

Harold Baer, Jr.

Oral History Interview
with Harold Baer, Jr.

*Interviewed by Jeffrey A. Kroessler
on January 16, 2009 & June 3, 2009*

Justice in New York: An Oral History

Preface

President Jeremy Travis initiated *Justice in New York: An Oral History* in 2006. Based in the Lloyd Sealy Library, the project was made possible through a generous grant from Jules B. Kroll, President of the John Jay College of Criminal Justice Foundation. The goal was to interview criminal justice leaders – district attorneys, police commissioners and members of the department, elected officials, defense attorneys, and advocates, individuals concerned with the workings of the system.

Each interview is recorded on cassette tapes and/or a digital recorder. The original is deposited in Special Collections in the library. Each transcript is bound and the volume is cataloged and placed on the shelves. A digital copy is available through the library's web site, as are selected audio clips from the interviews (<http://www.lib.jjay.cuny.edu/>).

Oral history is a problematic endeavor. The interview is only as good as the questions asked and the willingness of the interview subject to be open and honest. Some remain guarded, others become expansive. Sometimes memory fails, and details, names and dates are confused. Some individuals have their own set story, and an oral history will add little that is new or especially insightful. Other individuals use the interview as an opportunity to sum up a career; on occasion that means gliding over unpleasant or difficult details. Our purpose was to allow each individual to tell his or her story. In each case, the final transcript has been approved by the interview subject.

Even with those caveats, what emerges from these interviews is more than a collection of personal reminiscences. The interviews shed light on controversies and policy decisions of a particular historical moment. At times, the interviews verge on the philosophical, as with discussion of capital punishment, race relations, or the decriminalization of controlled substances. Always, the interviews contribute to our understanding of the many facets of the criminal justice system – law enforcement, prosecution, incarceration, prisoner re-entry, and electoral politics – and reveal how New York has changed over the decades, as have social and cultural attitudes.

Justice in New York: An Oral History stretches across more than half a century, from the 1950s to the 2010s. Those years saw an unprecedented rise in social unrest and violent crime in the city, and then an equally dramatic drop in crime and disorder. If the interviews have an overarching theme, it is how the city – the police, courts, elected officials, and advocates – addressed and, yes, overcame those challenges. These men and women were actors in that drama, and their narratives stand on their own. The truth or mendacity of the story is for the reader to assess.

Chief Librarian Larry E. Sullivan guided this project from the start and participated in several interviews. Interim Chief Librarian Bonnie Nelson oversaw the creation of a new website for Criminal Justice in New York, a portal for the oral histories, trial transcripts, images and documents from Special Collections, and other resources. Special Collections librarian Ellen Belcher, cataloging librarian Marlene Kandel, and emerging technologies librarian Robin Davis contributed to the success of this project.

Jeffrey A. Kroessler
2013

Harold Baer, Jr.
Chronology

- 1933 Born in New York City
- 1954 Graduated Magna Cum Laude from Hobart College
- 1957 Graduated from Yale Law School
- 1957 Joined New York firm of Greenwald, Kovner & Goldsmith
- Aug. 18, 1957 Married Suzanne Harris
- 1959-1961 Assistant Counsel to Whitney North Seymour Jr, on the State Commission on Governmental Operations of the City of New York.
- 1961 Assistant United States Attorney for the Southern District under Robert M. Morgenthau; involved in prosecuting heroin ring operated by Carmine Locascio; first prosecution in the country of a labor leader for embezzlement under the Welfare and Pension Fund Disclosure Act (Max Davis of the International Brotherhood of Production, Maintenance and Operating Employees, Local 10)
- 1963 Appointed Chief of the Special Prosecution Unit of the United States Attorney's office.
- 1963 Appointed to the committee on Labor and Social Security Legislation at the Association of the Bar of the City of New York.
- June 2, 1964 Admitted to practice at the United States Supreme Court.
- 1964 Gained convictions of Joseph Scalza, president of Teamsters Union Local 819, and 3 others for embezzling union funds; all were associates of labor racketeers John "Johnny Dio" Dioguardi and Anthony "Tony Ducks" Corallo. A few years earlier the Teamsters had taken over the 4,000-member local of the United Textile Workers of America.
- 1965-1967 Served on the Civil Rights and Federal Legislation committees of the New York County Lawyers Association.
- 1966 Investigated kickbacks to Teamster officials for loans from the pension fund.
- August 1966 Appointed executive director of the new police review board by Mayor John V. Lindsay, with the rank of deputy commissioner.

- Nov. 8, 1966 By a margin of 1,307,738 to 786,492, New Yorkers voted to abolish the Civilian Complaint Review Board; all members resigned a few days later. On Nov. 22, Police Commissioner Howard R. Leary created a new review board under police control.
- Mar. 10, 1967 Left as Executive Director of the Police Department's Civilian Complaint Review Board and joined the firm of Guggenheimer & Untermeyer.
- Feb. 4, 1970 Whitney North Seymour, Jr. replaced Robert M. Morgenthau as United States Attorney for the Southern District and appointed Baer First Deputy Assistant United States Attorney and chief of the criminal division.
- July 1971 Returned to private practice with Guggenheimer & Untermeyer, rising to partner.
- Aug. 17, 1975 Chaired New York County Lawyers' Association's Special Committee on Penal and Correctional Reform; released final report describing the inequities within the criminal justice system for Spanish-speaking defendants.
- 1977 Trustee and Chair of the Community Service Society's Committee on Criminal and Juvenile Justice.
- Sept. 1978 Special Counsel to the Ethics Committee of the City Council investigating charges against Councilmember Eugene F. Mastropieri.
- May 17, 1979 Became President of the New York County Lawyers Association at age 46, the youngest in its history.
- 1982 Gained Liberal Party nomination for Lt. Governor, but stepped aside so the Liberal Party could nominate Alfred DelBello, the Democratic candidate. Baer accepted the Liberal Party nomination to the State Supreme Court; elected in part because the Democratic nominees were not on the ballot due to a late filing.
- May 1984 Presided over Lillian Hellman's libel suit against Mary McCarthy, who on the Dick Cavett Show in January 1980 called Hellman a "dishonest writer," adding, "every word she wrote is a lie, including 'and' and 'the'." In a preliminary ruling, Baer said that McCarthy's comments were "on the actionable side of the line – outside what has come to be known as the 'marketplace of ideas'," and crossed the line "between opinion and fact." Hellman died soon after, and her cause of action died with her.
- Sept. 5, 1987 Harold Baer Sr. passed away; he retired in 1977 after 22 years as a Civil Court Judge and then a New York State Supreme Court Justice.

- Feb. 4, 1988 Issued a restraining order aimed at AIDS protestors intent on disrupting services at St. Patrick's Cathedral.
- June 1990 Moved into the Foley Square chambers formerly occupied by his father.
- June 25, 1992 Mayor Dinkins named a 5-member panel to investigate police corruption; Milton Mollen, former Deputy Mayor for Public Safety, named chair, with Harold Baer Jr., Harold Tyler, Roderick Lankler, and Herbert Evans.
- Oct. 2, 1992 Resigned from the Supreme Court to become executive judicial officer of Judicial Arbitration and Mediation Services; the day before, the *Times* published Baer's op-ed: "Why I Quit the New York Bench."
- Aug. 1994 Appointed to the United States District Court for the Southern District of New York by President Clinton (nominated by Senator Daniel Patrick Moynihan Nov. 1993).
- Jan. 24, 1996 Ruled that 80 pounds of cocaine and heroin seized from a rented car at 178th Street and Amsterdam Avenue on April 21, 1995 in Washington Heights was inadmissible because the police did not have probable cause to search the vehicle; that four suspects were seen leaving the area by the police was not necessarily suspicious, he said: "Even before this prosecution and the public hearing and the final report of the Mollen Commission, residents in this neighborhood tended to regard police officers as corrupt, abusive, and violent. After the attendant publicity surrounding the above events, had the men not run when the cops began to stare at them, it would have been unusual." The 40-minute confession of Carol Bayless, the woman arrested in the car, was also thrown out.
- April 1, 1996 Based on new evidence and testimony by police, Baer reversed his earlier ruling and admitted the seized drugs and defendant's confession. Senators, Congressmen, prosecutors, mayors and governors, police officials, newspapers, and President Clinton all criticized the first decision. The opinion noted his comments about the climate in Upper Manhattan: "unfortunately the hyperbole (dicta) in my initial decision not only obscured the true focus of my analysis but regretfully may have demeaned the law-abiding men and women who make Washington Heights their home and the vast majority of the dedicated men and women in blue who patrol the streets of our great city. ... the facts of this case have consistently danced the fine line between a valid search and seizure so essential to the Government's criminal justice initiative and a trespass on citizens' rights. While it is clear that the Fourth Amendment operates to protect all members of our society from unreasonable searches and seizures, it is equally unclear whether this protection exists to its fullest extent for people of color generally, and in inner-city neighborhoods in particular."

- 1998 Ruled the Giuliani administration's rules limiting large gatherings on the steps of City Hall was unconstitutional: "The City, in practice, appears to have unbridled discretion to grant exceptions to those groups whose speech it agrees with and deny exceptions to those groups whose speech it disagrees with." In November new security barriers were installed, limiting public access to City Hall.
- 2005 With co-author Robert C. Meade, Jr., published *Depositions – Practice and*
- 2005 The New York State Bar published *Depositions: Practice and Procedure in Federal and New York State Courts*, by Harold Baer and co-author Robert C. Meade, Jr.
- 2011 Published *Judges Under Fire: Human Rights, Independent Judges and the Rule of Law*.

Harold Baer, Jr.

January 16, 2009

JK If you could just identify yourself so that we can get started.

Baer Harold Baer, Jr. Would you like any more identification?

JK I think that says it all. In looking over your career, you have dealt with cases newsworthy and small; you have dealt with cases in almost every aspect of the law that I can think of, from organized crime to parking tickets. I'm just wondering, given your father being a prominent attorney and a judge, were you born a lawyer?

Baer No. Actually, I was not that clear that what I wanted most was to be a lawyer. As it happens, my mother was a lawyer, too. She didn't practice because I think basically, the story is, she went to law school, really to make sure she married my father. But she did graduate, and then she became a professional certified social worker, and spent her career in that neighborhood. There was a lot of law around me as I grew up, and I was never sure that I wanted to be a lawyer. And then when I was about to graduate from college, it seemed to me like I had to make some decisions, and I guess I had a conversation with my parents, and they seemed to tell me that this was something I would always enjoy, even if I didn't practice I would find it useful. As it happens, I had that same conversation with my daughters. Neither of them bought into it. But that's as much as I can recall of how I made the decision.

JK How did you end up at Hobart College after the war? I noticed that Richard Brown, Judge Brown, also is a Hobart graduate.

Baer Yes. I guess you don't know, him, but there's a judge – he was a judge in the District of New Jersey, his name is Stern, who also was a Hobart graduate, all in the same maybe five year period, or four-year period. I think there was another. Actually, we took the trip through the northern tier to look at a variety of colleges that seemed appropriate for me. I didn't want a big school. Actually, I wanted to go to Cornell School of Industrial and Labor Relations, because that really did interest me. So we went to Cornell and they were not as interested in me as I was in them. And Hobart was right nearby, so we just happened into Geneva. The campus was nothing like it is today, but it was just what I thought I might like, although it was quite cold.

JK Imagine what it's like up there today.

Baer Oh, yes. It must be terribly cold today. But we were in Quonset huts left over from some Navy program, and while we were there, actually, they built much more substantial dormitories. But those Quonsets, you could sort of almost see the wind coming through. It was cold, very cold.

JK Was there anything in your undergraduate education that prepared you for law school, specifically, or was it just a general liberal arts education?

Baer Yes. I guess I majored in Politics and minored in History. I had really grown up in the Liberal Party, which is no more, but in fact, in those days, my parents had been founders of that political party and I wrote my honors thesis on the history of the Liberal Party, and I guess looking at all of that in my undergraduate days, made me feel I wanted to be a lawyer. But there was nothing else, nothing in particular, in addition, that I can think of.

JK And from there it was Yale?

Baer Yes. That was an interesting story. My parents were both, just like me, public servants in large measure. My mother may have worked for a New York Jewish child care agency, and I guess also for the City of New York, actually she worked at one time with Milton Mollen and Charlie Rangel. But in any event, they were not particularly well-to-do, and I had gotten a full tuition scholarship for law school at Chicago, which is not a bad law school. But I had also met a young lady, and she came from a suburb of New Haven and was at Smith. So, I drove up to Yale, not really thinking I would be admitted, because even in those days it was about the best; I would never be admitted today.

JK I think we all look at our careers and say, "I would never have gotten in today."

Baer It's amazing what they do there today. I mean, I'm on the Alumni Executive Committee, and I listen to Dean Koh tell me what they're taking in, and it's just a whole, a wonderful world of kids, but not one I was in. Anyhow, so I drove up there and had an interview, and I really wanted to go there primarily because my girlfriend was living and going to school in that general neighborhood. And, low and behold, I was admitted, and I was quite sure my parents would say, "Listen, we really can't afford this," but they were really wonderful about it and said, "Yale is a wonderful law school, and if you get in, we'll manage to pay the freight, which, they did. These days, they would have gotten loans, but in those days, I guess there were loans but I didn't end up with any.

JK Your father was a judge at that point?

Baer He became a judge in 1954, and I guess that's when I graduated from Hobart. So, he became a judge as I went to law school.

JK And even then, judge's salaries were not as grand as the position might suggest.

Baer For sure. And continue in that position.

JK Judith Kaye never did manage to get the legislature to give New York State judges a raise.

Baer It's so sad. I mean, nine years, they've apparently not had a raise. I don't know how I survived, frankly, with two young daughters when I agreed to, agreed, that's another very long story as to how I ended up on the Supreme Court. But it was certainly nothing I had planned.

JK Looking over the chronology of your career, almost your entire career with one or two brief exceptions, you have been in public service or public sector law for your entire career.

Baer Well, for a decade of the 1970s, when I was in private practice, that was a fairly significant length at time. Indeed, I don't think I had ever held a job that long before.

JK You joined a firm right out of law school, but then very quickly joined the State Commission that Whitney North [Mike] Seymour Jr. put together, that he was heading.

Baer Yes. And, as you can tell from the chronology, I guess what happened is that Seymour and Bob Morgenthau had gone to law school together, or knew each other and had gone to law school, so that when Bob became the United States Attorney and I was still working at the State Commission, he had nobody who knew how to conduct a Grand Jury proceeding, which was akin to the kind of private hearings that we would have at the Commission all the time. So, he called Mike and he asked whether he had anybody who might be able to help him out, so that's how I went from one public service job to the United States Attorney's Office in 1961. And I guess you're right. I didn't move off that dime until I left the U.S. Attorney's office and went to be the initial Executive Director of the Civilian Complaint Review Board in 1967. But that was quite short-lived. So, after that, I guess in 1968, maybe, I went to Guggenheimer & Untermeyer. But that was short-lived, too, because Mike became the United States Attorney and asked me to be the Chief of the Criminal Division and his First Assistant in 1970. But I only stayed there a year-and-a-half and then I went back to private practice and stayed there until the Supreme Court nomination, which, as I say, I had not sought, but it just worked out that way.

JK You were a very young man in 1959, when you joined this Commission, investigating state government. You had been around state and local politics, having been born into the Liberal Party, so to speak. Was there anything eye-opening about your work on this Commission, anything surprising?

Baer Well, first of all, it was really set-up by Rockefeller and it was to look at, and find, if possible, any hanky-panky in the City of New York, essentially, to embarrass Mayor Wagner, who was really a staunch supporter of the Liberal Party. So I felt a little strange, but it was an introduction to politics and how it does make strange bedfellows. I found the whole experience to be eye-opening. I don't know if you saw anything about what we used to call the great 'rock salt investigation,' but there was an investigation.

JK Mike Seymour mentioned that quite proudly, how you did that.

Baer Yeah, well, it was quite amazing. It did show me a lot of what happened in the law enforcement world because it included my introduction to people like Roy Cohn, who represented one of the rock salt contractors, and people like Joe Spagna, who eventually had to resign as Purchase Commissioner of the City of New York, and Fortune and Anthony Pope, who were major movers in the city and state, maybe more than that. None of these people had I ever understood or known anything about and they all came from different segments of the political and social spectrum, so it was a particularly exciting couple of years. I don't think I've ever had a better experience. Obviously, the U.S. Attorney's Office is a major highlight in my life, but that couple of years was very eye-opening.

JK It sounds like it gave you a reality check, so to speak, after law school and being in a firm for a short time with, I'm sure, very limited experience, and then suddenly being thrown into this. "Wow, I'm suddenly swimming in shark-infested waters here."

Baer Yes, it was exactly like that. I had never expected it to be that exciting.

JK You wouldn't have been prepared for the U.S. Attorney's Office, it sounds like, had you not had this first experience working on this investigative commission.

Baer Well, I would have never been offered the job, I don't think. It was really the experience on this Commission that made that possible. And, of course, Morgenthau, from the get-go, was very interested in racketeering. And this Commission, although not directed toward racketeering per se, certainly as I indicated, gave you an opening and a good deal of information about the less savory community in which we live.

JK You've said that working for Bob Morgenthau at the U.S. Attorney's Office was a highlight of your career, and it was early in your career. I'm assuming that everything wasn't downhill from there, but if you could explain to me why it was such an energizing experience, why it was such a career-making experience. I've heard this from other people about working for the U.S. Attorney's Office.

Baer Yes. I think there are a couple of different reasons, but as you say, I was really quite young. I was probably, in 1961, still in my late twenties or very early thirties. It's calculable. One of the things that young lawyers who are interested in litigation strive for but rarely achieve within the first five or ten years at the bar, is trying lawsuits, trying cases, being a prosecutor or being a defense attorney. Even in today's law firm, not even, but especially today, because firms have gotten so much larger, there are people who are partners in law firms in a litigation department who have never tried a case. So, one of the major advantages that everybody gets when they come to the U.S. Attorney's Office, especially in the criminal division, is the opportunity to try cases and to try them right away and to sort of learn by being thrown off the dock into the lake. And the other major advantage of that experience is networking. Not prospects, but reality. I don't think there is another group of men and women with whom I have associated ever, including, I just finished chairing my fiftieth reunion at law school and I know some of those people and I keep up with some of those people, but I must say that the network of people in the U.S.

Attorney's Office has not only been beneficial from a business standpoint, because everybody helps one another once they leave, but as soon as there's a conflict, it's a colleague or former colleague that they call upon to take over what they can't do or handle. And the people are so wonderful. I mean, somehow Morgenthau was, well, I'm sure every U.S. Attorney feels, and his people feel the same way. But Morgenthau was somehow able to put together a wonderful group of young lawyers, almost all of whom I keep up with, and that's a good number, have been successful. Major successes in the litigation world.

JK I noticed in your outer office, you had photographs of the reunions of the Morgenthau U.S. Attorney's Office.

Baer Yes. And if you look, if you know any of those people, you know that between the Seymour years and the Morgenthau years, it's a decade, from, I guess, 1962 to 1972, men and women who are now essentially leaders of the Bar. And sadly, one of the funny stories, which I was reminded of only yesterday because of the untimely death of a wonderful fellow by the name of Peter Fleming, who was an assistant with me. But it reminds me of this story. Morgenthau was really quite close to Bobby Kennedy, and when there would be swearing-in of new assistants, I was sworn-in with two others, one of the others was Peter Fleming, and Bobby Kennedy either came down or was in New York and came to the swearing-in, and after we went into Morgenthau's offices and Bobby Kennedy, who was quite a nervous fellow, or so it seemed to me, it was only '61, he had just become the Attorney General. He asked Peter, "What is it that made you want to come here?" Peter looked at him straight in the eye and said, "For the money, of course!"

JK That's not an answer a Kennedy can appreciate.

Baer He didn't really know what to do with him. Anyway, it was a great experience, and the Seymour years were great, too. But the earlier years were wonderful and more of them, and I would do more trial work. When I came back as first assistant, it was a lot more administrative.

JK In the years at the U.S. Attorney's Office, there seemed to be quite a number of prosecutions of labor leaders and labor unions. I'm wondering why, at that particular moment, did that come to the fore, and whether this was a difficult business, trying to get at the records and pin them down.

Baer Well, the answer to your first question, this had become, for one reason or another, Robert Kennedy's major interest, and his major, major interest was Hoffa. But below Hoffa, there were a whole series of what were allegedly labor racketeers that he was particularly interested in, and in those prosecutions. And so, the U.S. Attorney, and especially the U.S. Attorney in the Southern District, followed suit, and somehow I became the labor racketeering expert. I assume there were plenty of other people who were doing that kind of work, but since I was in the organized crime and racketeering section from the get-go, more of the labor racketeering cases came to me. Insofar as

making the cases, the FBI was very, very helpful. They, as you may know, have lots of accountants, and the accountants, once you would get hold of the books, which wasn't always easy, they would do a remarkable job on making the cases. And they made cases, and they were exciting cases. They weren't just paper cases. One case I remember involved four or five defendants, and once we turned the lady who was an amazing woman, who worked for a Teamster Local, she actually explained how the pay-offs were brought by her to a Womrath's library on 57th Street, and put into a particular book. She was told in what book to put the money in an envelope. In any event, she was a major witness. Then, strangely enough, she could no longer be in the labor movement after her testimony.

JK No kidding!

Baer Believe it or not, she survived, and believe it or not, she became a clairvoyant, so that now people actually pay her to listen to whatever it is she tells them is going to happen to them! In any event, it was quite an amazing career in the labor racketeering world, with lots and lots of stories like that made it both exciting and not the kind of paper case that could have been quite dull.

JK You said something kind of interesting, which is that this was an interest of the United States Attorney General, Robert F. Kennedy, and he was interested in labor union prosecution. Rather than a bottom-up prosecution, so to speak, where you would get reports from members of the unions who were concerned about corruption. But this came from Washington; Morgenthau's office then followed suit. So, did you go out looking into unions? How did you determine who to go after?

Baer Well, it came from a variety of different places. Morgenthau had a phenomenal number of contacts, as well as a really wonderful kind of sixth sense, and he would get information, I don't know where he would get it from, and he would call you at six-thirty in the morning and say, "Listen, I was driving to work and I saw this guy in a limousine with a chauffeur. I know this guy. A year ago he was pushing a cart garment center. He didn't have any money. There must be something there. Find out!" And it turned out, it's obviously a longer story, but it led to an indictment and conviction of [James] Plumeri, who was a captain in the Lucchese Family and a labor racketeer, in addition. But I don't really know. The FBI would obviously have some information. Kennedy, himself, may have received some information and passed it along. I never knew where some of the information came from. Obviously, sometimes it just grew out of a tip like Morgenthau's trip from Riverdale.

JK All of the unions that you prosecuted, was there always an organized crime connection, or was some of it just garden variety embezzlement?

Baer That's a good question. I'm not really clear about the answer. Take Max Davis. His was the first Welfare and Pension Plan Disclosure Act prosecution. I think that was pretty much embezzlement. But there was always some sort of organized crime and racketeering aspect in the Teamster cases. Whether it was really there or whether the

subjects sort of told you it was there even though it wasn't, and you believed them, I don't really know. And it's hard to really tell. There was a prosecution I handled against a fellow by the named of [Pasquale "Patsy"] Crapanzano, who was the Joint Teamster Council President either at the time or a little later, and he would just take a certain amount of money, very little at the time, from two elderly ladies who ran a very profitable business. It had something to do with books, it was way over on the West Side, in a building that is no longer there [F.M. Charlton Company]. I have no idea, I mean, people would say, he had a nickname, which I forget, Tony something. Anyway, people would say that there was an organized crime and racketeering connection, but I can't tell you that I ever saw or knew or heard anything about it.

JK Later, as you stayed with the U.S. Attorney's Office, there was the Teamster's Pension Fund that you were looking into. I was surprised at the number of Teamster's cases that came through the Southern District.

Baer Well, that's because of Robert Kennedy's interest in the Teamsters. It was basically that influence that provided more and more tips from wherever they came from. I mean, they would hardly call Baer and say, "Listen, I've got this tip." But one way or another, the information would come to us. Teamster information, also, I suppose, was a priority because everybody knew it was Bobby Kennedy's priority. So, even after he left, I guess, there was a continuation of this particular interest in the labor movement, and Bob got very interested in the labor movement and labor racketeering, and I guess he had always had some interest in it. You know, the Liberal Party was in a large measure, well, I don't know how you would describe it, but the ILGWU – International Ladies Garment Worker's Union – was a major faction of the Liberal Party.

JK It was the Anti-Communist labor movement that the Liberal Party came out of.

Baer That's right. Well, in any event, that's a whole other world. And so, he would get information from people in the ILG, not that the ILG was lily white, but there were very few, one that I remember, but relatively very few prosecutions. But there were some informants who knew something about racketeering in the Teamsters and other unions. And so, I guess I got some information, but he got much more information. They were mostly all priority, if there was a priority, in the Teamster Movement.

JK Why was Bobby Kennedy so focused on the Teamsters and Jimmy Hoffa?

Baer I don't really know.

JK It's common knowledge. It's the common story, but I never thought to ask.

Baer Yeah, I'm not the fellow to figure that out. I mean, there were people down in Washington with whom he worked closely, Bill Hundley and a couple of others who really knew exactly what his motivation was. All I knew was that he thought badly of Jimmy and believed there was the same kind of taint in other Teamster locals around the country, and primarily in New York. I think we did the most work.

JK Was that what you were proudest of in your first tenure with the U.S. Attorney's Office? Was there any particular case or moment that stands out?

Baer Not really. The Plumeri case, which you'll see, that wonderful columnist who had acid thrown in his face and was blinded, before your time, probably, he wrote for the *Journal American*, and there is a big column out there about the Jimmy Doyle case. That was an exciting case, primarily because I pretty much made it myself, although the accountants did a lot of work because it was an income tax case. But I think probably that was a highlight. He also had a lawyer that, at the time, was thought to be a really good lawyer, so it would be challenging. But there were other cases, the four-defendant or five-defendant case, that was a pretty exciting case. It was the camaraderie of that office that was the overwhelming, wonderful part of that experience.

JK Why did you decide to accept the Police Review Board position, especially given the controversy that was swirling around it from the time it was proposed? Because you went directly from the U.S. Attorney's office to the Police Review Board.

Baer Yes. It sounds like that, but the fact is that I chaired, or again, Seymour may have chaired, but I think I chaired, the Civil Rights Committee at the New York County Lawyer's Association.

JK Yes. You were very involved with the Lawyer's Association.

Baer And the report we issued really called for a civilian complaint review board for the review of complaints from citizens against the police.

JK This is when John Lindsay is being elected, and you are chair, or you're involved in the Civil Rights Committee at the County Lawyers.

Baer Yes. So, when we wrote this report and Lindsay was elected, and Lindsay thought well of the concept, it was a little hard for me to say, "I don't think I'll do it." It was sort of my idea, to a degree. I thought it would work out a lot better than it did.

JK Can you explain, or describe, what happened at the County Lawyer's Committee? How did you decide to investigate this? How did you go about compiling the report? Why did you think this was such a key issue?

Baer Well, I guess one of the issues that had surfaced must have been, although I can't pinpoint it, the fact that there were more complaints about police conduct at or about the time of Lindsay running for mayor, and the fact that they had nowhere to go, that the complaints had to go back only to the police department, and so you were essentially, you know, you would wonder who is watching the watchman. And I guess that's how the concept emerged. It may have been Seymour's or my idea that we should do something about it. I don't remember, but I know that was the tenor and the atmosphere that prompted the report. I don't think I even have a copy of the report anymore, but the

report described what we should do better. And Lindsay bought it, hook, line and sinker. Of course, he bought it for a moment because the referendum made it clear that the public wasn't that excited about the concept of having non-police, lay people looking at these complaints. But for the nine months or so that it was operative, it was pretty well staffed. I mean, the city provided, the police department provided, whether they wanted to or not, some really wonderful policemen, one became the chief of the department, some of whom I really wish I knew where they are now, assuming they're alive. They were really not only loyal to the role they had, which was essentially ferreting out the wrong-doing on the part of their colleagues, but they were able to report and do a good job. As it turned out, I guess, it was a big mistake for the people to vote to do away with it because the cops who essentially took over as the majority were harder on the police than was the civilian dominated Board.

JK They're harder on their own?

Baer Yes. So, that was sort of fascinating to see happen. But in the last analysis, there are very, very few substantiated complaints, and I'm not sure what happens now with respect. I mean, I know what happens, I just don't know what the operation entails any longer. But we had, I don't remember the number, but we had a whole big office on Twenty-seventh and Park Avenue South, and we must have had a staff of thirty or forty policemen who were out there. And then a variety of people, lieutenants, one of whom became the Chief later on, the top cop, and I would have guessed he might. He was a real wonderful fellow. And another guy by the name of Savitt, who was a captain. Really brilliant. And that was an eye-opener, too, because while I've certainly had some criticism over the years about my view of the police, this was a very impressive group of people, and I was very impressed with their ardor and their acumen.

JK Was this a self-selected group of police officers who were working in the Review Board? I mean, did they select themselves.

Baer Oh, I think the Commissioner selects everybody. The Commissioner does everything. He works through others, but he's the boss in that department, then and now. It's a real para-military operation, as you may know.

JK One thing you didn't mention was the issue of race at the time. I mean, this came out of the Civil Rights Committee of the New York Lawyers, and the question of race is really heating up in the city and the nation at that time. I'm wondering what the racial connotations of the Review Board and the Committee's work might have been.

Baer Well, we put together an order which spelled out the way in which the Review Board was to operate, and racial slurs were right up there, along with other kinds of wrong-doing. It's just very hard to prove that kind of, it's almost always one person's word against another, and frequently, it's not even like that. One complainant and two policemen, and the complainant would, and did, allege a variety of racial slurs and the cops would say it never happened. You know, it's hard to substantiate a complaint with

that kind of evidence. But it was an important aspect of what prompted the report in the first place and in putting together the Review Board.

JK Was there a sense that the police were especially hard in minority neighborhoods? Was there a sense that their behavior was particularly worthy of investigation, or needed reining-in, or was it just a general sense, undifferentiated across the city?

Baer Yes, there were complaints from all over the city. They didn't concentrate, to my recollection, in any single area of town. But that does not negate the fact that I'm confident that Blacks and Hispanics probably were more at the, I don't think there was any profiling in those days, although I don't really know, but clearly, when you looked at the people who complained, they were basically Blacks and Hispanics.

JK The issue became heavily politicized since it was going to an election, and how did you, as the Executive Director of the Review Board, how did you feel when all these horrible things are being said about your work by the police union, by some newspapers, that the public seemed to be so unsympathetic to your work? It must have been very difficult as this became politicized, rather than objective work by professionals.

Baer You know, I can't say it rolled off my back, but it was neither the first nor the last time that my positions were criticized by the press. I really stayed out of that campaign to a large extent. The way the mayor had divided up the cabinet, there were people who were in charge of certain departments. There was a fellow who has become quite well-known who was in charge of the police department, and he was the one who was out front in terms of trying to keep the Board and keep it in its present status. But I rarely had anything to do with the politics. I mean, I just sat there and tried to do my job. I mean, it seemed to me that this was a job that was important to do, that the city was in need of some kind of objective, impartial men and women who could evaluate what the police were doing, and that I was just a worker in their field.

JK Were you surprised by the vote?

Baer No, I don't think anybody, this fellow, [Norman] Frank, who I guess was the Police Union President, I don't know where he got his money, and in fact, it really didn't make any difference. But he had so much and he mounted such a big campaign, and he sort of turned the people towards thinking if they were to vote to continue the Review Board that they were voting against law enforcement. That's a pretty tough nut to crack. So, I was not surprised.

JK What happened after it was voted down?

Baer Well, the commissioner, whose name was [Howard] Leary, he had been the commissioner, I think, in Philadelphia. In any event, he asked me if I would stay on to organize new police dominated new Police Review Board, and so I agreed that I would stay just to get everything organized, and I did. So, I guess that took –

Side 2

Baer They were harder on their own, than the civilian dominated Board. I no longer have the same, it no longer provided me with the same vision that I had hoped there would be.

JK When you say they were harder on their own, can you give an example of that or can you explain that?

Baer Well, I kept statistics, which I may somewhere still have. And it just appeared that there were more complaints that were substantiated, once the Police Review Board became police-dominated.

JK I can imagine how that would happen, where the police who have been out in the field themselves would understand between the lines what had happened in an incident, whereas civilians could only go by what was being presented to them.

Baer Yes, I think that's a very significant difference in the make-up of the Board, although there were some police on that board. I think Frank Thomas was on the board from the beginning, and he certainly knew what was happening out there. But I think the civilians, who were wonderful, Algernon Black was just a real gentleman, as well as a very, very smart fellow, I just think they were a little bit more reticent to be harsh or to punish the police when they weren't used to this kind of role, that they weren't prosecutors and they didn't really know what it took or what it should take for there to be enough proof to substantiate charges.

JK Before we leave this topic, I noticed in my research that one of the individuals on the Civil Rights Committee was a lawyer named Cora Walker. Mike Seymour talked about her and her difficulties as an attorney in Harlem. Did you remember her?

Baer Yes. She had been, I don't remember exactly, although I certainly heard the story of how Seymour met up with her. But she was a lawyer in Harlem for a long time, and I guess had a son who was a lawyer with her. She was a very outspoken black woman who, I guess, had some housing problems that he had taken over or helped her with. So, she was on the committee and she contributed. But I guess probably there were twenty people on the committee. I didn't know her very well. I got to know her a little better afterwards, but not very well.

JK It's just that, when I was doing this research, I saw her name and having talked to Mike about it, it was just something that struck me. So, when you went into private practice, did it feel like you were on vacation, compared to the enormous caseload that you had been carrying and the burdens of the Police Review Board? It's a different environment, entirely.

Baer Yes. There weren't too many brickbats in private practice, I must say. But again, it was a really wonderful choice for me. It was like college turned out. I had no idea what

I was doing when I went to college or where I was going, except I knew how many people there were. And here, while I could have gone to a much larger firm, this was just right and the people were just right.

JK This is Guggenheimer & Untermyer?

Baer Yes, the fellow I knew, who was a friend of my parents, Alfred Berman, who was married to Nanette Dembitz, who was a Family Court Judge and ran for the Court of Appeals in 1972, he was just a brilliant litigator. His brother, Zuke Berman, was a very well-known negligence lawyer in New York, maybe *the* best known, and his brother had a firm called Berman & Frost. Alfred was a real mentor. He taught me most of what I knew, even though I had been in the U.S. Attorney's Office, about litigating. You know, when you are an Assistant U.S. Attorney and you come into court essentially wrapped in the American flag, you are a little bit ahead.

JK I never thought of it that way, but yes.

Baer So, this was very different for me, being essentially a defense attorney. And so, the people there were very good and they were very smart. It was certainly a different milieu, but it had its own tensions and its own problems. I remember we were in the throes of adopting our second daughter and there were a lot of other things going on in my life. It was a perfect time to start in private practice, actually, but it was also busy. It was a busy time and I guess probably also, always in private practice, you have to have an interest in bringing in business as well as doing well. So that provided some stress for me since I didn't have any business. Happily, as it turned out, as I mentioned before, because of the networking from the U.S. Attorney's Office, it didn't take too long before I had some business. But then Seymour came back and said, "Listen, why don't you come back to the office." I was just barely getting started.

JK What was the focus of your practice at Guggenheimer?

Baer It was white collar crime; that was all I could get!

JK White collar crime?

Baer Yes. The people in the U.S. Attorney's Office would, my colleagues and I, since I had some reputation. I mean, I don't think organized crime and racketeering subjects were likely to come to me, but there was enough publicity and enough friends, so that I got plenty of business. But for a while, it turned out to be that when I came back from the U.S. Attorney's Office, after having this sort of exalted role, I got some corporate business, which was much more interesting and different. Not more interesting, white collar crime was plenty interesting, but it became a place where I was able to, with the help of the firm, the firm was a hundred and twenty years old, so they had some institutional clients that were looking to be represented by a younger lawyer, and I took over two or three major commercial clients. So, that whole decade of the 1970s was a very exciting time, and I made a little money, which was the first time in my life!

JK Yes, attorneys' salaries seemed to skyrocket while you were at the U.S. Attorney's Office, and you weren't enjoying the fruits of that great change. Was it essential for you to spend time in the private sector? I can't imagine you as a judge, having only seen one side of the ledger, so to speak. You had only been on the prosecutorial side, and now you are, as you said, a defense attorney.

Baer Yes, I must say, I think probably in looking back, both at the decade I spent on the Supreme Court and the decade-and-a-half I spent here, the better judges, and it's hard to generalize, but for the most part, in my view, the better judges are judges who have had litigating experience on both sides of the bench, on both the defense and the prosecutorial side. And one of the big problems in the Supreme Court is that most of those judges have had no private practice experience. Most of them were district attorneys, commissioners, legislators, some of whom had a private practice, I guess, but compared to this court, they do not have the same background, in my view. That doesn't mean they're not good judges. In fact, the people on that court that I worked with and the people in the court house from the bottom up, even though I don't know how they survive on what they get paid, are just wonderful people, and I will never forget that decade. The best law clerk I ever had I had over there, and I've had some phenomenal law clerks here. Of course, the law clerks in the Supreme Court are quite different. First of all, you have only one, but he or she has experience. I mean, you don't take them right out of law school. I don't here either, but here they are only a year or two out and they keep me young.

JK I wanted to ask you about your father, who had a distinguished career of his own, and I'm wondering, were you asking him for advice as you were going through? Was he counseling you that this is a good position to take, it's better for you to stay at the U.S. Attorney's Office, or move on. I'm just wondering if you can describe your relationship, since you were both in the same business.

Baer Yes, I really had a great love for my father, and basically would talk to him more about the law, I guess, because many of these jobs of which there were many, sort of fell into place, and I don't think he would have argued about any, nor did he. I mean, he never told me not to do something, and would always give me advice when I asked for it, and he had just a phenomenal judicial temperament, and if there's anything I've tried, probably not too successfully, to emulate, it was his temperament. He rarely, rarely lost his temper. A little like our President-elect. He was just a cool cat, and he made some, well, it's a long story. He had some obviously pre-conceived ideas about what was a wonderful career. And obviously, while he had been in private practice, he felt being a Supreme Court Justice was the pinnacle of success. And so, I won't bore you with that story, but it turned out that when I was no longer on the ballot for Lieutenant Governor, in 1982, I couldn't do anything but, the election law was such that you couldn't decline the Lieutenant Governor nomination, which I had to decline, if in fact, Cuomo was going to have the advantage of the Liberal line because just like president and vice president, if you voted for, as it turned out, Cuomo and DelBello on the Democratic line, those votes would not have been added to the Cuomo-Baer, on the Liberal line. So, there were only three ways you could do it to make a long, long story short.

JK You had accepted the Liberal Party nomination for Lieutenant Governor.

Baer Right.

JK And you had essentially won the primary.

Baer Right.

JK So, you were on the ballot in 1982.

Baer I would have been on the ballot, but I had to decline because otherwise, as I say, Cuomo would have suffered. So, you either had to die, which didn't appeal to me, or move out-of-state.

JK Which was not likely, either.

Baer Or you would have to take the nomination for another statewide office, and the only statewide office that was left was the Supreme Court. And it really, again, it's a fantastic piece of New York lore, but what transpired was that I was very happy to go back to Guggenheimer & Undermyer, and I would have done that, and the Liberal Party usually polled about fourteen percent of the votes in the Supreme Court election. But surprisingly, there was an unaccountable oversight and the Democratic law chairman, who was supposed to file the acceptances with the Board of Elections for the nominations to the Supreme Court, and had to do so within twenty-four hours, never did it. So, there was no Democratic line on the ballot in 1982, so obviously, the Liberal Party had nominated eight, there were ten slots, and they nominated eight of the Democrats, so those eight were happy, and they had a line, but they had also nominated me and Rose Rubin.

JK You had no expectation of going onto the bench.

Baer Absolutely not, and I was pretty delighted at the prospect of not going on the bench, and just going back to G&U. Anyhow, without the Democratic line, the only line left was the Republican line and the Liberal line and the Democrats had to work for the Liberals to get themselves elected, and they did and it was close, but I was elected. Well, I tell you all that because my father thought this was the most wonderful thing that could have possibly happened. In that respect, we had a disagreement.

JK You were used to making money at that point.

Baer That's right. And I was anxious to keep it up. And I had two girls, both of whom hoped to go to Ivy League colleges, one of whom was going that year, and the younger one was going two or three years later!

JK And that's when you decide to take a fifty percent pay cut, at least.

Baer And my parents, I guess, they were really sweet about that and they said they would help because they thought this was such a wonderful opportunity. Well, as it turned out, they did help, and as it turned out, it was a wonderful opportunity, and as it turned out, I was perfectly happy and my wife was wonderful about it and she was glad, I don't know about glad, she was happy to survive on the very few dollars that I was able to make as a Supreme Court Justice. But the whole story comes from your question about my father. I think every bit of advice he ever gave me in the last analysis probably turned out to be right, but that was one area in which I was less than certain.

JK Were you two were both serving as Supreme Court Judges at the same time?

Baer No, he had retired in 1975, and I came on the bench in 1982. So, there was a seven year hiatus. But everybody felt he was the greatest. I mean, even last night, there were some people at my table who had been in Hogan's office in the 1960s when he had been sitting on the Supreme Court on the criminal side, and they all remembered him as being really a stalwart. And indeed, I think everybody had a great deal of respect for him, because he loved it so much, I guess, he made himself into a really good Justice.

JK Can we back-up to your second stint at the U.S. Attorney's Office? There were a couple of things there. First, you have a long-term relationship with Mike Seymour, and second, it seems that Mike and Bob Morgenthau had an intertwined career, too, because he succeeded Bob Morgenthau in the office.

Baer Yes. I have no regrets about any of my ten or twelve jobs. But this one, Seymour is a phenomenal character. You spent some time with him, I gather. He not only has a new idea every minute.

JK He does.

Baer But they're mostly good. Some of them aren't so good. But he also is a Renaissance man, so he knew I wasn't anxious to start making money. So, he planned this picnic on some river near where they have a house in Connecticut – Salisbury, I guess. Anyhow, he said, "Why don't you and Suzanne come up for this picnic." He's very big for picnics, anyway. And, of course, we both knew what was in the offing, because he had no real contacts. I mean, Morgenthau was certainly ecumenical, but there were very, very few Republicans in Morgenthau's office. So, anyway, we had this picnic and he said slowly, "Can I convince you to come back to the office and be the Chief of the Criminal Division and the First Assistant U.S. Attorney?" That had always been an appealing job to me, but I really never understood what it was. So, to make another longer story shorter, I went back, left the law firm, went back to be the Chief and it turned out to be an experience which had lots of pluses, but as I mentioned earlier on, I was not looking for an administrative role. And this is pretty much an administrative role, very filled with declining prosecutions, assigning cases.

JK You're like the traffic cop.

Baer Yes, that's right. You are like a traffic cop. Morgenthau, obviously, he had been there for eight or nine years. It was not a spic-and-span office. Seymour's first priority was to make sure there were no old cases sitting in an obsolete file cabinet that should have been tried long ago. So, we had to clean everybody's cabinet. In those days, what assistants would frequently do is, while they would take whatever was assigned to them, the cases that they found less interesting would somehow get to the very back of the cabinet, and never surfaced.

JK Like every other working person in every other profession!

Baer Right. It was nothing new. Nothing new. So, that was a big piece of administrative work that I probably could have done well without. But again, the people were different and they've become good, good friends, and I enjoyed all of them and I enjoyed a lot of what I did there. And then, happily for me, Bob Morvillo, who had made a deal with Seymour to be next, after a year or a year-and-a-half started making noises about my leaving, since that was the deal. I was a little reticent, but it worked out really well. I guess I was there for a year-and-a-half or two years, and then I went back as a partner at Guggenheimer & Undermyer.

JK They brought you back as a partner?

Baer As a partner. And so, it all worked out really nicely. I got to do that work. I got to clean-up the office. I got to make a lot of new friends. I got to try a couple of cases and argue a couple of appeals. Mostly they were the dogs that had been left behind. But nonetheless, it was really an exciting experience on that second stint, as well.

JK Did Mike Seymour have an agenda when he came in, the way Morgenthau went after organized crime, racketeers, labor unions. Was there any focus that you can recall?

Baer There may have been a focus. I must say, it was not a distinct focus, like the Teamsters and organized crime was for Bob. It was sort of a Mr. Clean focus, and I think to a degree, that's his personality. He's an extremely ethical fellow, and an extremely bright guy, and all he wanted to do was take whatever came down the road, whether it was politically sensitive or not. If he thought it was right, he would do it. And it didn't really matter who called him and told him, "Why don't you pass on this one." We never passed on anything that was important and worthwhile pursuing, including the Pentagon Papers. Happily, I left at that juncture. That would have been another major piece of my life. I don't mean happily, but it was well prosecuted and it was indicative of the fact that pressure was not something Seymour ever bowed to.

JK Before we break for the day, I just noticed that you became President of the New York County Lawyers Association, as it said at the time, 'The youngest man ever to be elected to that position.' I'm wondering if you could talk briefly about the New York Lawyers Association, why you became so involved with that organization, and what your tenure as leader was like.

Baer Well, I guess again my father, and probably Seymour, played a role in my joining Bar Associations the minute I got out of law school. So, I joined both the Association of the Bar and the County Lawyers, but just from a geographical standpoint, the County Lawyers was downtown, and when I was at 170 Broadway I was practically across the street at 170 Broadway. And so, I began to be interested in the organized bar. And I have continued to be interested. What happens in the County Lawyers is that you join the committees, this is true basically in most organized Bar entities, and you eventually become chair of a committee and as time goes by, you get elected to the Board. It's not like everybody does, but if you show continued interest in the organization and you're prepared to do some heavy and not-so-heavy lifting. There was a wonderful president of the County Lawyers, his name was Friedman, and he was the president probably in the mid-1970s, and he sort of took me under his wing, having concluded that I was prepared to make a contribution to the County Lawyers. And so, with his imprimatur, I guess, I became the president, and it was a very exciting experience for me. Because once again, it introduces you to a whole new group of people with whom you can network and you would go to innumerable dinners and you would try and move the organized Bar along. One of the things I did after that two-year period was organize a new Bar Association called the Network of Bar Leaders, and I did that because I could tell from the County Lawyers that while the County Lawyers was a major Bar Association, that there were lots and lots of Bar Associations out there who had a hundred or two hundred members, and they really had no way of knowing what the burning issues were in the organized Bar, because basically that was sort of reserved, not purposefully, just by happenstance, to the five county Bar Associations and the Association of the Bar. So, this Bar Association that I started as I was leaving my presidency, included all of these Bar Associations. We now have forty-six Bar Associations, including the Hispanic Bar and the Bronx Black Women's Bar. Anyhow, lots and lots of them, and each sends a representative to meetings, so they all know what's happening. The network includes the five County Bars and the Associations of the Bar. So, it became something that I was very happy I was able to do, and probably could do because I had some clout as the president of the County Lawyers. But just being president of the County Bar was a lot of fun and I learned a lot and enjoyed it. Every time I have a new law clerk, I try to encourage them, but the organized Bar is in a somewhat different position than it was twenty years ago, and there's much more emphasis on billable hours, and there's a lot less emphasis on credit for Bar Association activity or the time you take to do the work you would have to do on a committee. So, it isn't quite the same, but my hope is that the organized Bar will continue to grow because I think it really provides a lot of the kind of, what would you say, I guess probably the kind of veneer that I think the profession needs, since not everybody thinks of the legal profession as the greatest place to be, or that lawyers are the best people, but I think the organized Bar does a lot to portray the best image.

JK Well, I think we've reached a natural closing point, and we haven't gotten nearly into the heart of your career.

Baer Well, we've certainly done a lot of talking. I don't know if any of it's worthwhile reporting to the rest of the world, but I found it enjoyable.

JK Well, thank you.

End

Harold Baer, Jr.

June 3, 2009

JK This is part two of the oral history with Judge Harold Baer Jr. The topic I'd like to pick up on is your experience as a Judge at the New York State Supreme Court, and your very public resignation with an op-ed in the *New York Times*. Are there any general comments you want to make about serving on the Supreme Court?

Baer Well, you know, it's an elected position and I guess we touched on how it came to be that I ran for election as a Supreme Court Justice and that certainly was not on my agenda at the time.

JK You were a good Liberal Party soldier.

Baer That's right. That's right. And I thought I was going to return to private practice. I was a Liberal Party registrant, but making some money and happy in private practice. In any event, it didn't work out that way, and I certainly have no regrets. I was elected, I guess, in November of 1982. I turned down the opportunity to have all party endorsements. Senator Goodman, I guess he was sort of a titular head, if not more than that, of the Republican Party, called me after it turned out that there was only going to be a Liberal line, and no Democratic line, and asked me if I would like to have the Republican line. Because I really wasn't excited about being a Supreme Court Justice in the first place, not because it didn't sound like something new and different, which is frequently how I make my decisions, for better or for worse, but simply because I really needed some money to send my kid to college. In any event, Roy Goodman was sort of a friend and I was certainly thankful for his invitation, but I decided I may as well be the only elected Liberal elected on the Liberal line alone, so I did stay exclusively on that line, and I won, not by a lot, but it didn't matter; as my father used to say, a miss is as good as a mile. I began my career on the bench in January of 1983. Of course, my parents thought it was a wonderful thing, and my father, who had already retired, arranged to become a Notary once again (all Supreme Court Justices are notaries while in office) and swore me in, and that was really exciting for me, and I'm sure overwhelming for him and my mother. So, I got there and from the get-go, having come from a fairly prosperous private law firm, the bricks and mortar aspect was appalling. I had been in the Supreme Court a lot, because my father was there and I would come for lunch occasionally and certainly saw his chambers. Anyway, in 1983, it was really decrepit, and the graffiti was all over, from the elevators to the outside walls, and the basement was the same difficult, I mean, there's just not enough room for the records, and there was leakage in the floor. Anyway, it was not the place you would choose to go to work. On the other hand, the people were just wonderful and how they continued to be wonderful when they were really never earning a living wage, I don't know. But it shows you that if you are interested in your work, or just motivated to do a good job if it's your job, it all worked out to be a very exciting experience. And the Judges, they are very different for the most part. There are relatively few Supreme Court Justices who have experience as litigators in

private practice. And almost all of them, almost, not all, obviously, but many of them have been either Assistant District Attorneys, and in that instance they did litigate, but they did not litigate civil cases, and most of the work, at least the work I did – you have to choose in the Supreme Court whether you want to be on the civil or the criminal side, you don't do both. Legally it is New York's Court of General Jurisdiction but because of the distance between the civil and criminal courts the administration urged you to do one or the other. Having had little civil experience when they came to the Supreme Court, and most of them chose to sit on the criminal side. Or they were commissioners of some sort with no litigation experience. I mean, they didn't arrive full-blown, as commissioners, but they had very little, if any, litigation experience, understanding what it's like to be a private practice lawyer with a case load in the Supreme Court of primarily negligence cases and how it's really a volume business. I had worked for a moment in an insurance company, and I learned how to work with plaintiffs lawyers, so I felt quite at home. I don't know how my colleagues felt, but the people, the justices were also wonderful people. I got along with them perfectly well. And there is a body of opinion to the effect that the group here has, to a greater or lesser extent, an elitist tinge that pretty clearly is not part of what I found in the Supreme Court.

JK There is a difference between the United States District Court for the Southern District of New York and the Supreme Court down the block, the cases and the qualifications and all the rest. This is really one of the premier courts in America.

Baer That's true. It manifests itself, also, in the fact that this is a lifetime job, and those men and women across the street have to run for re-election from time to time. It's a much different place to work, there's no doubt about it. The surroundings, when I was there in 1983, was the same as it was when I wrote the op-ed piece in the *New York Times* and left in 1992. Of course, those terms are quite long. Supreme Court Justices have to retire at seventy and then three two-year extensions that Supreme Court Justices may be permitted that no other court, no civil court or criminal court or acting Supreme Court Judges have. It's an interesting story of how that fourteen years came to be the term for Supreme Court Justices, there was, the story goes, that at the New York Constitutional Convention, when they were first figuring out the terms for Supreme Court Justices, there were two bodies of opinion. One was that it should be lifetime and the other one was that it should be a relatively brief term and re-election after four or five years, which is the case in Texas and lots of other states of the union. In any event, the fact is that few got to be a Supreme Court Justice in eighteenth century, or in the twenty-first century, without being somewhere between fifty and sixty years of age, and the compromise was that if we make it a fourteen-year term, most of the judges would have died by the time it's over. So, it met everybody's concern. And that's how that came about. In any event, I had a wonderful time there and the law clerk situation is quite different, too. You have only one, but you have an experienced law clerk, not people almost directly out of law school, as it is here. So, I had wonderful law clerks and I had wonderful cases. I would guess sixty to seventy percent of my cases were slip-and-fall cases of one sort or another, but they were new to me. Now that they have the commercial part which started as I left, at least those judges, I think it's very unfortunate in a sense because the commercial part judges have a variety of much more exciting cases, but there is still a group which now

have, it seems to me, slip-and-fall cases and the like. I don't really know. Actually, I think I'm going there for lunch today. Every month they have a brown bag lunch with another Justice providing the coffee and cake, which it seems to me it's about time I provided. I have not done it. Actually, I was about to do it and I volunteered but never picked a date, so I have to re-visit that problem.

JK One of your cases was the libel suit between Mary McCarthy and Lillian Hellman.

Baer Oh, yes, early on.

JK That was 1984 or something.

Baer Oh, my goodness. How did you even find that case?

JK The joys of the *New York Times* historical online. You get everything.

Baer I'd like to tell you I remember my decision word for word, but I don't. I think I concluded, probably wrongly, that while clearly they were both public figures and the *Times vs. Sullivan* case had already been decided, that there was enough malice to avoid the usual immunity for public figures. But I remember then Mary McCarthy died or Lillian Hellman died?

JK Lillian Hellman died, yes.

Baer And apparently this is a cause of action that does not continue after death. It sort of dies with the plaintiff. But I remember that case as being exciting, but there were other really, one wonderful case that I remember, wonderful in my lexicon, not necessarily everybody. But there was a case involving two gay men. I don't know if you read that case, but it was a case in which one gay man, they had been living together as a couple for a decade, or maybe more than a decade, and one man died and I guess the landlord wanted to throw his partner out.

JK That was very common in the '70s and '80s.

Baer Yes. This was then. It was the '80s. In any event, I concluded that the landlord couldn't do that, and that in fact, he had to give the other man a lease. And the Appellate Division reversed, but the Court of Appeals reversed the Appellate Division, not holding exactly what I held, but holding enough of what I held so the result was the same. And that was probably one of the very first cases of its kind. I live on Fire Island in a community called The Pines, which is probably seventy-five percent gay, everybody tells me about that case, which is now how many years later, twenty-five years later? And I've had a number of gay law clerks who I think came to me, or applied, who thought I was a hero, at least their hero.

JK One case and you are ...

Baer A hero in the gay community.

JK But you also were the Judge that issued a restraining order against Act Up against disrupting services at St. Patrick's Cathedral.

Baer Was that me? I know there was one case involving a demonstration at City Hall, and I refused to enjoin this demonstration; the Circuit may have reversed. There were a number of cases like that, when I first got here. And then, I guess what happened at the end of the decade, I had had a number of other state jobs, the earliest job, which I think we talked about, was with two different state commissions. I had been with the Civilian Review Board. So, I had some time in the pension fund, and had not joined the Fund and all that time I had to buy back; because I had no understanding that I'd ever be coming back to state service, I never bothered to enroll. But after ten years, it seemed to me I vested there anyway, and I had another three or four years that I could buy back from work on the commissions. As to the court itself when I arrived and when I left, we were still using rotary telephones. I think I mentioned that in the op-ed piece. So, it was impossible to have a conference with lawyers on both sides. I mean, you couldn't get them on the same telephone line. So, everybody had to either come in or you had to simply tell them what they were supposed to do on an ex parte basis. There were no computers, even in 1992, when there were computers around.

JK Yes, very much so.

Baer To get back to the question, I don't know if I told you, we talked about a committee at the County Lawyers, that resulted in or caused in part the creation by Mayor Lindsay of the Civilian Complaint Review Board. But there was another committee I chaired on Criminal Law or something like that, but we made a survey of the difference between what the state was paying per square foot to keep the Supreme Court cleaned up and livable as compared to the Federal Court, which, at the time, was at Forty Centre, which is now being renovated. In any event, it was like ten dollars on the Federal Court to one on the state court. And I can't, you know, it's hard to catalog now, fifteen years later, what it was that turned the tide so that I really was not about to continue on the state bench. I had, for instance, maybe three hundred motions, as compared to one hundred here. Of course, they're frequently more complicated. I mean, in many of the cases there, motions were like for a bill of particulars, it was not a big deal. But in any event, it was a very big caseload, no way to be in touch with people. OCA had this sort of big brother concept, so that every time you finished a trial, there was somebody in the back of the room saying, "I'm sending down another case." That didn't really bother me; that fact was, in a sense, a good thing because I really am anxious to keep busy. But it was for me a little like kindergarten.

JK You need a breather between Case 1 and Case 2.

Baer One would think.

JK Even just a cup of coffee would be ample.

Baer Altogether, it was enough to end any desire to be there longer.

JK It was a period when the city had gotten out of the habit of funding public agencies, public places.

Baer Yes. Why do you think that was?

JK Well, it came out of the fiscal crisis. But it had begun even in the Wagner years, they started disinvesting, and the Lindsay years accelerated it, and then the fiscal crisis, they cut everything. So, you were just at the end of a long process.

Baer I really give these fellows and gals who work there and work hard a lot of credit.

JK Well, you were one of them.

Baer True, but every time I go there for lunch, we talk about the unbelievable low salary levels.

JK Even today?

Baer They all look at me like I got out from under just in time. So, I resigned. I wrote that article with a wonderful law clerk, Bob Meade, with whom I wrote a book recently on depositions, and it was not done, you know, totally out of pique. I had also been asked to join the two arbitration and mediation services that had just surfaced in New York.

JK Milt Mollen brought you into that, didn't he?

Baer He was with JAMS, Mike Dontzin was running Endispute, which was a competitor, now they're together. Mike had been my father's first law clerk, and counsel to Lindsay thereafter. And a good friend, much better known to me than Milton. But much to Dontzin's chagrin, when I talked to Milton and had heard about the commission, I made it perfectly clear that while I knew and loved Mike, that I would come to JAMS assuming he would want to have me on his commission. And he was glad because at the time, the Liberal Party was still a mover and a shaker, and he certainly didn't know a lot of Liberals that were going to be available and had judicial experience too. But he certainly wanted it balanced as much as he could get it balanced.

JK That was in 1992, you resigned and joined the Mollen Commission and JAMS.

Baer Right, pretty much at the same time.

JK If you could just explain how you think you came to be tapped for this commission and why you accepted.

Baer Well, I think I have but let me do it again, maybe more thoughtfully. Once I had decided to resign from the Supreme Court, I certainly had to have a job. I had made some contact both with law firms and with these brand new mediation and arbitration entities, and I spoke with both Judge Dontzin and Judge Mollen, who were running respectively the two entities, Endispute and JAMS, and both of them were doing pretty much identical work and much of what I was going to be doing, along with what I had never done before and wasn't thinking I could do very well, marketing. But since they both were game to have me, I talked to Milton Mollen about the commission that had already been formed.

JK It was being formed. It began in June of 1992. This was after the police corruption, the precinct had broken and all this news was out about the drug dealing and so forth.

Baer I didn't resign until October. So, it was certainly in the process of formation. But I became quite friendly quite quickly with Milton, and actually talked to him about the staff. Once I had agreed that I would join JAMS and be on the commission, so the staff could not have been hired until October or November, even if the commission was formed in June. The staff couldn't have been hired before I came on board or I wouldn't have known anything about who they were or who we should have. Anyway, so it took four or five months before it got started, which isn't unusual. June must have been the time he needed for the executive order to start it going. Anyway, it was a minor part of my life, really.

JK The Mollen Commission?

Baer Yes.

JK Because it's a major part of the history of law enforcement in New York City.

Baer Yes. The Mollen Commission was really an extracurricular activity for all of us. The Mollen Commission began in very late 1992, and each of the members, and we had five as I remember it, and Milton I'm sure gave you a better view because he was pretty much the eyes and ears of the operation from the beginning. We had meetings on some sort of a regular basis of the commission members, and all of them were interested and active. I guess Ace Tyler was probably the fellow I looked up to, because I had tried cases before him when I was an assistant and he was a federal judge, and I had great respect for him. In fact, the Plumeri – Jimmy Doyle story that's out there (on the wall) was a case he tried. So, we all got along. I mean, we all knew one another, and Milton would lead the commission meetings. Basically, we would discuss the problems of being a commission without subpoena power. I'm not sure whether we got subpoena power later, but that was a big problem because obviously, we wanted records, and Mollen made a deal with the police department. Or we had subpoena power and we got the records we needed slowly but surely. You know, every commission, and this was the third commission I had been on, every commission has the same problem that their lifespan is not only relatively short to begin with, but can be cut off at virtually any time by the legislature cutting their funding, which, essentially, was their life's blood. And so,

the people who are subpoenaed frequently delay in the production of their records. And that happened on occasion here with the police records. That was a big problem. We eventually got all the records. One of the other problems was dealing with these undercover cops. We were up on 51st or 52nd Street and Park Avenue when the commission offices and staff were down on lower Broadway, I forget the address, but way down at the foot of Broadway. So, we didn't have that much contact, frankly, with the nitty gritty of what was going on in the office, where all the cops would come and all the counsel worked.

JK You had counsel? You had investigators? And they were the people doing the day-to-day work, digging into this issue of police corruption?

Baer Correct.

JK How did you see your role then? I mean, I assumed you were not out on the streets looking for police corruption, but when they brought all of this to you, how did you see your role?

Baer Our goal was to have a series of public hearings, so everything was sort of geared towards the timetable of public hearings. When we would have meetings, the meeting would be uptown at JAMS, and Joe Armao, who was the chief counsel and a young woman who was his assistant, Leslie U. Cornfeld, would come, and they would simply brief us on exactly where they were in their investigations and where the investigators were progressing and how close we were to paydirt or how far away we were. And I really don't remember having a particularly active role in the day-to-day activities of the commission, but it was pretty clear that they were uncovering the kind of problems that eventually stocked the public hearings. There were cops in Washington Heights, in that general neighborhood, who were either holding up or extorting money from drug dealers in order for the drug dealers to continue selling their wares.

JK But that's old-fashioned corruption. I mean, they didn't, in the old days, they didn't actually stick them up and steal from them and the like, but there was a long tradition of police officers getting bribes from bookmakers and prostitutes in order to look the other way and let them continue to operate, and that's what they were doing, only it was drugs.

Baer Right. That's really true. I don't think there was anything brand new about it.

JK Except they were using their guns.

Baer Yes. That's what I mean. But as you say, what may be new about it is there was no longer the kind of thing you read about, even in the Knapp Commission days, which was the preceding investigative commission. That in this time, in the '90s, really there was a good deal more violence. I mean, what was happening earlier on, as the people would make a deal, I mean, they would say to the cop or vice versa, "What'll it take to keep you out of my brothel?" And the guy would say, "A hundred dollars a week." And

they would all be friends. This was not that kind of situation. There was a lot more hold-up of drug dealers and taking their drugs and selling them themselves. I wouldn't be surprised if they sold them back. It was not friendly.

JK No. They weren't partners, the way in the Harry Gross era they were partners.

Baer That's right. It was a somewhat different operation. I don't even remember what our view was about how widespread it was, but it didn't seem to be an isolated act. It seemed to me that there was more than one cop involved, and there was plenty of money. I mean, the drugs were just making money for anybody who could get them and sell them. And that was basically what we concentrated on. I mean, we would have been happy if we could have found some of that old-fashioned corruption, but we didn't find that. Maybe Milton knows more about it, what the alternative corruption techniques were. But if he did, he didn't share them, and obviously, he would have. I think the public hearings, which I'm sure from your newspaper perusal, you have seen, were pretty much devoted to this kind of corruption.

JK Yes. Mike Armstrong, who was the counsel for the Knapp Commission, I've interviewed him a couple of times and he said that he believes the result of the Knapp Commission was to drive out most of the low level, what he called "grass eater" corruption, the ten dollars here and the free meal there, that kind of corruption which had been endemic in the police department in the '50s and '60s before the Knapp Commission was mostly wiped out after the Knapp Commission. And so, what you had was a new kind of corruption that was really more of a criminal enterprise than a protection racket or garden variety bribery.

Baer But don't you think it's really still going on? I mean, the Knapp Commission certainly uncovered a lot of it, but whether it drove it out, I mean, I see another brothel being raided every week or two in the paper, it seems to me. There was a big story about [Governor Eliot] Spitzer yesterday and I think that goes on today. I don't really know how you stop it. It's interesting what you say about Mike. I would be very surprised if Armstrong thinks he actually did away with corruption.

JK No, but he said that it enabled the majority of police officers who want to go straight, who want to be honest, to be honest. It changed the culture of the police department from a culture of corruption, where everyone got ten or twenty dollars all the time, to one where that was the exception. That's what he said.

Baer Yes, that's interesting. That may well be.

JK But that was before drugs, really, before the drug culture was so damaging and violent.

Baer Yes. And I think it's still there. And I don't know what the cops' role is, but they certainly, I mean, it's almost human nature. I mean, it happens in major corporations, over the last five or ten years especially, so, why shouldn't it happen to cops who are

making thirty or forty thousand dollars a year, if it goes on with executives who are making a million? Anyway, I don't suggest that you have to do it, but I think the greed index is still out there, and there are very, not a lot of people who find it easy to resist, is all I'm saying.

JK Was there anything you found especially surprising during the public hearings or during the briefings from the staff of the Mollen Commission? Something that made you sit back and go, "Whoa, I hadn't thought about that!"

Baer Well, I had been exposed to this hold-up scenario, but that was very surprising to me. To see guys on the street who are either, I don't remember if they were all plain-clothes, or some were cops in uniform. I suppose it came out in the hearing, but to just go up to a guy who's selling on the street and say, "Give me everything you've got, I'm a cop, or I'll take you in." That was never something I had understood before. But I can say, you know, when we first went, this is historical and apocryphal, when I first worked for Mike Seymour in the New York State Commission on the Governmental Operations of the City of New York, what we had hoped to find, I mean, we anticipated hanky-panky of one kind or another, but the plum that everybody kept on saying we were going to locate, was some guy who aspired to be a Supreme Court Justice dropping seventy-five thousand dollars in a little paper bag in a trash basket and some major politico coming by and picking it up and the aspirant then getting the nomination. It was pie-in-the-sky thinking, and similarly here, with the Mollen Commission, everybody was looking. I'm not suggesting that it didn't happen, but we certainly didn't find it. But it was the same as here. I mean, the timetable is difficult. Everybody knows you're out and looking and have a timetable, so there's more lying low during the period the commission is active; that's certainly so for any law enforcement commission. Everybody knows the time will be up, so the records come in, as I say, very slowly, sometimes only after a court hearing. So, I'm not surprised that I wasn't surprised that these were not more exciting developments. We did fine, but there's stuff out there that we had no idea about.

JK The general impression of the Mollen Commission is that it was successful, that it did highlight a very serious and real problem with the police department, and I'm just wondering how you would assess the value or impact of this Commission, both on the City of New York and police operations and the police culture. And personally, how did the Mollen Commission change your views at all, or alter the way you thought about these issues.

Baer Well, you know, the brouhaha that surrounded the Bayless case, which we will come to shortly, essentially was my hyperbolic take on what the Mollen Commission really found, and the feeling that there was a lot of police activity that was not of the best quality. And so, the Mollen Commission, as you know, when it left town, left a number of, I don't know, eighteen or twenty suggestions or findings or conclusions. And I think those were salutary and some of them had to do with more education, which was something I hadn't realized at the time, i.e. that the requirements were as little as they turned out to be. As an Assistant U.S. Attorney, every FBI agent I worked with was either a lawyer or an accountant! And that was certainly not the case with policemen. And so, I

think some of that has been changed. I think most of our recommendations were adopted, and I think all of them were salutary. The success really has to be laid at Mollen's feet. I mean, he had a magical way of getting people to do what he wanted them to do. Mike Seymour similarly has that quality, but as the U.S. Attorney he didn't have the role that Milton had. Milton was able to get the police department to actually cooperate. Meanwhile, I was still maturing, still tilting at windmills, thinking that everybody should be honest, and if you weren't, you should be punished. His view was a much different view about life, and he is somewhat older and had a life that was somewhat different than mine. Anyway, I share your view that the general view of the Mollen Commission or the general review, is a favorable one. I think it comes basically from the publicity, Mollen came away with favorable reviews. The public hearings and the suggestions we made for reform that he got adopted for the most part. I mean, the commissioner could have said, "Go to hell," and it would have worked out just that way. So, the commissioner deserves a lot of credit, too.

JK Milt Mollen is a force of nature. He is a man literally, they broke the mold when Milt Mollen came out, there's no question about it.

Baer Yes. It was a wonderful opportunity for me.

JK He is such a mensch that I put a conference together about Bob Wagner out at the College of Staten Island and he came! I thought, "To Staten Island?"

Baer That's amazing. Seymour had these ten or twelve assistant counsel on this commission back in 1959. And one of the young counsel was a fellow by the name of Victor Cocozello, who had been an assistant in the Homicide Bureau in the New York County D.A.'s office and lived in Staten Island and always had. Anyhow, to make a long story short, he died a few days ago, and I found out when the wake was. I called Mike, and Mike is well into his eighties, and I just simply told him about the fact that I was going to go to the wake. I'm sure I said, "Would you like to come?" thinking that was the furthest thing from his mind. But there he was, at the Staten Island Ferry, along with his wife, who is not in great shape, and they both came. And Honey, Victor's wife, just loved it. But indeed, that's the kind of loyalty that Mollen offers as well. I mean, frankly, Bob Morgenthau is also one-of-a-kind, but there's a difference between Seymour and Mollen and Morgenthau, even though there are a lot of similarities. Some of them are just more parts mensch, as you say, than others. I mean, Seymour would hardly like to be characterized as a mensch, albeit in many ways he really is. They were all wonderful men with whom I was and always will be proud to have worked.

JK So, you did spend some time during the Mollen Commission and after working for JAMS.

Baer No, I didn't spend any time anywhere after JAMS. I was nominated for this job while I was still there.

JK Oh, in 1993, that's right.

Baer In 1994.

JK You joined the Court in 1994, having been appointed, or nominated, by Senator Moynihan. How did that come about, or, was this a surprise? Had you sought this?

Baer Yes, well, the Liberal Party once again, because of its alleged balance of power, which it really didn't have, but that's what many believed, had a seat on Moynihan's committee that suggested nominees. He had had it for a long time. His name is Herbert Rubin. He is a wonderful man. He had come up to me at some function, probably a Liberal Party function, and said, "What do you think about going on the federal bench?" And I guess I was just starting in JAMS. It probably was 1992. And, anyhow, I said, not really seriously, "Well, if you can swing it, I'm all for it," because I had always thought that this was the pinnacle of success in my profession.

Side 2

Baer I thought about it simply from the standpoint of knowing that it was very different from the state judiciary and more powerful in terms of the kinds of cases and what you could do if you were here. But I was still hoping that I would stay at JAMS and do some good and incidentally make some money. I never seemed to quite get there.

JK It's not too late. There's always a career change in your future.

Baer Well, I've had a few, I must say, but they've always been public service, for a decade. But in any event, it was of little moment. I sort of dismissed it in my mind and went to work at JAMS. And then all of a sudden, I got this call to come to a meeting, and I knew every single person on that committee, and they were all friends. All people I had worked with or I had tried cases against or with or for. There were about twelve people who were all just, I don't know how Moynihan did it, but they were all people that I think would do a splendid job in providing suggestions, which is what they did. Every time there was an opening, he would call and say, "Get a meeting and give me three names," or something like that. And that's what happened here. I went to one meeting and then I went to another meeting, and by that time, I was getting excited. It was like candidate-itis, even if you don't have a shot in the world, after enough campaign stops, you think you're in. So, I began to think there was a shot, and then, I don't know if Moynihan called, but by the time it was announced that I was his choice, I think there were three of us, actually, but he called me down to his office twice. The first time he said, "I'd really like to help you, but you're not next." So, I was --

JK That's actually a very professional thing to do, to invite a candidate in and explain, "I'm going to help you. I'd like to. But you're not next." Okay.

Baer Yes. That's exactly what he did.

JK That's professional.

Baer Yes, he was truly professional. And I had a great respect for him. So, I went home. I mean, it wasn't like I knew a lot of other Congresspersons who were waiting for my visit. I guess I went with my wife, on the train for the first time. I usually fly to Washington, not that I commute exactly, but whenever I go. And so, I guess a year passed, or six months passed, and there was another spot, and I had been on that list. So, I kept on being on the list and I guess moved up, and eventually he said, "Congratulations. I want you." He had one caveat during the course of our meetings, which I really should have understood, but I'm still not certain I do. I had represented a welfare fund of a labor union, actually a municipal union, a teamster local run by a fellow by the name of Feinstein.

JK Barry Feinstein? He was head of a Teamsters Local in New York.

Baer Barry Feinstein. Yes. 237. I wasn't representing the union, I was asked to represent the welfare fund, which was a big deal. I don't know how many men, probably ten or twelve thousand, maybe more. It was a big deal and they had shops out on the island too, where there were municipal workers who were part of 237. In any event, the Senator said something like, "Even though you know Barry Feinstein, you're my candidate." Anyhow, I never quite understood that because it seemed to me that Feinstein always backed him and all he had to do was say "Yes" and there were fifteen thousand votes, and probably closer to thirty thousand. They were all either married or whatever. And I'm sure he always did, but there something must have turned the Senator off about Feinstein, who, by the way, had been in some trouble, but I had not represented him, and this may have been the Senator's problem. Other than that, everything I had in my background appealed to him, or at least didn't give him any pause. So, he nominated me in probably April or something like that. I thought it was a rather long process, but the confirmation hearing, that's another example. The confirmation hearing must have been in July. It was very warm in Washington in July. My wife and I, and my two daughters, went down there. Milton had made some noises about going, but I had no thought that he was coming. I mean, it just didn't seem like something he would do. There he was, in the flesh. Of course, he was sort of at the height of his public exposure and a hero to many of us, and I suppose that's as good a time as any to go to Washington. The Mollen Commission was all over the newspapers; he got a little more attention than I did. That was fine. I was delighted that he came. There was only one Senator, the Senator from Illinois, who lost her reelection campaign.

JK Carol Moseley Braun.

Baer Yes. She was the only Senator there, along with a whole series of AAs that sat in the back, representing all the different Senators. I think it took about ten minutes and she asked me something about arbitration and mediation, and that was the end of that. We walked out. And then, whoever the chair was at the time, Dole or Hatch, anyhow, his AA came over to me and said, "You had to submit copies of everything you had ever written," among other things, and she said, "I read all your papers." I said, "That was nice." She said, "There was only one thing that was memorable." I said, "Yeah? What

was that?" My wife was looking around and I couldn't figure out what was going to happen to me. She was representing the Chairman of the Judiciary Committee. And she said, "You wrote an article in *Bride Magazine* about planning your daughter's wedding. That was worthwhile."

JK You're kidding.

Baer That was it. That's what she said. I said, "I'm glad you liked it."

JK On such a basis Justices are appointed.

Baer Amazing. Amazing. So, anyway, I was confirmed and I guess probably had a few conversations. He was very nice, Moynihan, he would call and say, "I think we can do it tonight," or something. "There's only one other Senator in the Chambers." God forbid they should all be there, it might be trouble. I was sworn-in in August and began in August or September of 1994. And now, here I am. I guess within a year or two the Bayless episode befell me. And I think more and more, as I think back, that what I did was probably the right thing to do, but the law was, the more I see the light, a little unsettled to say the least. I'd only been here a year. I came in August or September of 1994 and this was at the end of 1995.

JK The ruling that you made was in January of 1996.

Baer But the arrest.

JK That was in 1995.

Baer I had only been here a short time, but the Bayless case certainly did generate a lot of activity in the media, but the reason is pretty clear in retrospect that --

JK Before you get into your reasoning, can you just outline what the situation in the case was?

Baer Yes. There had been an arrest of a middle-aged black woman in Washington Heights with eighty-odd pounds of heroin and cocaine in her trunk. She was in a rented car with Michigan plates and the cops who were in the vicinity had seen what was happening. In other words, what was happening was that, I guess, no different than if you were just coming home from college. The men came out, two or three or four men, came out, opened the trunk of the car, took out a duffel bag and put back another one with as it turned out money in it, or visa versa, I no longer remember the sequence. But in any event, then in some fashion, they scattered. She was arrested. Whether there was any, I mean, there were a number of legal issues, but there was a suppression hearing as to whether or not the drugs should be suppressed, and, as I recall it, the testimony from the one witness that the government provided, there were two policemen in the case, and one was a sergeant, the reporter, not the driver. The government's choice for the witness was

the driver, Mrs. Bayless, long before the hearing, went to the precinct and confessed. And all of it is on tape.

JK It was an extensive confession. It wasn't 'Oh, I did it.' It was forty minutes or so.

Baer And in some detail with a story that differed from the testimony of the one government witness. So, there were a number of things that bothered me about that. I mean, most importantly, I suppose, she had no reason to lie because she had already given up the ghost and confessed that she brought these narcotics to New York for her son. But there were three or four, at least, major differences, one of them being that she didn't see anybody running, she saw some people, these men, walk away. And that was fairly important because the way in which the government proposed that the drugs not be suppressed, was because there was reasonable suspicion that here they were with all this heroin and they were running away from the car, a clear indication of guilt, which is certainly fair. If true and if they had a right to stop the car in the first place. So, the reasonable suspicion was a fairly major tenet, and I guess probably she had two or three other differences from policeman's story, and as I say, she had no reason not to tell the truth at this time. Meanwhile, a cop had every reason not to tell the truth, at least to make sure that in fact the reasonable suspicion test had been satisfied. So, anyway, those facts coupled with the one witness gave me a lot of pause, and I simply suppressed the eighty-seven pounds of heroin. It was the beginning of an election year.

JK 1996. You wrote in your decision that even before this prosecution and the public hearing and the final report of the Mollen Commission: "residents in this neighborhood tended to regard police officers as corrupt, abusive and violent. After the attendant publicity surrounding the above events, had the men not run when the cops began to stare at them it would have been unusual."

Baer Yes. I think that was, as Sonia Sotomeyer might say, maybe that was a little over-reaction. You know, Judges really are not supposed to be scattering hyperbole in their opinions. I have pretty much controlled myself from doing that, although from time-to-time, and only yesterday in an opinion, I put in a statement about, "It's too bad that the lawyers couldn't have done a little research and saved us all a lot of time," which – you know, it was a throw-away line. This was not a throw-away line. This was really a significant feeling on my part, and whether I said it, you know, couched it in terms of before the Mollen Commission, it really was colored to an extent by the Mollen Commission findings, which obviously were a year earlier or close to a year earlier, the public hearings . Anyway, so, what happened is that the government asked for a re-hearing and I thought about it for a while and then I decided, "Well, why not? I would give anybody another chance." I guess they realized that the problem or one of the problems they had was that there was not really any corroboration, so it was this one lady with no reason to lie versus this policeman who had, I mean, obviously, he wasn't supposed to lie, but at least there was a reason why he might not tell the whole truth, since it was, I thought, a close question with respect to the reasonable suspicion test. So, we granted a re-hearing, and, of course, they produced the sergeant who they should have produced at the first hearing. I still don't understand why they didn't do that. It was so

easy for them to have done it, and they were both around, obviously, if they brought him a month later for the re-hearing. And if they had corroborated one another, which they did, so that it was two against one, I suppose I would have bought their story. But this way, with only one witness, I presumed the government realized I wasn't buying it. But so, in re-hearing, amidst all kinds of terrible media attacks, and these little men with the red hats, I don't even know their name, picketing my apartment house, they produced both and they corroborated one another. I reversed myself amid all the publicity.

JK The Guardian Angels. Well, I might add to the list who were protesting, if not marching outside your chambers, Newt Gingrich, every Republican Senator, Bill Clinton, Pat Moynihan and everyone in-between.

Baer Yes. The problem with respect to Gingrich that was disturbing, I guess, to me, and continues today to be disturbing, he continues to be disturbing.

JK Well, yes.

Baer He lined up, as I understood it, about one hundred and forty-seven of his confreres in Congress to petition for impeachment, and he never once, to my knowledge, and he's doing the same thing today with Sonia Sotomeyer, he never once spent the time to understand what my opinion was about or what the problems were in the way of the legalities, what the courts are about and how the Constitution protects Judges from impeachment because they they don't like the decision. Certainly never inquired in any way of me.

JK Well, you can dismiss a Newt Gingrich wanting the impeachment business, which has all the trappings of grandstanding. But you also have President Clinton questioning his appointment.

Baer And Moynihan. While I had no meeting with the President, I certainly had with Moynihan. Yes, but the President quickly having been a constitutional law professor, understood that he had made a mistake and that this is not what you do in America. And, in fact, Rudy [Giuliani], who I had actually hired as an Assistant United States Attorney, had come out with some big, blinside to what I had done, which is just part of his make-up. But then at probably the largest dinner for lawyers during the year, probably two thousand lawyers at an intellectual property dinner, and he was the speaker. After saying that what he had done was a mistake, and he regretted it, came down and kissed me on both cheeks. This concerned me a little only because when we brought [Joe] Valachi [a major government witness in a Mafia trial the 1960s] back up from Atlanta, he told us a story that before he left, they knew what he was doing, i.e. coming north to cooperate and testify, and he had been kissed on both cheeks, and that meant he was targeted for death. In retrospect, I look at it primarily from the standpoint of it being an election year that catapulted me into this fifteen minutes of fame.

JK You also received, as I was going through the chronology of those days, unexpected, from my perspective, support from a number of federal judges including William Rehnquist.

Baer The more interesting thing to me was Jon Newman, who was the Chief Judge of the [United States Court of Appeals for the] Second Circuit at that time, apparently got every single living Chief Justice to write this very significant piece, which is now posted outside the Judges' dining room on the eighth floor. I'm not sure it got any greater coverage than that but it's a very well-written judicial independence piece, and certainly signed by all these great judges. And then Jon wrote a remarkable article in the American Judicature journal, which spelled out some more detail why what I did was the right thing to do in terms of changing my mind. Nobody was prepared to say that what I did in the first instance, but for all my African-American and Hispanic friends, I was their hero. It was really quite a vitriolic piece, and the kind of thing that I would not do today; it might stop my nomination for Supreme Court Justice.

JK I noticed your name wasn't on any short list.

Baer Very perceptive.

JK This is what you wrote at the second hearing. "Unfortunately, the hyperbole in my initial decision not only obscured the true focus of my analysis, but regretfully may have demeaned the law-abiding men and women who make Washington Heights their home, and the vast majority of the dedicated men and women in blue who patrol the streets of our great city. The facts of this case have consistently danced the fine line between a valid search and seizure so essential to the government's criminal justice initiative and a trespass on citizen's rights, while it is clear that the Fourth Amendment operates to protect all members of our society from unreasonable searches and seizure, it is equally unclear whether this protection exists to its fullest extent for people of color generally and in inner city neighborhoods, in particular."

Baer Yes, I think that's all, probably fair, from my perspective.

JK It is kind of two things. One, it's kind of an apology to the police. But it's also trying to reinforce what the legal issue is, and it's that fine line between reasonable and unreasonable search and seizure and the Fourth Amendment.

Baer Yes. George Mason Law School recently had a symposium with about ten of us. The topic was police hunches. And each of us wrote an article that was published in one of their journals. First, we went down there and all talked for five or ten minutes, but it was interesting to see the scope of the ten people they had put together. A lot of professors, another Federal Judge from Minnesota who had gotten into some difficulty of his own, and Ed Meese. Meese didn't make it into the journal. But Meese made it perfectly clear that he thinks that there ought to be no exclusionary rule whatsoever. The exclusionary rule and Meese's philosophy were quite different. I think that's an easier way to put it. He thought it was just a disaster to have these kinds of prohibitions on

police activity. At least that's what I gleaned, since he never got into the journal, I never saw it in print. I just listened to him. I was amazed at what he was saying.

JK But you had a battle royal over this, and it became a battle in the newspapers and in politics, and as well as in the court. But I'm thinking in recent years, the police stop and frisk thousands of minority men on the streets of Manhattan and Brooklyn and Queens, and the courts have said this is perfectly okay. The police are now searching bags, going into the subways, searching anyone's things, anytime. And it seems that you're radically trying to protect the Fourth Amendment here, having a very high bar, and that very high bar that you were setting in 1996 seems to have been lowered to almost nothing.

Baer Well, you know, I think 9/11 played a role in that change. You can see it. I mean, it's operative there and in the injunctive relief that I granted in connection with the demonstration in front of City Hall. Now you can't get into City Hall at all.

JK Exactly. That was the last case I was going to ask about, because I remember when I was teaching urban history, I would tell my classes, "We're going to have a walking tour of Lower Manhattan. We're going to meet on the steps of City Hall. And if you need to go to the bathroom, just go right in, it's upstairs to the left." Because City Hall was wide open. And now you can't even get in front of City Hall.

Baer Yes. It's very different. I think 9/11 has made a big difference. One of the things we talked about was the consent decree for Rikers Island that I oversee. And I can tell from that work on Rikers Island that there is very little of the same kind of protections. And I think the Supreme Court has probably bought them. I haven't followed it as carefully as I did in 1996, but I watch the decisions and I see that Roberts is certainly moving in the direction of eliminating whatever remaining barriers there are, with respect to search and seizure. Yes, and you know, the police activity is also given a wider berth, more permissible, what you're saying. Much of what I was afraid of in those two decisions, both the first and the second decision, was essentially what's happened now, and I think it's a sad state of affairs. I think 9/11 was certainly the genesis, well, I don't know about the genesis, but played a big role.

JK 9/11 did, but it was in 1998, Rudy Giuliani attempted to limit the rights of groups to meet on the steps of City Hall to protest city actions, and you ruled that his rules were unconstitutional and you wrote: "The city in practice appears to have unbridled discretion to grant exceptions to those groups whose speech it agrees with and deny exceptions to those groups whose speech it disagrees with." And then, within a few months, there were concrete barriers keeping everyone out of City Hall.

Baer Well, I don't know. Did the concrete barriers come before 9/11?

JK Yes. He had already --

Baer The court affirmed my decision, I'm glad to say. I mean, that was the one I think about, how he didn't mind having all his Yankees at City Hall.

JK Yes. Exactly. It was in the context of having the New York Yankees there, but not a gay group who were protesting cuts to gay services or housing or some such. It was Housing Works.

Baer Well, there was another case, I don't know that it got any publicity, but it was a lot more fun, in which Rudy did not prevail. There was this photographer, who takes pictures of vast number of people. I'm not sure why that's a big hit, but in any event, he wanted to take a picture of about a thousand nude women downtown on the Lower East Side, and the city moved to enjoin him from doing this. Mike Hess is a really good friend of mine, and he was the Corporation Counsel at the time. I made it pretty clear that the photographer, with proper protections for pedestrians, etc., had a right to do this so long as it was at a time when there was no traffic, and there were few if any people on the street. And the photographer agreed to abide by all the protections to people's privacy, etc. This was going to be done at five or six in the morning on a Sunday, or something like that. In any event, I'll never forget, Mike said, "Well, I'm not sure you're wrong about that. Let me call my boss." So, he called Rudy. He comes back with this sort of sad face. He said, "Let me tell you what Rudy said." I said, "Okay." We're all here, including the photographer. "Not in my city!" Anyhow, he lost, and he went all the way up to the Supreme Court, and I guess Justice Ginsberg said, "Forget it."

JK What was the Rikers Consent Decree you're involved with?

Baer Oh, I think probably many, many years ago, in 1975 or 1976, there was an uprising at the facility. And so, the Legal Aid Society brought this action against the city to make sure that the myriad of problems that had been unearthed were resolved, either through litigation or a consent decree. And I guess Mayor Koch, I wasn't here, but Morris Lasker wrote a couple of wonderful decisions on the capacity for each cell, how big they must be, etc., and then there was a consent decree, which Ed Koch agreed to, involving lots and lots of changes. Morris left in probably 1997 or 1998 or 1999. He left soon after I came. Maybe it was even earlier. And he asked me if I would take over, assuming the Legal Aid Society and the city would agree. By that time, he had set-up what was called an Office of Compliance, with a staff to make sure that the consent decree was being carried out. In any event, all parties agreed and I said I would do it, and since certainly 1996, the next ten or fifteen years, I was and continue to be the judge who, with the staff, makes sure that they have done the kinds of things they promise to do, which, the only reason it continues to this day is that they have really yet to fully comply, although they are making great strides towards that end. One of the major problems now happens to be an order for heat, which requires them to provide air conditioning, primarily for health reasons, when the temperature gets above eighty-five degrees. They may have made it by this time. There are a whole series of problems like that that the consent decree requires them to do, and the Prisoner Litigation Reform Act helped and hurt, it abrogated things like requiring that prisoners get newspapers on time.

JK Yes. There were a lot of silly suits. “I asked for creamy peanut butter, not chunky.”

Baer Yes. So, a lot of them were dismissed.

JK Bad cases make bad law.

Baer Right. But a number of them are still around.

JK Well, if we’re down to installing air conditioning in the cells on Rikers Island, I’d say we’ve made enormous strides.

Baer That’s right. The Department of Corrections thinks they’ve done so much that they really should no longer have a consent decree. And most all of it has now been agreed to by Legal Aid. But there are a couple of items that are problems and they continue to vex me, and I just, Martin Horn, who is now the Commissioner, is really a good Commissioner. He knows what he’s doing. Not everybody – Kerik was the best example – knew what they were doing. So, I think it will all go away within a little while, and I wrote a long article for the *New York Law School Law Journal* about the history of it because Ross Sandler, a friend of mine, had written a book saying this is something that the courts ought not have anything to do with.

JK That was his book on the consent decree concept in general.

Baer Yes. Right, and how really it was a legislative function, that was the theory. So, this was a response, although I didn’t publish it in a hardback volume.

JK I think we’ve almost come up-to-date, and if there is an opportunity to continue or to re-visit some of these subjects, just let me know, and I’ll be glad to bring the tape recorder and you can correct, amend or add on to.

Baer All right. Well, if you send me the draft as you did the last time, if there’s anything exciting that I left out, I’ll be sure to include it or talk to you about including it.

JK Well, thank you very much.

Baer You’re very welcome.

End

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