themselves
569 from risk that they don't, they don't see coming.

570 00:43:57 So unless the language excludes or carefully defines
571 what's covered, ambiguities are construed against the
572 insurance company. And I liked that kind of challenge.
573 Reinsurance is really an outgrowth of that because once
574 insurance companies pay claims, they have to get
575 reimbursed, usually for virtually all of it, by the

⁶ Mary Kay Vyskocil served as a Bankruptcy Judge in the Southern District of New York from 2016 - 2019, after which she was elevated to a judgeship on the U.S. District Court for the Southern District of New York where she currently serves.

576 reinsurance and retrocessional arrangements that they
577 have. And I liked that work, too, because you were a
578 00:44:32 plaintiff. We represented the same insurance companies.
579 If you're a defendant, all you're doing is losing. If
580 you're a plaintiff, you can actually win. And, I found
581 that being a plaintiff was terrific. I remember once I
582 succeeded on a case, we were defendants, and I called the
583 client to say "congratulations, the time has run for
584 00:45:01 appeal, and we have now won." And the client said, "well,
585 that's all very well, but, you know, your bill is not
586 insubstantial. So, there's a limit to how happy I can
587 be." And I said, "well, if that's the kind of victory
588 you're looking for, you should do favors for people in
589 the underworld."

590 00:45:24 PRITCHARD: Could you talk about your relationships with
591 clients generally? How did you view the connection
592 between a lawyer and the client?

593 JUDGE JACOBS: I've always thought it was an awesome thing
594 to represent somebody else's interests. And never to let
595 them down. When another client raised a question about
596 how I could justify, you know, charging whatever it is I
597 was charging for my time, at the time I said, "when you
598 play golf or when you go to sleep, I'm worried about your
599 00:46:06 case because I'm your lawyer. I obsess about it, I worry
600 about it, and I try to win it, and that is what justifies
601 my fee." Actually, it isn't in a large law firm. What

602 justifies the fee is that whatever you don't know can be
603 supplied by somebody down the hall who is an expert in
604 it. So if you have a case that involves ERISA, you can go
605 00:46:32 to see somebody who, for whatever reason, chooses to
606 spend their lives dealing with ERISA problems or, or
607 bankruptcy, or products liability, or anything else. I
608 was always flattered that a client wanted my services.
609 Now, of course, I don't have to worry about that.

610 00:46:53 PRITCHARD: When you were in private practice, you were a
611 smoker. How did you quit?

612 JUDGE JACOBS: Oh, I quit on September 9, 1981. I, I was a
613 two-and-a-half pack-a-day smoker. I found that smoking
614 was wonderful. It stimulated my mind. It made me more
615 effective. The young people I talk to have no idea of the
616 advantages of smoking and I try not to tell them, but I
617 had to stop. It was going to kill me. So I, I
618 00:47:33 heard there was a doctor, a psychiatrist named Herbert
619 Spiegel, who was hypnotizing people into stopping
620 smoking. So, I made an appointment, and I went to see
621 him. And, he interviewed me, and then he left the room,
622 and he told me to close my eyes and rest, and the lights
623 were dimmed and I heard his voice in a creepy way,
624 telling me that my body was a temple and that I wanted to
625 stop smoking. And, and after a while the lights went up
626 and he came in and he said, "so how was it?"

627 00:48:14 And I said, "I don't think it had any effect at all." I
628 said, "I don't, it's just you, frankly, talking in a
629 creepy way. And, um, I don't think it's had any effect."
630 And he said, "well," he said, "you know, you're a lawyer
631 and lawyers tend to be analytical and not to have much of
632 an emotional life and maybe that's why it didn't work."

633 00:48:39 And I thought, I don't have an emotional life? You're a
634 doctor and you have an emotional life? And then I paid my
635 \$150 which in 1981 was a lot of money, and I left. And I
636 remember looking into it, the window of an adjacent
637 store, and I thought, for \$150 I can stop smoking through
638 lunch. And that's what I did. I just, I just never smoked
639 again. Did it work? I don't know, but Herbert Spiegel
640 was, he was an expert at this.

641 00:49:16 PRITCHARD: Judge, in March 1992, President George H.W.
642 Bush nominated you to the Court of Appeals for the Second
643 Circuit. How did that nomination come about?

644 JUDGE JACOBS: Well, it had never occurred to me to be a
645 judge. I considered I was overachieving, as a, as a
646 partner in a great law firm.

647 00:49:45 There was an easy way to explain it. I was once asked by
648 a sociologist, how people become federal judges. He said
649 "I can never write an article on it because people never
650 tell the truth." And I said, "well, I'll tell you the
651 truth." He said, "well, how did you become a federal

652 judge?" I said, "merit," but of course that's not the
653 whole answer. When I was at Simpson, for the first five
654 00:50:15 years that I was a partner, I was on the recruiting
655 committee. I was also one of the two Republicans in the
656 whole place. And so, when a number of Brigham Young
657 conservatives were arriving for the summer program from
658 Chicago and Yale, I was put in charge of making sure they
659 had a good experience and that they came back.

660 00:50:42 And these people were organizing the Federalist Society.
661 And they afterward became influential through Attorney
662 General Meese in identifying possible judges. And one
663 day, one of those young law students who became my
664 partner, Tom Bell, asked me if I ever thought about
665 becoming a judge. And I said, "no." And he said, "well,
666 would you consider becoming a judge?" I said, "what kind
667 of judge?" And he said, "circuit judge." I said,
668 00:51:21 "well, it seems like a great idea." I said, "who would do
669 this?" And he said, "I know people." And he did. And it's
670 not as though I then became a judge. I, I interviewed for
671 a seat and that seat went to Dan Mahoney, who was a
672 founder of the Conservative Party in New York State.

673 00:51:44 And I interviewed for a seat and it went, in DC, and it
674 went to Doug Ginsburg and I interviewed for a seat in the
675 Second Circuit, and it went to John Walker. I interviewed
676 for a seat in the Second Circuit and it went to Joe
677 McLaughlin, and then with about a year to run of the

678 first Bush administration, I was asked if I was still
679 willing to do it. I said "yes."
680 00:52:20 They said, "well, would you come down for interviews?"
681 And I said, "I've already interviewed with everybody." I
682 said, "if you want me, I'm available." And they said yes.
683 So, President Bush made a personal phone call. That's
684 what he did when he was going to nominate you. He would,
685 he would call you. And, and I remember the conversation,
686 it's, it's the only time I ever spoke to a president.
687 00:52:47 PRITCHARD: What do you remember about your Senate
688 confirmation process?
689 JUDGE JACOBS: There were, there were only two senators
690 there by the time it came to me. Ordinarily, nominees for
691 circuit courts go first because they can be more
692 contentious. But the district judges went first on the
693 day of my hearing because there was one of them whose
694 brother was a senator. And as a matter of senatorial
695 courtesy, since he was there, they started with the
696 district judges.
697 00:53:21 By the time it came to me, there were only two judges
698 left, two senators left, Senator DeConcini⁷ and Senator
699 Strom Thurmond.⁸ With Senator DeConcini I had a nice
700 conversation about the loser pay rule and whether it

⁷ Dennis DeConcini served as a U.S. Senator for the State of Arizona from 1977 - 1995.

⁸ Strom Thurmond served as a U.S. Senator for the State of South Carolina from 1954 - 2003.

701 should be instituted in the United States. And it was
702 easy answering the questions of Senator Thurmond because
703 the people at the Justice Department who prepare judges
704 for these hearings, they're professionals, they're there
705 from one administration to the other.

706 00:54:03 And they told me that Senator Thurmond's questions were
707 always very easy to answer. Like, "are you planning to
708 apply the Constitution as it's written or are you going
709 to make it up?" I said, "well, that's an easy question to
710 answer." They said, "not at all." Senator Thurmond had
711 such a deep South Carolina accent that if you were a
712 Manhattanite, it's almost like another language. And
713 there was someone there who would just imitate him. And
714 so, when he asked his question I was able to decipher it
715 and answer it.

716 00:54:38 PRITCHARD: How long did the hearing last?

717 JUDGE JACOBS: Seven minutes.

718 PRITCHARD: Seven minutes.

719 JUDGE JACOBS: There wasn't all that much that was
720 controversial about me. I mean, I was, you know, a law
721 firm partner. There were no issues or scandals that

722 00:54:55 arose. I never said anything very interesting. And I
723 certainly never said anything stupid.

724 PRITCHARD: Once you had been confirmed, how did you
725 prepare to become an appellate judge?

726 00:55:10 JUDGE JACOBS: When I was being sworn into the Southern
727 District of New York as a lawyer, I appeared with about
728 eight or nine other candidates for admission before Judge
729 Lloyd MacMahon. He was eccentric. He asked all of us,
730 "can I be sure that you have all mastered the Federal
731 Rules of Civil Procedure?" "Yes," we all said. "Can you
732 assure me that you have all mastered the Federal Rules of
733 Criminal Procedure?" "Yes." "Can you assure me that you
734 00:55:46 have all mastered the Federal Rules of Evidence?" "Yes."
735 And as I stood there I thought, if he's going to ask you
736 about bankruptcy, I'm just going to say no. But he
737 didn't. And, and then he said, well it's a great thing
738 I'm doing today, I'm doubling the number of competent
739 litigators in the Southern District of New York.

740 00:56:07 So I was, I was insulted at the same time that I was
741 admitted. That is one way that I prepared for becoming a
742 judge. I just sat down and I read the rules. And, you
743 know, it orients you. I also got stuff from friends.
744 Somebody then a prosecutor, somebody who did a lot of
745 defense work, articles. But ultimately, if you're a, if
746 you're a lawyer who has written briefs, you're pretty
747 well prepared at the get go.

748 00:56:51 PRITCHARD: What, if anything, surprised you about your
749 new job when you went on the bench?

750 JUDGE JACOBS: What is very surprising about an appellate
751 court is the extent to which three people, because in my

752 court we always sit in groups of three, think together,
753 have to decide things together. This is very unusual. I
754 mean, you get a string quartet and everybody's looking at
755 everybody to make music, but we don't confer ahead of
756 time. And, and so a big part of what you have to do is,
757 is diplomacy. If you don't listen to people, they won't
758 00:57:39 listen to you. And you have to know what their psychology
759 is. Some people are very tough about what they want.
760 Other people can be accommodated. You make a study of
761 your, of your colleagues, in the same way you make a
762 study of your, you know, your siblings or people in your
763 family, and it really becomes a matter of diplomacy.
764 00:58:10 I was very surprised about that, but I shouldn't have
765 been, because in an appellate court everyone has had a
766 career in which they are the decision maker. Whether
767 you're a law partner, as I had been, or whether you were
768 a prosecutor trying cases on your own, or a criminal
769 defense lawyer trying cases on your own, or people who
770 00:58:38 work in the corporate area and make decisions about who
771 to hire and whether to settle. Every single one of us has
772 made independent, sovereign decisions. And all of a
773 sudden you have to make decisions together. It's
774 unnatural, and it's a skill that you have to learn. And
775 you just can't, you can't assume that anybody will ever
776 agree with you about anything, and you have to be ready
777 to defend your position and listen to other people and

778 accommodate them because they're used to being
779 accommodated.

780 00:59:21 PRITCHARD: How did you adjust to the change in the style
781 of work, from a busy law firm to the relative quiet of an
782 appellate court?

783 JUDGE JACOBS: My chambers is really organized as a small
784 law firm. I mean, the law clerks are a combination of
785 senior associates and junior partners. That is to say,
786 they need to know everything about the case and the
787 record, and they need to be able to do first drafts of
788 things. And in the model of the law firm, you know, I'm,
789 01:00:00 I'm the partner, the senior partner, and the client is
790 the right answer. So I've always tried to organize things
791 in a way that's, that is familiar to me. It's not as
792 remote as you might imagine. I do have colleagues, and,
793 and on the Second Circuit Court of Appeals we like each
794 other. We always have. I've been there for thirty years.
795 01:00:30 There's hardly a nasty word said to anybody. Maybe people
796 are holding it in. I don't know, but that matters too. It
797 is, it's a collegial environment, and I've never, well
798 I'm not a social butterfly. So the amount of social
799 support that I get is fine. And, of course, I go home and
800 my wife and I talk about everything.

801 01:01:02 PRITCHARD: You refer to the judges as similar to your
802 siblings. How do you manage to continue to get along with
803 all of your siblings for so long?

804 JUDGE JACOBS: I once pointed out that a federal appeals
805 court is like, is like a family composed entirely of in-
806 laws. You didn't bring these people in and you don't even
807 know why they're there. Somebody else has made the
808 decision and now they're with you for life. So, you
809 better get on with it. And if you're, if you're wise and
810 you have social skills, you like them. And, and because
811 01:01:47 we work together, you rely on them. But it does become a
812 family. Partially because what you adverted to earlier,
813 being an appellate judge is not exactly a, a round of
814 social occasions.

815 PRITCHARD: Could you talk a bit about memo writing
816 amongst the judges and how your approach to writing memos
817 to other members of a panel differs from your approach to
818 writing an opinion?

819 01:02:28 JUDGE JACOBS: An opinion is, is written for the panel.
820 But until you know what everybody is thinking, you can't
821 begin to write something that is going to be signed by
822 two other independent thinking people. You also don't
823 know whether you're going to get a dissent, and you don't
824 know whether you're going to get a dissent on this
825 ground, or that one, or the other.

826 01:02:56 So it's the memo writing that, that enables you to draft
827 an opinion. And in the memo writing, you're not really
828 writing for the court. You're writing for yourself, and
829 you're trying to promote your understanding of the case.

830 And it helps that we have always discussed these cases
831 ahead of time before we write memos. We have our voting
832 conference, and if memos are being written it means that
833 in the voting conference we either haven't come to a
834 majority view or unanimous view, or somebody has said,
835 well, "I'm open to your views, can you try and convince
836 me?" Opinion writing is for the panel, the panel writes
837 01:03:55 for the court, and the court writes in the context of a
838 hierarchy, with the Supreme Court having teachings that
839 we follow, as well as our own instincts to follow the
840 Constitution and to read the laws or statutes. But memos
841 are much more freewheeling. If I'm writing to somebody
842 that I know well, I can be quite irreverent and blunt
843 01:04:32 and candid. If I don't know what impact my views are
844 likely to have, I'm much more guarded, much more
845 scholarly. Memo writing is like letter writing. You write
846 a different letter to different people. But I think that,
847 as in 'most everything that lawyers write, you should
848 start out knowing what it is you want to do and what it
849 is you want done and what you want said. Who to think?
850 How? So it has to be functional.

851 01:05:14 PRITCHARD: And persuasive.

852 JUDGE JACOBS: And persuasive. Yeah.

853 PRITCHARD: You were always very close to Judge Pooler.
854 Could you talk a little bit about your friendship with
855 her?

856 01:05:23 JUDGE JACOBS: Well, Judge Pooler and I come from similar
857 backgrounds, and we arrived at completely different views
858 of, of the law. I think for a long time anyone would have
859 said that she was the left wing of the court, while
860 people would have said that I was the right wing of the
861 court. The right wing of a New York court is, of course,
862 like the left wing of a court in Indiana.

863 01:05:55 But, although we disagreed with things, we liked each
864 other a lot, and we spoke on the phone very frequently on
865 Fridays discussing gossip, colleagues, what is being
866 fought over in the court, whether something is likely to
867 be upheld by the Supreme Court. A mixture of chitchat
868 and, and substance.

869 01:06:28 I remember once, I got off the phone with her on a
870 Friday, and before I had started the conversation, I had
871 just sent out a memo trying to take one of her cases en
872 banc. So she got off the phone and saw the memo, and then
873 she called me up and she said, "Dennis, I'm just on the
874 phone with you for half an hour, and you didn't mention
875 the fact that you're trying to take this case en banc."

876 01:06:50 And I said, "that's just business." And she said, "well,
877 what is this, organized crime?" We knew each other very
878 very well. And, and she died quite a few years ago. I
879 still miss her, as I miss a number of other judges on the
880 court. But we were specifically, and for a long time,
881 very close.

882 01:07:20 PRITCHARD: Judge Mahoney, who you mentioned earlier, was
883 also a close friend. Could you talk a bit about him?

884 JUDGE JACOBS: Judge Mahoney was a very, very, humorous
885 person. And, he had a very infectious laugh. And when we
886 would be in touch on the phone to discuss business, when
887 I got off the phone, I was practically immobilized by, by
888 having spent so much time laughing. He was on the court
889 for a tragically short period of time. When I was a,
890 01:08:02 when I had been nominated, one of the things I did to get
891 ready was I had, I had a long lunch with him and he told
892 me a lot about the court and, and he made it very plain
893 that serving on the Second Circuit was a huge pleasure.
894 And that relaxed me a lot.

895 01:08:24 PRITCHARD: You mentioned a moment ago your effort to take
896 Judge Pooler's case en banc. You have made a concerted
897 effort over the course of your time on the court to
898 normalize en banc review of cases. Could you explain why?

899 01:08:42 JUDGE JACOBS: For a very long time, the Second Circuit
900 has gone en banc many fewer times per year than almost
901 any federal appeals court in the country. Over time, this
902 has transmuted from being a failure of the court to be
903 able to mobilize to go en banc into one of our traditions
904 of we don't go en banc. I mean, that's in the statute and
905 it's in the rules. Why wouldn't you do this?

906 01:09:13 The explanation could be that we're never wrong. I don't
907 find that convincing. I think if mistakes are made, they

908 ought to be convinced. And I think people should be able
909 to, to get together to do that. Every time it would,
910 there would be an initiative to go en banc, it would get
911 very complicated. Somebody would say, "I want to go en
912 banc on this issue." Somebody would say, "I want to go en
913 banc on that case, but I want to go on the other issue."
914 Somebody would say, "if you're going to go en banc on
915 that issue, I'm not joining, but I would go..."

916 01:09:47 Between one thing and another, the chief judge who had to
917 decide whether we're going en banc could look at the
918 votes and not know whether we're going en banc. Not only
919 that, we wouldn't know what to ask people to brief. And
920 then when it came time to vote, we were all fractured.

921 01:10:08 Plus the thing was taking months and months and months of
922 time while people cogitated about it, thought and sent
923 memos about it, changed their position, changed their
924 votes. It was, it was a mess. So, at a certain point when
925 I was chief judge, I decided we needed protocols for
926 deciding these cases. And I appointed three colleagues:
927 Judge Wesley, who set up the New York Court of Appeals,
928 01:10:39 so he was on a court where everything was decided en
929 banc; and Judge Calabresi, who was the dean of Yale Law
930 School, if he could hold those people together, he could
931 figure out how to do en bancs; and John Newman, who knew
932 more about the sheer mechanics of our court and indeed
933 all appellate courts than anybody I know.

934 01:11:10 So, I told them to come up with protocols, and they did.
935 And they're not published because they're subject to
936 change. And, it mainly organizes our efforts, so that
937 people know when they should send a memo, how much time
938 they have to vote on what. And, and I don't think it has
939 actually increased the number of en bancs that we hear
940 per year, but it does mean it takes us much less time to
941 decide whether to go en banc or not. And very often, if,
942 if a panel sees that the decision of a particular issue
943 does not find favor with colleagues, they can change it,
944 and they can change it without going through the,
945 ramified apparatus of, of an en banc. So, in a way, we
946 01:12:16 do decide more issues en banc than we did before, only it
947 doesn't look like it.

948 PRITCHARD: And the structure or the procedure for doing
949 that is putting a hold on the mandate?

950 JUDGE JACOBS: Yes. In order to avoid having a mandate
951 issue, and the Supreme Court tells us once we've issued
952 our mandate, which is our instruction to the district
953 court, only in very rare and unusual circumstances should
954 01:12:44 we recall it. So, if you're thinking of going en banc,
955 you need to put a hold on the mandate. People used to put
956 a hold on the mandate and then it would sit there for
957 months while the people who wrote the opinion and signed
958 it are steaming because by the time, a few months after
959 you issue the opinion, you have to do more research in

960 order to find out whether the law has changed since then
961 and to, to recognize intervening precedents.

962 01:13:16 So the en banc protocols also deal with holds. And there
963 were a few other issues on which protocols were created.
964 These are understandings among us, which we all vote on
965 unanimously, as to how we're going to conduct our
966 business on matters that could divide us or cause us to
967 get mad at each other.

968 01:13:44 PRITCHARD: Probably a very good example for many
969 families.

970 JUDGE JACOBS: I think it is.

971 PRITCHARD: Judge, what do you look for in hiring law
972 clerks?

973 JUDGE JACOBS: I've been very successful in hiring law
974 clerks. I've had more than a hundred. I've only fired
975 one, I might add. I would usually hire a law clerk after
976 talking to that person for fifteen or twenty minutes.

977 01:14:15 And then my law clerks will talk to them, and then I'll
978 sit down with them and decide what we want to do. I look
979 for people who, in the twenty minutes I talk to them, can
980 discuss an issue of law that I don't know and explain it
981 to me. I look for people who are quick on the uptake,
982 that I can communicate with, who can express things to me
983 verbally. I've already looked at writing samples, so I
984 know that I'm not even talking to somebody who doesn't
985 know how to write. And then, then my clerks will have

986 01:14:59 reactions as well. I remember once, I told my clerks
987 after the fellow had left and "I'm thinking of hiring
988 that person," and they said, well, "we don't think so." I
989 said, "well what's wrong?" And they said, "he seems
990 arrogant." And I said, "do you think you're not
991 arrogant?" I mean, you're practically law students giving
992 advice to the federal appeals judge on how, whether
993 opinions should be affirmed that are written by highly
994 sophisticated and experienced district judges. I'm
995 arrogant with what I'm doing. This is just, this is not a
996 problem. It's a, it's a feature.

997 01:15:53 PRITCHARD: What career advice do you give your law
998 clerks?

999 JUDGE JACOBS: Of course that depends on what question
1000 they're asking. But the, at the risk of sounding
1001 sanctimonious, the one, the one constant is that people
1002 should do what interests, challenges, and amuses them.
1003 Because if you don't, you'll burn out. The legal
1004 profession takes a great deal out of you. And if you, if
1005 you allow yourself just to do what will cause your
1006 friends to be envious or will maximize your paycheck or
1007 will look good on your resume, you're wasting years of
1008 your life. You should do what interests you and
1009 01:16:50 challenges you and enables you to have a, a life of the
1010 mind, a life of family, and a balanced life, 'cause
1011 you're only going to have one.

1012 PRITCHARD: Judge, having been in private practice, when
1013 you go on the bench and you hear lawyers delivering their
1014 oral arguments, how do you approach that process?

1015 01:17:12 JUDGE JACOBS: Well, when you have spectators, they're
1016 usually grading the lawyers on, on their on their manner,
1017 their fluency, how they look. None of this matters to a
1018 judge. What you want in a lawyer is someone who can
1019 answer the questions that you have in mind when you mount
1020 the bench. On our court, possibly uniquely among the
1021 circuits, we don't discuss the cases ahead of time.

1022 01:17:44 So when I come on the bench, I don't know what the other
1023 judges are thinking. So, we will all try to use oral
1024 argument to promote a view that we have, or to test it,
1025 or to want to try to understand what the other judges are
1026 thinking sitting around us. So, the main thing for a
1027 lawyer to do is to try to gauge what, what the judges
1028 want from them, and that's answers to questions.

1029 Different judges have different reactions when people
1030 avoid answering questions. Some people will just keep
1031 pressing and pressing until the lawyer is a jelly. If
1032 somebody avoids answering my question, I think I already
1033 know what the answer is.

1034 01:18:48 An important characteristic of oral argument in the
1035 Second Circuit is, is courtesy. It's a conversation among
1036 lawyers who have all read the same texts, and some of
1037 them have written the briefs. And, if you are not

1038 courteous, the lawyers, some of them are going to get
1039 disturbed or panicked, and they're not going to be able
1040 to represent their clients right. And if they can't
1041 represent their clients right, then they can't answer
1042 your questions. So oral argument in the Second Circuit is
1043 very courtly and very courteous. There may be a lot of
1044 questions hurled at somebody, but it's, it's all in view
1045 of trying to solve the case.

1046 01:19:45 PRITCHARD: When writing an opinion, who is your intended
1047 audience? And I have a second question there. Does that
1048 answer change when you're writing in a really high-
1049 profile case? And here I'm thinking, for example, of
1050 *Windsor*.⁹

1051 JUDGE JACOBS: Appellate judges don't have much of an
1052 established audience. There's no clique that's waiting
1053 for the next Jacobs opinion in order to eat it up and
1054 discuss it. So I think, I think you're writing so that
1055 01:20:21 everyone understands with complete clarity not only what
1056 the outcome is, but that it was rendered on a fair basis.
1057 And for that I think everybody is the audience. It's
1058 often said that you should write an opinion to satisfy
1059 the person who's going to lose. But I was a practicing
1060 lawyer for twenty years. You're never going to satisfy
1061 the party who's going to lose.

⁹ *Windsor v. United States*, 699 F.3d 169 (2d Cir. 2012), *aff'd*, 570 U.S. 744.

1062 01:20:58 Nobody wants a lawyer who's a good loser. And if, if the
1063 issue is one that has drawn a great deal of attention, it
1064 really shouldn't affect the expression of the opinion.
1065 But *Windsor* is a very good example because *Windsor* held
1066 that the federal government cannot discriminate against
1067 same sex unions in, in the federal tax under the federal
1068 tax laws when those unions have been entered into in
1069 states that allow them and they're valid.

1070 01:21:43 And I tried to make the opinion as dry as possible so
1071 that there was no emotional content to it. I thought the
1072 answer was quite easy and the federal government could
1073 not discriminate against those unions. But I did
1074 something very unusual, and I did it because it was a
1075 high-profile case. I put three dots and then I said

1076 01:22:17 You have to recognize that this is an unusual result, and
1077 that, and that the law has not often accommodated same
1078 sex unions, but we are dealing here with civil law and
1079 civil status. And, and the state does not bless or
1080 sanctify a union. For that, I said, you have to go next
1081 door. Which was ambiguous because there were people who
1082 01:22:50 pointed out that next door to the federal court where I
1083 was sitting is a Catholic church. But churches and courts
1084 are usually on a square, and you can go next door, and,
1085 and I just wanted to make plain that I'm not weighing in
1086 on a, on a cultural phenomenon. I'm dealing with people's
1087 entitlements as, as citizens, to enter into unions,

1088 blessed or not blessed by the state, and recognized and
1089 enforced by the federal government.

1090 01:23:33 PRITCHARD: You have been described often as pragmatic. Do
1091 you have a unified philosophy of judicial decision-
1092 making?

1093 JUDGE JACOBS: I think it tends to make a judge ridiculous
1094 to talk about a philosophy. When I was on the bench for a
1095 couple of years, I was interviewed by the New York Law
1096 Journal, and I was asked what my judicial philosophy was,
1097 and I said, "it's all I can do to decide the cases one by
1098 one." In time, you realize that that's not entirely,
1099 01:24:16 that's not the full answer. Perhaps another anecdote will
1100 illuminate this. I was once on jury duty in New York
1101 state court, and, the veneer is questioned by lawyers,
1102 not by the judge. So everybody finds out what everybody
1103 does. So one of the lawyers said to me, when you're, you
1104 know, a federal judge and this case will be governed by
1105 state law, "will you be able to apply the law even if you
1106 01:24:49 don't agree with it?" And I said, "that's what I do for a
1107 living." And that comes close to philosophy. I think, I
1108 think my personal preferences, which I certainly have,
1109 and my personal views, I have no shortage of them, should
1110 not derail a case. Judge Easterbrook wrote an article
1111 01:25:22 years ago in which he said that after you've done your
1112 research and after you've tried to understand what the
1113 Constitution says or what a statute says, sometimes

1114 there's a lacuna. You just don't know in this one spot
1115 what the law is. And he said that some judges say, "oh,
1116 oh, boy, that's great. Now I can make it up!" And other
1117 judges are baffled and unhappy about it. And I like to
1118 think that I'm in the second category, not because I
1119 01:26:02 don't have views, but because I tend to be nervous about
1120 formulating a rule of law, because I know from fifty
1121 years since law school that as soon as you formulate a
1122 principle, the next case will embarrass it. It is very
1123 difficult to have the wisdom to come up with a principle
1124 01:26:38 of law that will withstand the twists and turns, the
1125 torsion that future cases will, will place upon it. That
1126 makes me a pragmatist? Perhaps.

1127 PRITCHARD: Judge, in 2007, you gave a speech at Fordham
1128 Law School called *The Secret Life of Judges*.¹⁰ What was
1129 that about?

1130 01:27:02 JUDGE JACOBS: My speech on *The Secret Life of Judges* is
1131 really not about anybody's secret life. I have a friend,
1132 I ran some titles past him, and I said, "what do you
1133 think is a good title for an article I'm writing?" And I
1134 read three titles, and he said, "*Secret Life of Judges*."
1135 And I said, "I haven't even told you what it's about."
1136 01:27:20 He said, "it doesn't matter. That's a great title." So, I
1137 used it. What I was saying is that it is well known, not

¹⁰ Dennis Jacobs, Chief Judge, U.S. Court of Appeals for the Second Circuit, [*The Secret Life of Judges*](#) (Nov. 20, 2006).

1138 controversial, that all judges are lawyers. We think like
1139 lawyers. We respect lawyers. We think that lawyers are
1140 very likely to arrive at the, at the right answer to
1141 things. And we therefore discount the influences,
1142 cultural and intellectual of other professions: the
1143 medical profession, the clergy, the financial world, the
1144 world of, of craftsmen and small businessmen.

1145 01:28:21 All of these should be extremely important influences on,
1146 on the understanding of law. But we don't have them. We
1147 have legal minds, and we think the legal mind is the best
1148 kind of mind to have. It isn't. There are better kinds of
1149 minds to have. The thing about a legal mind is that
1150 that's what you have to have when lawyers have to agree
1151 on an outcome and when judges have to agree on an
1152 outcome; we need to have this common vocabulary.

1153 01:28:56 But that doesn't mean that we should denigrate others.
1154 And I, and I left out the military. I mean, they are,
1155 this is a profession, and an old one and we largely
1156 disregard every profession but ours. And we've come to
1157 the conclusion that the more procedures you have, the
1158 more hearings you have, the more remands you have, the
1159 more appeals you have, the more legal expense you have,
1160 the closer you come to justice. But ask anybody who's not
1161 a lawyer and they'll tell you that's really wrongheaded,
1162 and I think it's wrongheaded too.

1163 01:29:39 PRITCHARD: I'd like to shift gears and talk about some of
1164 your other opinions now. You wrote a dissent in a case
1165 called *Southerland*¹¹ which dealt with a child welfare
1166 worker's liability under section 1983. What drew you to
1167 dissent in that case?

1168 JUDGE JACOBS: Mr. Woo, the child welfare worker, had
1169 entered a house with almost a dozen children, and they
1170 looked neglected, and they possibly looked abused, and
1171 there seemed to be no food in the house. And he, and they
1172 01:30:24 were, there was dispute about facts, but generally
1173 speaking, that, that's what he saw. That's what he
1174 perceived. And he, he took custody of the children. And
1175 the majority held that he should not have done that
1176 without getting a warrant from a court. And it was, it
1177 was a time of day when you, there was no judge on duty or
1178 it may have been on a Sunday. But in any event, I thought

1179 01:30:57 that we were giving an insufficient deference to the
1180 judgment of a person in another profession who has to
1181 make extremely important decisions on, on an urgent
1182 basis, and, and should not have been faulted for the
1183 decision that he made there. I pointed out that child
1184 welfare workers constitute a profession, that they have
1185 their own lives, that they cannot spend all day on one
1186 01:31:43 case. They have to, they have a large body of children
1187 that they're responsible for and they have an awesome

¹¹ [Southerland v. City of New York](#), 680 F.3d 127 (2d Cir. 2011).

1188 responsibility. Anyway, I, I lost because the majority
1189 went the other way. But a couple of years later, I was at
1190 a bar association event and I was talking to a woman.
1191 01:32:06 I didn't notice that her tag, her ID, said her name, last
1192 name, was Woo. And she said that she was the daughter of
1193 the defendant in that case and that, that my dissent had
1194 mattered a lot to him. And that, in fact, he had posted
1195 it in the breakroom of the child welfare workers. So, if
1196 I wondered whether it was worth dissenting, that was my
1197 answer.

1198 01:32:39 PRITCHARD: Could you talk about your dissent in *Husain v.*
1199 *Springer*,¹² where you famously disclosed that you had not
1200 read the majority's forty-four-page opinion?

1201 JUDGE JACOBS: This was a case in which students at a, at
1202 a college which was part of the City University sued the
1203 president of the college because she had enforced the
1204 campaign finance restrictions on a student election for
1205 the student parliament, or whatever it was.

1206 01:33:21 And there were very strict rules. You could only have so
1207 many posters. You could only have so much in the way of,
1208 of free food, pizza, whatever it is. But students on the
1209 school newspaper had devoted the entire newspaper to
1210 supporting one slate of candidates, and she said that,
1211 you know, that that sort of violated the campaign finance
1212 restrictions. She wanted another election. She was sued.

¹² 494 F.3d 108 (2d Cir. 2007).

1213 01:33:54 The students had all graduated. They had, nothing was at
1214 stake except nominal damages. And the thing was costing a
1215 mint. I mean, you have a college that would, that needs
1216 to spend money educating people, and they're busy
1217 litigating something that seemed to me to be foolish. So,
1218 I wrote a dissent that I admit was very self-indulgent.
1219 And it said pretty much at the beginning that I have not
1220 read the majority opinion. It's forty-four pages, and
1221 it's not worth the time of anybody with anything
1222 important to do. When it was published, I got a call
1223 01:34:44 from a colleague who said, "Dennis, you're going to have
1224 to take that sentence out." I said, "why?" She said,
1225 "because it's going to be in your obituary." I said, "is
1226 it really that good?" She said, "take it out." Well, I
1227 didn't take it out. And sometimes people would say, "is
1228 it true you didn't read the majority opinion?" And I
1229 would say, "did you?" Because if a dissent is really
1230 good, nobody will read the majority opinion.

1231 01:35:19 Of course, in the end I had to read the majority opinion
1232 because it was an issue of attorneys' fees. And so I, I
1233 had to read it. But it got a good deal of attention.
1234 Unusually, one of my law clerks came to me and said it is
1235 the subject of comments and blogs. So I said, "well, what
1236 are people saying?" And he said, "well, here's one." And
1237 it says, "we ought to have illegal immigrants as judges

1238 because they will do the work that Americans won't do.”

1239 And I thought that was such a witty and unfair attack.

1240 01:36:14 And anyway, I, that's the only time that I dissented

1241 without reading the majority opinion. I wouldn't want the

1242 reputation of not reading my colleagues' opinions.

1243 PRITCHARD: On the record.

1244 JUDGE JACOBS: On the record. And Guido Calabresi is okay

1245 with it.

1246 01:36:34 PRITCHARD: You were Chief Judge of the Second Circuit

1247 from 2006 to 2013. That was another role you obtained due

1248 to merit. What were your major initiatives as Chief

1249 Judge?

1250 JUDGE JACOBS: The main thing is that our courthouse at 40

1251 Foley Square had deteriorated seriously with a couple of

1252 renovations only, since 1936, when it was opened. And it

1253 was in, it was in a bad way. The water was coming through

1254 the walls. Water was leaking out of the pipes. There was

1255 01:37:28 lead in the in the drinking water. Nobody could regulate

1256 the heating and there was no air conditioning except some

1257 primitive devices that were built into the building and

1258 didn't work anymore. So my predecessor, Chief Judge

1259 Walker, arranged financing, a couple hundred million

1260 dollars to renovate the building. And the work began

1261 pretty much when I became Chief Judge and lasted for six

1262 of the seven years that I was Chief Judge. And as much of

1263 a torment as it is to be involved in construction

1264 01:38:14 in New York City, it was wonderful for me because I love
1265 buildings; it's a landmark. It was an opportunity for me
1266 to work on the preservation of, of a great New York
1267 building. And I was able to exert influence in the
1268 directions that mattered to me, chiefly that I wanted the
1269 building to look as it did in 1935 and not be, as it
1270 were, updated in any way other than the infrastructure.

1271 01:38:51 And that, that was done. And I'm very happy with the
1272 result. There were other things that I did as Chief
1273 Judge. But that's, that's the main one.

1274 PRITCHARD: Did you learn much about the building trade
1275 during that process?

1276 01:39:09 JUDGE JACOBS: Yes, I had a lot of meetings with
1277 architects and with contractors. And I had to ride hard
1278 on them because the progress, like every construction
1279 project in New York, falls behind unless somebody throws
1280 a tantrum, basically. I remember one meeting in which
1281 there was talk about setting up the, the scaffolding
1282 outside the building. And I said, "you're going to have
1283 01:39:40 to put scaffolding all around the whole campanile." And
1284 they said, "no, we're going to have sort of climbing,
1285 climbing platforms that will go up and down the building
1286 and we won't have to do scaffolding." And I said, "gee,
1287 that's great." I said, "when did that come in?" And the
1288 engineer was delighted to say, "the Romans used to do
1289 that." I had a great deal to learn about, about

1290 01:40:18 construction, and, but I knew something about getting
1291 things on schedule, and I was, I was very, very
1292 aggressive, very cautious. And I was watching the budget,
1293 which at one point did go out of control. But it's a
1294 government project, it's, it's very hard to make it come
1295 in under budget. I learned a lot about construction and
1296 I'd like to forget it.

1297 01:41:01 PRITCHARD: Judge, could you talk about your work on the
1298 Judicial Resource Committee of the United States Courts,
1299 which you served on for many years?

1300 JUDGE JACOBS: I was on that for seven years. I was chair
1301 of it for several, for several of those years. It deals
1302 with personnel policy for the, for all of the judiciary
1303 and for everybody who works in the judiciary. One of the
1304 main initiatives we had to deal with was that the, the
1305 network of laws, federal laws, that deal with
1306 discrimination and harassment, do not, by terms, apply to
1307 the federal judiciary. We needed to make sure that we

1308 01:41:55 that we were plugging that gap, and we had no end of
1309 people who make judicial decisions and hold hearings. So
1310 we worked for quite a few months coming up with a program
1311 by which people who believe that they are being misused,
1312 can, can safely make a filing and get a hearing, and get
1313 relief if they're entitled to it.

1314 01:42:26 That was, that was a major job. Another thing that
1315 committee does is it decides where new judgeships should

1316 be created, or where temporary judgeships should be
1317 allowed to lapse. And for that, the committee sends
1318 01:42:47 questionnaires out to every court, and the courts will
1319 sometimes say, well, we need two more or we don't need
1320 anybody. And then we look at their caseload. We look at
1321 how many senior judges they have ready to take up the
1322 slack. We look at a host of factors, and then we make
1323 recommendations to the Judicial Conference of the United
1324 States as to what the Judicial Conference of the United
1325 States ought to recommend to Congress if and when
1326 Congress decides that they would like to have a judgeship
1327 bill. Of course, judgeship bills are few and they're far
1328 01:43:32 between. And, as far as I know, all the work we did on
1329 that did not result in the creation of a single
1330 judgeship. But the judiciary has to be ready, so that we
1331 do not become a political football when it becomes time
1332 for, when there's a consensus that new judgeships should
1333 be created. They are needed. They are always needed. But,
1334 of course you can imagine that, there are a lot of
1335 political calculations that go into this.

1336 01:44:12 PRITCHARD: In 2021, Chief Justice Roberts appointed you
1337 to the Committee on Codes of Conduct. Could you talk a
1338 bit about your work for that committee?

1339 JUDGE JACOBS: The Committee on Codes of Conduct provides
1340 advice to anybody in the judiciary who has an ethical
1341 question: whether they can or should participate in some

1342 event, whether they can put a bumper sticker on their
1343 car, whether they can, whether their son or daughter can
1344 participate in a political campaign, whether they can buy
1345 this stock or whether they can participate in a
1346 01:45:02 municipal program, to do some good somehow. And we will
1347 answer every inquiry, usually within about ten days. It's
1348 really amazing. What we do is we look at the canons,
1349 which are available to everybody. And then we look at our
1350 precedents; the advice we've given in the past. Not all
1351 of them are published. Many of them are private. They
1352 represent people's personal dilemmas.

1353 01:45:46 And we will also look at evolving trends and maybe
1354 precedents that need to be reworked or thought about
1355 again. I should say it's a very collegial, very
1356 thoughtful group of people. And we respect the individual
1357 judge's decision because ultimately, under the ethics
1358 rules, people make their own decisions. But we will, we
1359 will tell them what the principles are, and we'll tell
1360 them how we're leaning. Occasionally we will say "don't
1361 do this."

1362 01:46:28 PRITCHARD: How many judges sit on that committee?
1363 JUDGE JACOBS: Like most committees of the United States
1364 Judicial Conference, there is one representative from
1365 each of the circuits, and also a magistrate judge and a
1366 bankruptcy judge. That gives us, I think, a broad
1367 representation of how things are done around the country.

1368 01:46:58 PRITCHARD: In 2019, you took senior status. How has life
1369 changed for you since then?

1370 JUDGE JACOBS: If, if a person who has worked hard and
1371 conscientiously for forty or fifty years retires and
1372 takes up stamp collecting, I can predict that person will
1373 get up in the morning raring to get to the stamp
1374 collection, and will work on it and sometimes work
1375 through lunch because it's so absorbing. And it will be
1376 enveloping because we have certain, we have certain
1377 patterns of work just the way we have certain needs for
1378 how we eat and how we sleep. So unfortunately, although I
1379 01:47:56 try to reduce the number of days I come in to work, the
1380 amount of work expands. I have more flexibility, however.
1381 I had had a lifelong desire to take a couple of long
1382 vacations which I never was able to do. And, and we have,
1383 we have done that. We spend a little more time at our
1384 house in the country, about an hour and twenty minutes
1385 outside New York City, and I find that I, I need that.
1386 It's a perfect balance with the excitement of being in
1387 New York City.

1388 01:48:40 PRITCHARD: Judge, I remember from my clerkship looking up
1389 at the pictures above your couch, and many of them are of
1390 steamships. You love steamships. What about steamships
1391 appeal to you?

1392 JUDGE JACOBS: I, I've always been fascinated by them. I
1393 mean, they achieved their present size about the 1880s,

1394 and since then they were the largest movable manmade
1395 objects. They are machinery. They are dwellings. They are
1396 restaurants. They are whole cities. And they connect one
1397 continent with another. Many of the steamships, the great
1398 ocean liners on the Atlantic Line, have very interesting
1399 histories. They have had lives. They have had disasters.
1400 01:49:44 And they were loved by the people who traveled on them.
1401 And I always wanted to travel on an ocean liner across
1402 the ocean. And when I took senior status, that's one of
1403 the things that Judith and I were able to do. We crossed
1404 the Atlantic on the Queen Mary, which is the only
1405 remaining ocean liner that travels across the ocean. And,
1406 and it was amazing and magical, and I had never saw so
1407 much water in my life.

1408 01:50:22 PRITCHARD: You also have another hobby, which is
1409 playwriting, and I know one of your good friends is a
1410 professional playwright. Talk a bit about that practice.

1411 01:50:33 JUDGE JACOBS: Well, teaching was my first unsuccessful
1412 career, and playwriting is my second unsuccessful career.
1413 My, my friend and former partner, Michael Chepiga, has
1414 been a playwright probably all his life. His plays have
1415 been performed. I've attended a number of them. He's
1416 super talented. And when he retired from Simpson Thacher,
1417 I said, "hey, Michael, I'm hoping you write some plays
1418 because I'd like to see them."

1419 01:51:12 He said, "well, I don't know." He said, "I, I don't have
1420 a subject at the moment." And at the time nothing was
1421 inspiring him, and I made a proposal for what I thought
1422 would be an entertaining kind of a play. And he said,
1423 "yeah, that would be really interesting." He said, "let's
1424 write it together." I said, "I don't know how to write a
1425 play. He said, "you'll learn."

1426 01:51:33 We talked about, we laid it out, particular scenes, and
1427 he said, "Dennis, why don't you, why don't you do this
1428 scene and then we'll see how it goes." I spent, I'm
1429 embarrassed to say how much time I spent writing that one
1430 scene, which had two characters trying to decide
1431 something. And when I was done with it, I gave it to
1432 01:52:03 Michael. We were in a restaurant and he read it and read
1433 it. And then when he was done, I said, "what do you
1434 think?" He said, says "it, it's not theater." I said,
1435 "what do you mean? There's this character and that
1436 character and they're talking to each other." And he, and
1437 I said it, "it's theatrical." He said, "not really." He
1438 said, "nothing really happens." He said, "it's just, it's
1439 just you have two characters, but it's just yourself.
1440 It's just you talking to yourself." So I said, well, "is
1441 it funny?" He said, "it's funny, but it's not theater."
1442 So he suggested that I hone my theatrical skills by
1443 writing ten-minute plays. And I started doing that.

1444 01:52:58 And it is, it's all absorbing. It's very difficult. And
1445 then one year I had a law clerk who'd had a career in the
1446 theater and I allowed her to read a couple of ten-minute
1447 plays. She thought they were funny. And she had friends
1448 in the theater, and she recruited one of her former
1449 colleagues, and they mounted the play with a whole bunch
1450 of friends in a conference room of a big law firm.

1451 01:53:47 And before the production, I was so nervous I could
1452 hardly contain myself. As a judge anything I write gets
1453 published, and people rarely tell you it's no good. But
1454 when you have, when you have a play with an audience, if,
1455 especially if it's a comedy, you're listening for people
1456 to laugh. And if they don't laugh, it's devastating. And
1457 I was very nervous. It went off. But, I have since
1458 submitted a play or two for a ten-minute play
1459 competition, and I didn't, I didn't come in first or
1460 second. Or third or fourth. So, I'm now a retired
1461 playwright.

1462 01:54:37 PRITCHARD: I was there the night that the, your ten-
1463 minute plays were produced. They were excellent. I still
1464 remember one of them was about a couple during the
1465 intermission of a play, and I think they were debating A)
1466 whether they liked the play and B) they were thinking
1467 about leaving.

1468 01:54:52 JUDGE JACOBS: That was the idea of it. It was an
1469 intermission because it was a premise for a ten-minute

1470 play. So, intermissions were about ten minutes. So, it
1471 would, the doors were open and they would come out and
1472 they would argue and, that, that was the play.

1473 PRITCHARD: I thought it worked really well. It was very
1474 meta too, because they were talking about whether they
1475 should leave the play, and here we all were sitting
1476 watching it.

1477 01:55:18 JUDGE JACOBS: I like my plays. That doesn't seem to have
1478 much to do with whether they're going to get produced.

1479 PRITCHARD: Some of your colleagues have written memoirs.
1480 I don't imagine you're ever going to write a memoir, but
1481 if you had to, what would the title be?

1482 01:55:46 JUDGE JACOBS: I'm thinking of a book by Robert Benchley.¹³
1483 And my, my version of it would be *My Thirty Years in a*
1484 *Quandary and How They Grew*.¹⁴ You know, I have to say,
1485 memoirs is not really a genre that, that fits with being
1486 an appellate judge. The life of an appellate judge is not
1487 crowded with adventure and event. And also, writing a
1488 memoir already puts you in a false position.

1489 01:56:42 My, my career as a lawyer has been in two jobs, one,
1490 Simpson Thacher, and the other on the court. I don't
1491 think I could make that very interesting because my
1492 approach throughout has been to, to serve these two

¹³ Robert Benchley was an American humorist, columnist, and actor known for his contributions to *The New Yorker*, *Vanity Fair*, and several short films.

¹⁴ Judge Jacobs refers to Benchley's collection of humorous essays titled "My Ten Years in a Quandary, and How They Grew," published in 1936.

1493 institutions. They're both great institutions, to make my
1494 contributions to them and not necessarily stand out
1495 01:57:25 in any particular way. When I took senior status, the law
1496 journal asked me, you know, what I had to say about my
1497 career. And I said, "I, I kept my end up." And they said,
1498 "is that all?" I said, "it's a lot." That's, that's what
1499 I did. And then somebody said, "well, that's a phrase
1500 that comes from carrying a casket up and down the steps
1501 of a church." You know that...[gestures].
1502 01:57:54 And I said, well, "that's not a bad, that isn't a bad way
1503 of putting it." So no, I'm not planning to write memoirs.
1504 And the best title for a memoir has already been taken
1505 by, in the biography of Irving Kaufman, *Mercy and*
1506 *Justice*.¹⁵ That would, that would be a nice title.
1507 01:58:21 PRITCHARD: Thank you, Judge. It has been an honor and a
1508 pleasure to conduct the interview so that future
1509 generations may benefit from your experience and
1510 insights.
1511 01:58:30 JUDGE JACOBS: Truly, the pleasure was mine.

¹⁵ Referring to the biography of Judge Irving Kaufman, *Judgement and Mercy: The Turbulent Times of the Judge Who Condemned the Rosenbergs*, by Martin J. Seigel.