



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

HON. JACK B. WEINSTEIN
U.S. DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

An Interview

with

William B. Bonvillian, Lecturer at MIT and Director of Special
Projects, MIT's Office of Digital Learning

and

Oscar Chase, Co-Director of the Institute of Judicial
Administration

Russell D. Niles Professor Law,
New York University School of Law

December 12, 2016

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[START RECORDING]

PART I

0:00:00 **Interviewer: William B. Bonvillian**
Clerked for Judge Weinstein (1974-75)

MR. WILLIAM B. BONVILLIAN: I am
William B. Bonvillian, Bill, and I'm
very pleased to be here today on
behalf of the NYU Institute of
Judicial Administration or IJA and
its Oral History of American Judges.
I - and Oscar Chase who is the
Faculty Co-Director of IJA - will be
conducting an oral history interview
with the Honorable Jack B. Weinstein,
Federal District Judge for the
Eastern District of New York. I
clerked for Judge Weinstein in 1974
and 1975. Today is December 12th,
2016 and we are gathered in Judge
Weinstein's chambers in the
courthouse in Brooklyn, New York.
Judge Weinstein, thank you so much
for participating.

0:01:03 HON. JACK B. WEINSTEIN: It's a

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pleasure to be with you Bill after so many years admiring your career.

0:01:11 MR. BONVILLIAN: Thanks Judge. Why don't we start at the beginning and just do some background on you and your family? Tell me a little about your parents, what brought them to New York City, to Wichita, then back to New York City.

0:01:34 HON. WEINSTEIN: My father was born in Hungary and came to this country when he was four, primarily for reasons of economics, and his father's economics. They were relatively poor, lived in the Lower East Side. And then when they worked their way up a little economically, moved to East Harlem which had a vibrant Jewish community in the early 20th Century. He was a bright and handsome, vivacious man, taken out of school when he was about 13 and put to work carrying men's garments in the garment industry. My mother

0:02:17

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was born just a few blocks from here.
Her parents had come over from
0:02:38 Russia. My maternal grandfather when
he was about 17, and my grandmother
was about 15 or 16, were involved in
local Socialist politics. The local
police told my great-great
grandfather that he would be picked
up and arrested the next day so they
were married, the family history
says, placed in potato sacks and
shipped
0:03:13 off to America, where they put packs
on their backs and went aboard local
vessels and sold knickknacks and
things to the sailors. When I was
born he lived in a house on Rodney
Street¹ just a few blocks from the
courthouse, one of those 3-story
corner houses with his shoemaker's
equipment in one store and a grocery
in the other. We used to eat
0:03:53 extremely well in his house.

¹ Rodney Street is in the Williamsburg Section of Brooklyn in New York City.

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[Chuckling] because the grocer paid him rent in fresh dairy products. And the Wallabout Market², which turned into the Navy Yard later as I'll tell

0:04:10 you, was the source of fresh products brought in by farmers with their horses and 2-day old bread from Ebinger's.³ And it was a very lovely extended family on my mother's side. My father's side had a more extended family which dozens of cousins, most of them male, most of them fought in World War II, some

0:04:46 of them here illegally from Hungary. When my parents were about 21, for my father, and about 18, for my mother, one of his sisters who was married to a man who was a haberdasher in Wichita, died and my paternal

² The Wallabout Market was Brooklyn's great terminal market on Wallabout Bay, once the second largest wholesale food terminal market in the world. It was torn down in 1941 as the Navy Yard expanded for World War II.
<http://www.brownstoner.com/history/past-and-present-the-great-wallabout-market/>.

³ Ebinger's was a Brooklyn bakery that opened in 1898 and became a chain throughout Brooklyn.

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grandfather ordered dad to go out and take care of his sister. So they promptly married and went out to Wichita. He was very successful in

0:05:26 Wichita. He was a haberdasher, 32nd degree Mason, hunted, fished. She became a very good cook using Middle American culinary feats and combined it with her Jewish background so that,

0:05:53 ultimately, she was excellent and earned some money when we badly needed it, drawing up recipes for a local sugar company and bringing home all kinds of desserts for us. When they came back here, dad went with the --

MR. BONVILLIAN: [Interposing] And you were about 5 years old?⁴

0:06:20 HON. WEINSTEIN: -- I was about 5. My first recollection is of the Wythe Avenue⁵ streetcars that ran a few

⁴ Judge Weinstein was born in 1921 in Wichita, Kansas.

⁵ The Crosstown streetcar line ran on Wythe Avenue in Brooklyn between Red Hook and Greenpoint.

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blocks from here. They frightened me. [Chuckling]. So my grandparents took me into their bed. I was really a frightened kid. My paternal grandparents also took me in [[Laughing], into their bed. I slept around a lot [Laughing]. My first
0:06:50 recollection of them is of the iceman bringing up ice for their ice box. And the convivial extended family meetings in that house, the laughter of all of the cousins, that's the way
0:07:10 we entertained ourselves during my youth and no TV, little radio. But just visiting each other and amusing each other as extended family. My father was very beloved of his family. And she was, my mother, a beautiful woman, was beloved in hers. So I benefited by being spoiled by both families [Laughing] and love was
0:07:42 really the primary thing I remember in those early years, doting aunts

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and uncles.

MR. BONVILLIAN: So let me jump ahead to your youth when you were working for a trucking company and going to Brooklyn College at the same time. Tell me a little about the trucking company and then the experience of going to college.

0:08:10 HON. WEINSTEIN: We were in serious financial difficulty following the crash of 1930. I remember distinctly a call for margins and dad lost his job. I had an aunt, to take a period
0:08:31 just before the trucking period, who was involved in theatrical work.

MR. BONVILLIAN: Yes.

HON. WEINSTEIN: And she got jobs for my mother and for me and later my brother in various Broadway productions. So for years I worked on Broadway with minor speaking parts and both mother and I used to pose
0:09:03 for artists. I've looked for those drawings but I haven't been able to

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find them. After we finished that period, I continued to work to support the family. I used to get up at 4:30 in the morning and work on a milk truck, sometimes with a horse and wagon which was easier because the horse knew the route better than I did. And when that finished and I graduated from high school⁶ in about '35 or '36, I guess I was about 15, I needed a job to help the family. I'd been paid \$1 and a quart milk, while I was delivering milk. And in that period there was a great deal of help in the community. My grandfather knew somebody who ran a trucking firm, who used some of this storage facilities. And he spoke to Al Burns. My father knew him, too, and had helped him in some of this business problems. Dad was without a job. So I started at Brooklyn

0:09:43

0:10:05

⁶ Judge Weinstein graduated from Abraham Lincoln High School in Brighton Beach, Brooklyn.

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College at night, working
0:10:41 for the trucking firm. First, just
as an office boy and then when I
learned to drive they got me a little
car and I ran around handling some of
the problems, loading sometimes,
unloading, going down to the docks
and handling a lot of the
documentation and going to school at
night. The work was about 60 hours a
week and the commutation was
0:11:12 rather difficult. I had to go into
New York and then come back to
Williamsburg on South 6th Street under
the Williamsburg Bridge. This whole
area was one of the large industrial
0:11:25 areas of the world. It had an
enormous impact on World War II, 3
and 4-story buildings making all
kinds of small engines and other
things for the war. And very close
to what was becoming the large
Brooklyn Navy Yard. While I was
working for the firm, Roosevelt in

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the mid 30's, well I guess when I
0:11:57 started I observed it, and in '36,
was developing the Brooklyn Navy
Yard. And we were handling shipping
that came in from New Jersey.
Essentially this area was using Civil
War communications and
transportation, extremely efficient.
Railroad cars barged over from New
Jersey and huge storage facilities in
Brooklyn and in Desbrosses⁷ Street in
New
0:12:35 York and we were doing delivery so I
was in a sense cognizant of what was
happening in the real world without
being fully familiar with it. What
was very curious about that period
0:12:53 and strikes me now as so different
from what happens today is that all
of the men in the company and my boss
were interested in seeing me succeed

⁷ This street is in what is now called Tribeca, which at the time was a major warehousing center with extensive early truck traffic. See:
http://www.nyc.gov/html/lpc/downloads/pdf/reports/TRIBECA_NORTH_HISTORIC_DISTRICT.pdf (p.3-4).

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in college. None of them had had more than a grade school education. And here was a kid who was going to college. And they were all determined that I would succeed. So

0:13:23 my boss would sometimes drive me to Brooklyn College. Usually I'd go by trolley car. And the guys would do everything they could to help me. When I bought a \$50 Ford they showed me how to put it together and take it apart. And I went fishing with them. But here was this kid who was going to be a college graduate and they were all --

0:13:48 MR. BONVILLIAN: [Interposing] And they took care of you.

HON. WEINSTEIN: They were all taking care of me to make sure that I would do my homework. I used to get a day

0:13:56 off before tests. And whenever possible I could get an hour or two to go up on the Williamsburg Bridge and do my homework. The tugboats

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0:14:30

were burning coal so all of my homework and essays had those cinders on them. I observed the Japanese Marus, they were the most beautiful white ships coming to collect scrap iron, some of which I think they threw at us, at my submarine, but they certainly threw it at the Americans and dropped it on Pearl Harbor. So it was a fascinating experience for a kid. Here I was dealing with trucking and delivery of motors and scrap and other things during the day; dealing with plebeian types of questions and deliveries, schedules

0:15:13

and money; going to Penn Station and the like. I'd take a trolley car or sometimes my boss would drive me up to Brooklyn College because he lived near there and I'd be studying Plato

0:15:28

and advanced mathematics and history

--

MR. BONVILLIAN: [Interposing] So

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from the docks to Mount Olympus,
Judge?

0:15:42 HON. WEINSTEIN: No, it was just
absolutely fascinating and then I'd
walk home to save a nickel, I walked
about three miles to get home in the
evening. And go to sleep and get up
immediately in the morning, early in
the morning, to go to the trucking
company.

MR. BONVILLIAN: So you majored in
economics but --

HON. WEINSTEIN: [Interposing] Yes.

MR. BONVILLIAN: -- what were your
favorite course areas? What were a
couple?

0:15:58 HON. WEINSTEIN: My favorite courses
were those in philosophy, I think. I
won an economics prize much to my
surprise.

MR. BONVILLIAN: Mm-hmm.

0:16:09 HON. WEINSTEIN: And so did my son at
Columbia.

MR. BONVILLIAN: [Laughing].

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HON. WEINSTEIN: My older son when he went to undergraduate school. It was just the sense of intellectual stimulation and something so different from what I was seeing in my daily life, that just changed my whole conception of what life was like, and what the academic life was like.

0:16:34

MR. BONVILLIAN: So the beginnings of World War II were starting to be felt and you finished your Brooklyn College degree⁸ in 6 years working the whole time. But then you --

HON. WEINSTEIN: [Interposing] I...

MR. BONVILLIAN: -- go to the Navy.

0:16:55 HON. WEINSTEIN: Right, I, immediately after Pearl Harbor I went down to enlist and they wouldn't take me in my choice of --

MR. BONVILLIAN: [Interposing] What was that choice?

0:17:06

HON. WEINSTEIN: -- Naval aircraft,

⁸ Judge Weinstein completed his Brooklyn College studies in 1943.

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because I had some slight asthma. So I enlisted as a seaman and they told me they would give me three months to complete my academic work and get my degree. I had about 30 or 40 points to complete. And I took 30 points at a time, I mean it was a cinch just going in. As a result, I got all A's and graduated Magna [Laughing]. And then went up to Columbia in the 90-day program to train as an officer. It was fascinating for me because I had taken higher mathematics so some of the artillery stuff was easy. I volunteered then to -- I think I volunteered, no, I think they chose me to send me to MIT and Harvard to study --

0:17:32

MR. BONVILLIAN: [Interposing] Radar.

HON. WEINSTEIN: -- electronics --

MR. BONVILLIAN: [Interposing] Right.

HON. WEINSTEIN: -- and radar. And

0:18:13

0:18:16

from there --

MR. BONVILLIAN: [Interposing] And

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MIT had the great Rad Lab which was
the great center --

HON. WEINSTEIN: [Interposing] Yes.

MR. BONVILLIAN: -- of radar
technology --

HON. WEINSTEIN: [Interposing] Yes.

MR. BONVILLIAN: -- development.

0:18:22

HON. WEINSTEIN: And that was
interesting to me. I had taken some
atomic physics at Brooklyn College.
And then I volunteered for the
submarine force because I thought it
would be challenging and the men were
highly selected and the work was
interesting and it was well paid if
you survived.

[Chuckling]

0:18:47

MR. BONVILLIAN: Right.

HON. WEINSTEIN: And so I went out to
Hawaii and picked up my ship and
shipped out on the *Jallao*.

MR. BONVILLIAN: Right, and the

0:19:02

Jallao SS-368 was a brand new
submarine and the most modern

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submarine class⁹ --

HON. WEINSTEIN: [Interposing] That's right.

MR. BONVILLIAN: -- at the time.

HON. WEINSTEIN: And built [in Manitowoc, Wisconsin]--

MR. BONVILLIAN: [Interposing] What was that experience with the crew like? What were those war patrols like?

0:19:10

HON. WEINSTEIN: When I came aboard I immediately, just by circumstances, became a favorite of the Captain because the radar broke down that first night and I was able to solve the problem almost immediately because I had gone through these advanced schools at MIT [Laughing]

0:19:40

and solved the problem and our radar was working within minutes.

MR. BONVILLIAN: That was Captain

⁹ The *Jallao* was a Balao-class submarine launched in July 1944 at the Manitowoc, Wisconsin shipyard.

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Icenhower¹⁰, right?

0:19:48 HON. WEINSTEIN: Captain Icenhower,
a wonderful guy.

MR. BONVILLIAN: Yes.

0:20:17 HON. WEINSTEIN: With whom I
continued to correspond and talk long
after the war ended. I was in charge
of all of the radar and some of the
electronic gear. I helped out with
some of the guidance systems because
I had had this advanced work which
some of the other officers hadn't
received and I was able to understand
some of this machinery, advanced
machinery, somewhat better than those
just because of my training.

MR. BONVILLIAN: And this is all the
beginning of American electronics,
[which] is really occurring in the
Navy at this point.

HON. WEINSTEIN: Yes.

¹⁰ Lt.Cmdr.(later Rear Admiral) Joseph B. Icenhower (1913-1994) commanded the *Jallao* from 1944 through the end of the war. He was awarded the Silver Star and Navy Cross for his wartime actions. He later commanded the submarine *Sennet* in an exploration expedition to the Antarctic in 1947 and authored a number of books on naval history.

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0:20:40 MR. BONVILLIAN: And early computing is actually onboard.

HON. WEINSTEIN: That's right. We were beginning to use modern systems of navigation although we still used

0:20:53 the ancient methods, getting up at dawn and fixing on the stars, but what you now carry in your watch was a huge machine [Laughing] that enabled us to do some dead reckoning from the submarine. I stood regular watches. I loved the watch particularly in the South Seas although we were also in the north

0:21:25 and in terrible winter conditions when the Japanese attacked Alaska. But the southern seas when everything was dark, the submarine was dark between 12:00 and 4:00, the stars just illuminated everything. You felt as if you'd been on Broadway. And as the submarine went through, all the crustaceans began to glow alongside. Sometimes it was kind of

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0:22:01 scary because you'd think to yourself

well they must be seeing us in Tokyo,

but while we were charging at night.

And so my relationship --

MR. BONVILLIAN: [Interposing] So

0:22:14 that would have been in the

Philippine Sea and then you were up

in the Northern Pacific for the

Aleutian Campaigns.

HON. WEINSTEIN: Yes.

MR. BONVILLIAN: And how many war

patrols?

HON. WEINSTEIN: We were on four war

patrols.

0:22:23 MR. BONVILLIAN: And this is 1944 and

'45?

HON. WEINSTEIN: Correct.

MR. BONVILLIAN: The first patrol, we

were in the Battle of Leyte Gulf.¹¹

MR. BONVILLIAN: Yes.

HON. WEINSTEIN: Partly because our

radar was so effective we were in a

¹¹ The Battle of Leyte Gulf (October 23-26, 1944) was a large, decisive air and sea battle of World War II in which the Allied Forces prevailed over the Japanese fleet.
<https://www.britannica.com/event/Battle-of-Leyte-Gulf>

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group. Our ship picked up before any other one of the submarines --

0:22:45 MR. BONVILLIAN: [Interposing] Well, I think it was one of your sightings at 35,000 yards --

HON. WEINSTEIN: [Interposing] That's right. A cruiser retreating from

0:22:53 Leyte Gulf and we sunk it [light cruiser *Tama*]¹². So that was a successful patrol. The other patrols were primarily designed to pick up fliers going to Tokyo and from the islands we'd just conquered. I gained some insight about what can go wrong because our submarine force was way behind that of the Japanese, technologically they were ahead of

0:23:38 us. It was just the huge mass of our equipment that enabled us to beat them and the bravery I think of our men.

¹² The *Jallao* on her first war patrol sank the light cruiser IJN *Tama* on October 25, 1944 as she was retreating from the Battle of Cape Engano, a part of the Battle of Leyte Gulf. See: http://www.combinedfleet.com/tama_t.htm

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MR. BONVILLIAN: And that was particularly optical technology that they had --

HON. WEINSTEIN: [Interposing] Yes, and they were ahead with respect to torpedoes, our --

0:23:56 MR. BONVILLIAN: [Interposing] Yes.

HON. WEINSTEIN: -- original torpedoes the first year were not --

MR. BONVILLIAN: [Interposing] Yes.

0:23:59 HON. WEINSTEIN: -- exploding. And during our last patrol we were using electric torpedoes. We should have sunk half a dozen ships. We had perfect ranges on them and none of the torpedoes exploded because the new electric torpedoes were not being used [correctly] or were defective, which at a few points created problems for us

0:24:34 because when we shot torpedoes and they didn't explode¹³, in Japanese

¹³ These and other fundamental problems with U.S. Navy torpedoes, are detailed in Peter Maas, *The Terrible Hours* (Harper Collins, N.Y. & Canada 1999) and other sources. In

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convoys, the Japanese destroyers were
able to come after us --

MR. BONVILLIAN: [Interposing]

Because they could see the torpedo
wakes? --

HON. WEINSTEIN: -- and not feeling
any --

MR. BONVILLIAN: -- and know where
0:24:54 you were.

HON. WEINSTEIN: -- and not feeling
any -- no, the electric torpedoes
didn't have wakes --

MR. BONVILLIAN: [Interposing] Oh,
0:24:58 wakeless, right.

HON. WEINSTEIN: -- that was their
advantage, one of their advantages.
And in fact one of them actually
struck our periscope, turned it way
over and then [there were] depth
charges. But apparently the Japanese
captain must have been more
frightened than we were because after
dropping a limited

contrast Japanese torpedoes had far more range, explosive
power and reliability.

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0:25:20 number of depth charges he skadoodled
and we went back to base. I was on
the conning tower when one of the
Admirals came by and he looked up and
he said who did that. Was that one
of our ships that caused that damage
or the Japanese? I said a Japanese
destroyer ran into us. He said, oh
good, less paperwork for me.

MR. BONVILLIAN: Right. [Laughter]

0:25:54 HON. WEINSTEIN: So all in all it was
interesting. And the crew was, after
a -- I think they looked at me with
some skepticism when I came aboard.

0:26:16 Here was a tall, Jewish officer and
most of them had never seen a Jewish
person and I thought they looked for
my horns. But after a few months
when I showed that I could do the job
and during one of the typhoons I
actually saved one of the sailors,
one of my lookouts, by grabbing as he
went overboard or started to go
overboard, I became kind of a

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favorite of the crew.

MR. BONVILLIAN: So that great
0:26:47 camaraderie emerged over time.

HON. WEINSTEIN: Yes. It was
fascinating. Among the crew of 9
young men, from all parts of the
country, with all kinds of
backgrounds, we were able to relate
and talk about books and ideas that
we had acquired in a common
0:27:15 understanding, educational
understanding, that then existed in
this country. My public education
was in public school and the Brooklyn
College was the equal in quality to
0:27:32 some of theirs at Yale and Harvard.

MR. BONVILLIAN: So this is the young
group of officers that --

HON. WEINSTEIN: [Interposing] Yes.

MR. BONVILLIAN: -- were on the
submarine.

HON. WEINSTEIN: -- and the Captain
was...

MR. BONVILLIAN: Yes.

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0:27:39 HON. WEINSTEIN: Congenial and...
fortunately somewhat conservative.
So instead of taking unnecessary
risks he saved his ship on a few
occasions.

MR. BONVILLIAN: Really? So let me
move you now to after the war.

HON. WEINSTEIN: Yes.

MR. BONVILLIAN: And you go to
Columbia Law School.

0:28:01 HON. WEINSTEIN: Right.

MR. BONVILLIAN: And how did that
come about?

0:28:11 HON. WEINSTEIN: Well I had options
at that time. I realized. I could
have gone into research, atomic and
other research that I had seen up at
Cambridge. I could have gone to
medical school, my grades were very
good. Or I could have gone to law
school. So I wrote home for books
and my mother sent me Holmes's book
on the law [*The Common Law*]¹⁴ which I

¹⁴ Oliver Wendell Holmes, Jr., *The Common Law* (1 ed. 1881).

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read [and] couldn't understand. But
I decided [law] was
0:28:41 fascinating enough and would permit
me to use almost everything I knew
about transportation and all of the
variety of experiences that I've had.
So I was fascinated by it --
MR. BONVILLIAN: [Interposing] So
that was his great pragmatic legal
doctrine --
HON. WEINSTEIN: [Interposing] That's
right. And it all looked like the
0:29:03 kind of thing that an average guy who
had seen a lot of things might
succeed at. And was interesting. So
I --
MR. BONVILLIAN: [Interposing] Did
0:29:15 that tie to your earlier interest in
philosophy?
HON. WEINSTEIN: To some extent it
did.
MR. BONVILLIAN: Yes.
HON. WEINSTEIN: Yes.
MR. BONVILLIAN: And why Columbia?

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HON. WEINSTEIN: Well I was accepted
at Columbia and Harvard. Yale wanted
0:29:26 me to take an exam but by that time
Evie¹⁵ was pregnant. And she wanted
to be with her family --

MR. BONVILLIAN: [Interposing] So you
had been married right after the war.

HON. WEINSTEIN: Yes. So Columbia
was the place. Very good choice. I
had never seen a lawyer so far as I
know. First lawyer I [saw] was, I
think, was Herb Wechsler,¹⁶ the great
-

0:29:48 MR. BONVILLIAN: [Interposing]
[Laughing] One of your colleagues --

HON. WEINSTEIN: -- professor --

¹⁵ Evelyn Horowitz Weinstein, Judge Weinstein's wife from 1946 until her death in 2012. She graduated Brooklyn College and attended the Columbia School of Social Work. She was a social worker who founded Community Advocates in 1972 which supported affordable housing and battled against housing discrimination and homelessness on Long Island. She started the Ombudservice program that worked with patients in hospitals and nursing homes. She also headed the Family and Children's Association, an organization serving vulnerable children and families on Long Island that was later replicated across New York. See: <http://www.legacy.com/obituaries/newsday/obituary.aspx?page=lifestory&pid=157960060>

¹⁶ Herbert Wechsler (1909-2000), a Columbia Law School professor who specialized in constitutional and criminal law as well as federal courts. Wechsler drafted the modern penal code and served as the Director of the American Law Institute. See: <http://www.nytimes.com/2000/04/28/us/herbert-wechsler-legal-giant-is-dead-at-90.html>

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MR. BONVILLIAN: -- at Columbia.

HON. WEINSTEIN: One of my future
0:29:51 colleagues --

MR. BONVILLIAN: [Interposing] One of
your --

HON. WEINSTEIN: -- he scared me out
of my wits after the first class
[Laughing]. I came home and I said
Evie, dear, I think we may have made
a mistake.

MR. BONVILLIAN: Was he teaching his
0:30:02 Constitutional Law course or his
contracts¹⁷?

HON. WEINSTEIN: Constitutional Law
and Criminal Law which I later taught
myself. Evie had gotten a Master's
degree in Social Work while I was
away.

MR. BONVILLIAN: Also from Columbia.

HON. WEINSTEIN: Also from Columbia.
And she was doing marvelous work with
0:30:26 people who had suffered psychiatric
problems in World War II. She set up

¹⁷ Mr. Bonvillian meant "Criminal".

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the first clinic with volunteer psychiatrists meeting at night. And later was ombudsman and did wonderful work with all the people. So her relationship and our discussions, our pillow talk, about her problems, my problems, I think had an impact on both our work. She was able to use lawyers in controlling and supervising some of the old age homes. And I used some of her concepts and feelings of empathy for the poor in my work.

0:30:42

0:31:09

MR. BONVILLIAN: So in addition to Professor Wechsler, who were some of the great figures at the Law School at that time?

HON. WEINSTEIN: Jerry Michael¹⁸ in Procedure. Julius Gerber¹⁹ in Development of Legal Institutions,

¹⁸ Jerome Michael (1890-1953), a Columbia Law professor who co-authored with Herbert Wechsler two influential works on criminal law: (1) *A Rationale of the Law of Homicide* (pts. 1 & 2), 37 COLUM. L. REV. 701 (1937), 37 COLUM. L. REV. 1261 (1937), and (2) the casebook, *CRIMINAL LAW AND ITS ADMINISTRATION: CASES, STATUTES AND COMMENTARIES* (1940).

¹⁹ Julius Gerber, a long-term Columbia law professor and legal historian noted for his work on legal institutions.

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Llewellyn ²⁰in Contracts, some
philosophy. It was a wonderful --

0:31:30 MR. BONVILLIAN: [Interposing] That's
an amazing collection.

HON. WEINSTEIN: -- faculty. It was
a wonderful faculty. About 6, all
males, all white, of people who

0:31:42 carried the whole curriculum in very
large classes.

MR. BONVILLIAN: And you complete
Columbia Law School and then what
evolves in the next stages?

HON. WEINSTEIN: We were, there were
six of us in that class of 68
[students] who were somewhat upset by
what we thought was the abuse of the
Socratic

0:32:05 Method. Here we were, a class made
up entirely of people who had served
in World War II, many under difficult
conditions. And we were torn apart

²⁰ Karl Llewellyn (1893-1962), legal scholar and founder of the legal realism school of American jurisprudence, and a major drafter of the Uniform Commercial Code. He authored *The Bramble Bush - Our Law and its Study* (Oxford University Press 1951).

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within days by this terrible Socratic
Method of reducing you to a gibbering
[Laughing] idiot because the
professor would demonstrate within a
few moments how inferior your
analyses of these cases were. So we
0:32:42 went to the Dean. Marvin Frankel²¹
was one of them, Arthur Murphy ²²and -
-

MR. BONVILLIAN: [Interposing] Later
Law Professors Marvin Frankel [and
Arthur Murphy].

HON. WEINSTEIN: -- ultimately, yes.
0:32:54 And Columbia set up for the first
time a system of postgraduate
lectureships. So we each took a
course and worked with the first year
students and helped them with some of
their writing. The one course no one

²¹ Marvin Frankel (1920-2002), a Columbia Law School professor, federal judge in the Southern District of New York, and a leader of the criminal sentencing reform movement.

²² Arthur W. Murphy (1922-2016), professor of legal methods, administrative law, and trusts and estates. He also worked at the Atomic Energy Commission as a member of its atomic safety and licensing board from 1961-73, later serving on a Presidential commission on nuclear accidents, and wrote on science and the law issues. [See: http://www.law.columbia.edu/faculty/arthur-w-murphy](http://www.law.columbia.edu/faculty/arthur-w-murphy).

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wanted to teach was Development of
Legal Institutions because Julius
Gerber was considered a curmudgeon.

0:33:25 I was fascinated by him. He became a
good friend of mine and I learned a
lot. And as a matter of fact, Bill,
you will recall that one of the first
cases you and I dealt with, with you
as clerk and I as judge, involved the
application of old equitable
principles --

MR. BONVILLIAN: [Interposing] Yes.

HON. WEINSTEIN: -- the 2-way school
0:33:48 desegregation case²³. The information
I got, and my sense for what equity
could do, and the scope of Federal
Court jurisdiction, because we were
based on equity as well as law and
0:34:06 had jurisdiction that was very broad,
came from teaching that course in
Development of Legal Institutions.
And I think that my convivial

²³ *Hart vs. Community School Board of Brooklyn* (supplemental opinion), 383 F. Supp. 758 (E.D.N.Y. 1974)(re: appointment of special master).

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relationship with Julius and his wife, who were very kind to Evie, we were then having our third child, and Walter Gellhorn²⁴, helped me in being appointed to the faculty, much to my surprise. I was the first person, post-World War II, appointed to the faculty. I was up in Albany. I'd been appointed with [Whitman] Knapp²⁵ to represent someone in a death case and we were about to walk to the courthouse when I got a call from the Dean in the hotel. And he said, Jack, are you interested in teaching. Was I interested in teaching! --

0:34:40 [Laughter]

HON. WEINSTEIN: -- well [Laughing] to be dropped on the Acropolis at Columbia Law School and into teaching

²⁴ Walter Gellhorn (1906-1995), a Columbia Law professor known for his championing of civil liberties and his contributions to the development of administrative law. See: <http://www.nytimes.com/1995/12/11/nyregion/walter-gellhorn-law-scholar-and-professor-dies-at-89.html>

²⁵ Whitman Knapp (1904-2004), a prominent New York attorney, who headed three bureaus for District Attorney Frank Hogan and led the Knapp Commission investigating police corruption in 1970-72 for Mayor John Lindsay. He was later named a judge of the Eastern District of New York in 1972.

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and getting away from my practice,
0:35:21 which was fairly successful --

MR. BONVILLIAN: [Interposing] That
was with Bill Rosenfeld²⁶.

HON. WEINSTEIN: With Bill Rosenfeld
as a partner and a group of people
who were in shared offices. I was
doing very well, making much more
than my contemporaries. I couldn't
get a job downtown that I wanted, in
0:35:43 the big firm. There was still a good
deal of prejudice against Jews. But
when people would come to Columbia
professors and say I've got this big
case, I can't pay for big law firms,
who do you recommend, they'd send
them to me. So I was making a good
deal of money --

MR. BONVILLIAN: [Interposing] So
these, later your law professor
0:36:03 colleagues, and your law professors
are sending you cases --

²⁶ Judge Weinstein worked in private practice with William Rosenfeld, formerly a single practitioner, from 1950-1952. Jeffrey B. Morris, *Leadership on the Federal Bench: The Craft and Activism of Jack Weinstein* (Oxford University Press 2011).

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HON. WEINSTEIN: [Interposing] That's right.

0:36:06 MR. BONVILLIAN: -- when you were practicing.

HON. WEINSTEIN: It was just great because I had participated in that lectureship and enjoyed it thoroughly.

MR. BONVILLIAN: Yes.

0:36:19 HON. WEINSTEIN: So he said would you be interested in teaching. Wow. Come down tomorrow, of course [Laughing]. Getting out of

litigation I was doing, appellate litigation particularly in shareholders' suits, which had a bad reputation and it was probably just as well to pull me out [Laughing] at that point before I got into trouble and bring me up to Columbia. And it was just... like lightning --

MR. BONVILLIAN: [Interposing] Now,

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0:36:46 you clerked for Judge Fuld²⁷.

HON. WEINSTEIN: Yes.

MR. BONVILLIAN: Chief Judge of the
New York Court of Appeals in --

HON. WEINSTEIN: [Interposing] He was

0:36:51 Chief Judge later. It was 2-year
clerkship. The first year and then
the second year, both of us agreed,
[I'd] stay on. He offered me --

MR. BONVILLIAN: [Interposing] So
your Columbia colleagues had
recommended you to Judge Fuld, how
did that --

HON. WEINSTEIN: [Interposing] Well

0:37:06 --

MR. BONVILLIAN: -- come about.

HON. WEINSTEIN: -- the Dean selected
his clerks. And he selected me
because I'd worked with Julius on
that one course that nobody else

²⁷ Judge Stanley Fuld (1903-2003), a highly-respected judge on the New York Court of Appeals, appointed in 1946, and became Chief Judge from 1967-73. Early in his career, he worked on rackets investigations then headed two bureaus for Thomas Dewey when Dewey was Manhattan District Attorney, from 1937-43. See: <http://www.nycourts.gov/history/legal-history-new-york/luminaries-court-appeals/fuld-stanley.html>.

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wanted to teach. So that got me up to Stanley. I call him Stanley, he was a great friend in later years. Fuld was cruel to his clerks. He

0:37:32 expected us to think and write the way he did which was obviously impossible. So there were 20 and 30 drafts and he would take a draft and fling it at you and say is this what

0:37:46 you expect the Court of Appeals to say about this subject? And I, regularly, I would come home and cry to Evie and regularly he would fire me. He'd say you're fired

[Laughing]. And I would walk down to our little apartment on 23rd Street, knock on the door with tears in my eyes, and Evie would say why are you

0:38:12 here Jack, Fuld needs you so

[Laughing] I'd walk back and be rehired. He offered me a second year. And I said to him... Stanley, I'm not going to -- and at that time it was Judge of course, I'm honored

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but I'm not going to accept that offer. I have to support my family and I went into practice. As I said I couldn't get a big, the kind of job downtown which was then paying \$6,000 a year so I opened my own practice with Bill Rosenfeld and we made a lot of money for that time. I think we were making --

0:38:46
MR. BONVILLIAN: [Interposing] Yes. For that time.

HON. WEINSTEIN: -- \$25,000 a year.

MR. BONVILLIAN: Yes. But you did do a second year with Judge Fuld?

HON. WEINSTEIN: Well what happened was --

MR. BONVILLIAN: [Interposing] Working.

0:39:07
HON. WEINSTEIN: -- because I wouldn't take the second year, he took somebody from Yale and he said he'd never take anybody from Yale again. And that clerk broke down [Laughing] and couldn't take

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Stanley's criticism. So I was
working for Stanley from 6:00 in the
morning until 10:00 and then I was
working in my law office from 10:00
0:39:36 to about 2:00 or 3:00 and then
commuting to Albany because I was
working for the State Legislature as
Counsel on Motor Vehicles. So the
money was probably relatively pouring
0:39:51 in [Laughing].

MR. BONVILLIAN: So you were
rewriting the whole Motor Vehicle
Code for New York --

HON. WEINSTEIN: [Interposing] I did,
yes.

MR. BONVILLIAN: -- and that was your
first real experience in writing
major --

0:40:00 HON. WEINSTEIN: [Interposing]
Legislation.

MR. BONVILLIAN: -- revising major
legal systems --

HON. WEINSTEIN: [Interposing] Yes.

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And I worked for Seymour Halpern²⁸, a wonderful, ethical State Senator on his legislation which was --

MR. BONVILLIAN: [Interposing] And he was a Republican from --

0:40:16 HON. WEINSTEIN: -- he was a Republican. I had been cleared. I was a Democrat, cleared for Republican work because of Stanley Fuld who was a Republican. So

0:40:29 unbeknownst to me I was acquiring all of these great jobs and opportunities. I didn't --

MR. BONVILLIAN: [Interposing] All at the same time, too.

HON. WEINSTEIN: -- all at the same time. I was just this stupid kid from -- which I thought of myself as, from Bensonhurst to Brooklyn,

0:40:46 suddenly having all of these roads opened. It was incredible.

MR. BONVILLIAN: Tell me about, and

²⁸ Seymour Halpern (1913-1997), a Republican New York State Senator from 1941-54. He served as a Member of Congress from 1959-73.

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at this point, too, you go to teach
at Columbia, tell me about the early
courses that you're teaching and the
influential members of the faculty
you worked with and fought with.

HON. WEINSTEIN: I taught Criminal
Law with Herb.

0:41:10 MR. BONVILLIAN: Herb Wechsler.

HON. WEINSTEIN: Wechsler. I taught
Corporations with Adolf Berle²⁹. And
I taught --

0:41:17 MR. BONVILLIAN: [Interposing] Berle
the famous expert on corporations --

HON. WEINSTEIN: [Interposing] Yes.

MR. BONVILLIAN: -- and advisor to
Roosevelt in the 30's --

HON. WEINSTEIN: -- and I taught
Civil Procedure with Jerry Michael.
Herb Wechsler was then starting the
American Law Institute revision of

²⁹ Adolf Berle (1895-1971). a Columbia Law professor, economist and diplomat, who served in President Franklin Roosevelt's "Brain Trust" working on economic recovery policy in the 1932 election. He authored with Gardiner Means the noted work *The Modern Corporation and Private Property* (1933) on corporate governance. See:
<http://www.nytimes.com/1971/02/19/archives/adolf-a-berle-jr-dies-at-age-of-76-lawyer-economist-liberal-leader.html>

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sentencing and penal work. And he
0:41:45 asked me to participate with him.
And I said, Herb, I'm not doing it --
I can't work with you [Laughing]. I
have my own things to write. And I
just -- I would have been just ruined
working with him because I couldn't
meet his standards. So by that time
I had written a number of articles
and things on Procedure as well as on
Criminal Law and beginning on
0:42:15 Evidence. And Harry Tweed³⁰ who was
looking at the revision of New York
Practice and Procedure asked me to
write a report on whether Procedure
should be changed in New York as part
0:42:36 of a revision of the court system.
And I recommended that that be done
and I was appointed reporter. I

³⁰ Harrison Tweed (1885-1969), a prominent lawyer and law reform leader who became president of the Legal Aid Society of New York supporting the public defender system. He was president of the Association of the Bar in New York in 1945, and became president of the American Law Institute in 1947 working on its "Restatements" of the law and the Uniform Commercial Code. Governor Dewey named him in 1953 chairman of the state commission to study the reorganization of the state courts, noted here by Judge Weinstein.

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0:43:01 didn't know anything about New York
Practice or anything I was doing. I
was just [Laughing] learning as I
went along. And, of course, not
knowing anything about a field has an
advantage because you can look at it
with a fresh eye. There's nothing
that you think is set in concrete,
it's all fluid when you look at it.
And so I set up what amounted to a
corporation at Columbia Law School.
I must have had 10 or 15 people
working for me on these studies and
things and we revised and produced
what became the CPLR³¹ which is still
in effect, this is 50 years now since
0:43:34 it was adopted.

MR. BONVILLIAN: Yes, a great and
famous legal reform.

HON. WEINSTEIN: Yes. And I spent an
enormous amount of time going all
0:43:43 over the state talking to lawyers. I
remember going up in the middle of

³¹ N.Y. Civil Practice Law and Rules.

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the winter to the Adirondacks, I think it was Wyoming County or... and all of the members of the bar, about 10 of them, met with me in the local saloon [Laughing] and they were concerned primarily about habeas corpus³² because they had the prisons up there. But it was fascinating to talk to the lawyers. They didn't adopt some of the basic revisions but they adopted a fairly conservative version of the Federal Practice. That's worked, I think, fairly well in New York.

MR. BONVILLIAN: So let me shift now to one of the projects you did early in your career which was helping the team of lawyers work on Brown v. Board of Education³³ that was headed by Thurgood Marshall³⁴.

³² Lat. (You have the body.) The name given to a variety of writs, having for their object to bring a party before a court or judge. BLACK'S LAW DICTIONARY (2nd ed.).

³³ [347 US 473 \(1954\)](#).

³⁴ Thurgood Marshall (1908-93), a Justice of the U.S. Supreme Court from 1967-81, appointed by President Lyndon Johnson. He previously served as a Circuit Court judge and Solicitor General of the U.S. He directed the NAACP's legal efforts for

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HON. WEINSTEIN: Yeah.

MR. BONVILLIAN: Describe to me that
0:44:52 project and what Marshall was like.

HON. WEINSTEIN: Walter Gellhorn had
set up a little seminar that was led
by Jack Greenberg³⁵ --

MR. BONVILLIAN: [Interposing] Yes.

HON. WEINSTEIN: -- he just died [in
October 2016] -- to help various
civil rights organizations,
particularly the Legal Defense Fund
under Thurgood Marshall.

0:45:21 There would be Jack [Greenberg], he
would go down and get various
problems and then this small group
under Walter Gellhorn, about half a
dozen people, would write memoranda
to help. And when I was appointed to
the faculty Walter said "you'll do
that Jack from now on" [Laughing].

25 years before that, founding the NAACP Legal Defense and
Education fund in 1940.

³⁵ Jack Greenberg (1924-2016) succeeded Thurgood Marshall as
Director- Counsel of the NAACP Legal Defense Fund. He worked
on the *Brown v. Board of Education* case, and argued some 40
civil rights cases before the Supreme Court. He taught as an
adjunct professor at Columbia Law School from 1970-84, then as
Vice Dean there until 1989.

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And he took me down to the first meeting at the Association of the Bar and there was

0:45:55 a large group meeting on some issue that was relevant to the brief, I forget what it was. And Thurgood came in and he saw me, a new face. I didn't know anything about anything.

0:46:11 And he said, Jack, would you chair this little committee, we want to get a consensus on that. And so I listened and out of my ignorance got a consensus called and the secretary dictated the conclusions and from that point I was in [Laughing] with Thurgood. I spent an awful lot of time, very often staying over at the

0:46:39 Algonquin [Hotel] which was just opposite the Association and, of course at that time, its enormous library was central to this kind of research --

MR. BONVILLIAN: [Interposing] The research...

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HON. WEINSTEIN: And really I was just a junior associate. Kind of a fly on the wall. Thurgood had me at all of the meetings. And I listened.

0:47:04 And I helped with the drafting and the redrafting but my role was so minimal that I was almost embarrassed when he put my name on the brief. But I found him an absolutely

0:47:23 fascinating character.

MR. BONVILLIAN: This is your first experience with a black lawyer, [who was] of great substance, right?

HON. WEINSTEIN: He was able to pull together the black Bar³⁶ which was relatively small and split as to what they wanted, whether they wanted immediate desegregation, or separate and equal, or what they wanted. He

0:47:48 was able to draw together when necessary the major historians, sociologists, Constitutional lawyers

³⁶ This group included such noted lawyers as Robert Carter, Constance Baker Motley, James Nabrit, Jr., and William T. Coleman.

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in groups to help him with the briefs
and you know it went up to the
Supreme Court a number of times for
re-argument and then for decision on
what the decree should be like. And
he was able to bring together the
0:48:30 black community in the South.

Remember these teachers were facing,
if he were successful, the
possibility of losing their jobs. So
there was a good deal of dissention
0:48:47 about what they really wanted. He
dominated them. And he dominated
them in part because he had put his
own life on the line repeatedly in
going down to defend people unjustly
accused. As had Jack Greenberg, who
had by that time graduated, and a
number of other brilliant young
lawyers he had around him. But

0:49:22 watching him, I found him such a
dominant personality. He told jokes
using situations that would not now
be politically acceptable. He was

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able to just bring together people in a way that I found astounding. And so I did whatever he asked me to as the young associate and listened and he had me there -- I had all of the documents of that time and

0:50:01

unfortunately when I left Columbia they were destroyed. But I had a full set of documents and stayed there after the cases were decided in dealing with the post-Brown attempts

0:50:17

by the South to circumvent and delay.
MR. BONVILLIAN: So you were critical at the time of the kind of sociological evidence that was being introduced --

HON. WEINSTEIN: [Interposing] Yes.

MR. BONVILLIAN: -- in the case by Marshall and his team but you later came to change your mind about that?

0:50:35

--

HON. WEINSTEIN: [Interposing] Yes.

MR. BONVILLIAN: -- tell me, tell me that story.

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HON. WEINSTEIN: Curiously the sociologist who developed the Doll Theory³⁷ by showing African American children white and black dolls and they favored the white dolls and they drew certain conclusions with respect to the effect of separation that was adverse, to show that separation and equal didn't work and was deleterious, it was used in a famous footnote by the Chief Justice in his opinion. I looked at the research. And based on my analysis and the work I had done in college in statistics and the like it was simply not acceptable. I think he had five or six cases. But they needed something and they put it in. And I used some language I shouldn't have used in criticizing this work. Evie, my wife, had worked with the

0:50:58

0:51:15

0:51:46

³⁷ This is a theory derived from experiments conducted in the 1940s by psychologists Kenneth B. Clark and Mamie Phipps Clark and known colloquially as "the doll tests" to study the psychological effects of segregation on African-American children.

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sociologist³⁸ when she was at Columbia
doing her advanced degree,
interviewing people in Harlem, which
is curious how lives' paths cross in
so many different ways. But later I
recognized that the court really
needed some kind of factual basis and
none of it existed. And the court
was quite right. The conclusions
were right. But the data

0:52:18 didn't support it. And so ultimately
I said to myself the court was right
and I think I probably followed that
theory in some of my decisions. I've
made decisions with --

0:52:33 [Laughter, crosstalk]

MR. BONVILLIAN: [Interposing] I
recall some of those...

HON. WEINSTEIN: -- with very little
factual, legal support. But they
were right decisions subsequently
supported by other data.

MR. BONVILLIAN: Judge, I'd like to

³⁸ Kenneth B. Clark was a psychologist and Mamie Phipps Clark was a social psychologist.

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move now to your role in Nassau

0:52:47 County.

HON. WEINSTEIN: Yes.

MR. BONVILLIAN: And how did it come about that you became County Attorney for Nassau County and tell me a little bit about your work with Gene Nickerson³⁹ who was later a colleague on the Eastern District Court of course but then the County Executive.

0:53:02 HON. WEINSTEIN: Well I had been doing some work on reapportionment⁴⁰ with Lenny [Leonard B.] Sand⁴¹, independently with some of the

0:53:13 unions. So I had acquired some kind of a name in the Democratic politics. Gene was the first Democrat elected in Nassau County Executive since the

³⁹ Eugene ("Gene") H. Nickerson (1918-2002), a Nassau County Executive, Federal judge in the Eastern District of New York, and an advocate of social services for the needy, who expanded the parks system, favored zoning reforms, and was an early supporter of environmental protections.

⁴⁰ Reapportionment refers to the reallocation of seats in a representative legislative body based on census figures.

⁴¹ Leonard B. Sand (1928-2016), a Federal judge in the Southern District of New York who was previously an assistant U.S. Attorney in New York, an assistant in the office of the U.S. Solicitor General, and then in private practice he argued a number of "one man one vote" reapportionment cases, including before the Supreme Court.

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turn of the century. Last two
centuries ago.

MR. BONVILLIAN: Yes.

[Chuckling]

HON. WEINSTEIN: And Bert Harnett⁴²
was his first County

0:53:36

Attorney. Bert was one of the six of

us who established that lectureship
[at Columbia Law School]. And so

Bert, when he wanted to go back into
practice and make money, recommended

me to Gene. I had a sabbatical which
I extended so I was there about three

years. And Gene and I had an

absolutely marvelous time. We built
new parks, new roads. I helped buy

that whole Mitchell

0:54:06

Field on which Hofstra is now

located. I was involved in all kinds
of disputes. With respect to

discrimination I remember we had one
problem of the local real estate

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⁴² Bertram Harnett (1923-2015), was Nassau County Attorney from 1962-63, and a Judge on the New York State Supreme Court from 1968-77.

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0:54:27 developers and the brokers were not showing African Americans homes in wide areas. And so they were all being picketed. And Gene was embarrassed. And he called me up and he said, Jack, go down and solve that problem [Laughing]. And so I was then in my office with this huge crowd of disputants. Sick to my stomach, when I would -- how was I going to solve this, and suddenly it occurred to me that maybe if I proposed that the local real estate people advertise in the *Amsterdam News*, the African Americans would feel that they were cooperative. And that's the way we decided that problem. And there were all kinds of --

0:55:25 MR. BONVILLIAN: [Interposing] And this was when Nassau County was the fastest developing county in the country.

HON. WEINSTEIN: Well it stopped --

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0:55:30 MR. BONVILLIAN: [Interposing] Lots
of zoning and other kind of issues.

HON. WEINSTEIN: -- yeah, I think it
stopped gaining residents when I was
--

[Laughter, crosstalk]

HON. WEINSTEIN: But it was
developing and it was becoming a very
liberal, fine government that they

0:55:50 had. So as part of that work I wrote
the first brief for the Suburban
Communities and One Man, One Vote⁴³.
Lenny Sand, very fine lawyer and
judge, and I helped argue those
cases.

MR. BONVILLIAN: And that brought you
a certain amount of attention at the
time including to Robert Kennedy⁴⁴, as

⁴³ *WMCA, Inc. v. Lomenzo*, Secretary of State of New York, 246 F. Supp. 953 (S.D.N.Y. 1965), affirmed 377 US 633 (1964). Weinstein's brief in this case led him to work on other Democratic Party reapportionment matters throughout the state. Jeffrey B. Morris, *Leadership on the Federal Bench: The Craft and Activism of Jack Weinstein* Oxford University Press 2011) p.52.

⁴⁴ Robert F. Kennedy (1925-68), U.S. Attorney General for his brother John F. Kennedy, U.S. Senator for New York from 1965 until his death in 1968. Robert Kennedy was responsible in significant part for federal district court nominations in his state when his party was in power.

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I recall.

0:56:18 HON. WEINSTEIN: Yes.

MR. BONVILLIAN: And tell us about how you got named to the Federal bench.

0:56:27 HON. WEINSTEIN: Well Kennedy was interested in reapportionment. And I found myself advising him on some Criminal Law issue that he was concerned [with] then because I had taught Criminal Law at Columbia and I had an interest in it, particularly as County Attorney. Problems with local jails and protection of defendants. One of the things I did when I was County

0:57:01 Attorney was go down to Washington and get money for a project that ultimately became the Nassau Suffolk Defense Fund, for which I took a lot of abuse from the right wing in Nassau County, including some of the African American lawyers who thought that they would lose some of their

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practice by having these people
[lawyers] paid for and representing
defendants. And

0:57:34 I was threatened by them with the
loss of my license to practice law.
Of course, it didn't mean a thing to
me because I had a faculty seat at
Columbia. And [Laughing] nothing

0:57:47 meant any -- no threat to me meant
anything. I was called before the
Grand Jury to defend one of my land
assessors and in defending them I
just said this job doesn't mean
anything to me, I can always go back
to Columbia, but this is an honest
man and they refused to indict him.
So I was in a position of some
assurance

0:58:19 that I could do and say what I
thought was right. And ultimately we
set it up. That organization is in
existence today. I was the first
Chairman of the Board.

[Crosstalk]

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MR. BONVILLIAN: And they had their
25th anniversary -- -

HON. WEINSTEIN: [Interposing] And
Evie --

0:58:32 MR. BONVILLIAN: -- anniversary --

HON. WEINSTEIN: -- yes.

MR. BONVILLIAN: -- celebrating your
work in creating.

0:58:36 HON. WEINSTEIN: Yes. And Evie used
them in connection with her defense
of people who were in these old age
homes.

MR. BONVILLIAN: Let's go back to
Senator Kennedy and the way in which
you became a Federal judge.

HON. WEINSTEIN: Because I had been
working with him to some extent
working on reapportionment, he,
again,

0:58:59 took a liking to me, I don't know
why. And I met him at his house and
in Washington for meetings on some
legislation he was interested in. He
wanted to run me for Lieutenant

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Governor but they needed somebody
with an Italian name and my name,
Weinstein, didn't [Laughing] didn't
qualify. So he had, as his
representative in New York, Bill
0:59:34 vanden Heuvel⁴⁵ a very famous person
who's done a great deal with the
United Nations as you know, and in
connection with some of President
Roosevelt's work. Bill suggested to
0:59:56 Kennedy that he recommend me for the
Southern District where they had an
opening. However, I was at that time
-- I was always on three payrolls for
some reason. I was at that time
advising the Speaker⁴⁶ of the
Assembly⁴⁷ who was preparing for the

⁴⁵ William F. vanden Heuval (1930-), Deputy U.S. Permanent Representative to the UN, who previously served as counsel to New York Governor Averill Harriman, and assistant to Attorney General Robert F. Kennedy (1962-64) in the Justice Department, where one of his projects involved the landmark desegregation of the Prince Edward County school system. He was Chairman of the N.Y. Board of Corrections investigating conditions in the prison system before becoming a diplomat.

⁴⁶ The Speaker presides over the Assembly and is typically selected from the majority party.

⁴⁷ The Assembly refers to the lower house of the New York State legislature.

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1:00:27 Constitutional Convention⁴⁸ and I
drafted and published ultimately a
book on what I thought should be the
new Constitutional Convention. So I
said, well, I'm not interested and
I'm committed to working with the
Constitutional Convention. So a
little while later when I realized
that the Constitutional Convention
wasn't going to do very much --
MR. BONVILLIAN: [Interposing] The
constitutional reforms you wanted in
1:00:52 New York State were just not --
HON. WEINSTEIN: [Interposing] No --
MR. BONVILLIAN: -- going to happen.
HON. WEINSTEIN: -- I wanted to
reform the New York Court System and
1:00:57 its procedures to conform to what I
had already done in procedural
reform. And they [Laughing] they
weren't going to do anything along
those lines that would affect the

⁴⁸ In New York State, every 20 years voters may elect to hold a convention to revise and amend the state's constitution (N.Y. Const., Art XIX, sec 2).

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patronage that was involved in the court system. So I called Bill [vanden Heuvel] and I said, "Bill, get me out of here". And there was an opening here in the Eastern District⁴⁹ and that's where I was appointed. I ultimately realized the psychological basis for my rejection and my acceptance. I was in Ohio, in Dayton, about to deliver a speech on reform of some aspect of procedure. And the Dean, I said to the Dean, my father when he was a young man went to the National Cash Register Educational Group that was being trained, they were quite advanced, to sell cash registers. I'd like to see it. I'd like to see those tents. I had some pictures of it. Well there were no tents. It was a great big building. And when I went by it I said to the Dean you

1:01:21

1:01:56

1:02:07

⁴⁹ The Eastern District comprises the counties of Kings, Nassau, Queens, Richmond, and Suffolk. See: <https://www.nyed.uscourts.gov/>.

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know I took the Eastern District
judgeship and I know now why I did
it. He said why. I said because
after the Depression was over my dad
was appointed as National Cash
Register Representative for Nassau,
Suffolk, Brooklyn, Queens, and
1:02:34 Richmond. And that was his
territory. And after he died as a
fairly young man I was given the
opportunity of protecting my father's
territory and I jumped at that
opportunity. It's strange. But I'm
sure that's why I took this job.
MR. BONVILLIAN: Right. I'd like to
hear some of your early experiences
as a judge in the Eastern District.
1:03:01 Who were a couple of the judges that
you were working with? What was the
atmosphere here? What kind of cases
were coming in front of the Eastern
District?
1:03:10 HON. WEINSTEIN: The cases in the
criminal side were relatively simple,

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still going back to alcohol and bank robbery, robberies of post offices. And the civil side was also rather simple.

MR. BONVILLIAN: So this is in 1967.

HON. WEINSTEIN: 1967. And they used essentially the state system. The cases were assigned to individual judges, motion by motion. So that of the six judges, one case might be handled by all six judges. Now when I came down, my sense was to clean the docket as quickly as possible. Speed it seemed to me was a part of due process. So I was getting rid of my cases. I'd get motions, decide them, many of them dispositive, and then

1:03:40

1:04:15 I'd get the next motion and the next motion. It was like a chute of coal coming into my courtroom. I don't remember, I think by the time you were my clerk we had devised a --

1:04:27 MR. BONVILLIAN: [Interposing] Yes,

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you had an individual docket.

HON. WEINSTEIN: -- different system.

MR. BONVILLIAN: -- system.

1:04:41 HON. WEINSTEIN: Yes. I had, while I was at Columbia I had gone over to London and studied the British system which gave to magistrates control of the cases then sent them up to the justices for actual trial. And that I thought was a decent system. So we instituted here for the first time an allocation of a judge, and ultimately a magistrate judge, to each case as it came in. And that judge was assigned for the rest of the case's history. And we were able then to control it.

1:05:16 MR. BONVILLIAN: Now was that individual docket control assigned to a particular judge? Was that an idea that you pressed with your colleagues?

HON. WEINSTEIN: Yes. I insisted on it because otherwise I would have

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1:05:22 killed myself and they all understood
that it had these substantial
advantages. Although there were a
few of the older judges who lacked
some energy who preferred the old
system which permitted them to rest.
But this way, they got a case
assigned, that was their case, and if
they didn't handle it, it just hung

1:05:48 there. Eventually with respect to
habeas corpus as you remember there
were about 500 that piled up that
way. I took the whole 500 and
disposed of them over a 2-year
period. But individual assignment
was an enormous advantage. It now is
used in all Federal courts so far as
I know.

MR. BONVILLIAN: Right. And you used
1:06:15 that individual assignment system to
really develop your own kind of
techniques for managing your docket,
a docket, continuous docket, updating
system and periodically calling in

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[all]

1:06:27 the cases in front of you. Tell us about some of those reforms and tell us about the atmosphere in the courtroom itself that you created, which was very different than what other judges were using.

HON. WEINSTEIN: I had a sense partly because of my work on trucks and what I saw in real life and how business

1:06:49 operated, that a lot of this legal technique was not useful. And that business techniques could be much more efficiently used. So when I started, I stopped using the robe. And I began to handle all of my non-jury appearances in court around the table.

MR. BONVILLIAN: And trials.

1:07:26 HON. WEINSTEIN: And bench trials, so that documents could be passed back and the amount of acrimony was reduced. You can't, if you're sitting two feet from the judge and

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1:07:38 from your opponent you're not going to be shouting at them. And I called in the experts from both sides, swore them, and had them discuss things as experts in the same field. And it worked very well because the experts didn't want to embarrass themselves before other experts and they'd make concessions and we would be able to reach settlements. I'd bring in the

1:08:01 litigants so they could hear what the problems were with their case. And we settled a lot of the cases and where we didn't settle them we were able to minimize the issues for a jury or non-jury trial. I thought that worked very well. And, of course, I didn't wear a robe around the table and I didn't even wear it, when I had a jury trial, partly because I used to

1:08:27 walk up and sit with the jury to see what they --

MR. BONVILLIAN: [Interposing] What

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they were seeing.

HON. WEINSTEIN: -- what they were
1:08:33 seeing, exactly.

MR. BONVILLIAN: Right. So Judge,
you developed early on a reputation
as a lawmaker in a very positive
sense.

HON. WEINSTEIN: Well with respect to
procedure --

MR. BONVILLIAN: [Interposing] Yes.

HON. WEINSTEIN: -- you will recall
1:08:47 that after I went down to a Texas
meeting with a number of New York
attorneys, I appointed Ed Wesely⁵⁰ as
chairman of a committee - but we had
the best litigators who became a
committee to examine what we were

⁵⁰ Edwin J. Wesely was the head of the Eastern District's Committee on Civil Practices for many years. He was a former student and dear friend of Judge Weinstein. A graduate of Cornell University and Columbia Law School, Wesely had a distinguished legal career as a Federal Prosecutor and a litigation partner with Winthrop, Stimson, Putnam & Roberts [as of 2017 known as Pillsbury Winthrop Shaw Pittman LLP]. Wesely was a Special Master in Federal Court cases, and a dedicated humanitarian, serving many years as Chairman/President of CARE, a leading international relief and development agency, and co-founder of CARE International. He had many honors including Foreign Press Association World Humanitarian Award 1988. He was a Member of Council on Foreign Relations. He served on nonprofit boards, and chaired legal committees in the Federal Court system.

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doing in this court, and to propose changes in local rules. Those local rules ultimately were adopted and became the basis for critical changes in the Federal rules. The critical change being that the attorneys had to consult with each other, and had to reduce the amount of litigation pressures and agree to a large extent on where they were going with discovery and the like. And having met together, the entire posture and attitude towards litigation changed. That is the basis for Rule 16 [of the Federal Rules of Civil Procedure], as you know, that was adopted subsequently. That committee exists today and our criminal rules and our civil rules adopted now with the Southern District I think work exceptionally well if the judge uses the power he has, which I'm now using in a very complex case, to take control and to

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ensure that the case is decided quickly, effectively and based on due process without unnecessary litigation.

1:10:35 MR. BONVILLIAN: And you used, as a key tool there, developing the local district courts' rules in a series of areas which then became models for jurisdictions elsewhere.

HON. WEINSTEIN: That is correct.

1:10:44 MR. BONVILLIAN: So let me get back to this question of your role as a lawmaker. You would, in effect, seize control of the cases on your docket, and you would see opportunities where law reforms were needed and read those issues into the cases as they were coming in front of you, and then elect to focus on major intellectual projects in the
1:11:11 course of a year around some key cases and around some key law reform issues.

HON. WEINSTEIN: That's right.

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MR. BONVILLIAN: Is that a fair
summary?

1:11:28 HON. WEINSTEIN: It is. And I, in a
number of cases, as you may recall, I
would signal to the lawyers that we
are going to have a control meeting,
effectively, on such and such a date
and I want this issue discussed among
any other issues you wanted to
discuss so I could focus them on
where I wanted the law to go and the
1:11:45 factual development.

MR. BONVILLIAN: Yes.

HON. WEINSTEIN: Perhaps I was too
controlling at times but it seemed to
me that the judge had to take charge
of the case. And that's the theory
now of the federal discovery rules.

PART II

Interviewer: Oscar Chase

1:12:04 **Co-Director of the Institute of
Judicial Administration and
Russell D. Niles Professor of Law,
NYU School of Law**

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MR. OSCAR CHASE: Judge, you mentioned some of your approaches to the development of law and how important that was to you in your decision-making. I wonder if we
1:12:25 could continue that theme by asking about the relationship between a Federal District Judge and the [Federal] Court of Appeals. And in particular since you're in the Second Circuit, how you

1:12:38 found that relationship to work?

HON. WEINSTEIN: Well we particularly you know are in a fine position here in the Second Circuit because we've had in general outstanding judges on the [Federal] Court of Appeals. When I first joined the bench I used to sit from time to time on the Court of Appeals mainly for my clerks's benefit so they

1:13:07 could see how the operation went. I wasn't particularly anxious to sit up there because most of their cases I

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found were too dull. But I also found that there wasn't enough discussion among the judges on the Second Circuit. They didn't meet the same standards of the New York Court of Appeals⁵¹ or the [U.S.] Supreme Court with respect to intra-judicial discussions

1:13:48 and of course their en bancs were very limited. In general I think that if we don't have the best Court of Appeals in the country, it is none better than ours. And the Chief
1:14:07 Judges in recent years have been superb. I think Chief Judge Katzmann⁵² is extraordinary. What he's done with respect to counsel for

⁵¹ The New York Court of Appeals is the highest State court in New York, whereas the previously mentioned "Court of Appeals" with Chief Judge Katzmann refers to the U.S. Court of Appeals for the Second Circuit which is a Federal court.

⁵² Robert A. Katzmann, Chief Judge of the U.S. Court of Appeals for the Second Circuit since 2013. Chief Judge Katzmann was previously a professor of Law and Public Policy at Georgetown University; a Fellow of the Brookings Institution; and president of the Governance Institute. He is also on the Board of Advisors of the Institute of Judicial Administration (IJA) at NYU School of Law and has taught statutory interpretation in IJA's annual New Appellate Judges Seminar. See: <http://www.ca2.uscourts.gov/judges/bios/rak.html>.

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immigrants and counsel generally for those without adequate counsel at the appellate level is extraordinary. Without a good appellate counsel right from the beginning when the

1:14:40 immigrant makes his first approach to administrative agencies he's lost or she's lost. There must be counsel at every stage of the administrative and appeals level. Not only for immigrants but for other people. And until we get adequate counsel as Chief Judge Katzmann has been working for assiduously we're not going to get the full due process in the

1:15:15 Federal system.

MR. CHASE: Speaking of courts of appeals, it brings to mind that before you were appointed to the Federal District Judge you ran in the

1:15:29 days when the New York Court of Appeals was an elective court. You ran for the office of judge on the New York Court of Appeals --

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HON. WEINSTEIN: [Interposing] No.
Not judge, Chief Judge.

MR. CHASE: Chief Judge. Excuse me.
Yeah. And that must have been an
interesting experience and given you
1:15:48 some thoughts about the difference
between elective and appointive
office. Could you talk a little bit
about that?

HON. WEINSTEIN: Yes. The then Chief
Judge was Stanley Fuld⁵³. He had to
resign because of age limits which
were unfortunate because he was then
at the peak of his powers. As a
sitting District Judge I used to go
1:16:15 down a few blocks to where the city
jail was located and handle habeas
corpus and other applications. And
the state criminal justice system as
well as some of the civil system was
1:16:34 atrocious. People could sit in
prison and wait for years before
their case was tried. And the

⁵³ *Supra*, footnote 27.

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appeals lagged. I would walk down in front of the cells in order to get to the room where I was holding these hearings in the jail and prisoners would stick their hands out and say, they knew I was a Federal Judge,

1:17:00 "Judge, can you do something for me? I've been here for two years. My family has no income, what can be done?" The situation was impossible. The person who was slated to succeed Stanley Fuld was Charlie Breitel⁵⁴, a good friend of mine, a fine lawyer, and like me a graduate of Columbia Law School. I did not think Charlie would make a good administrative

1:17:34 judge. He was, like Stanley Fuld, interested in the Cardozo⁵⁵ approach which was to decide the case and move

⁵⁴ Charles D. Breitel (1908-1991), Chief Judge of the New York Court of Appeals 1974-1978 where he initiated reforms that shape our modern judicial system. See:

<http://www.nycourts.gov/history/legal-history-new-york/luminaries-court-appeals/breitel-charles.html>

⁵⁵ Benjamin N. Cardozo (1870-1938), Chief Judge of the New York Court of Appeals 1927-1932, and Justice of the U.S. Supreme Court appointed by President Herbert Hoover. See:

<http://www.nycourts.gov/history/legal-history-new-york/luminaries-court-appeals/cardozo-benjamin.html/>

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the substantive law but not to be
concerned with the administration of
1:17:52 the courts. Now the Chief Judge was
Chief Judge of the Court of Appeals
and Chief Judge of the State of New
York. And what I wanted to do was
change the administration of the
Court of Appeals. I wasn't
interested in becoming Chief Judge or
a Judge in the Court of Appeals
rather than a District Judge. A
1:18:15 District Judge in the Federal court
has I think the best job, legal job,
in the world. Seeing real people,
dealing with real problems, in the
first instance, developing the law,
pushing the envelope where required.
Looking out for the protection of
people that needed the protection of
the law. Real people, real facts. I
was very happy on the District Court.
1:18:44 But I wanted to change the
administration and that's why I ran
for Chief Judge. I was perfectly

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happy when I was defeated because I had raised the issue and Charlie Breitel, when he became Chief Judge, became more effective as a Chief Judge. And then when Judith Kaye⁵⁶ became Chief Judge she was magnificent in her administration of the court. Doing things for the poor people. Setting up drug courts. Setting up family courts. A magnificent change that's been carried forward, providing counsel for the poor. So we now have both in the Court of Appeals for the Second Circuit and in the Chief Judge of the New York Court of Appeals, magnificent administrators who understand that without counsel there is no protection of constitutional rights whether it's the appeal, the trial, or the administrative level.

⁵⁶ Judith Smith Kaye (1936-2016), Chief Judge of the New York Court of Appeals 1993-2008, was the first woman on New York's highest court. Chief Judge Kaye was a graduate of NYU School of Law and a former member of the IJA Advisory Board. [See: http://www.nycourts.gov/history/legal-history-new-york/luminaries-court-appeals/kaye-judith.html](http://www.nycourts.gov/history/legal-history-new-york/luminaries-court-appeals/kaye-judith.html)

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At the trial level we now have a wonderful Federal defender service. Excellent people. And we are giving good, I think, good protections. We

1:20:13 get many of these habeas cases from the state and there I'm not sure that, although the judges are fine, that we are getting as good results as we're getting here. Counsel is vital at every stage.

MR. CHASE: I wonder if you could say a little bit more about the process of running for office. You had a

1:20:37 particular goal in mind and you already were a judge so it wasn't a personal thing. But surely the experience of running for office.

HON. WEINSTEIN: It was exciting.

MR. CHASE: Uh-huh.

HON. WEINSTEIN: I was all over the state. I met people. I understood after I saw them that their view of what the court should give was not

1:21:00 necessarily what the court's view was

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and in some cases it was more effective than what the judge was seeing. So getting out into the field, seeing what was happening and what the relationships were, helped me a great deal. I was just as happy not to have been elected and happier because I would have had to resign at 70. And I really wasn't interested so much in administration, I was interested in getting the system changed. The result of my mixing [Laughing] the pot by joining -- by making this a contested election was that the Constitution was amended so now it's an appointive office which is what I recommended when I wrote my book on revision of the New York State Practice and Constitution.

MR. CHASE: Well as we know the method of becoming a judge in the New York Court of Appeals was later changed.

HON. WEINSTEIN: Yes.

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MR. CHASE: It's no longer an
elective process. Do you have any
thoughts, having seen personally the
election system and now having
1:22:24 observed the appointive system, do
you have any thoughts about that
sometimes controversial question?

HON. WEINSTEIN: It all depends upon
the attitude of the Bar, the public,
and the press. If everybody is
interested in a good judicial system
and in getting good judges and not
appointing or electing people as
1:22:47 patronage for past service, for
political parties, you will get a
good judiciary. We have a fairly
sound state judiciary now although
it's mixed to appointed and elective.
I would myself prefer appointive with
committees recommending to the
appointive authority, the governor
appointing or, in the city matters,
the mayor
1:23:15 appointing, subject to approval by

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the legislative body. I think that works best. But nothing works unless the press and the public and the Bar itself insists that we want the best

1:23:32 judiciary on the merits. Now, we appoint our magistrate judges. We, Federal District Judges, and they are superb. They're appointed strictly on merit. We have a committee that recommends a group of them to fill any vacancy. And our magistrate judges, I think I can say fairly, are, from a meritorious point of view,

1:23:58 better than our judges who are appointed through their political recommendations and their merit as a whole. We've got a very good bench here as well as on the Court of Appeals for the Second Circuit.

MR. CHASE: Well of course the description that you gave of an ideal appointive process is the one, close

1:24:21 to the one, that New York in fact

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adopted.

HON. WEINSTEIN: No, a lot of them
are elected. The Supreme Court
Justices --

1:24:28 MR. CHASE: [Interposing] Oh, I mean
for the Court of Appeals.

HON. WEINSTEIN: Oh, yes, true.

MR. CHASE: But, yes, there are
certainly these local Supreme Court
Justices as they're called in New
York --

HON. WEINSTEIN: [Interposing] Well
it's a compromise, you know? They're
1:24:42 appointive, appointed as state judges
and then assigned. So it's a
compromise and it works fairly well.
But the main thing is that the media
and the public and the Bar itself
insists on the very best people.

MR. CHASE: Yes. You spoke earlier
about the role of a Federal District
Judge and you also have spoken
eloquently about the importance of
1:25:13 the administrative side. Could you

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say a little bit about the Chief
Judge, which you were for a period of
time, of a Federal District Judge? A
Federal District Court? Which can
1:25:23 have many members.

HON. WEINSTEIN: We have now -- when
I came on the Court it was all-
white, all-male.

MR. CHASE: Hmm.

HON. WEINSTEIN: Court. Now we have
I think slightly more female judges.
We have representatives from every,
almost every aspect of our community.
1:25:47 It's a well-balanced bench. And the
judges are very good. And that's
because the Senators, particular
Senator Schumer⁵⁷, and the Republican
Senator⁵⁸ before him, insisted that
they set up a committee which went
out and looked for the best people,
recommended to the Senator, the
Senator recommended to the President

⁵⁷ Charles ("Chuck") E. Schumer (1950-), the U.S. Senator for the State of New York and a Democratic Party leader.

⁵⁸ Al D'Amato (1937-), Republican U.S. Senator for the State of New York preceding Charles Schumer.

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and the President followed the
1:26:15 Senator's recommendation. So we have
an excellent bench. Now the system
works well. But even better than
that system I think is what we do in
selecting our magistrate judges.

1:26:28 Together the magistrate judges and
the district judges in the Eastern
District of New York are a superb
court with our ancillary services,
the ex-mediation, arbitration, our
committees of practicing lawyers and
the Criminal Bar and the Civil Bar
who watch what we're doing and
recommend changes in practice. I
1:26:56 think it's an effective court.

MR. CHASE: Does the Chief Judge of
the court have a role that --

HON. WEINSTEIN: [Interposing] Yes.

MR. CHASE: -- particularly
important?

HON. WEINSTEIN: Yes. As Chief Judge
I appointed the first committees of
lawyers who recommended changes in

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our practice, our local practice.

1:27:15 They became... the local practice they recommended was adopted by us. They became the basis for local rules throughout the country and eventually for changes in the Federal Civil Practice. And they depend essentially on a sense of the attorney's responsibility with the judges to shape the case early so that the cases are decided on the merits without excessive litigation and costs. And the court has very great powers under Rule 16⁵⁹ when a summary judgment and Rule 1⁶⁰ saying

1:27:32

1:28:06 the cases should be decided promptly, effectively, and on the merits. I think the Federal system works well. But it requires judges who understand the great power of a Federal Article III⁶¹ Judge, assisted by magistrate

⁵⁹ Fed. R. Civ. Pr. 16.

⁶⁰ Fed. R. Civ. Pr. 1.

⁶¹ Article III of the U.S. Constitution establishes the Federal judiciary. See: <http://judiciallearningcenter.org/article-3-and-the-courts/>

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judges, to push the envelope where changes in the rules or substantive law are required. The Federal District Judge in a sense is freer to use imagination, to push the rules towards equality and due process, as we apply them because we're supervised by the Court of Appeals. So we can go a little further than the Court of Appeals might of itself gone and then have the Court of Appeals, having had the District Court explain why when we see the people, when we see these events, the law ought to be changed. So it's a working relationship between the Court of Appeals, District Court, and to some extent the [U.S.] Supreme Court. Of course, the problem with the [U.S.] Supreme Court is that it hears so few cases.

MR. CHASE: Yeah.

HON. WEINSTEIN: So that effectively

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it's the Court of Appeals that makes
the decision in almost all cases.

MR. CHASE: I guess one of the great
things about being a Federal District
Judge is you don't have to convince
any other people on a panel.

1:29:49 HON. WEINSTEIN: That's right.

MR. CHASE: You make the decision.

HON. WEINSTEIN: But not only that.

I can spend a whole year on a case
that interests me. I'm not under

1:29:58 pressure to my colleagues. If I
think a case is important enough and
raises enough procedural,

substantive, and factual issues, I
can devote an enormous amount of

time. I go out into the field. I

look at the places where some of
these events take place. I do

extensive research of my own on

1:30:25 matters that I think require some
initiative. I explain to the

attorneys what I'm doing, why I'm

doing it, and give them guidance on

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what I want. The result being that with respect to critical issues, the most extensive research, factually and legal on some of the issues is at the District level. We provide the ore in the sense that can be refined on the way up.

1:31:02

MR. CHASE: You make the record essentially.

1:31:10

HON. WEINSTEIN: We make the record but we're not limited by what the attorneys want. We can use our understanding of what the law requires, what the public requires, in addition to what the attorneys require.

1:31:34

MR. CHASE: Well in a moment I'd like to get back to that theme in the context of some of the very important cases that you had but before we do that still on the so to speak administrative side, I think it was when you were Chief Judge that the District adopted the arbitration,

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court-annexed arbitration system.

HON. WEINSTEIN: Court-annexed
mediation.

MR. CHASE: And mediation. But also
arbitration --

HON. WEINSTEIN: [Interposing] Yes.

1:31:54 MR. CHASE: -- and I think the
Eastern District is one of the few
that still has mandatory arbitration
for certain cases.

1:32:03 HON. WEINSTEIN: That's right. We
have probably the most extensive
teaching program for lawyers in
various specialties. We bring them
in, give them all their courses in
their specialties and then they
volunteer within special areas to
assist in mediation and arbitration.
It works very well.

1:32:33 MR. CHASE: One of the other topics
that came up earlier was your role in
developing the law of evidence
because in addition to your work on
the New York Civil Practice Law and

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Rules⁶² you were also very involved in the development of the Federal Rules of Evidence. If I'm not mistaken there was no Federal Rule of Evidence⁶³, it was all common law.

HON. WEINSTEIN: Correct.

1:32:54 MR. CHASE: And state law until this. Can you say a few words about that? That must have been an amazing experience.

1:33:02 HON. WEINSTEIN: It was. We had an excellent committee. We had a fine reporter. We spent several years going over the rules. We made them more flexible to reflect what I think is the case. We have a more educated now jury system. Many of our cases are tried by the court alone. And we can therefore have a more flexible

⁶² Judge Weinstein participated at a 50th Anniversary celebration of the New York CPLR hosted by IJA at NYU School of Law, See:

http://www.law.nyu.edu/news/cplr_50th_anniversary.

⁶³ The Federal Rules of Evidence, enacted by Public Law 93-595 (approved January 2, 1975), as amended by Acts of Congress, and further amended by the United States Supreme Court, are a set of rules that govern the introduction of evidence at civil and criminal trials in U.S. federal trial courts.

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set of rules that's concentrated more
1:33:36 on probative force as well as on
possible prejudice. I wrote when I
was a professor at Columbia what was
and probably still is the leading
article suggesting a radical change
in the rules with respect to hearsay
so that probative force was the main
issue and the possibility of
prejudice was also considered. The
advisory committee adopted that. It
1:34:13 was rejected then because the Bar
itself preferred a rule that was more
predictable. But there is still in
the Federal Rules a catchall
provision that permits the trial
1:34:28 court to allow evidence that has
strong probative force and has
guarantees similar to those of the
exceptions. And we're much more
flexible about evidence. Now what I
do is bring everybody in at least a
week and sometimes even before the
actual trial and go over all of the

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1:34:58 evidentiary problems that I expect to
occur and then bring them in every
morning a half hour --

MR. CHASE: [Interposing] The
attorneys this is?

HON. WEINSTEIN: -- early.

MR. CHASE: -- that you're referring
to?

1:35:10 HON. WEINSTEIN: I insist that we
bring up all of the rules of
evidence. I don't like sidebars. I
like to decide everything in advance
where possible. There are
emergencies of course. So the case
moves. And therefore my trials tend
to be much shorter than some of the
1:35:24 other judges.

MR. CHASE: Now you mentioned the new
rules of evidence that developed,
came about, and you had also, of
course as we have discussed, helped
bring about a new procedural system
for New York State. And in both
cases you followed by writing or co-

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writing extensive treatises.

1:35:48

HON. WEINSTEIN: Right.

MR. CHASE: Many people have wondered how you managed to do that in all your judging but --

HON. WEINSTEIN: [Interposing] Well I didn't sleep too much during that period and particularly since in the state case I had to run all over the state to convince the judges and the attorneys that our revisions were

1:36:08

right. And that was true of the evidence rules as well. What I wanted to do, and why I wrote those treatises was also, and also one and two volume handbooks for the Rules in

1:36:24

the State and the Federal Court, I wanted to see that they were developed along proper lines. So with the treatise available, it was my view of flexibility and power of the Federal Judge that I hoped the judges would follow. And to a large extent those treatises have had that,

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and handbooks, have had the effect.

1:36:53 Of course I no longer do them. It's just too exhausting at my age.

MR. CHASE: Well they're still in print of course and they're updated from time to time.

HON. WEINSTEIN: By excellent revisers.

MR. CHASE: Well having been one them⁶⁴ I appreciate that point--

1:37:11 HON. WEINSTEIN: [Interposing] Your work is excellent. Is excellent.

MR. CHASE: Thank you Judge. Does it ever occur that when you have a case and maybe there's an issue about whether something in evidence should

1:37:25 be in evidence and the lawyer refers to your thesis, your treatise and says but Judge on page so and so you said.

HON. WEINSTEIN: Yeah.

MR. CHASE: Does that ever happen

⁶⁴ Professor Oscar Chase was one of the scholars who, from 2001 to 2011 worked on updates to Judge Weinstein's treatise, *New York Civil Practice Law and Rules (CPLR)*.

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[Laughing]? How do you deal with it?

1:37:43 HON. WEINSTEIN: [Laughing]. I first had that when I was County Attorney of Nassau County. I had a case involving some \$300 (million) or \$400 million acquisition of land. I took a position as County Attorney different from the one I took in the treatise. So my opponent started his argument by saying the County Attorney formerly known as an expert on this matter says so and so in his book and he says so and so in his brief. And so when I got up I said, well, Your Honors, I've learned since --

[Laughter]

1:38:16 HON. WEINSTEIN: -- and I took the client's position.

1:38:27

MR. CHASE: You had talked about your efforts to develop the facts and make sure the lawyers developed the facts and the law and especially in important cases. One of those that's

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well known is of course Hart against
Community School Board⁶⁵ which
involved integration. Can you talk
about that

1:38:51 for a while --?

HON. WEINSTEIN: [Interposing] Yes.

MR. CHASE: -- because it's a
remarkable case and...

HON. WEINSTEIN: Well Coney Island
meant a lot to me because at one
point my father represented NCR⁶⁶ in
that area and we had free tickets to
Lunar Park and Coney Island. And our
family used to go down there. I used
1:39:10 to go down with a quarter or a nickel
for a frankfurter, or a nickel for
the train each way and a nickel to
spend any way I wanted [Laughing].
And so I had an interest in Coney

⁶⁵ In *Hart v. Community School Board of Brooklyn*, 383 F. Supp. 699 (E.D.N.Y. 1974) ("Hart I"), Judge Weinstein's court ordered the school board to prepare a desegregation plan for the Mark Twain Intermediate Gifted and Talented School in Brooklyn, New York. The plans to gradually desegregate the magnet school that were then ordered by the District Court were upheld on appeal by the Second Circuit, 512 F.2d 37 (1975).

⁶⁶ NCR is the National Cash Register Company which once had a monopoly on retail store cash registers, but now specializes in bank cash machines.

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Island.

1:39:25 And after the war the Jewish community which occupied a large portion to the west was split off from the Italian community which was a very stable community. And the Jewish community tended to leave to the new buildings that were being built to the east of Coney Island. And what the city did was put into

1:39:57 those almost abandoned buildings that were collapsing a great many of the welfare clients. And the combination of welfare clients which were at that time primarily African American with some Hispanic, some few whites, in those collapsing buildings, and then actually change the way classes were funneled into the intermediate school in Coney Island so that it

1:40:39 became an all-African American school system surrounded by people living in these collapsing houses. I walked those streets with my clerks. And I

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was appalled by what I saw physically
1:40:59 and what I knew legally was happening
with the decisions. And I appointed
to help me because what was necessary
was for the court to understand the
physical and legal situations and
economic situation and try to work
out some way of integrating that
school in that area that was so
deteriorated, educationally and
1:41:30 otherwise. I appointed somebody from
the Columbia faculty who worked out
various programs and was brilliant.⁶⁷
And we came up with a conclusion that
the city simply couldn't afford. So
what we developed for that school
with the aid of some wonderful
lawyers representing the school and
the community was essentially a
school that invited people from the
1:42:07 whole of Brooklyn to a magnet school.

⁶⁷ The special master in Hart, was professor Curtis J. Berger of Columbia New School. See *Curtis J. Berger, Away from the Court House and into the Field: The Odyssey of a Special Master*, 78 Colum. L.Rev. 707(1978), of the author's account of acting as special master in the Hart case.

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MR. CHASE: Oh.

1:42:23 HON. WEINSTEIN: Which was so well developed in its faculty and in its programs that people vied to get on it. And it's still very successful. It was the only way we could break that chain between living quarters, neighborhood, and depressed school. Now after the event I continued to walk in that area to see it develop and it's now developed into a very clean area. I had them pull down all of the old buildings and they built
1:42:51 new one and two-family houses and the school works very well.

MR. CHASE: Well it's remarkable that -- was that one of the remedies that, using your power as a judge in equity?

HON. WEINSTEIN: Yes.

MR. CHASE: About the housing?

HON. WEINSTEIN: What I had, as a tool, because I had taught at Columbia,

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1:43:15 Development of Legal Institutions and
Equity, we had a fine Equity course;
we had a fine *Development of Legal
Institutions* course. And I knew that
courts of equity had enormous power
1:43:30 to deal with a changing society which
is what they dealt with in England
over hundreds of years. And the
United States had to deal with it in
a space of decades rather than
centuries. So I used all that I had
learned, expanded it, used special
masters⁶⁸, used equity, and I think it
was quite successful.

1:43:57 MR. CHASE: You mentioned special
masters. That's another aspect of
your judgeship if I may say that is
to use special masters in particular
cases. What would you say to other
judges about the opportunities in
that regard?

⁶⁸ Rule 53 of the Federal Rules of Civil Procedure provides the authority of U.S. District Courts to appoint a special master, an officer of the court to perform quasi-judicial functions, often investigative, to assist the court. Special masters are often used in complex civil litigation.

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HON. WEINSTEIN: They have to be used
carefully. But the judge needs to be
able to reach out into the community,
1:44:20 has a bridge into the community, he
can't go and hold in many instances
public hearings as in the Hart⁶⁹ case.
And he also needs somebody to block
the community so they don't interfere
1:44:37 too much and he can hear what's going
on and develop with the special
master an understanding of what's
required. What is the sense for the
situation? Carl Llewellyn who's one
of the great teachers at Columbia and
one of my colleagues when I taught
there always told us look for the
sense of the litigation. What is the
1:45:08 essential problem? And the special
master helps the judge find out
what's going on in the community and
communicate without himself or
herself becoming so involved that he
or she loses all sense of

⁶⁹ *Supra*, footnote 66.

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impartiality. They're very effective. I used them in Agent Orange⁷⁰. I've used them in other cases.

1:45:35 MR. CHASE: I was about to ask you about that because in the use of special masters, it's particularly been used by you in class actions. And you have managed to finality very

1:45:53 important class actions and made some important law, one of them of course being the Agent Orange case. I'm sure it would be interesting to hear your take on Agent Orange.

HON. WEINSTEIN: Well Agent Orange was essentially a political case.

They have not, even up to this date, done the necessary statistical,

1:46:15 medical studies that would show definitively from a statistical analysis what the relationship was

⁷⁰ In the Agent Orange cases, veterans and their families brought a class action against certain chemical manufacturers and the U.S. government for injuries plaintiffs sustained from the use of "Agent Orange" herbicide during the Vietnam War. Judge Weinstein's rulings and ordered settlements in the Agent Orange cases were subject to various appeals. See: Product Liability Litigation, 597 F. Supp. 740, 747 (E.D.N.Y. 1984).

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with the spraying of herbicides by the government and various diseases that the soldiers and sailors and the local population later had. So that I had to deal with the case where the science was not developed but there was a clear feeling among the

1:46:52 Vietnamese veterans, for other reasons, too, because they were not treated well by the public which didn't support the Vietnamese War⁷¹. I had to deal with a case where they

1:47:05 felt that they had been abused. The use of herbicides I didn't find objectionable. They saved the lives of our soldiers and sailors by preventing Vietnamese soldiers from creeping up through the brush and trapping them. And what I did was appoint four special masters to try to achieve settlement. One had a

1:47:35 relationship with the Democratic

⁷¹ Vietnam War, (1954–75), a protracted war between the communist government of North Vietnam and its allies in South Vietnam, and its principal ally, the United States. See: <https://www.britannica.com/event/Vietnam-War>

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majority in the Federal Legislature;
one with the President, Democrat or
Republican; and two were very
experienced tort lawyers. The then
president rejected helping the
veterans at all. So the money had to
come from the producers. And we were
able to work out a settlement that
at that time was, I think, the
largest

1:48:11 settlement of a case, a tort case, of
that kind, \$180 million⁷². I settled
it by insisting that the plaintiffs
and the defendants be well
represented. We kept working day
1:48:28 after day and night after night.

Eventually we settled it because one
of the chief producers had produced
particularly dirty herbicides with
dioxin to a very high degree. They
did not wish to settle. So I said

⁷² The settlement of \$180 million was put in the Agent Orange Settlement Fund distributed to class members in accordance with a plan ordered by Judge Weinstein. See: https://www.benefits.va.gov/compensation/claims-postservice-agent_orange-settlement-settlementFund.asp

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very bluntly at 1:00 a.m. one
morning, look, you don't have to
settle, I'll take the settlement from
1:49:02 everybody else. You will be held
responsible for about 45% of the
dioxin and you may have a jury that
will find you liable for billions of
dollars. They came back in a few
minutes and said, well, we'll get
within settlement. The settlement
was adopted at 3:00 a.m. that
morning. And the next morning when
we were to start the case we
1:49:29 indicated, Ken Feinberg⁷³, indicated
to the public it had been settled.
The other thing [Laughing] I did
which was probably of an arm-twisting
variety was to say to them when the
1:49:44 settlement was signed, I want to see
the \$180 million now. They thought
they would pay the \$180 million over

⁷³ Kenneth Feinberg (1945-), a lawyer who mediated the Agent Orange settlement. Feinberg later served as special master of the federal September 11th Victim Compensation Fund, which distributed nearly \$7 billion to more than 5,000 victims and families of victims of 9/11. See: <http://content.time.com/time/nation/article/0,8599,1903547,00.html>.

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a period of years. Interest rates were very heavy at that -- very high, so \$180 (million) was the equivalent of \$300 million present value. And we set up a system in each state to help the families in what amounted to an insurance system for the veterans who showed any of possibly related disease. Ultimately of course Congress provided for presumptive causal relationships. Again without the necessary scientific data unfortunately.

1:50:11 MR. CHASE: Yeah. Well as I recall there were, the settlement was very happily accepted by the class on the whole.

1:50:42 HON. WEINSTEIN: On the whole.

MR. CHASE: There were a few --

HON. WEINSTEIN: [Interposing] There were some dissenters.

1:50:45 MR. CHASE: -- objectors and you had to actually decide the case for some of them. Is that right? And do you

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recall --

HON. WEINSTEIN: [Interposing] I held hearings all over the country.

MR. CHASE: Hmm.

1:51:04 HON. WEINSTEIN: I had to have marshals accompany me because I was threatened by shooting [Laughing] by some of the veterans who didn't agree. And I held hearings in New York, Chicago, California, Texas, other places. I heard hundreds and hundreds of people and most of them when they understood what we were trying to do were accepting. And I say later as a political matter Congress gave them much more relief.

1:51:33 MR. CHASE: Yeah. Of course that was not the only class action that you supervised. There were some other product liability cases that you had dealt with and of course there were

1:51:49 the desegregation cases. Class actions remain, despite the law in Rule 23 [of the Federal Rules of

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Civil Procedure]⁷⁴, somewhat
controversial. What's your view?
Have you found that they're effective
on the whole?

1:52:17 HON. WEINSTEIN: They're a very
useful tool in settlement and I think
they can be tried although they're
not usually tried. I think that the
defendant producers and vendors have
been effective in getting the
Congress and to some extent the
Supreme Court and Courts of Appeals
to reduce their effectiveness but I
believe they're still quite effective
when properly limited and supervised.
And I've continued to indicate that
the consumer class action can be a
useful tool to protect the public.

1:52:54 Now there are other devices. There's
multidistrict litigation which we
used in Zyprexa⁷⁵ to settle with about

⁷⁴ Rule 23 of the Federal Rules of Civil Procedure govern class actions, such as requirement for certification of a class.

⁷⁵ A consolidation of actions against the Eli Lilly & Company for injuries suffered from use of the company's anti-psychotic drug, Zyprexa. See: *In Re Zyprexa Products Liability Litigation*, 424 F. Supp. 2d 488 (E.D.N.Y. 2006), and *In re*

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1:53:09 \$6 billion in damages some 30,000 cases. And there are other methods of consolidation which I won't go into now. But given the flexibility of the Federal Rules [of Civil Procedure], and the judge, special master, magistrate judge, and a procedural system that's handled aggressively but with due process in mind, they can be very useful because very often the administrative agency that should be doing this work,

1:53:41 Federal Trade Commission, Drug⁷⁶, other commissions on safety, are not doing their job because they are partly politically motivated. When they get too aggressive the new Administration can reduce their capacity by appointment.

MR. CHASE: One of the criticisms of class actions has been that in some of them there's very little value for

Zyprexa Prod. Liab. Litig., No. 04-M1596, 2005 WL 3117302 (E.D.N.Y. Nov. 22, 2005).

⁷⁶ [U.S. Food and Drug Administration](#).

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1:54:11

the --

HON. WEINSTEIN: [Interposing] Yes.

MR. CHASE: -- consumer. But a lot of value for the lawyers.

HON. WEINSTEIN: I agree. And --

1:54:14

MR. CHASE: [Interposing] Is there some way that you try to deal with that --

HON. WEINSTEIN: [Interposing] I think the judge has to stop it. And we do reduce the fees and if the case has little merit and is solely for the benefit of the attorneys, both the statute and the rules as applied

1:54:43

by the Courts of Appeals and District Judge, can prevent abuse. And should be, should prevent abuse.

MR. CHASE: Perhaps we should turn to criminal cases because obviously that's an important part of your docket. You have had some interesting approaches to criminal cases. You told me once that when you were going to sentence someone,

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1:55:12 you brought the family there.

HON. WEINSTEIN: Yes, I do.

MR. CHASE: Could you say something
about that?

HON. WEINSTEIN: I take a video of
1:55:19 the sentence should the Court of
Appeals ultimately want to see what's
happening in court. The emotional
aspects of it. The fact that the
family may or may not be giving
support all affects whether there
will be rehabilitation and whether
the defendant should be sentenced in
a certain way. I will also look into

1:55:44 what the kinds of prison facilities
the defendant will face because
that's all part of the sentence. So
in some recent cases where it's clear
that the defendant will, if he's
sentenced to a long prison term, be
placed in solitary confinement or be
assaulted, I have to take that into
account. So I take into account not
only protection of the community but

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1:56:15 rehabilitation and saving of the
 family and saving of the defendant so
 that we do not strip as we have in
 the past many of these African
 American or Latino communities of
1:56:32 people who should be there as
 husbands and fathers to provide
 stability to the community and to act
 as role models for their kids. They
 shouldn't be in prison for a long
 time. So the whole attitude towards
 the prison system and locking people
 up would change radically in the 80's
 because of... inappropriate reforms by
1:57:08 the Sentencing Commission and by the
 statutes, are now being rolled back
 by a more intelligent consideration
 of what's needed for the community,
 what's needed for the taxpayer. We
 simply can't afford to have such
 large portions of our population
 incarcerated. We can't afford to
 destroy these communities. We can't
 afford to unnecessarily destroy

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1:57:35 defendants. So reentry program,
programs for supervised release where
we provide community facilities are
being developed in this District to
an extraordinary degree by a variety

1:57:54 of programs that I'm very proud of
but I can't go into detail on them.
Many of them, I think, are being
utilized as models as adopted by the
Attorney General of the United
States, past and present.

MR. CHASE: You referred to the
Federal Advisory Sentence System
which was mandatory at one point.

1:58:22 HON. WEINSTEIN: Yes.

MR. CHASE: But now has become more--

HON. WEINSTEIN: [Interposing]

Advisory.

MR. CHASE: -- discretionary and
advisory.

HON. WEINSTEIN: Yes.

MR. CHASE: Do you feel that there's
enough discretion for the Federal --

1:58:32 HON. WEINSTEIN: [Interposing] Oh,

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yeah.

MR. CHASE: -- District Judge? There is.

HON. WEINSTEIN: Except with respect
1:58:34 to mandatory minimum. There are
mandatory minimums now that are
outrageous as applied in individual
cases. Absolutely destroying people
who are good members of the
community, good family heads, and did
what was wrong, that have looked at
pictures of children that were
obscene, for a variety of
1:59:06 psychological and other problems.
They can be controlled without
destroying the family and without
these huge sentences which make no
sense at all. I've been -- I've
visited these prisons. I've visited
the place where they receive
treatment in the prison. And I see
professors, heads of businesses,
who've left their families destroyed
1:59:30 and should not be in there for those

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long periods.

MR. CHASE: One of the aspects of criminal cases is that there's often a great deal of interest on the part of the community. Of course that's true when you have a segregation case or an integration case and so forth as well. But how does that, as a Federal District Judge, have you found that there are -- that the public is sometimes very active? I think about the Kahan case --

1:59:45

HON. WEINSTEIN: [Interposing] Kahane⁷⁷, yeah.

MR. CHASE: -- you recall. And the Orthodox community was I think worried about your decision if I can put it that way. How do you deal with that?

HON. WEINSTEIN: Well let me step back for a moment. I think Congress was well advised to provide, as it

⁷⁷ Judge Weinstein's court sentenced Meir Kahane, an orthodox rabbi, to imprisonment. In *United States v. Kahane*, 396 F. Supp. 687 (E.D.N.Y. 1975), the rabbi brought action for food meeting orthodox Jewish dietary requirements (kosher food).

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2:00:26 now has, that people who are affected
by the crime have a right to be
heard. I like that. They come in in
some cases. They ask for penalties
which I think are too great and then
2:00:39 we discuss them and go over it and
sometimes they come around with an
understanding and acceptance. So we
get a reasonable decision. But they
have a right to be heard and the
community has a right to be heard.
Now in the Kahane case, we had a
Rabbi who was highly prized by the
Orthodox community but he was a
2:01:08 danger to society. He stored
explosives in... some of the airports.
He was training people to use
explosives and blow things up. He
had to be sentenced to prison. And
when he was released he went back to
Israel and was head of what is
essentially as I understand it
terrorist groups. So I had to listen
to the community because I had to

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2:01:45 understand what his impact on the
community was. What the community's
view was. But... I had to resist what
that individual small community of
Orthodox Jews felt about him in order
2:02:02 to consider the safety of the entire
community. And that's part of what I
had to deal with. Now in that case
there was a problem with the kosher
food. And I had to provide, which
was resisted by the Bureau of
Prisons, kosher food for him. When
they refused I let him out on bail so
he could have kosher food. Now they
2:02:30 provide kosher food. They provide
halal food for Muslims. And from
that series of cases I got involved
in providing for prayer within the
prisons. All of that has to be
accomplished with respect to the
First Amendment and our failure, our
refusal, to discriminate against
religions. But the necessity of
treating the religious issue when it

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2:03:06 raises problems like this. What do
you do with schools, in schools, when
Muslims have to pray five times a
day? With respect to clothing, with
respect to all these cases which are
2:03:20 coming before the courts and come
before me. You have to deal with a
real life situation in a way that
recognizes religious liberty,
recognizes what's due to the secular
community, and permits us to live in
peace without the kind of
discrimination and terror that
Madison tried to avoid with the First
2:03:51 Amendment.

MR. CHASE: Other criminal trials
that you recall, putting aside the
religious issue which is so
important, but that come to mind that
you?

HON. WEINSTEIN: I had a number of
cases. I had one judge who was
taking bribes. I've had
representatives who took bribes.

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2:04:13 They were very difficult cases to try
and to sentence. What do you do with
a person who has done well with the
community and then has done something
like this? General deterrence is

2:04:30 absolutely essential. You've got to
be very firm so you don't encourage
this kind of thing. And in New York,
particularly with some of the cases
coming from Albany or from the city,
we've had bad abuses.

MR. CHASE: Yep.

HON. WEINSTEIN: By legislative
representatives. It's a constant
2:04:50 problem.

MR. CHASE: Perhaps as we head toward
the end of this interview, we could
more generalize, if we can, and I
wonder, you've had a career in the
law that is truly remarkable:
academic, lawyer in a private firm,
being a judge, essentially writing
laws, working with the legislature;
what parts of your career stand out

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2:05:24 for you as being both heartwarming
and also in your view important? I
know it's a big question but.

HON. WEINSTEIN: Well. Huh. I was
so lucky. I came from relatively

2:05:39 poor but loving parents and a loving
family. I grew up in a relatively
modest, mixed neighborhood. There
was one period in my early education
where one of the teachers called in
my parents and said your son Jack is
going to end up in jail if he doesn't
straighten out.

[Chuckling]

2:06:06 HON. WEINSTEIN: And eventually I did
kind of straighten out when they
skipped me and I became more
interested in what they were
teaching. I had been doing a lot of
private reading myself and I was
bored by a lot of what went on in
school. So I had a good public
education. Grade school,
intermediate school, my high school

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2:06:28 teachers some of them were superb.
They had advanced degrees from
Harvard and City University [of New
York]. I went to Brooklyn College at
night. It was superb. All built,
many of these

2:06:47 schools were built with federal
funds. It was government that
provided. It was government that
provided the playgrounds in our area.
It was government that gave me my
legal education. And gave me all
these opportunities. So I'm a firm
believer in the capacity to use
government intervention whether by

2:07:15 building roads or bridges or schools
or health facilities or what have you
for opportunities like for people
like myself. I still think of myself
as just a relatively poor kid from
Bensonhurst[,Brooklyn], suddenly
thrust into these positions by
happenstance, by good luck. And I
think America remains potentially

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discriminated against because of
disability or because of race or
2:09:04 because of gender or because of so
many other things. It's a
magnificent country. We are a city
on the hill. And of course it's
distressing for me to see some
2:09:18 regression now. And this court will
remain as part of the fortifications
of due process and equality in this
country and I will remain as long as
I can walk in the door. And even
after I have to be carried [Laughing]
in and out. To do my duty that I've
been doing in war and peace for the
last 60 or 70 years to see that this
2:09:46 great country's Constitutional
protections and concern for each
person is maintained. Every person
that comes into this courthouse has a
right to be treated as an individual
with rights and responsibilities as a
person. Whether he's in prison,
whether he's accused of a crime, or

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she, what are her civil or his civil disabilities are. And that, this

2:10:24 court, I'm convinced with its judges and its procedures and its practices will remain that great bastion, bastion of civil rights. It was right here where we're talking, where

2:10:41 George Washington fought the first great battle of the [American] Revolution. Thousands of people died on this very, in this very area, fighting that battle and gave their lives. People that I knew died, my friends died in World War II. I'm going to stay here and do everything I can to see that these traditions remain in

2:11:07 force. And the powerful assistance that we get from academia and from schools like NYU and its Brennan Institution⁷⁸[sic] are essential to give us the morale that we needed,

⁷⁸ The Brennan Center for Justice at NYU School of Law is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice.

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need, when we are criticized. The support of the media, the support of the Bar which comes, is vital. And we have the great position here of having the *New York Times* and the *Wall Street*

2:11:52 *Journal* and many other publications and great schools like NYU and Columbia that support us. So we're not alone. It's all of this together that provides for a free society.

2:12:08 Without any one of that, support from the public, support from the media, support from the academic institutions and the writings, and our own courts, we couldn't do the job.

MR. CHASE: Well Judge on behalf of the Institute of Judicial Administration and New York

2:12:26 University Law School, thank you very much.

HON. WEINSTEIN: Thank you for having me.

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[END RECORDING]