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Ira Michael Heyman  
THE LAW CLERKS OF CHIEF JUSTICE EARL WARREN: IRA MICHAEL HEYMAN

Interviews conducted by  
Laura McCreery  
in 2004

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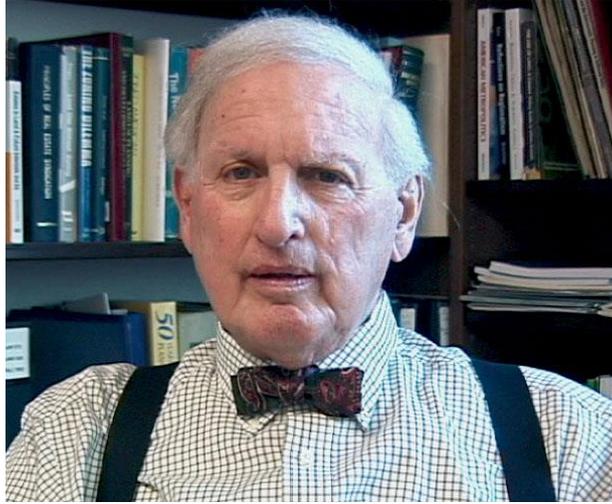
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Ira Michael Heyman

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**Interview #1: October 12, 2004**

[Begin Audio File 1]

01-00:00:00

McCreery: Oops! I'm getting a little tiny hum from this connection, here. There we go. Okay, tape number one. Today is October 12, 2004. This is Laura McCreery speaking, and on this tape I'll be interviewing Chancellor I. Michael Heyman at his office in the law school at UC Berkeley, and we're collaborating today on the project "The Law Clerks of Chief Justice Earl Warren." Chancellor Heyman, could you start off in the usual way, by stating your date of birth and then just talk a little about where you were born?

01-00:01:18

Heyman: Yeah, I was born on May 30, 1930, in New York City.

01-00:01:23

McCreery: What were your family's circumstances at the time?

01-00:01:29

Heyman: Well, my father was an insurance broker. He had been in the meat business, but that had gone belly-up during the Depression. My mother was a schoolteacher. She taught for about forty years, or a little over forty years, fifth grade in the New York City school system. She taught on the Lower West Side, which at that time was a relatively blue-collar neighborhood. My grandparents did fairly well. My father's mother lived with us. We lived first up near the City College of New York, and then thereafter, I really grew up on Western Avenue and Eighty-Third Street on the West Side in Upper Manhattan.

01-00:02:18

McCreery: What were the effects of the Depression on your family?

01-00:02:21

Heyman: They shielded me quite a bit from them, but there were obviously some effects. Certainly my father's business having folded was traumatic, and his having to go into a new field, which he did. But my mother's salary was very helpful in carrying the family during those difficult times. I don't remember being deprived at all. So, I was an only child and I suspect I was an only child because of the Depression, and there's nothing memorable for me in terms of want.

01-00:03:03

McCreery: Okay, thank you. Talk a little bit about your early schooling and what kind of interests you had as a child.

01-00:03:10

Heyman: Well, I went to public school—in fact, the public school that I was at was PS 9 which was only two blocks away from my house. I just had lots of friends in the neighborhood and we played and did all the rest of the things one does. The pressure from my mother and my father ended up with my

doing quite well in school. The public school that I went to was rather interesting. Boys were, in quotation marks, “graduated” from it at sixth grade, and girls at eighth. So, at sixth grade, I went on to junior high school. But that brought a lot of pressure on tall boys in sixth grade, which I remember with some delight.

01-00:03:59

McCreery: How did you handle that?

01-00:04:02

Heyman: Probably not well, and I don’t remember with specifics, but I do remember that it was fun to be in that situation.

01-00:04:11

McCreery: You attended two high schools, I understand?

01-00:04:13

Heyman: Well, I went to junior high school and then I went on to the Bronx High School of Science. I had been going to summer camp in the Adirondacks, and I liked athletics quite a bit, and Bronx Science was in a very old building and it had no athletics to speak of, certainly no interscholastic competition. I prevailed upon my family to send me to a private school called Horace Mann School for Boys, where I could play a lot of different sports. That was a fairly demanding school, but not as demanding as Bronx Science, as a matter of fact.

01-00:04:53

McCreery: Now, how did you come to attend Dartmouth for college?

01-00:04:56

Heyman: I think my father’s pressure with respect to Dartmouth was very important. He had gone to Columbia University; he wished he had gone to Dartmouth, but the family circumstances were such, his father just died, that he couldn’t leave the city. So, he thought that that would be a good place for me. I applied to a number of other places. This was a very tough time to get into college. It was 1947, and an awful lot of veterans were coming back, or had come back from the Second World War, so it was a difficult time to get into selective schools. I thought Dartmouth seemed awfully good. I visited Princeton and a couple of others, and I was not as impressed, at least for my own needs, as Dartmouth. That really was the reason.

01-00:05:50

McCreery: Did you have a plan for what you would study?

01-00:05:52

Heyman: I had absolutely no idea what I would study. As a matter of fact, you might be amused by the fact that after the first semester at Dartmouth, the college gave to the high school that had more than five graduates in that class a prize for the high school whose graduates scored the highest average in their first year of grades, and my high school got that. They got that, and I got four Cs and a D, so you can imagine how bright those other kids were. That was a

wonderful wake-up lesson for me about what you had to do in college, and from then on, I did exceedingly well.

01-00:06:37

McCreery: Well, what was the postwar atmosphere at Dartmouth?

01-00:06:40

Heyman: Well, it was really dominated socially by veterans, and people who were considerably older than we children, and that probably is what got me in trouble that first semester.

01-00:06:54

McCreery: You did go on to major in government.

01-00:06:57

Heyman: I majored in government. I took to the government courses that I had taken, I liked them, and I liked the faculty, and I became very close to two members of that faculty. Both of them had quite a deal to do with what I later did, but I enjoyed government and I didn't enjoy science, so social science seemed to be what I thought I would do. That soon and certainly was what I was most interested in.

01-00:07:30

McCreery: Tell me something about how you ended up working with the Senator Irving Ives while still in college.

01-00:07:36

Heyman: I was finished with all of my major requirements, including my thesis, at the end of my junior year. That, I had to get special permission to do that, but it was really a *fait accompli* because nobody had noticed that I had done all of this. So, I had to petition to write the thesis then take the comprehensive test, and they said okay, and they let me do it. I did pretty well on that, as a matter of fact. Nevertheless, one of the two government teachers to whom I've alluded, a fellow named Morrison, had resurrected an old fellowship that Dartmouth had, called the Class of '26 Fellowship, which permitted a student for some period of time to go work in a place like a legislature. He suggested that I do that and he arranged, really, for the award to me. So, I did it my senior year, and so I shopped around for where I'd like to work.

There were two senators from New York, my home state. One was Herbert Lehman, and he had a staff of about thirty-five, and Irving Ives had a staff of about three, and so I thought that'd be much better from my perspective, and it certainly was in terms of the responsibilities that I could undertake in that office. So, there I went. Also, my parents were fusionists in New York. Those were the people who were anti-Tammany and not quite Republicans, but they were the backers of Fiorello La Guardia, for instance, the fusion candidate for mayor. So, it wasn't so unusual for me to be working for a Republican rather than a Democrat, and in those days, certainly for New York, the Republicans

were quite liberal. I think Ives, in many ways, was a lot more liberal than the center of the Democratic Party now.

01-00:09:39

McCreery: That's an interesting comparison.

01-00:09:41

Heyman: Well, he was followed by people like Herman in various political jobs in New York, by Rockefeller, by a whole series of people who were quite left of center.

01-00:09:55

McCreery: Well, you mentioned your parents' politics; what were your own?

01-00:09:59

Heyman: Oh, I think I tended to be what we today would call a liberal, most of the time that I was conscious of having a political position.

01-00:10:11

McCreery: What did Senator Ives have you work on?

01-00:10:14

Heyman: Well, his office had two substantive people: one was his executive secretary, who was his wife—he had married her after his first wife died, and she had been working for him previously to that—and the other was his administrative assistant, a guy named {Dwyer Schagrute?}, and that was it. So, when I came in, I was the third substantive person. There had been a person previous to that. That meant that I really shouldered quite a load from the very beginning, and for instance, I was his chief staff person on one of his committees, which was health and welfare. So, I did all the things that a legislative assistant or an administrative assistant would do in that regard. So, I really had a lot of responsibility when I was 20 years old, so that was really quite exhilarating for somebody my age.

01-00:11:17

McCreery: How did you get on with the Senator himself?

01-00:11:18

Heyman: Oh, we got on famously. That's been one of the things that's been a delight in my life, that the people I've worked for have normally really liked me. That's really been very helpful.

01-00:11:29

McCreery: Now, how early did your interest in the law begin?

01-00:11:34

Heyman: It began prior to the time that I had gone to Washington because I took a couple of law kinds of courses at Dartmouth. One was in constitutional law with a guy named Bob Carr, who became the President of Oberlin thereafter, and the other one was with Professor Morrison, in kind of an administrative

law course. I really liked both of those considerably, but it really was cemented when I went to Washington. I was really in the midst of not only law-making, but an awful lot of lawyers in the legislature. I was very interested at that time in the idea of going into politics, and being a lawyer seemed to be a very good profession if that's what one wanted to do.

01-00:12:25

McCreery:

Here, you were getting a look at the center of Washington, itself, too.

01-00:12:29

Heyman:

Well, certainly the Senate part of the center of Washington, yeah, I did. It was fascinating. As I say, especially for one as young as I.

01-00:12:39

McCreery:

Now, you didn't go straight to law school, however. Talk about what you did after you left Senator Ives.

01-00:12:42

Heyman:

That's right. Well, I had been in the Marine Reserves when I was in college, it was something called a Platoon Leaders Class, and you got a Second Lieutenant's commission when you finished all of the basic training and the like. When I was in Ives' office, I called over to the Marine Corps, and I said, "A constituent is really quite interested to know when he'll be called up for active duty." This was, of course, in the middle of the Korean War. So, they told me that it was going to be in June, just after I was graduated. So, I prepared myself. One interesting story, at least to me, about that is that one of the senators was a man named Paul Douglas from Illinois. He was an extraordinary man. He had been in the Marine Corps during the Second World War, and he'd gone in as a private and he ended up as colonel, with battlefield promotions. He was enamored with the Marine Corps, absolutely enamored. As a matter of fact, that year, President Truman had sought to limit the Marine Corps to three divisions and three air wings, which would be one less of each than previously had been through, and Douglas defeated that in the Senate. In any event, when I got the word that I was going to be called up in June, I told him, because I had seen him quite often, he and Ives were good friends, and he was a great, big man—he grabbed me and he lifted me up and he was just so elated for me, that I would have this opportunity.

01-00:14:30

McCreery:

Well, how did you feel about it?

01-00:14:31

Heyman:

I felt pretty good. Now, I must say that that led, to a good extent, to the fact that my wife and I got married that Christmas, before she finished college and obviously before I did, and it was in anticipation of this adventure in the Marine Corps.

01-00:14:51

McCreery:

How did that adventure play out, in your case, during these Korean War years?

01-00:14:54

Heyman:

Well, it was fine. I stayed in the United States the whole time. I was at Camp Pendleton, which was my introduction to California, and really, my wife's too, although she had been there for a short period of time, another time. It was my introduction to California, and then I went to El Paso. We went to El Paso, Texas, where I went to artillery school and army school at Fort Bliss, and back to Pendleton, and then out to the desert. The group I was in opened the marine base out near Palm Beach. I mean, Palm—

01-00:15:31

McCreery:

Palm Springs.

01-00:15:32

Heyman:

Palm Springs, yeah.

01-00:15:35

McCreery:

Well, it's a limited view, but what did you think of California in those years?

01-00:15:39

Heyman:

Well, I liked it. We went up to Los Angeles from time to time from Camp Pendleton and we flew up to San Francisco a couple of times because my wife's first cousin lived in Sausalito, as a matter of fact. So, I had a very nice impression of it, but I never was in the East Bay, never saw it. But it led me, when I was going to get out, to apply to Stanford Law School because that's the only one I had ever heard of.

01-00:16:15

McCreery:

So, you applied to Stanford and—

01-00:16:17

Heyman:

Right, and to Yale. I had had a scholarship from Chicago when I was graduated from Dartmouth, and that held over, so I could have gone there. But I had the GI Bill and it wasn't necessary, and my first choice had been Yale. That's a funny story, too, because I was admitted to Yale—it's a very tough school to get into, it certainly is now and it was then—for the class of '54, which would have been as if I didn't go into service. They admitted an enormous class that year because they thought there would be no draft deferments for people in graduate school, and then that rule changed, so they had the largest class they've ever had. Well, when I came back to go to law school in '53, two years later, what could they do but let me in? The veteran, I mean, goodness gracious. So, I have the feeling in life that I've had a lot of breaks of that sort, and so, life has been very serendipitous.

01-00:17:29

McCreery:

Well, tell me about starting at Yale, moving there and getting settled and starting off in law school.

01-00:17:36

Heyman:

Yeah, well, it was fine. The only blip that I can remember is that we had gotten student housing and when we arrived in New Haven, we were directed out to where it was, and it was Quonset huts out by Yale Bowl. [My wife] Theresa walked into this Quonset hut and she cried. I'll tell you, that's a woman who rarely in her life ever cried, but the prospect of moving back into what essentially was the kind of housing we had started out with in the Marine Corps was just too much for her. So, we marched out and found some other place to live, which turned out to be delightful, except it burned down that first Thanksgiving. Yale was fine, I really enjoyed going to law school there, and I did fine and I got on the *Yale Law Journal* and that was of some importance in those days, more so than it is presently, in terms of later career. I enjoyed law school a lot and my wife taught school, which she had done at Camp Pendleton also. She taught school at a private school in New Haven and did very well, and then decided that she was going to go to school, too. So, she went into the graduate program in history of art at Yale.

01-00:19:02

McCreery:

I know she went on to become an art curator and have quite a career.

01-00:19:03

Heyman:

Yes, that's right, and had an enormous career, yeah.

01-00:19:07

McCreery:

Well, tell me a little bit about school itself—professors that you connected with or were influenced by.

01-00:19:15

Heyman:

Well, it was a very odd time at Yale Law School because we had three deans in three years. We had the dean who was retiring, then we had a new dean, Harry Shulman, who was a great scholar of labor law. He died, unfortunately, that year, and then we had Dean Rostow. So, we had three deans in three years. I don't think it affected the students very much, but it did affect the faculty considerably. I had wonderful professors there. I had Grant Gilmore, he was a fine man. I had Fritz Kessler, who after retirement at Yale came and taught here, who was a marvelous teacher and a fine scholar in contract law. I had John Frank, who was one of the people who left and didn't get tenure, and we all thought that was quite undeserved, but I had him in constitutional law. He went on to practice law in Arizona and be exceedingly successful in many ways as a public interest lawyer in Arizona. Vern Countryman was another who had the same fate, which was very strange. In any event, all of this was part, I think, of the upset of having rotating deans during those three years. I had a wonderful guy in torts named Jimmy James, who was a considerable man. Those are the ones that most easily come to my memory, but there were others, too.

01-00:20:52

McCreery:

Then, working on the *Law Review*, what was the focus of that journal in those days?

01-00:20:57

Heyman:

Oh, just the same as it is now. I mean, it's articles by prominent faculty members and notes and comments by students. I wrote two notes, I guess, and I can't remember exactly what they were about. One of the hardest things about getting a topic for a student is that you constantly are looking at the literature to see that somebody else in another law school in another law journal hasn't written about the same subject. I got beaten twice that way, so I had put enormous amounts of work in it and I had to start all over again, but it worked out fine, in the end.

01-00:21:32

McCreery:

But I note you were already in something of a leadership role by doing that.

01-00:21:37

Heyman:

Yeah, well, that's right. [laughter]

01-00:21:42

McCreery:

Well, I know you had an experience working on an appeals court in Vermont, was it?

01-00:21:50

Heyman:

When I was graduating from law school, I went to work for a Wall Street firm, which I wanted to see what that was like. So, I got a job in one, and I had a lot of fine adventures there which I really enjoyed. But Theresa was getting her master's degree, so that meant that I was commuting from New Haven every day, which was not the greatest commute, especially on the New York, New Haven, and Hartford Railroad, at that time, which was not nearly as good as Amtrak is presently. So, that was long. It was a ninety-minute ride, and then getting down to Wall Street from Forty-Second Street, from Grand Central Station, et cetera, et cetera. Work was demanding, although not nearly as demanding as law school firms are, presently.

01-00:22:35

McCreery:

What kind of assignments did you have there?

01-00:22:37

Heyman:

Oh, I had all kinds of wonderful ones. It was a small firm, it had twenty-six lawyers. In that days, that was a pretty good-size firm. I worked with a litigation partner and they let me do little things like argue motions and stuff like that. That firm represented the American Express company, and in the course of that, I was given all of these assignments which were quite distasteful, largely bringing pressure on sellers of travelers' checks and money orders, who were usually druggists or somebody else who had commingled funds or done something which they weren't supposed to do. I must say, the human toll with regard to that on them and on me, in a way, it was not pleasurable.

The one I remember the best was the American Express company had something called a field warehouse, so if you wanted to borrow money and

you were in a business in which you had an inventory and you needed to create a security interest in that inventory to underlay the debt obligation that you would have, they would set up a warehouse on your premises and put your goods in the warehouse, and thus you could get a loan on the basis of pledging that inventory to secure the loan. Well, one of the ones they set up was in a boatyard out on Long Island, and unfortunately, they put in their field warehouse boats of all their clients, whom they were storing these boats for the clients during the winter. Then, they fled with the money, and the American Express company has now got this warehouse full of other people's boats, and the people are clamoring to get their boats because the sailing season and the motor-boating season has started. So, they send me out to face all of these people, which was a very interesting experience.

01-00:24:56

McCreery:

Well, perhaps that experience helped define your own interests in the law, or what you weren't interested in, but—

01-00:25:03

Heyman:

Just one more story that was really a lot of fun. Well before I joined this firm, a disheveled man had come in and to the reception, said he'd like to see a named associate, he had the name of the associate he had gotten somewhere. The receptionist didn't know what to do about this so she called him up, this is a fellow named {Pat Raleigh?}. She described this fellow and Raleigh said, "Oh, send him down, I'll talk to him." So, he did, and this man wanted a will. That's all he wanted, and he wanted to make the Damon Runyon Cancer Foundation his beneficiary, and with no other gifts to anybody else. So, Raleigh drew up this will for him, they didn't charge him very much money for it. That will went into the safe and all the rest, and then about when I was there, word came in that this fellow had died in a kind of flea-trap hotel in Brooklyn, but he had an envelope on the dresser in that hotel to get in touch with two people.

One was the named person in New York Trust Company, and the other one was Raleigh. It turned out this fellow had \$14 million, which for 1960, '50, whatever it was, was a lot of money. He had come from a little town called Liberty, Maine, and he had amassed this money largely because he owned the parcel of land upon which Stuyvesant Town was built in Manhattan. In any event, I got sent up to go up with the fellow from New York Trust Company, the executor, to canvas what was going on in Liberty, Maine. We found out eventually a lot of things, but the way we found them out, nobody would talk to us when we got up there. I kind of looked like this, so not even quite as formal as this, and the executor came up in his three-piece suit with a homburg, or whatever it was, and nobody would talk. Finally, he was really frustrated and he said, "Well, why don't you see what you can find out? I have to go back to New York," so he did.

I managed, in a lot of nice ways, to get them to start to talk with me. It was really a wonderful saga about this man, and he had been adopted by a family in Liberty who had some money, and about half the people in this town—it was a town of 500 and a lot of people were pretty old—were on his personal dole, and he had not made any provision for them in his will. He also had three or four houses that must have been a family member's, and I had to inventory the houses and found wonderful things like pre-Prohibition whiskey in parts of the attic, and all kinds of things. Well, you can understand the human dimension of all of this, and the executor, very understandingly, and I were permitted to talk to the Damon Runyan Cancer Foundation by our employers and see if they would do anything for all these people on the dole. They said yeah, they'd take a million dollars of this, which again was pretty good, and put it into a trust fund for 20 years, the income to go to the people who were on this dole. In any event, we settled this thing pretty nicely, but it was an extraordinary experience for me. Again, the legal questions weren't particularly difficult at all; it was all human questions, and it seemed to me I did pretty well with those. That's the kind of stuff I remember about that law firm.

What did happen is that Charles Clark, who was the Chief Judge of the Second Circuit Court of Appeals, lost his law clerk at the last moment, who was called up into the Air Force. So, he was clerk-less as the term was beginning, and he turned to an old clerk of his whom he had liked a lot, who was my best friend, and so my best friend says, "Why don't you ask Mike Heyman?" So, he did ask me, and then I had to go to the firm, and the firm said, "Okay, sure, you can have a leave of absence." So, I went to work for Clark and it worked out fine. He was kind of an old, wonderful curmudgeon. A great judge, and he had been Dean of the Yale Law School, so he was a very learned man. But one-on-one he was just wonderful, absolutely wonderful, and I had a grand time clerking for him and I learned a lot of law as well as what do you do as a clerk and how do judges go about deciding cases. He was, as I indicated, the Chief Judge, which meant he had a lot of administrative responsibilities in the Second Circuit. I had now had a lot of experience in this during various kinds of things, so I think I was quite helpful to him in that part of his job.

01-00:30:15  
McCreery:

Well, it sounds like you learned a lot from him. What sorts of things was that appeals court looking on, your year? The usual?

01-00:30:23  
Heyman:

Well, just the normal run of cases. About 75 percent of the cases then and I suspect now that were appeals should never have been appealed. The answers were so clear. A quarter were quite interesting, and especially in New York because it is such a financial center, so a lot of very interesting business kinds of cases arose, and also civil abuse cases. Again, as I say, in most of the cases that were appealed, I don't know why they were appealed. Clients were

adamant or lawyers wanted to make money on appeal—I just don't know, but that was really the story. That court, unlike practically any other court, never looked at the briefs before the case was argued. The briefs were handed up at the time of argument, and that was very interesting. So, then you had to really scramble between the argument and the briefs. What that court did is after the panel would sit, then the next week, they'd all write memos to each other saying where they were tentatively, in terms of decision. They were two or three-page memos. Then, they'd meet and really decide the case. They'd meet the following week. Clerks, or at least this clerk, had the obligation of preparing the memoranda for the judges' consideration because he told me in practically every case how this was meant to come out. So, in any event, it was a lot of fun.

01-00:32:00

McCreery:

That's an interesting system. I wonder how that evolved there.

01-00:32:03

Heyman:

I have no idea, but it was a very interesting court because there were only six members of that court of appeals and it was the busiest—well, with the exception of the Washington, the District of Columbia—court of appeals in the United States. They had Charlie Clark, Jerome Frank, who was a great scholar and also had been a teacher at Yale, they had Edward Lombard, who had been in the federal district, or in the southern district in New York, in Manhattan, Sterry Waterman, who had been a judge from Vermont, and Judge Hincks, who was in New Haven. So, that was the six, but they also had retired judges who sat pretty often, and one was Learned Hand, and one was his cousin, Augustus Hand. So, it was really, in a sense, eight judges, and it was a quite distinguished court, although not as distinguished as it had been. But still, quite distinguished court, and it was heady for me to do that.

01-00:33:21

McCreery:

Well, I wonder how that affected your own interests and plans, being in that environment.

01-00:33:26

Heyman:

Well, the judge talked to me a lot about how great it was to teach, and I came from a background in which my mother had been a teacher, and so, that sounded pretty good but I was pretty sure I was going to go back to my law firm, who had been holding this position for me. Where, as I say, I had a very exciting first year plus, working for them. It was very hard. I came back from a week in Miami the year I was clerking for Judge Clark, and my wife and I had gone down to see my grandparents, and I came back to the office and there was a message to call Chief Justice Warren. I said, "Isn't that funny?" So, I went and I talked to the judge. Well, apparently Yale had put me in for that clerkship without ever asking me. So, I called up and I made an appointment and I went down to see Earl Warren. My judge gave me a very favorable recommendation and {Mark?} hired me, so it just came about from nowhere. It was really extraordinary.

01-00:34:31  
McCreery: Do you know if Yale did this typically?

01-00:34:34  
Heyman: I have absolutely no idea. I never really enquired very much. I'm sure they would have said to me of course they asked me, but I don't remember being asked at all about—

01-00:34:44  
McCreery: Do you recall your first impressions of the Chief Justice?

01-00:34:52  
Heyman: Well, I remember what he looked like, physically. I have a sense of being in that office. Before I went in, I talked with Jon Newman. Have you talked with Jon?

01-00:35:02  
McCreery: Not yet.

01-00:35:03  
Heyman: Yeah, he's a wonderful man. He was a classmate of mine at law school; a little bit about the Chief and other people who clerked for him whom I knew, especially Jerry Cohen, who thereafter clerked for Frankfurter. I knew at least mythically of Earl Warren. No, I remember it being a pretty interesting conversation. It had very little to do with the law. It had really much to do with my Marine Corps experience and California, and how did I like California, and all that kind of stuff, and what did I think I wanted to do? It wasn't a very long interview.

01-00:35:45  
McCreery: What do you suppose he was looking for?

01-00:35:47  
Heyman: Well, he was looking for a Chief Clerk, and hell, I was a Marine Captain by that time. [laughter] So, I think having been in the Marine Corps really has been very helpful in my life, largely for reasons that have nothing to do with what I did in the Marine Corps. It certainly helped at the Smithsonian, let me tell you.

01-00:36:14  
McCreery: Well, I take it, it wasn't too hard to decide to accept this appointment?

01-00:36:18  
Heyman: Oh, no. Well, I went back to the firm and they said, "Oh, sure," they said, "take another year."

01-00:36:23  
McCreery: What's one more year?

01-00:36:25  
Heyman: That's right. Well, they couldn't say no to that.

01-00:6:28

McCreery:

No, no. Well, how did you and your wife proceed, then, moving to Washington?

01-00:36:34

Heyman:

Well, we had lived in Washington briefly when we were first married, although not permanently, but in June, when I went into the service, I was at Quantico for five months. I commuted down—luckily, there were three other guys that were doing the same thing, so we'd leave at 4:30 in the morning to make reveille. Theresa worked for CIA, which was pretty funny, with a very brief career with the CIA because when I got sent to Pendleton, off we went together. I had an apartment in Washington with, I can't remember exactly why I did, but I did. Oh, of course I did because I had been working for Ives.

01-00:37:36

McCreery:

Yes, and commuting back and forth.

01-00:37:38

Heyman:

Right, so I had an apartment in Washington, and it was over in Anacostia, which now is a really tough neighborhood. It was between Bolling Field and St. Elizabeth's Hospital, and I had to take the bus, and I remember, on South Capitol Street every morning, to get to the Capitol. In any event, we lived there for the five or six months we were there, and Theresa worked in Washington, so it was okay. It was kind of real blue-collar apartment complex, but I do remember that Theresa hadn't much experience of cooking, bought a chicken, and the chicken had feathers on it. She had absolutely no idea what to do with it, but a neighbor did, so that was helpful. I don't remember too well what went on there. Of course, being in Basic school was really pretty tough, and I didn't have much time to do anything except to be down there and to commute back and forth every day. So, we didn't have much chance to do very much.

01-00:38:46

McCreery:

Well, then, starting off, though, with your Supreme Court clerkship, first of all, just describe what you remember about the very beginning, when you arrived and the other clerks who were there arrived.

01-00:38:57

Heyman:

Well, of course, when I first arrived, the three of us arrived but the judges weren't there. So, we were broken in by a clerk from the year before who stayed over for a portion of the summer.

01-00:39:13

McCreery:

Was that Dallin Oaks, perchance?

01-00:39:15

Heyman:

That was Dallin, right. Which I found amazing, eventually, to realize how extraordinarily conservative Dallin is, to have worked with Earl Warren. I'm sort of interested to see what he says about his experience. He taught us the ropes and taught us what kinds of memoranda on certiorari and appeal cases

that had to be worked on during the summer. Of course, there were no cases to argue until *Aaron v. Cooper* came along, which was, as you know, argued in special term in late August. By and large, the experience was just doing a lot of work in preparation for the justices returning. As you undoubtedly found out from Mark and—[phone ringing] excuse me just for a second.

01-00:40:15

McCreery: Sure, of course. Okay, you were just talking about your early start up in August of 1958 with the other two clerks.

01-00:40:25

Heyman: Yeah, and as I was mentioning, I'm sure you've already found out that one of the responsibilities for the CJ's clerks, at least in that era, was we did all the *in forma pauperis* briefs, so we had to do the research and do memoranda for the whole court, not solely for the Chief Justice, on all of those petitions. So, that was very burdensome, and there were sort of twice as many of those as there were of normal certiorari petitions.

01-00:41:00

McCreery: Yeah, I was wondering what percentage of the total docket that was.

01-00:41:03

Heyman: It was huge. Now, see, it's much less now because the court has put jurisdictional and procedural obstacles in the way, to such an extent that the number of cases that they'll even consider has diminished considerably.

01-00:41:24

McCreery: While the staff has grown and everything is—

01-00:41:26

Heyman: Oh, it really is amazing. Those years, Douglas had one clerk, all the rest had two, and the Chief had three, largely because of that special responsibility. And then we had this extraordinary responsibility of suggesting to the Chief which of the petitions, the certiorari petitions and the appeals, ought not to be discussed at conference because the outcomes were evident.

01-00:41:56

McCreery: Was that the so-called ex-deny list?

01-00:41:58

Heyman: That was the ex-deny list, yeah.

01-00:42:00

McCreery: How long had that practice been going on? Any idea?

01-00:42:03

Heyman: Oh, it certainly had been going on before I got there, and I don't even know if it's still going on. But you know, other justices from time to time took things off the ex list, which was fine.

But you see, I felt a great responsibility not to get the Chief in trouble. Trouble meant that other justices would take them off the list.

01-00:42:28

McCreery: So, you had to be a step ahead or two.

01-00:42:29

Heyman: That's right, or try to be, in any event.

01-00:42:33

McCreery: Yeah, right. Now, speaking of that, though, did the Chief Justice give you much instruction about what to look for in those cases?

01-00:42:40

Heyman: No, no. I think he assumed that we knew the rules with regard to the kinds of cases they take, and that we had been adequately briefed by Dallin. He was right. It really didn't take very much discussion, and of course, the three of us talked amongst ourselves considerably, with respect to it, and we even, I suspect—although I don't remember precisely—on occasion went to clerks in other offices and asked them their opinion.

01-00:43:13

McCreery: Well, that was your community that you could talk to, after all.

01-00:43:16

Heyman: Sure. Oh, it was a wonderful community. I think one of the really fine things about clerking on a multi-judge court, or especially the Supreme Court, is that you see the other clerks frequently. At least, you did when I was there, and we ate lunch together three or four times a week. You always had eight other people who were as deeply involved in each of those cases as you were, so the conversations started off at a very sophisticated level because you'd all done so much work on it.

01-00:43:50

McCreery: Well, how did you divide up your own workload among the three of you? You were Chief Clerk.

01-00:43:58

Heyman: I don't even remember. Maybe Mrs. McHugh did. I doubt it. I don't remember how we did that.

01-00:44:06

McCreery: Well, since you brought her up, tell me your impressions of her.

01-00:44:09

Heyman: Oh, she was a dragon, but she really protected Warren beautifully. He loved to see people, especially from California, and he'd want to spend hours with them and Mrs. McHugh was really tough. He really needed somebody who was terribly tough, but boy, she was really tough.

01-00:44:27

McCreery:

But no doubt you understood the reasons that was important.

01-00:44:31

Heyman:

Yeah. Well, but some of the times you wanted to see him and she'd keep you out.

01-00:44:36

McCreery:

Well, when you wanted to see him, how did you have access to him during the week, let's say?

01-00:44:40

Heyman:

I had to do it through Mrs. McHugh, but she was pretty good. I mean, how could you question her because she knew what he was doing; I didn't? There were set times that the Chief had all three of the clerks in and we discussed things before the week in argument, and we discussed the cases before conference with him. Then, when he was assigning drafts for us to do, it usually went along with a case that he decided he would author, one that you had written the bench memorandum on. So, it was pretty evident, and then I think all three of us, as a matter of fact, he'd say where he was, what he kind of saw, what he wanted to stress, and you went off and you did a draft and sent it in. Sometimes it was very acceptable, and sometimes it wasn't.

01-00:45:46

McCreery:

Did you have an opportunity to work on very many of those over the course of that year?

01-00:45:50

Heyman:

Well, he didn't take very many cases that year.

01-00:45:54

McCreery:

I remember hearing that.

01-00:45:55

Heyman:

We had a little seminar here. Not a seminar, but we had a session at the law school last spring—was it last spring, or it was early this fall—about Warren and the anniversary. I was on one of those panels, and so I decided I'd read all the cases from that year, so I did. They didn't author that many opinions, but I read all the cases. The cases he took, with the exception of *Greene v. McElroy*, were really not very major cases. So, I remember *Greene v. McElroy*, but I don't remember the other cases I worked on. But I worked on some of them, I know, but they weren't very consequential cases that he decided to write.

01-00:46:51

McCreery:

Partly, it has to do with what came up that year.

01-00:46:56

Heyman:

The year, with the exception of *Cooper v. Aaron* and *Greene v. McElroy* didn't have very many interesting cases, and it was really very interesting that

it didn't. At least, not to me, when I re-read the cases that year. Plus, it was very exciting to be there and all the rest, but in retrospect, it was not one of those major sessions of the court.

01-00:47:19

McCreery:

Okay. Well, when he did assign an opinion to himself and you were going to work on further writing, how did that take shape? How did you work with him to know what he wanted and then prepare your longer memo?

01-00:47:34

Heyman:

Well, as I say, we had a conversation usually with the three of us, if I remember properly, and I guess I had some conversations with him as I was working on something. Largely, he was very direct with respect to getting to the point and how he wanted to come out in this case. But of course, he knew how he wanted to come out in this case. Law clerks get socialized in the viewpoints of their justices, and about two weeks after the justices come back, you might come in with all kinds of ideas but what at least most law clerks want to do is to anticipate what the justice wants to do. You've done enough, so you really have a pretty good idea, and that develops as the beginning of the year goes on. So, there are no surprises. I don't think that he took a position on a case that term that I wouldn't have predicted he would have taken, or any of the three of us. At least, I didn't feel that way.

01-00:48:40

McCreery:

Do you remember instances where you felt a different position from his was appropriate, or have any—

01-00:48:47

Heyman:

I didn't. I didn't, and I don't remember the others, but maybe they did. I didn't feel that was true, from my perspective. But then, I was really trying to, I guess in most jobs I've had, it's really been trying to—until I've been in the leadership role—help the person I'm aiding to the extent that I can, in terms of his carrying out his agenda. So, it would have been very unusual for me to argue at great length with the Chief on outcomes of cases. I don't remember doing that, in any event.

01-00:49:33

McCreery:

Now, how did your role as Chief Clerk differ from those of your fellow clerks?

01-00:49:38

Heyman:

I arranged for the luncheons where we had outside guests.

01-00:49:42

McCreery:

That's fun.

01-00:49:43

Heyman:

And got them to agree and went and picked them up and brought them back. Oh, another one I had, which was really quite interesting, was to brief the Clerk of the Court as to the outcome of conferences. The Chief would take me

through the whole agenda, then I would go talk to Jim Browning. The interesting thing was, it was Jim Browning's first year as Clerk of the Court.

01-00:50:09

McCreery: Was it?

01-00:50:10

Heyman: He's a wonderful man, and he and I had a lot of fun.

01-00:50:14

McCreery: And he stayed on that job quite a while.

01-00:50:15

Heyman: He did, and now, of course, he's been a very distinguished judge on the Ninth Circuit, yeah.

01-00:50:22

McCreery: Well, we've touched a couple of times on *Cooper vs. Aaron*: let me have you say what you remember about when you first learned that the special session would take place, and so on.

01-00:50:33

Heyman: Well, of course, we briefed the case, and I forgot which of us did or we all did or however that was. There wasn't any doubt in anybody's mind how this was going to come out. I'll tell you another little anecdote in a moment, but there wasn't any doubt about how it was going to come out. So, we briefed it and I can't remember who briefed it, but it was the first argument I had ever heard in the Supreme Court. So, you know, the clerks sit off on the side behind the grille, and you're fairly close up and you can watch the opposing lawyers. You can see the demeanor of the court, and you're looking, et cetera. In any event, it was great drama because it was my first time ever having watched an appellate argument in the Supreme Court, and this was a pretty big case. The thing I really remember is when the representative of the school board or of the city, I forgot which—

01-00:51:36

McCreery: Mr. Butler?

01-00:51:37

Heyman: I can't remember his name. He got up and he said, "May it please the court, the people of the City of Little Rock," and the Chief Justice looked at him and then said, "Which people are you talking about?" That was where Warren's extraordinary skill came. He just saw through things so fast, in terms of the human dimensions of a case.

01-00:52:01

McCreery: Because here he was representing the school board.

01-00:52:03

Heyman:

That's right. Well, he was doing what you always do when you're representing a school board or a city, you talk about the people of, but the Chief wouldn't let him get away with it. So, I remember that quite well.

01-00:52:20

McCreery:

That is pretty amazing.

01-00:52:22

Heyman:

Then, I don't remember much else. I just remember the drama of the moment, I remember that question by the Chief, and the Chief didn't write that opinion, as I recall. It might well have been a *per curiam* opinion. It was, it was a *per curiam*, and I don't think we wrote the *per curiam*. I don't remember that. At least, I didn't, in any way.

01-00:52:45

McCreery:

I think Justice Brennan—

01-00:52:47

Heyman:

It could well have been.

01-00:52:49

McCreery:

But it was unusual in that it was *per curiam* but also signed by every justice. It took me a while, reading about it, to realize it wasn't just *per curiam* in the usual way. Do you have any knowledge of what Chief Justice Warren hoped to accomplish with that?

01-00:53:01

Heyman:

Oh, I'm sure that, well, what I think he really wanted to show, that there was such unanimity that everybody was willing to sign that opinion and come to that same conclusion. That was really very important in the desegregation cases, that there be a unanimous court and that people go on the line with respect to those results. So, I'm just sure that he's the one who got them to do that. Of course, Frankfurter wrote a long concurrence, about three or four weeks after. In fact, as I went through the cases from that term, the amount of writing that Felix Frankfurter did that term, might well have been what he did on all terms, but it was really extraordinary. I never knew him well enough to have a sense of why he wanted to be so prolific, but any event, he was.

01-00:54:06

McCreery:

Well, speaking of Justice Frankfurter, he was said to go around not only to the other justices, but in some cases, to the other justices' clerks on occasion. Did you have any experience of that in your year?

01-00:54:21

Heyman:

Well, you had to experience, not with him personally, but with his clerk, who came up to be very angry about a citation that the Chief had put into an opinion that he had circulated.

01-00:54:39

McCreery: How did you handle that?

01-00:54:40

Heyman: I said, “Oh, I’ll talk to the Chief about it,” and I said to the Chief, “It doesn’t make any difference.” This was a New Deal case, was it *Schechter*? Yeah, the poultry company, I can’t remember the name of the poultry company. It stood for the proposition that congressional authorization for the executive was necessary for the executive to create a program, and it was one of the New Deal programs. So, it knocked off the validity of the program, but it didn’t say it was unconstitutional. It just said you had to get congressional authorization, and that’s what this *Greene vs. McElroy* concluded also. So, I thought that that case was pretty relevant, but Frankfurter objected and I could understand why, in terms of resurrecting a pre-’37 Supreme Court case, when Roosevelt was President. I understood it.

01-00:55:48

McCreery: That was your experience of Justice Frankfurter?

01-00:55:50

Heyman: No, I had very little. The only other justice I really got to know was Justice Brennan because Brennan had had a heart attack and he had to walk every morning, and he craved for company. I only lived two blocks away from him—we lived in Georgetown—so I used to get up early some mornings and go with him, and so that was fun. I really enjoyed that. I didn’t really get to know any of the other justices. Of course, I saw them from time to time, but I didn’t really get to know them.

01-00:56:28

McCreery: Then, your chances to see them interact with one another were mainly in open court, I take it?

01-00:56:34

Heyman: Yeah, well, I mean, when I first started clerking, the Chief Clerk had a very large office and it was right next to the conference room. If you put a glass up to the door—but I didn’t do that. I mean, I did it once just to see if I could do it, but then my morality overcame my inquisitiveness. One of the things I did find, it was very early after I came, and I was looking through this huge desk which was in this room, and I came across all of the drafts of the *Brown vs. Board of Education*, and I just kept them there, and then when the Chief came back, I said to him, “I found all of these.” He said, “Thank you very much.” That’s the last I ever saw them. I could have made a career out of those drafts! [laughter]

01-00:57:26

McCreery: Yeah, you’re especially thinking of it now, after fifty years. Yeah, okay, well, to return, if I may, to *Cooper vs. Aaron* for just a moment, the record shows that Justice Clark drafted a dissent in that case, although he didn’t carry

forward with it. Do you have any recollection of that, or of how Chief Justice Warren brought him back into the fold?

01-00:57:48

Heyman:

None at all. I didn't know. I mean, I don't remember that, number one, and number two, the Chief didn't talk very much about how he politicked the other justices. There were things that at least for me, and I'm sure it was for everybody because he and I got to be very close personally, but he didn't talk to his clerks about it. That would have been one thing about how he had muscled whoever it was into doing what he wanted them to do.

01-00:58:30

McCreery:

Was that a sense of propriety on his part?

01-00:58:33

Heyman:

I think a lot of that came from his long political career, where he had been burned on a number of occasions. It was just instinctive for him.

01-00:58:51

McCreery:

Yeah, he certainly brought considerable political skill.

01-00:58:54

Heyman:

Oh, enormous.

01-00:58:55

McCreery:

Although it's hard for you to make a comparison, since you didn't know him then, but I just wondered if you had any views of how he operated?

01-00:59:01

Heyman:

Well, we talked endlessly about California. The others told you undoubtedly that we usually had lunch with him on Saturday, and lots of that conversation was about California. He loved to take us to restaurants where people would come up and say, "Governor," and he'd talk with them, and he loved that, he really did.

01-00:59:23

McCreery:

Well, it was quite a change of pace for him, after all, to come to the Supreme Court and be shut off from all of that.

01-00:59:28

Heyman:

Sure was.

01-00:59:30

McCreery:

Well, that's probably a good reason the clerks played a social role as well as—

01-00:59:35

Heyman:

Oh, yeah. Well, you're almost sons, in a way, or daughters, now.

01-00:59:39

McCreery:

Is that right?

01-00:59:40

Heyman:

I think so. That's the kind of feeling that I had, and that maybe with my need, as much in my observation, but that's the sense I had. It's funny about that, though: I don't think very many people consider what the style of life is when you go on the Supreme Court. When I worked in the Interior Department just before I went over to the Smithsonian, it seemed as if Bruce Babbitt, then Secretary of the Interior, was going to be put on the Supreme Court by Clinton, and so he and I talked about that. I said, "Bruce, you're going to hate that job. You won't like that job," because he loved to go out and make speeches and convince people out in the hinterlands of the conservation ethic and of the things that he believes in. But he would have taken the job if he'd been asked.

01-01:00:42

McCreery:

Okay, let me pause just for a second and change tapes. Sorry about that.

[End Audio File 1]

[Begin Audio File 2]

02-00:00:40

McCreery:

Okay, this is our second tape on October 12, 2004. This is Laura McCreery, continuing the interview with I. Michael Heyman. We were just talking a little bit about your later conversation with Bruce Babbitt about how you thought he would hate a Supreme Court appointment in terms of the kind of life it would be for him. Is there anything else to be said about Chief Justice Warren's own adaption to that new role for him?

02-00:01:09

Heyman:

Well, I guess a couple of things I could say is that one, the Supreme Court takes off for a good period of time in the summer, and my recollection is that the Warrens came back to California and he saw a lot of old friends and he went duck-hunting with whoever it was and did the kinds of things he had always done. So, I think that was very important with him, in terms of reviving him and giving him opportunity. The second thing I remember pretty well was that he lived in the hotel right next to the Shoreham, the name of which is escaping me at the moment, but it was out Connecticut Avenue, some distance from the court. He walked in with Justice Clark quite often, all the way to the Supreme Court. I don't know exactly why he did that, but one thing was rather interesting, this was at the time of great antipathy by the Far Right, the really extremist right, about Warren. He just didn't do anything special in terms of his safety that I could see.

02-00:02:23

McCreery:

In the midst of "Impeach Earl Warren," and all that.

02-00:02:25

Heyman:

"Impeach Earl Warren," the John Birch Society, the whole bit. He just went on the way he normally did. He never even talked about that furor and all the

billboards and all of the rest. That's what I meant with Warren, he really compartmentalized, and I think it maybe was just the way he always was, or maybe it was his lessons from politics. Washington is a terrible place for gossip, and you never can be sure that even people whom you liked, trusted and liked, won't inadvertently or some other ways let a tidbit go to somebody and then it explodes into an issue. But he was very careful about that.

02-00:03:11

McCreery:

Did you have much of a sense of the public's perception of him, aside from the billboards and things like that?

02-00:03:19

Heyman:

Well, he was obviously revered by the black community, and by liberals in general, by people interested in civil rights and civil liberties, and he was really revered.

02-00:03:35

McCreery:

Well, we've talked about the case in your year, *Cooper v. Aaron*, but of course, there was this whole period after the *Brown* decisions leading up to that, did he talk to you much generally about the implementation of those civil rights decisions or what that meant to him?

02-00:03:51

Heyman:

At least, I wasn't in conversations I remember about that. I think that I, and I suspect the others, too, made a lot of assumptions about him which were undoubtedly right, but maybe we didn't ask. I just don't remember talking about that in particular.

02-00:04:18

McCreery:

Well, it might not have been—

02-00:04:18

Heyman:

We didn't see him that much, either. We saw him socially, and in the social occasions, he really didn't talk about work. We talked about a lot of other things, and he really led the conversation. Then you went to a ball game, or you did this or the other, and it was a lovely time, and I really enjoyed it immensely. But you didn't talk about substantive things that I recall, and you didn't have that much time with him, otherwise. He, as I indicate, compartmentalized. He never said a word to us about being the Chancellor of the Smithsonian Institution. He never said a word, and my wife was working there, that term. He never said a word about that. He never said a word about all his responsibilities as the Chief Administrator of the United States Courts. He never talked to us about that at all.

02-00:05:08

McCreery:

Even though we know from his speeches and some other things that he gave a lot of thought to administration of the court system.

02-00:05:11

Heyman:

Sure, yeah, but he didn't see us as participants in doing that, number one, and I think compartmentalization is really the right word. I think he did do that, and then when we were with each other, it was nice, et cetera, but it was all business. He was really quite wonderful in listening to positions being suggested by clerks, that in the end he didn't buy. But listening to them and interacting with respect to them, and then finally saying, "No, I'm going this way," and then having an expectation we'd be completely with him and make whatever it was he was doing the best we possibly could.

02-00:06:00

McCreery:

Well, thinking back, what did you learn from that process?

02-00:06:04

Heyman:

Well, I've always thought that's the right way to be when you're, in that sense, in an executive position. I think you've got to seek to get the opinions of those who are around you, who you respect. You don't have to always follow them, but then you should really be able to depend upon complete loyalty. That's the way I remember it.

02-00:06:36

McCreery:

Did he speak to you openly of the issue of loyalty and confidentiality? Or did he need to?

02-00:06:42

Heyman:

I don't think he needed to. Maybe he said it once, but it wouldn't have been very important to me because I just made the assumption with regard to confidentiality that on matters of court business, that should always be with you. I've been very loath, even if I remember, to talk about how the court operates, in that sense. I've been a little scandalized by some of the books that have come out with respect to that. Yeah, maybe I'm wrong because maybe the people should know, but my own view is that that's not my place.

02-00:07:24

McCreery:

Well, speaking of his political skill and experience, did you have much of a view of his relationship with President Eisenhower?

02-00:07:33

Heyman:

Well, I think he was furious with Eisenhower, when Eisenhower said that it was the biggest mistake he had ever made. I don't think that cheered up Earl Warren, particularly. Then again, he had been in politics for so long that I should say, also, it's really kind of interesting given the fact that Warren going over to Eisenhower over Taft probably was very important in Eisenhower's nomination in the Republican Party.

02-00:08:12

McCreery:

Yeah, they had a political history together, shall we say?

02-00:08:13

Heyman:

That's right.

- 02-00:08:15  
McCreery: But of course, President Eisenhower had been noticeably silent about the *Brown* decisions, so the Chief Justice didn't seem to have much support from the executive or the legislative branch, in trying to carry out implementation or urge implementation.
- 02-00:08:32  
Heyman: Eisenhower finally came around.
- 02-00:08:34  
McCreery: Yeah, but it took a while. I didn't know if that was ever discussed in your presence.
- 02-00:08:39  
Heyman: No. That's not the kind of things he would discuss with us. He wouldn't even discuss how much he hated Nixon. [laughter] He wouldn't discuss that at all.
- 02-00:08:48  
McCreery: Oh, my next question, darn.
- 02-00:08:50  
Heyman: No, he wouldn't discuss that. I only heard that from others; not ever from him.
- 02-00:08:58  
McCreery: As you say, some of the books that have been written and so on go into a lot of detail about things like that.
- 02-00:09:05  
Heyman: Yeah, but not with us. I mean, not with me, in any event.
- 02-00:09:08  
McCreery: Well, it's important to our picture of him that he did, as you say, compartmentalize his different relationships, and there were appropriate things for each relationship.
- 02-00:09:18  
Heyman: Right, and I think that he was very aware of what gossip and inside information of that, how that is manipulated and used and done all the rest. He'd manage, I guess, in most of his political life, to be quite protective with respect to that.
- 02-00:09:40  
McCreery: Did you ever see him angry?
- 02-00:09:42  
Heyman: I never saw him angry. Not really angry. I remember once he came up when we were upstairs, we were playing some game, and he just assumed we were all working hard. So, he stood around there looking that way and he said, "Well," I can't remember his exact words, but it was sort of, "Well, I see you're amusing yourself." We were embarrassed, I remember that.

02-00:10:09

McCreery:

In terms of interacting with counsel in the courtroom, what kinds of things did you see there?

02-00:10:16

Heyman:

Well, I think he could be pretty tough. That question that he asked that attorney is not uncharacteristic. I mean, he had definite views. By the time he heard the case argued, he pretty well knew where he was. But so, most of the justices do. Unlike some of the other justices, however, I never had the sense that his questions were a dialogue with some other justice. I just thought those were very direct with counsel, and he wasn't arguing with another justice on the court.

02-00:11:02

McCreery:

Via the counsel?

02-00:11:03

Heyman:

Yeah. Or with his colleagues. An awful lot of the questions—not an awful lot, but a number of questions—that got asked on the court is a refutation of the question somebody else just asked. So, it's really an argument between the two justices and they're using the counsel as the medium for the argument that they're having. I didn't see him do that.

02-00:11:32

McCreery:

But some of the justices did do that a lot?

02-00:11:33

Heyman:

Oh, sure, and a lot of them continue to.

02-00:11:39

McCreery:

Well, you were saying you didn't have much chance to get to know the other justices on a personal level, but just from your observations, and again, assumptions that you developed and so on, how did you view the groups that would tend to vote together. What do you remember from that year?

02-00:12:00

Heyman:

Well, Frankfurter and Harlan, and Whittaker and Clark were normally together, and Brennan and the Chief, and Douglas and Black were normally together, and I can't remember who the ninth was, at the moment.

02-00:12:21

McCreery:

Let's see, well, you mentioned Brennan and Harlan? Oh, Potter Stewart was brand-new. Let's talk about him for a moment.

02-00:12:25

Heyman:

And Potter Stewart. Potter Stewart was a little bit of a switch. He continued, actually, to be the O'Connor of the court of that time. He did. Harlan and Frankfurter, I don't think, differed in their view. I don't remember them ever being on the opposite side of a case. I'm sure they were, but I don't remember them being while I was there. Whittaker normally was with them—in fact, I'd

say ninety percent of the time, he was with them. Although Whittaker really idolized Douglas, I mean in a personal way, he really did. But he didn't vote that way.

02-00:13:13

McCreery: Of course, Justice Whittaker didn't stay long. What was your view of what was going on there?

02-00:13:20

Heyman: I have a view, but I don't really know its authenticity. My sense was that he felt overwhelmed in some ways, and it was a terrible chore for him, and he thought that he was in a group that in some ways or another, outstripped him so much—in any event, that was my sense. I never discussed this with him, and so I don't know, and I never discussed this with his clerks, so that was just a—maybe it was sort of a rumble that was going around in the court.

02-00:14:03

McCreery: [phone ringing] Oh, there's your phone. Okay, starting up again, we were talking a moment ago about Justice Whittaker, and I wonder, do you have much sense of whether pressures from the other justices contributed to his—

02-00:14:18

Heyman: I have absolutely no idea. I've given you a general notation that I'm not even confident about, but it's the one I remember of the time.

02-00:14:28

McCreery: Then, Justice Stewart is the brand-new person, who I guess took the oath of office in October '58, so really, after the early session had already gone on. Any more thoughts about how he kind of fit into that picture?

02-00:14:45

Heyman: No, I just don't remember.

02-00:14:48

McCreery: There have been so many accounts, again, of Justice Frankfurter kind of approaching newer justices, and there were several in that period.

02-00:14:58

Heyman: It wouldn't surprise me at all. I think that Justice Frankfurter enjoyed that and he also undoubtedly sought to affect people. The Chief did that occasionally, too. They all do that, to some extent, but the question is how much? There's nothing wrong with them talking with one another with regard certainly to cases and to subjects that condition what one might have as a response to a case.

02-00:15:33

McCreery: I wonder whom the Chief Justice could talk to, though, in your view?

02-00:15:39

Heyman:

Oh, he could really talk to Black. I expect he might even be able to talk to Douglas, if he could ever find him. Douglas was so smart, but a little remote. So, I think he probably could have talked to anybody on the court, but I don't remember him going around talking with people very much, but it could well be that he did. I was upstairs on the second floor, so I didn't get to watch him walk around very much.

02-00:16:13

McCreery:

Yeah, you were more removed than the other clerks were for their justices.

02-00:16:15

Heyman:

That's right, that's right. Yeah.

02-00:16:19

McCreery:

Well, give me your thoughts on Chief Justice Warren as a leader in this particular role. How did he carry out his leadership?

02-00:16:32

Heyman:

Well, he's a very strong person. He was a very strong person, and he had very definite viewpoints. Some of them didn't fit into the kind of categories one might think, with respect to him. He was a bear on pornography, for instance, and on family values, he was enormously supportive, and things that seemed to undermine those were things that he viewed really negatively. So, in terms of First Amendment lines, he was to the right of certainly Douglas and Black, and probably of Stewart, with respect to those matters. So, if you looked at it from the point of view of a particular constitutional protection, he had different views, and I think he probably stated those quite forcefully. Then, of course, the Chief Justice, if he's in the majority, had the power of assigning decisions, and that's a big one. He never asked us about it; we ought to do that, too. He was a strategic fellow, in that sense. He knew very well what he was doing and he knew very well how to exercise the kind of authority he had. I just had the sense of a very strong man. I thought that his ability to ignore or seemingly ignore the extraordinary amount of personal attacks on him was very interesting. Had to be pretty tough to do that, and then never even talk about it.

02-00:18:17

McCreery:

Yeah, that's probably pretty rare.

02-00:18:21

Heyman:

I don't know how much he talked to Mrs. Warren about it, but he didn't talk about it around the court.

02-00:18:29

McCreery:

What about the criticisms of Chief Justice Warren that we've heard over the years—he wasn't a scholar, he hadn't been a judge, those kinds of things.

02-00:18:41

Heyman:

I think that he wasn't a scholar. He was very smart, but I think that the pervasive value for him was fairness, and his interpretation of fairness. That's pretty abstract, but I think that's how we approach this. He didn't approach it in a precedential sense, but he played the game and he was very honest with it, in terms of whether precedent supported him or didn't, and when he was really overruling or seeking to overrule prior determinations. I think that he looked at that job in some ways the same way that he looked at his job as Governor. The judiciary has a narrow compass, but when it focuses on a particular problem, it can go pretty deeply in terms of fundamental values. It's got to wait for cases; it can't reach out and decide something. You might wait ten years and the case never comes to you where you would like to make a particular kind of a decision. That's a great limitation on judicial power. So, I can't tell you the extent to which overruling or evading a prior decision in terms of logical reasoning, I can't tell you how he felt about that. I just can't tell you. I do know that he was very strong and he had an ethical sense which I rather liked. It appealed to me, unlike some other people's ethical sense, who were just as strong and just as willing to fail to follow precedent. They just happened to be on the right rather than on the left. You take Rehnquist, you take Scalia, you take Thomas, they're very activist judges.

02-00:21:10

McCreery:

Yeah, what about this term, "judicial activism?" How did that apply?

02-00:21:14

Heyman:

Well, you know, it was a big debate, certainly during the time after the New Deal legislation was knocked off. This was in large part the centerpiece of Frankfurter's contributions to jurisprudence, was the role of judges and the extent to which judges ought to be carrying out their own sense of fairness versus greater certainty in terms of the law and obedience to analysis, which confines the extent to which a judge or a justice has discretion to make determinations. A big, big subject, and that fight goes on all the time. All I'm trying to say is that there are people on the left and people on the right who don't behave the way Justice Frankfurter thought they should. [laughter]

02-00:22:27

McCreery:

As you're pointing out, the court has a very specific role in terms of reacting, in a sense, to what presents itself.

02-00:22:35

Heyman:

Right, that's right.

02-00:22:38

McCreery:

You're saying Chief Justice Warren was very clear on those kinds of distinctions.

02-00:22:44

Heyman:

Yeah. Oh, yeah. There's sort of nothing you can do if the case doesn't come before you that raised the issues. There's no way to reach out for them. I guess

what I'm really saying about the Chief Justice is that I think that when the issues did come before him, his own ethical sense of what was fair was probably the predominant motivation for his decisions. That's different than starting out with the proposition that I've got to look up a lot of precedent and see how this kind of problem was handled in the past and vote that way unless I have very persuasive reasons for going contrary to it. Of course, the legal realists say, "Every time you go and do that, you can find two lines of precedent and we're always making a choice on some grounds other than you're stating; which one that you're going to accept." Frankfurter, of course, would never do that. Sort of almost like a deconstructionist argument, but nevertheless, so that tension always. Warren was undoubtedly over towards one end of that spectrum, which was not the one that Frankfurter believed he was on, and I guess was, but it's very hard to tell.

02-00:24:13

McCreery:

Of course, many of the decisions that we now associate with the Warren Court came after your year, the due process—

02-00:24:20

Heyman:

Sure, and before my year.

02-00:24:22

McCreery:

And before, certainly. I don't know to what extent it was the Warren Court in your time.

02-00:24:31

Heyman:

Well, I think it's just named for Warren, and I think it's named for him in good part because the role everybody assumes he played in getting a unanimous decision in *Brown*. I don't know if you could call it the Warren Court in that he influenced the majority—I think he did to some extent, but there were a lot of powerful people on that court. You had Black and Douglas on that court, and he tended to be with them much of the time, and they're very persuasive people. If you're adding up judicial workmanship, they're pretty good at that. So, I mean, of course one calls them after the Chief Justice, but that doesn't mean the Chief Justice is leading them to that conclusion.

02-00:25:43

McCreery:

I wonder how you kind of characterize in your own mind his legacy in that role as chief justice.

02-00:25:51

Heyman:

Well, I think that his legacy to a very large extent is premised upon his own beliefs and he's idolized by a lot of people, including me. This is repetitive, but I saw a very strong man who had very intense beliefs, whose beliefs were not ideological, exactly. They were really human relations-based, and they were in general for the underdog in society and trying to create legal protections about the situation that that person found him-or-herself in. Those were his instincts. They probably came out of Bakersfield; I don't know

where they came from, but they're very pronounced. He tried to effectuate those, and I think people who believe in those values think very, very highly of him. I think the big arguments are only the extent to which a court ought to do that kind of thing, and I don't have much problem with that because I think I really do come out of the legal realist tradition, to a greater extent than otherwise.

02-00:27:25

McCreery:

And that was so even then?

02-00:27:26

Heyman:

Oh, yeah. That came from law school more than any other place.

02-00:27:32

McCreery:

Well, I wonder, just thinking back on your own experience, how do you evaluate that piece of your life?

02-00:27:44

Heyman:

My life has had so many different pieces to it that it's hard to. It was fascinating—it was fascinating to see the inside of a prominent agency of American government. It taught me a lot about how to teach, although I didn't think that's what I was doing at the time that I was there. It was a fine experience, it really was. I'm certainly better, in terms of all the things I've done since, for having done that for a year. But I could also say that about the year previous to that, with Charlie Clark. One wasn't on as big a stage, obviously, there as one was at the Supreme Court, and all the glamour that comes from having that on your CV is diminished in relationship to it. I don't think I was oblivious to that, but I sort of never have thought about things so much that way. I look back on it and say I was a very fortunate guy to have that job. I can't say I deserved that thing, the way it came about, but I was very fortunate to have it.

02-00:29:12

McCreery:

You touched very briefly on the social occasions that would happen while you were a clerk, and Mr. Hoerner asked me to have you talk about an occasion he remembers where you and your wife had the Chief Justice and his wife and some of the other clerk couples over for dinner, on a very hot evening. Do you recall that particular—

02-00:29:36

Heyman:

Oh, absolutely, do I recall it. We lived on a little alley in Georgetown that was quite delightful, but I think it had once been slave headquarters, but however, they were all redone. They were twelve-foot-wide houses, essentially, and here comes the Chief Justice in his big limousine. It was a real question if they'd ever get up this alleyway, but somehow they did. Then, he comes in, and we had an air conditioner that was in our bedroom on the second floor, so we got a whole bunch of fans and we were bouncing in the air, and the cold air from one place, to a fan, to another, so we could get it downstairs. We were never completely successful with that, but it was a little better than it

would have been otherwise. I remember that pretty well, and it was a wonderful time. What the Chief did in many ways is what he so often, if I remember properly, did with us, is that he sort of made it a family event and he was the daddy. So, he was the one who chose the topics, and I don't mean that in any malicious sense. That's how he behaved, he behaved as if we were a big family and that he was there to glue us together and to lead us in conversation and the like. I thought it was a wonderful occasion, I really did.

02-00:31:04

McCreery:

He was the sort of fellow you could have over for dinner and talk about other things.

02-00:31:07

Heyman:

You really could have him over, and Mrs. Warren was exactly the same way. So, in fact, Theresa and I used to visit Mrs. Warren after his death when we went to Washington and see her. Yeah, he was very much that way. I have a wonderful picture of Warren holding my first son in his arms in the backyard in Berkeley when he was out here during the summer. He was that kind of guy.

02-00:31:37

McCreery:

Yeah, he would have loved that.

02-00:31:38

Heyman:

He was very family-oriented, really family-oriented, and that's why I say in some ways, he treated us as his sons, he really did.

02-00:31:51

McCreery:

Well, to what extent did you keep in touch with him after your clerkship was over?

02-00:31:56

Heyman:

Well, every year we had a dinner in Washington. I'd always come to that. He appointed me a counsel in one of the indigent cases, and I argued for a guy up in the prison near Sacramento, at Folsom, and I came back to the court and argued the case there. It was quite an experience.

02-00:32:22

McCreery:

Yeah, how'd it come out?

02-00:32:23

Heyman:

I won. I won six to three. I did some writing when I first came out of the Chief's office that obviously had to do with constitutional law because that's all I really knew anything about at the time, and he wrote me the letter about one of the articles. He said, "Well, I see you saved me on *Brown*," because I was saying that *Brown*, the outcome of the case really could be very well-premised on two or three cases that had preceded it. This was sort of an answer to those who were saying that the court simply imposed, the moose guy imposed its will. I said, "That's silly," and I had a progression of cases. The only problem is that they had never cited them in the opinion in *Brown*. I

thought he was good-humored about that. Then, I remembered, when he came out here to Cal, I think I remembered what the date was. It was thereafter, and this was sort of in the period of rebellion on the Berkeley campus, and he was so accepted by the student body. It was really extraordinary. I mean, it was so different, and there could have been no other prominent government official who could have come here and received the kind of adulation that he received, with the exception of a group of about ten or twelve Japanese American kids at school who picketed him for what he had done in terms of the relocation when he was Attorney General.

02-00:34:10

McCreery: Did he ever speak to you of that, by any chance?

02-00:34:12

Heyman: Oh, yeah.

02-00:34:13

McCreery: The internment of the Japanese Americans?

02-00:34:15

Heyman: Actually, right after that occurred, I was driving him back to the city, and he said, "You know, Mike? I think that's the only real mistake I've ever made." He said that publicly, later. That's the only time he ever said, "I did wrong, but I know it."

02-00:34:37

McCreery: Well, I'm interested to hear of his wonderful response here on the campus.

02-00:34:40

Heyman: Oh, it was just extraordinary.

02-00:34:42

McCreery: They were too young to remember him as Governor; this was all Supreme Court.

02-00:34:45

Heyman: Oh, sure, this was all Supreme Court, yeah.

02-00:34:50

McCreery: I wanted to go back to you mentioned one of your jobs as Chief Clerk was to arrange the lunches where you'd bring in outside speakers. Talk a little bit about who you got that year—

02-00:35:01

Heyman: The only guy I can remember is Acheson. I had an old car, it was a Chevrolet and it had a split windshield, I mean, it really was old. I went to pick him up in my old car, and he was very good. This was a really grungy old car. In any event, he came. We had all the other justices, all the justices at one time or another, so that was ten. We did it, how many weeks were we? We did it for the Attorney General, we did it for people who were quite prominent, all of

whom really were very good about coming and speaking with us. I was so consumed with the arrangements, I can't even remember what they said.

02-00:35:51

McCreery: That's the trouble with being in charge sometimes, isn't it?

02-00:35:53

Heyman: I know, it's really true.

02-00:35:54

McCreery: As you no doubt found out later in your career.

02-00:35:58

Heyman: I must say also that as I age, my memory about things has become dim, but I just don't remember it. I just remember they were good occasions, and it was very interesting, and you did have access to interesting people.

02-00:36:14

McCreery: Well, you were talking about bringing the Chief Justice out here to Berkeley later on to speak, and—

02-00:36:20

Heyman: I didn't, I mean, he came out.

02-00:36:23

McCreery: Or seeing him on that occasion, anyway. Other than the reunions, were you in touch with him much after he retired from the bench?

02-00:36:29

Heyman: Not very much. Hardly at all, once he retired. A little, but not a great deal. He stayed in Washington, and that made it difficult. I got to Washington a lot because I was doing a lot of work with the Civil Rights Commission, and with HUD at that time, but my trips were so busy, I used to take the red eye there and then I'd come home on the five o'clock, so I don't know how I ever existed with all of that. I did a lot of that kind of travel.

02-00:37:07

McCreery: So, perhaps you didn't have much chance to assess his mood after he retired, or his view of what came after him, in terms of the court?

02-00:37:16

Heyman: No, I didn't. Be interesting if other people did; I'd really like to know what they saw, so I'll look forward to this.

02-00:37:25

McCreery: Yeah, a few of them were in touch with him a little bit more.

02-00:37:30

Heyman: I was in touch with him every year because another guy and I picked his law clerk from the West Coast every year.

02-00:37:42  
McCreery: Yeah, I wanted to ask you about how that worked.

02-00:37:44  
Heyman: Worked fine. We got good people.

02-00:37:49  
McCreery: Well, I know he tried to take one from the West, going back quite a ways.

02-00:37:54  
Heyman: He probably did, except my term.

02-00:37:56  
McCreery: I noticed that, you had Michigan and that was as far west as it went.

02-00:38:00  
Heyman: That's right, that's right.

02-00:38:04  
McCreery: Really, though, on a practical level, how did you scan around and look for potential clerks for him?

02-00:38:10  
Heyman: Oh, they all were nominated by their law schools. So, you had ten or twelve candidates from west of the Rockies, and so you did it just the way you always did. My own was to get people who looked very confident who would get along with the Chief Justice.

02-00:38:33  
McCreery: There's always that personality aspect.

02-00:38:34  
Heyman: Yeah. Oh, yeah, I really thought so. Interestingly enough, during that whole period of time, nobody ever nominated a woman. Isn't that interesting? It's really amazing the change that's occurred in that regard in the legal survey. All is not rosy yet, but my goodness gracious, it's a seat change.

02-00:38:53  
McCreery: Yeah, we take it for granted, now, certainly.

02-00:38:54  
Heyman: We really do take it for granted. You know 63 percent of the incoming class here this year are women?

02-00:39:00  
McCreery: Isn't that astounding?

02-00:39:01  
Heyman: I know. I had a party at the house because I have a small section of thirty-one or so, and I said to a number of the women, I said, "Don't call me a sexist for this, but I'll tell you something—since we've gotten a lot of women in this

law school, it is so much nicer around here than it was before.” It is so much more civilized, it really is.

02-00:39:24

McCreery:

How so?

02-00:39:25

Heyman:

Well, you’ve got people who are caring to a greater extent than the men used to be, and these are very able women who are good competitors, but their whole attitude—not their whole attitude, but a good piece of their attitude is different than the attitude of the average man. It’s really interesting. It’s much more cooperative now than it was before. That’s probably what is the best word.

02-00:39:56

McCreery:

As you point out, there weren’t any women clerks at the Supreme Court in your time, or right after.

02-00:40:00

Heyman:

Not when I was there, in my time. Yeah. That’s right. Well, there were hardly any women in law school. There were four women in my class at Yale, and three of them dropped out. So, one woman was graduated from Yale. When I started teaching here in ’59, it was practically the same, three or four women, maybe three of them would graduate. Really extraordinary change.

02-00:40:31

McCreery:

Yeah, I interviewed one of the other former clerks who came along I think just a little after you did, and he had gone to law school with Judge Ruth Bader Ginsburg, and was saying she was the perfect age and sort of person to be one of these clerks, but of course, that didn’t happen in that time. So, it’s interesting to hear your thoughts on what’s happened here.

02-00:40:52

Heyman:

Yeah, I’m really pleased with it. I think it’s just been very good. Well, I think as a social phenomenon it’s very good, but I just think in a very human way, it’s been very good here.

02-00:41:08

McCreery:

Well, I wonder what else you’d like to tell me about your time with Chief Justice Warren and what you got out of it.

02-00:41:15

Heyman:

I think we’ve pretty much covered it. It’s very hard to look back, especially when you’ve done a number of different things, as I seem to have. So, each one of these things is kind of additive, but it consumes one, and so you remember what you recently did a lot better than what you did sometime in the past.

02-00:41:37

McCreery:

I understand. I'm just wondering if that year had any particular bearing on your own legal interests as you pursued them afterwards, in teaching and so on.

02-00:41:45

Heyman:

It probably didn't particularly because what I ended up doing was more specializing in matters that had to do with land, and quite a lot of environmental, and quite a lot of public regulatory aspects of that. Now, in that sense, those are the same values I had before I clerked and that I had when I clerked, but you didn't do those kind of cases. The subject matter is completely different than anything I did when I clerked at either the Second Circuit or the Supreme Court.

02-00:42:27

McCreery:

Of course, your appointment here all along has been a joint appointment with law and—

02-00:42:31

Heyman:

Well, starting about five or six years after I came here. That's when I started to teach here. In a way, it was the melding of the two courses I taught when I first came, which were both property law and constitutional law. So, what I ended up getting into, which was governmental participation in the process of land development and land use, I'd been very interested in the constitutional aspects of that as well as in the techniques of doing that. So, it bears relationship, but certainly it wasn't a subject in itself that I had did at all before I came here.

02-00:43:17

McCreery:

I don't know how much of a Supreme Court watcher you've been in the intervening years—

02-00:43:21

Heyman:

I haven't been. I mean, I have for the field that I'm in, and the court has gotten much more active in those, unfortunately, of course they've gone the wrong way from my perspective. In general, I have not been a Supreme Court watcher. It seems that these various careers that I've had, that once I'm done, I'm done, and I'm doing something else. So, I'm interested, but then I don't put a lot of attention in them because all the new ones seem to be so demanding. Now, I don't have to worry about any of that.

02-00:44:07

McCreery:

Well, just speaking very generally, though, what were your thoughts when Warren Burger was brought in after Chief Justice Warren's retirement, and what happened during his time? Were you surprised at all?

02-00:44:19

Heyman:

I was not pleased, but I know Burger from another side, which is a prior Chancellor of the Smithsonian, and Burger was at least reputed to be—I wasn't there at the time, obviously—a great micromanager, or sought to be a

great micromanager of the Smithsonian, which is frowned upon by whoever the secretary is. I must say, Rehnquist has been wonderful. He was wonderful during the five and a half years I was at the Smithsonian, in his role as Chancellor of the Smithsonian. He's very, very supportive and very rarely sought to interfere in anything.

02-00:45:06

McCreery: Had you known him at all before that connection?

02-00:45:07

Heyman: No, no. That's when I first got to know him. We never talked very much about it. I told him that I had been a law clerk for Warren, but he wasn't totally interested in that. [laughter]

02-00:45:24

McCreery: But you got to see this from a number of different angles, didn't you?

02-00:45:26

Heyman: That's right, yeah.

02-00:45:27

McCreery: With your own years at the Smithsonian, yeah. Okay. Well, again, is there anything else that you'd like to add about Chief Justice Warren or his legacy or his effect on you?

02-00:45:44

Heyman: I don't think so. I think he will be a remembered Chief Justice, I really do, because the court acted on some very long-lasting principles, which will always be benchmarks, and those will always bear Warren's name. Just like a Marshall's name or other Chief Justices' names. Actually, not that many Chief Justices' names. He'll always be a benchmark with respect to both what people think of as activism and the people think of as decency and fairness. He really will be, and to have left that kind of a mark on the institutions of American government is really pretty important.

02-00:46:46

McCreery: It's interesting that he himself was on more than one occasion heard to say that he thought some of the voting rights decisions were really the most important of his time.

02-00:46:55

Heyman: Well, he thought that the most important one was *Baker v. Carr*, he really did. He let Brennan write it, if I remember properly. No, maybe he wrote it. I can't remember it, yeah.

02-00:47:05

McCreery: That tells you something about his view of—

02-00:47:10

Heyman:

Well, it certainly tells you something about his view of democracy and special interests. One of the things about him was that he was really a child of the Progressive movement in California. His idol as a young man was Hiram Johnson, and that tells you a lot about Warren, what the agenda was of the Progressives in California. He had to overcome some things that were not as attractive about the Progressives, like their xenophobia, and he did eventually overcome those. Which was really interesting because that was a very xenophobic group, the Progressives. Certainly, his disdain for special interests and his notions of his ideas of what democracy really meant in terms of representation of people, he could say then, as he did to me a couple of times, "If you look at all of the propositions that have been on the ballot," this was well before the present age, "the people of California have been pretty damn sensible." That's how he really felt, that the common man, generally speaking, made sensible decisions. I don't think he would have continued to feel that way once the whole profession of the media has gone in the manner that it has, and the extent to which special interests are putting an awful lot of money in the proposition fights. But he sure felt that before, and that gives you a clue about where he thinks or thought power should really lie. So, it should be in the common man, number one, but number two, that there really has to be a shell of protection for individuals against when the common man acts really antithetical to those principles.

02-00:49:20

McCreery:

How consistent was he in that view, over time?

02-00:49:22

Heyman:

I think he was quite consistent. I really do. I think the reason that I remember that question in *Aaron vs. Cooper* is because that was very consistent with what I'm saying right now, when he said, "What people are you talking about?" That was very consistent.

02-00:49:43

McCreery:

Anything else?

02-00:49:45

Heyman:

Nothing else.

02-00:49:46

McCreery:

Thank you. That's a very nice summary. I appreciate it very much.

02-00:49:48

Heyman:

Yeah, good.

02-00:49:49

McCreery:

Okay.

[End of Interview]