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Stuart R. Pollak

Law Clerks of Earl Warren,
Chief Justice of the United States Supreme Court

Interviews conducted by
Laura McCreery
in 2004

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Stuart Pollak

Table of Contents—Stuart Pollak

Interview 1: April 29, 2004

Tape 1

Background information on family—Attending Lowell High School—Undergraduate experience at Stanford—Relationships with professors—Relationship with father—Attending law school at Harvard—Faculty at Harvard—Working on the law review—Taking the bar exam—Getting the Supreme Court clerkship—Impressions of Chief Justice Warren and Mrs. McHugh—Working with the chief justice and other clerks—Confidentiality aspect of relationship with Chief Justice Warren

Tape 2

Chief Justice Warren's sense of leadership—Chief Justice Warren as a family man—Remembering the other justices at the time—Listening to cases—Important cases during the term—Saturday lunches with the Chief Justice and the other law clerks—Differences between the lead clerk and the other clerks—Evaluating experience as a law clerk to Chief Justice Warren

Tape 3

Working in the criminal division of the Justice Department after clerkship—Dealing with the assassination of President Kennedy—Relief after the release of the Oswald report—Thoughts on the Warren Commission—Other experiences with the Justice Department—Reunions with clerks and justices—Working in the Superior Court and court of appeals—Working with other judges

Interview #1 April 29, 2004
Begin Audio File 1

01-00:00:00

McCreery: Okay, Justice Pollak, the first thing I'm going to do is record a little introduction. So I'll just say this is tape number one. Today is April 29, 2004. This is Laura McCreery speaking and I'm interviewing Stuart R. Pollak in his office in the California Court of Appeal in San Francisco for the Oral History Project on the Law Clerks of Earl Warren. To start off, would you kindly state your date of birth and talk a little bit about where you were born.

01-00:01:01

Pollak: Sure. I'm a native Californian. I was born in August of 1937 in San Pedro, California, down in Southern California. And my family moved to San Francisco when I was, I think, about two and I've basically lived in San Francisco since then with a number of years off in the East Coast when I was in law school and for a few years after that.

01-00:01:35

McCreery: Okay. Just tell me a little about your family and the family livelihood and so on.

01-00:01:41

Pollak: Well, my dad came over from Hungary as a young boy. His father had left the family behind, came over to this country as a laborer. We recently, after the death of an uncle in our family, found a cache of letters between my grandfather and my grandmother when my grandfather was over here as a laborer working three jobs, saving pennies. Ultimately brought his family over to this country. My father came as a very young boy. And ultimately moved from Chicago where they had settled to California and he was in the newspaper circulation business. He was a circulation manager for a couple of newspapers and then formed his own business, which was in the sales promotion business, focusing primarily on newspaper sales promotion. But over the years getting into other areas, as well. It was my dad and my mother—my mother was born in this country, raised in Chicago, came out to California and raised a family of two. I had a younger brother, no longer living. And the four of us spent what was my childhood here in San Francisco, living down in the Marina district.

01-00:03:15

McCreery: You attended public schools all the way through?

01-00:03:19

Pollak: I went to public schools until I went to college and then I went to private universities. Went to Stanford and then to Harvard Law School. But a product of San Francisco public schools.

01-00:03:32

McCreery: Tell me a little bit about Lowell High.

01-00:03:34

Pollak:

Well, Lowell High was a good high school at the time. It was a lot easier to get into then than it is today. We didn't have to take any exams. And just indicated that's where we wanted to go and that's where we went. But it was a good school. While I was at Lowell I was involved a lot in public speaking, debating. The forensic society is what it was referred to. One of my very close friends from Lowell and sometimes debate partner—not my normal debate partner but sometime debate partner—was Steve Breyer. We were classmates together and then went to Stanford together. Lowell was a good school. Pains me, actually. We've got kids of our own. Our kids are now grown, we're working on our grandkids, but one of my four kids went to University High School, a private high school here in San Francisco. And that really struck me and pained me because going to the parents night then there were so many parents who had graduated from Lowell and we were all there. The colors of Lowell were red and white. And the colors of University High School have become red and white. And it was just as though in one generation we had all moved out of the public schools into private schools. Sad commentary actually. But Lowell, Lowell was a fine school when I was there and I think it still is if you're lucky enough to get in.

01-00:05:30

McCreery:

How early did you think of going into the law?

01-00:05:33

Pollak:

Oh, I think I had that in mind really since high school. I was involved in debating and law seemed to be a logical extension of my high school activities. But yeah, that was something that I had in mind I think really before I went to college.

01-00:05:53

McCreery:

How did it come about that you went to Stanford?

01-00:05:58

Pollak:

Well, I mean, I'm almost embarrassed to say. That was the only school I applied for. I wanted to go to Stanford. I considered it a good school. I don't know, as I look back on it, that I really studied the alternatives as carefully as might have been a good idea but I never had any regrets. I think Stanford was a great school and I was glad to be there. I don't know. Having been at Lowell in San Francisco, Stanford just seemed like the place to go. Cal, I mean, you thought about Cal. Obviously if you lived here you thought about Berkeley. But that seemed like too big a place for me at the time. And Stanford just seemed like—a little more intimate place and where you get a little more individualized attention. Didn't want to get lost at Berkeley.

01-00:06:59

McCreery:

How did that expectation compare with your experience there?

01-00:07:03

Pollak:

I was not disappointed at all. Stanford was—I think is and was a wonderful university. Class sizes were reasonably small, many, most of them, not all of

them. And met many good friends. I think I got a wonderful education there. I've come to feel that I would not have been any the worse for it if I had gone to Berkeley and saved my folks some money at the time. And I've had a lot of connections with Berkeley over the years. But there was certainly nothing wrong with Stanford.

01-00:07:38

McCreery: What was your major?

01-00:07:40

Pollak: I majored in economics, although my minor—I may have taken as many courses as in my major—was philosophy. And I've always thought that was much more valuable than the economics, frankly.

01-00:07:56

McCreery: How so?

01-00:07:57

Pollak: Oh, just as a method of thinking. The economics curriculum, I felt at the time, tended to become very repetitive. It was the same basic approach applied in different areas but really I didn't feel it was quite as expansive in terms of—you know, and challenging as the philosophy. In philosophy there were all kinds of things that just seemed a lot more interesting to think about, work on. And although at the time it seemed to me probably of less real value—I mean, it was enjoyable but I don't think I fully appreciated the value of it. And I think in later years, particularly in law school, I really tended to appreciate the value of that education in philosophy.

01-00:08:57

McCreery: Favorite philosophers?

01-00:09:00

Pollak: Oh, I mean, I was involved in linguistics and reading people like Ayer and Wittgenstein and those folks, which—you can see that—how that carries over into law so readily. So I was interested in the same thing, I suppose.

01-00:09:23

McCreery: And to what extent did you continue with your debating and other activities like that at Stanford?

01-00:09:30

Pollak: Actually, Steve and I, we both—I think we debated together as a team once at Stanford in our freshman year. I think we both felt, certainly I felt and I think Steve felt the same way, that we had done the same thing very intensively for four years at high school and it seemed like we'd been there, done that and that was the end of the debating at Stanford. And we both got involved—I got involved, Steve was involved—in the—I think the principal activity there, extracurricular, was the Institute of International Relations. IIR. Did various things in that line. Model United Nations and that kind of stuff. But not debating as such.

01-00:10:18
McCreery:

Now, these were the Eisenhower years.

01-00:10:23
Pollak:

Yeah.

01-00:10:23
McCreery:

What were your political interests, if any?

01-00:10:27
Pollak:

Very minimal frankly. It was not a period to be caught up in the politics of the time and I don't think we were. And Stanford in particular. Stanford really was removed. It was sort of an idyllic place and it was there as an academic retreat as a student. And obviously you're paying attention to what's going on in the world, too, but certainly we weren't actively involved—I wasn't actively involved campaigning for anybody or getting really involved in any sort of party politics.

01-00:11:08
McCreery:

What about the faculty there? Were there particular professors you worked closely with at IIR or in the classroom?

01-00:11:19
Pollak:

Oh, Donald Davidson was the professor—yeah, Donald, that was his first name, Davidson in the philosophy department—who really made a major impression on me. Red hair, man with a deep voice, and my daughter many years later was going to—I guess it was Berkeley. When she was at Berkeley she told me she was taking this philosophy course from somebody named Davidson. “Does he have red hair?” “No, no, he's got gray hair.” In any event, went over to watch one of the classes and sure enough it was the same fellow who's still teaching her. But anyway, he was a wonderful professor and very thoughtful man.

Another instructor I had as a freshman who made a major impact on me, and I for the life of me can't remember his name. Just one of the freshmen English courses I took. Never forget this fellow. I had done pretty well in English. I think I won a Bank of America award for English in high school. I think the first quarter had an English course that was okay. I remember the second quarter at Stanford I turned in my first paper and I had never received a paper back with more red on it. He absolutely tore apart what I had written. And we went through that several times. I remember spending time with this. He was a young fellow. He was just a teaching assistant probably or assistant professor. But in any event, that one quarter working with him did more for my writing I think than any course I'd ever had before or since. I wish I could remember his name.

But other people. There was a wonderful professor in the ec—a couple of professors in the economics department. Baran was one of them who was a—he was considered far out. He was sort of a left wing economist. I don't know.

I think people attached the term communist to him. I don't know that he really was. But he was a wonderful professor and really in terms of understanding different economic systems, comparing capitalism, socialism, communism, so forth. He was a very, very thoughtful person and one of the people that stands out.

Paul Fagan, a pretty well-known economist, was there at the time. Took a couple of classes from him. I'm not sure anybody else comes to mind at the moment in particular. But—

01-00:14:42

McCreery:

Other adults who were influential to you early on?

01-00:14:47

Pollak:

Nobody in particular. Me and my dad. I had a good relationship with my dad. My dad was a very tough individual and he did build this family business which he had wanted me to go into. Probably one of the most difficult decisions of my life. I remember debating. He really wanted, did want me to go into the business and I wanted to go to law school. And he acquiesced. "That's what you want to do, that's what you should do." But I always felt a little badly about it because I know that's what he had wanted. My dad was a—he was a real atheist and there was a period of my life when I sort of went through a religious phase and I decided that I wanted to be bar mitzvahed, which he couldn't understand. But again, I remember he said, "Well, okay." Supported me. That's what I did. He never understood it. But there was no other person whose elbow I was working or that I can—really comes to mind. A lot of wonderful elders in my family, in my life. My family had lots of uncles and so forth, for whom I had and still have great regard. But I didn't have an uncle who was a lawyer that I was working in his office or anything of that sort.

01-00:16:57

McCreery:

You struck out on your own in going into the law, I guess. Well, tell me, how did you go about applying to Harvard and deciding to take that path?

01-00:17:07

Pollak:

Well, I knew I wanted to go east. Up until that point I'd spent my life, my education here in the Bay Area. And I liked the Bay Area and I always—my family was there and I always anticipated I'd come back. But it seemed to me that some period of my life I wanted to be somewhere else, so I looked east. And Harvard seemed like the best school. And that's where I applied and I was fortunate enough to get in.

01-00:17:50

McCreery:

Did you and Mr. Breyer talk this over together much?

01-00:17:57

Pollak:

Oh, we did. Not in terms of where. I don't know that either one of us influenced the other. It was an independent thing we both decided on. But I

know that was the only school that I applied, the only law school I applied to and I think that was true in his case. We must have talked about it. I can't really remember conversations but we were living together. We lived together for three years at Stanford so I'm sure we were talking about it. But it was an independent decision. We didn't go to be with each other or anything of that sort.

01-00:18:35

McCreery:

And then—

01-00:18:36

Pollak:

As a matter of fact, we didn't go together, come to think of it. I went directly from Stanford to law school and Steve was a—he was a Marshall Fellow and he went to England for two years. So yeah. We were just on different tracks. And then he returned after two years, went to Harvard. But we were off on our own at that point.

01-00:19:00

McCreery:

What was your living situation then once you arrived in Cambridge and got settled?

01-00:19:06

Pollak:

Well, at that point, another fortunate thing in my life, I think. At that point I was married. I married the summer between my graduation from Stanford and starting at Harvard. So I was married from day one. Which I always thought made law school much easier. I used to go through the dorms there where most of the people—most of the people were single, obviously. I always thought there was a tension in the law school dorms that you can feel. This was the stuff of *Paper Chase*. And that was the atmosphere. And I always thought going home, having a home and a wife and so forth, probably made law school a lot more bearable.

01-00:19:59

McCreery:

Well, that leaves me to ask you about the pressure. For those of us who will never get closer than *The Paper Chase*, what was the feeling among the students about the program and how to get through it?

01-00:20:12

Pollak:

Well, there's no question the first year at Harvard was a very intense year. And it was a pressure filled year and particularly because you went through the whole year without having any exams, no practice exams, and you really didn't know where you stood. And the pressure just kind of mounted as you moved toward those first year exams. I still remember just a few days before our first exam one of the younger members of the faculty, Roger Fisher, invited his section over to his home, I think it was, to have beer or something. He was trying to get us all to relax before we went into the exams. And at this lunch or whatever it was, there was one of the older members of the faculty, one of the names at Harvard, Professor Leach, W. Barton Leach. And I remember a whole bunch of students were standing around talking to him and

I literally remember him telling us—he says, “You folks realize that you have your entire life in your hands these next two weeks.” [laughter] So here we are, we’re all trying to get relaxed and take a deep breath and he was telling us if we didn’t do well in those two weeks we might as well go off and become carpenters or something.

There was pressure. You didn’t know how you were going to do. But I’ve always felt myself, to me since then, that that first year is really a litmus test of whether you’re going to enjoy practicing law. I thought the first year of law school was the most exciting intellectual—year intellectually of my life. It was an exciting year. Your thinking does change and you look at things differently. I think if you enjoy that first year, despite the pressure, you’re going to enjoy practicing law. And some people found the whole thing horrible and that was a pretty good sign that they probably should be looking for another career.

01-00:22:56

McCreery:

That’s a nice way to think of it, though, as a test for what your life will be like in a sense. Now, talk a little more about the faculty at that time.

01-00:23:07

Pollak:

Well, it was a distinguished faculty. It was and is. And most of the distinguished people were all very open. It was an accessible faculty. You could talk to them. It was a large school. There were 500—more than 500 people in our class. Four sections of, I don’t know, 135 people or something like that. So they were large classes. But it was a great student body I felt. You formed these study groups and you really did learn from your fellow classmates and the whole experience of tossing things around with them was I think part of the—a real valuable part of the whole learning experience. The faculty was there. You could talk to them. They were approachable. Some you would approach more than others. Roger Fisher, I don’t know if you’re familiar with him, but he’s—went on—went on to great things. This was his first year teaching at Harvard. Sure it was a learning experience for him, as well. But anyway, he was particularly accessible, particularly—I enjoyed talking to him, tossing things around. I think you probably wound up spending less time one-to-one talking to faculty than at smaller schools. But, as I said, I think the students were of a caliber that you really got it in the exchange with your fellow students.

01-00:25:01

McCreery:

And your study group, how did that work exactly at the time?

01-00:25:07

Pollak:

My goodness. How did it work? We were religious about it. We had a group of—must have been about six of us. We sort of made assignments. One person would come in and try to lay out, organize in an area something we’d been working on. And then we’d toss it around and try to figure out what certain cases meant. But we took turns taking the lead and trying to do a little bit more and present it. But we spent a lot of time just back and forth trying to

explain, rationalize cases. You know how you put these two cases next to each other and this case says that, and the other says that. How do you make sense of both of them and what's the rule that you really derive from all of this? And that was a significant part of the learning experience, doing that.

The school was very different then. I think out of that 500 students or so, there couldn't have been more than ten or twelve women in the class. Shows you how rapidly things have changed. There were very, very few women in there, in the school, in the profession at the time. And that was the first year.

Second year I was fortunate enough to get onto the law review. And really the second and third years, the law review was my principal activity. Classes really became secondary. The law review was a very, very all consuming activity. And I think in retrospect we learned a lot from that process. But the classes really did become secondary. We didn't put nearly the amount of time into them that we had the first year. And, of course, by that time we have some confidence that we did understand what was going on and didn't have that same fear and it made a great difference in the way you approached things. But those of us who were on the review, we spent far more time working on the law review than we did preparing for our classes.

01-00:27:45

McCreery:

How did you divide up the work on the law review?

01-00:27:49

Pollak:

Oh, they had a system that everybody did certain things. There were the second year people and the third year people. The second year people would write case notes and longer notes and then they would be edited by third year people. And so then in the third year obviously you did that editing and then some of us, I was one of them, became officers and so we had certain other responsibilities, dealing with authors and things who were submitting the non-student written portion of the review. But it was a pretty good system at the time. It was clear cut what people were doing. You got assigned your case note to write and you'd write it and sit down with somebody and tear it apart and go back and forth.

01-00:28:53

McCreery:

Did you develop particular interest in the law while in school?

01-00:28:58

Pollak:

I knew I was interested in doing trial work. I mean there were some subjects that interested me more than others. I knew for example, after taking a course in tax law, which was a wonderful course, a wonderful professor, one of the deans at Brown, whatever his first name was, taught a great course, but I knew that I was not destined to become a tax lawyer. I knew I didn't want to get involved in doing estate planning. And there were certain areas that interested me. I was interested in the anti-trust course I took. Securities law from Louis Loss was a good course. Those were things that interested me. But I must say I didn't have all that clear an idea of where this was all going to take me, other

than that I did know that I wanted to get into doing litigation work. I did have that in mind. Coming out of law school, when I started looking around for a job after clerking and so forth, it was a concern of mine. How are you really going to get yourself in a niche where you can do that?

01-00:30:31

McCreery:

And married and with a young family, of course, by then, too. Some consideration.

01-00:30:35

Pollak:

By then, that's when I had my first, my first daughter. I handed out cigars at the law review. I guess it was a Christmas party. Sure, it was a Christmas party. My daughter was born in December and I remember handing out cigars the second year of law school. And that was the only child I had up through my clerkship and then I had another child the following year.

01-00:31:11

McCreery:

Okay. Now, what about taking the bar exam?

01-00:31:17

Pollak:

Well, that was an interesting challenge in a sense. I knew I wanted to take the bar exam right away. I did not want to go off and clerk and do something else and wind up taking it years later. And so I got this clerkship we'll talk about. But I came out to San Francisco and took the bar review course, although the clerkship started before the exam and before the exam was over. So I remember I came out here and I went to the classes for a while, and they give you all these booklets and things to study up on, which I wound up taking back with me to Washington. I actually started the clerkship and I was still studying for the bar and then I flew out here to take the bar exam. And I was a little nervous about doing that but fortunately it worked out all right.

01-00:32:22

McCreery:

And you knew you would take it in California?

01-00:32:24

Pollak:

I knew I would take it in California. And not necessarily to the exclusion of taking it somewhere else but California is—there's no reciprocity and I knew I wanted to pass the bar in California so I came and I did that.

01-00:32:44

McCreery:

Well, let's move on to the Supreme Court clerkship and how the idea first came up for you.

01-00:32:53

Pollak:

Oh, how did it first come out for me—come up for me? Well, it came up for me—the idea of a clerkship. It wasn't necessarily a Supreme Court clerkship. A clerkship. I remember talking with a couple of my friends back there, making the point that one of these days you're going to go back, get in a firm, get in a job, and you'll probably be in that job for a long time, perhaps the rest of your life. And here I've got this opportunity to do a clerkship and see the

Court from that side and why pass up that opportunity. And it seemed to make sense to me. It was a chance before—settling down and just start practicing law, which is what I anticipated I would be doing. It just seemed like an ex—a good thing to be doing. So I looked around for a clerkship. And really I wasn't looking for a Supreme Court clerkship. I was thinking of different court of appeal clerkships. One of the people I interviewed, in fact had an offer from—which is interesting in retrospect. And that was Justice Burger. He was sitting on the court of appeals at the time. It is kind of ironic in retrospect.

But any event, somebody suggested to me applying for the so-called Reed/Burton Clerkship. Justice Reed and Justice Burton at that point had both retired from the Supreme Court. They both retained their offices in the Supreme Court and they were sitting by designation on the court of appeal in the district and also occasionally on the Court of Claim—Court of Claims. And they had sort of worked out a clerkship where you'd work for them and at the same time work for the Chief Justice. And I applied for that clerkship and I think the only person that I interviewed to get the clerkship was Justice Reed, as I recall. I think the Chief Justice—whoever they picked became his additional clerk. I don't think I actually interviewed with him before I got that job.

01-00:35:53
McCreery:

Well—

01-00:35:54
Pollak:

And I may have met Justice Burton, too. I'm not sure.

01-00:35:58
McCreery:

Well, how did that work in practice, then? The sort of divided allegiance to the retired justices and to the chief?

01-00:36:07
Pollak:

It was a great year. It was not a problem. As I recall, it was clear my first responsibility was to Burton and to Reed but it shouldn't take full-time. And, of course, I didn't want it to take full-time. I did everything I could to generate as much time as I could to be available to work on things from the chief. And it wasn't a problem because really—at that point Burton was really slowing down. He only I think issued a couple of opinions while I was with him and I think really it was kind of sad actually. He was suffering from pretty advanced Parkinson's at that point. And I remember I wrote—I drafted an opinion for him and it was an opinion that sat on his desk for a long time and he never did issue it. Finally it got reassigned to some other judge in the court. He didn't write any more opinions. Reed was still fairly active and he issued a lot of opinions. There was a lot to do with him. But easily half my time was available and I would—I'd work on cert petitions that were handed down. I drafted one opinion for Warren, which—less, obviously, than his other clerks. But I would meet with him. Warren had this practice. He called his clerks together and go over the week's cases and so forth. I was part of that and was

in there and went out to the Saturday lunches and was part of that gang. But I had to be sure I got my stuff done for Reed and Burton.

01-00:38:24

McCreery:

Do you happen to recall the circumstance when you first met the Chief Justice?

01-00:38:32

Pollak:

Not really. I can almost picture it but it's probably because I picture walking into his office and I can picture his office and his big beautiful desk and his coming out around the desk as he would often do. And I'm sure that's what happened the first time. Every time you met him it was with a big warm smile, as though you were his closest friend. And I'm sure the first time I walked into his office that was the way I was greeted and I was always greeted that way. Welcome. Always knew your name. He probably knew it the first time. Mrs. McHugh, his secretary, always had him well prepared. Nobody ever knew quite how much assistance he was getting from her in terms of being refreshed to who was coming in to see him. But he would always know the name of everybody who walked into that office and greet you as a good friend. I'm sure that's what he did on the first occasion.

01-00:39:44

McCreery:

Whatever their system, it worked, it sounds like.

01-00:39:47

Pollak:

Whatever worked.

01-00:39:47

McCreery:

Yeah. Tell me a little bit about her, as an aside. I've heard about her many times.

01-00:39:51

Pollak:

Well, Mrs. McHugh—I'm sure if you talk to his clerks you'll hear about Mrs. McHugh. She was a wonderful, wonderful secretary to the chief, his protector. She protected him, took care of him. She was a very well organized nice woman. A firm woman but nice woman that people sometimes joked—she was so efficient. People would sometimes refer to her I think as being more demanding than I think she was. But I think she was actually a very nice person and I always liked her, got along with her. And she was always very helpful and she always told you if—if the chief was expecting something or other, she would be sure that you had it so you didn't walk in there without it. She was protecting the chief, she was helping you. She ran that office in many ways. Nobody got in to talk to the chief without going through her. And if you had something you wanted to go up and talk to him about, you'd call her and she'd arrange it to happen. But everything did go through her.

01-00:41:12

McCreery:

Okay. Now, do you recall how the week would go typically? What was the cycle leading up to the Friday Court conferences and the Saturday lunches and so on?

01-00:41:25

Pollak:

It's been a long time. Been a long time. One of the main things that all the law clerks did was work on these cert petitions. We all had our offices. In our offices we had our typewriters. And you'd spend a lot of time reading the cert petitions and reading some of the cases and writing up a memo summarizing what the case was about and making a recommendation. That was a big job that was always going on. These cert petitions were always coming in and they were always getting doled out. "Can you do another one?" "Yeah."

01-00:42:17

McCreery:

How many per week came in would you say at that time? Any idea?

01-00:42:22

Pollak:

I don't remember the numbers. But I know we were always working on them. And we turned out a lot. Every law clerk would turn out, I don't know, half a dozen would probably be a small week. There were a lot of them. Not too good on the numbers. But that was just a constant, constant chore. At the very beginning, you come to work in the summer, that's what you're working—that's all you really have is your cert petitions. But then you start getting into the cycle with argument and so forth. Then, in addition, you're writing bench memos which is something that I would do as well as the cert petitions. There were fewer of those but they were more intensive documents. You worked hard on them to—and it's kind of interesting.

One of the things institutionally I think that's so strong about the Supreme Court is that that analysis goes on individually in every chambers. A lot of other courts, such as the one I'm now sitting on, there are written materials that get circulated prior to the hearing of a case, of course. But we tend to do it collectively. One person will do it and then others will share that product, do some research of their own if they think it's appropriate, whatever. But you start with a single product. Whereas there it's going on nine times every—unthinkable that somebody would use a bench memo from another chambers. My God, that's—really would not have crossed anybody's mind.

But anyway, you did the bench memos and then as cases got decided at conference and the assignments would be made, who's going to write the opinion, then those get handed down to the law clerks. But really, in terms of the day of the law clerk, how many hours you do one thing or the other, it's hard for me to recall. But they were all long days. I'll say that. We were all down there long hours. Early in the morning 'til well after 6:00, at a minimum, nights not unusual, and virtually every Saturday. I can't quite recall within that what—but somehow you got things juggled.

01-00:45:36

McCreery:

Okay. Well, in your work for the Chief Justice—so you clerked along with Mr. Niles—

01-00:45:45

Pollak:

Peter Taft.

01-00:45:46

McCreery: Mr. Taft.

01-00:45:47

Pollak: And—

01-00:45:48

McCreery: And, oh, Timothy

01-00:45:51

Pollak: Tim, Tim Dyk. Timothy Dyk.

01-00:45:53

McCreery: Yeah, who is a judge now.

01-00:45:54

Pollak: Timothy—right, exactly.

01-00:45:56

McCreery: Now, how were assignments made from the chief himself and/or how did the four of you sort of divide things up?

01-00:46:08

Pollak: That's a good question and I'm not really sure. I believe that the cert petitions were handed out by Tim. The chief at that time had his three and a half clerks, as I would say. I was the half. Two clerks and then a chief clerk. And Tim was the chief our year. I think he assigned the cert petitions, if I'm not mistaken. I think that Warren himself assigned the bench memos and I'm sure that he assigned the opinions. He would ask you to write the opinion, draft the opinion. But that would come from him.

01-00:46:58

McCreery: Yeah. Well, let's talk about some of the examples of that from the year that you were there. Particular cases where you were involved in writing an opinion.

01-00:47:11

Pollak: Just talking about Warren, one of the things I thought was interesting, and still do actually—obviously he decided the cases. His law clerks did not decide the cases for him. And he would tell you in advance the way he saw the case and what he expected to be covered, said in the opinion. But unlike a lot of judges, I think, he did very little of the writing himself, and based on what I saw from others, and an opinion that I did, you'd give him the draft and he'd read it over and he'd comment and if he thought you should do a little more here or something, he would pay attention to that. But he was certainly not somebody who would take—pick up a pencil and start word-smithing and changing phrases. He left the opinion writing, under his direction as to what it was going to say substantively, but he left that to his law clerks.

Unlike what his practice was when it came to giving his speeches. He was a public figure and I think he thought of himself that way. And unlike his

opinions, he never had any of his law clerks do anything on his speeches. He wrote his speeches out himself and they said what he wanted to say. And I always thought it was kind of an interesting contrast. Precisely what cases you cited and what went into the opinion, that was not his concern. He was concerned how the case came out but not the way it was expressed and articulated. But when it came to his public speeches, that was him. He wanted to put himself into that and that's what he always did in the year I was there.

01-00:49:34

McCreery:

What do you owe that to? Here he'd been a governor, your governor, in fact, and had this whole career in public life leading up to the Chief Justiceship. But how do you explain that particular view of his?

01-00:49:48

Pollak:

I think he was—thought of himself as a public figure in terms of public policy and relationships. He was very concerned about the image of the Court and the public perception of it. I think it does go back to his political roots. He was not a legal scholar and he was not interested in all these fine points that a lot of judges spend a lot of time on their opinions working on. He was very concerned with how the cases got decided but he was not concerned about the way in which you distinguished this case from that case and so forth. That was not his interest or his passion. I always thought that the thing that was so special about him was his uncanny common sense. Just a down to earth commonsensical person. When he'd call the clerks in after argument, we'd talk about cases that were on the calendar, and he'd go around the room. He'd ask us what we thought about this case. And typically we were all just out of law school, young folks. Typically our explanations or our analyses were pretty legalistic. We talked about, well, this case and how this differs from that case and so forth. And he'd listen to all that and then he'd tell us what he thought. He just kind of cut through it. Not talking about the cases but just talking about the analysis of it, which was grounded in an understanding of all this law but it was just a very commonsensical analysis and here's what was right and he'd tell you why he thought so. And that was the way he looked at things I think. We should have more people with as good judgment as he had.

01-00:52:10

McCreery:

Yes. Well, by then, he was in, what, about his tenth term as Chief Justice.

01-00:52:18

Pollak:

Sure, sure. He came in with *Brown*—

01-00:52:21

McCreery:

And had—

01-00:52:21

Pollak:

—and this was '62 so that's about right.

01-00:52:24

McCreery:

—Pretty well established himself. To what extent do you think there was an expectation that he would respond a certain way to a type of challenge in a case? Did people have his number by then? Was it—

01-00:52:44

Pollak:

At that time you could predict what his feelings would be, as you could with most of the members on the Court, and as you can with most members on the Court today. You don't know precisely how they're going to decide something but you certainly know what's important to them. It was no surprise his feelings on areas in criminal law, criminal procedure and so forth. So you know what his basic values were at that point, his basic approach. Like every judge, I think, he'd surprise you now and then. He thought about these cases. Certainly was never a kneejerk reaction to anything. You always had the feeling that he'd think about the case and he wanted you to think about it and he was interested. And wanted to be sure that things didn't get overlooked. But he had his values, things that were important.

01-00:54:08

McCreery:

It's quite a skill, isn't it, bringing commonsense into a complicated legal discussion.

01-00:54:15

Pollak:

It's a great skill. It's a great skill. Some people are able to do it better than others. Unfortunately, some, I think non-lawyers, confuse that with sort of thinking that this means that he felt he could do whatever he wanted to do. And I don't think he felt that at all. He felt that there were legal principles and so forth that had to be adhered to but he also thought that those principles ought to develop in a way that made sense and respected people's rights and were fair. And that's what was important to him.

01-00:55:11

McCreery:

What were you told about the confidentiality aspects and by whom?

01-00:55:18

Pollak:

We were told by the chief—that was day one. Maybe that was the first time I met him. I'm not sure. But I certainly remember being seated before him and having him explain—I think he explained it to all of us. I think he called, it was the four of us law clerks, and he gave us a little talk, telling us that our relationship to him was like an attorney client relationship and that was based on trust and confidentiality and it was essential that that be respected. He instilled that into everybody that worked with him. What took place there was not to go—be repeated to others. He elaborated on that. He went on. He said, "Look it." He said, "You're going to be approached by the press. They're all over this place." It wasn't a matter of trying to find out what's going on while it's going on. He was concerned about security, as well. But he said, "After decisions come down, you're going to be approached. What did this mean? Or what was behind that? Explain it." And he said, "Great thing for your egos to be able to talk to the press and tell them. There's no personal self-

aggrandizement here.” He says, “What went on in leading up to the opinion, that stays in here. The Court issues its written opinions and the written opinions are what is out there for people to interpret.” And he didn’t want his law clerks or other people providing commentary to what was coming out of the Court. And everybody knew that, understood that. I don’t think there was ever a leak in the time that he was there. Things that have happened subsequently, books that have come out, *The Brethren* and so forth, that was unthinkable when he was around. That’s what he wanted. Everybody respected it.

And it’s interesting. It’s a little off the point but it goes to Warren. As you know, I later became a member of the staff of the Warren Commission. He carried that philosophy with him to the Warren Commission. I personally thought that his philosophy absolutely fit the Court. But when applied to the Commission, not necessarily. While the Commission was doing its work, I can’t really remember the scene but I do know that he did expect the same confidentiality to apply to people who were working on that report. And after the Warren Commission report was issued, it was immediately—in fact, it was being attacked before it came out. People like Mark Lane and so forth were around criticizing what we were doing before we had done it. But any event, there was all this criticism and conspiracy charges and so forth. And in retrospect, I think most of the people who were connected with the Commission maintained their silence much longer really in deference to this view from the chief. There was the report. The report would speak for itself and you don’t need to have people out embellishing it. And I think perhaps from a historical perspective it would have been better if people who had—who knew what was in there had spoken up more quickly and come to the defense of the report. But in any event, that was certainly his attitude throughout. That what took place within the walls of the Court stayed there. It was not to be breached by anyone. And, as we said, that’s certainly the way it was while he was around.

01-01:00:13

McCreery:

Okay. I’m going to suggest we take a short break and change tapes. Excuse me.

01-010:00:20

Pollak:

Okay.

Begin Audio File 2

02-00:00:00

McCreery:

Okay, we’re recording on tape two. This is Laura McCreery continuing the interview with Justice Stuart R. Pollak at his office in San Francisco. Well, continuing our discussion of Chief Justice Earl Warren, can you comment a little bit upon his sense of leadership? How, from your viewpoint, he approached that aspect?

02-00:01:02

Pollak:

Well, he certainly was a leader but he did it—he had this remarkable style. You never felt that he was overpowering. He was a big man and big voice so he had the physical attributes. He was always smiling. He would throw out his ideas and he just did not—I never saw him denigrate or humiliate anybody. He treated everybody with respect. He explained things and you never felt that you were being pushed or demeaned. You wanted to perform for him. He was just a person that you wanted to do what he wanted. He would explain himself. It was just a very unthreatening mannerism that he had the ability to project.

02-00:02:52

McCreery:

Did you ever see him angry?

02-00:02:56

Pollak:

I don't think I ever saw him actually angry. When he'd reminisce and he'd tell us stories, he'd tell us stories about situations where he had been upset. He'd talk about some other public figures or incidents. He'd tell us about them, where—things that happened that upset him. But I don't believe that I ever saw a situation where he lost his calm or chewed anybody out in a demeaning manner. I don't think I ever saw him lose his temper. I don't think so. When I think of him, he comes back as exactly the opposite. You see his big smile. Just the way that people saw him on the bench as the Chief Justice, he'd call cases and talk to people. It was always done graciously, never meanly. That was the same way he spoke to people in his chambers. It's hard to imagine there wasn't a time when he got upset but I can't remember it. I can't remember it.

I said this before but it was not just the people that he worked with. He seemed to remember everybody. I was saying how he'd remember your name, which is not so surprising, I suppose. But years later you'd see him, he'd remember you. But it wasn't just your name. When I would go back to see him after I had been off the Court for several years, and visited him on a few occasions, walk into his office and he'd start asking me how was my wife by name, my kids by name. And that's where I wondered about Mrs. McHugh's role. I couldn't imagine that he really remembered all those. But it was just that warm inviting style. And he treated everybody with respect. I think it really does—just commands obedience. You want to do what he wants you to do.

02-00:05:27

McCreery:

And talking of family, he was known as quite a family man himself. Did you have much view of that personal aspect?

02-00:05:35

Pollak:

Yeah, a little bit of it. He would talk about his family. We met members of his family while we were back there. Yeah. He was clearly a family man and talk about his kids. It's funny. I've compared notes a little bit. One of my former colleagues on the superior court is his grandson, Jim Warren. Some ways

reminds me a little bit of—I never told Jim this but he reminds me a little bit of the chief. But yeah. He would speak about his family and when they were there we'd—there'd be an interchange and there were several times during the year that they would be down there. There were events where we'd see them, talk to them. I can't remember that he actually said this but his law clerks were like his family. I don't know if that's really true or not. But it was a very warm congenial atmosphere and that certainly extended to his family.

Speaking of family, this is a funny story, personal story. My wife and I had him over to our modest little place for dinner one night during the year we were there. He and his wife came to dinner. And my wife was absolutely terrified the night before. She's cooking dinner, worrying about what she's going to serve him. And my wife and I have a standing joke. We laugh about this because she was making this dessert. This was the middle of the night before the night he was coming to dinner. She was making a dessert and she needed bananas. She didn't have a banana in the house. Said she needed a banana so I had to get dressed and go out. There were no grocery stores open. It was literally the middle of the night. And I remember I went down to the Four Georges. It was a very fancy hotel in Georgetown. I went into the kitchen and I said, "Can I buy a banana from you?" It was the most expensive banana I ever had. But anyway, I brought this banana back so she could make dessert. But anyway, they came over the next night and it really was like having your grandmother and grandfather over for dinner. He walked in. In a moment—my wife had met him before, she'd known him. Everybody just relaxed. It was just a lovely evening. He was just gracious as could be. His wife was a lovely person. And it was just a pleasant evening. He was just an easy person to get along with.

And he was a grandfather. I have a picture. My daughter at that time, my only daughter at the time, was I guess around two. And we brought her down to Court to show her off to the chief and put her on his lap so we'd have a picture of her with him, which we still have. And the grandfather, he just went—my daughter's backing up into a corner and he just went and he picked her up, put her in his lap, and she started—I remember she started putting her finger in her nose and the chief—we're trying to take a picture. But he obviously was right at home with kids. He just took her hand and just put it—in this picture he's holding her hands. That's how it happened. But everything was just very, very natural and relaxed and pleasant. I think he enjoyed meeting the kids.

02-00:10:00
McCreery:

Natural with people of all types it seems.

02-00:10:02
Pollak:

Yeah. Absolutely. Absolutely. Just did not have any airs. He was just a very down to earth human being.

02-00:10:10
McCreery: Yeah. Well, let's talk just a little bit about the other justices at that time. I was noting that President Kennedy had appointed Byron White to replace Justice Whittaker I guess when you were still in law school, towards the end was it? Or the spring before you started, in any event.

02-00:10:33
Pollak: That's right. Yeah. He was there the full year that I—oh, yeah. While I was still in law school, yeah, because he was there the full year that I was there.

02-00:10:41
McCreery: Okay. And then—

02-00:10:46
Pollak: His closest personal connections in the Court at the time I think were with Arthur Goldberg.

02-00:11:01
McCreery: Another new member, right?

02-00:11:02
Pollak: Yeah.

02-00:11:03
McCreery: While you were already there?

02-00:11:04
Pollak: Yeah.

02-00:11:06
McCreery: That fall of '62.

02-00:11:09
Pollak: Yeah. I think he was sworn in just before I got there, I think. Because Frankfurter had left, was no longer there, and Goldberg had been sworn in when I got there. They were close. Black, Douglas. The people he was most philosophically in tune with. He was friendly with everybody. There are these stories about the friction between him and Frankfurter, apparently it was just before my day. But for example, Stanley Reed, who philosophically was a very different person from Warren and temperamentally. He was a much more reserved southerner. Lovely man. He was a wonderful human being also. But very different from the chief. But he was always telling me how fond he was of Warren. Their relationship was very cordial. The chief was friendly with Tom Clark, with whom he didn't always agree. But they had a genuinely very cordial relationship. Don't think he bickered with anybody. Justice Harlan was a little more reserved and they tended to be on the opposite sides of a lot of decisions. But there was never personal rancor that I was aware of. White. White there was something. It was nothing. I hesitate to mention because you don't want to build it out of proportion. But there was something there.

Actually, I'll tell you an interesting story. The one opinion that I—personally that I drafted for the chief was a not very significant opinion and very few lawyers, I'm sure, know what this case was about. It was a case called Sperry against Florida. And that was a case that was decided unanimously by the Court what the outcome should be. So it wasn't a very controversial case. And after the conference—I can't remember precisely how all this happened. But Justice White, without having been assigned the opinion, wrote an opinion and sent it to the chief. Now, the chief hadn't assigned the opinions yet. He was in the majority. He decides who writes the opinion. And White wrote this opinion, sent it to him. And Warren never explained to me what he was thinking about it. He didn't say anything to me about that other than he called me in there and he asked me to write that opinion. And it was clear he wasn't too happy with what White had done. And White's opinion was a—it was an analytic opinion. Fairly short analytic and the one that Warren finally issued that I worked on was a very, very different opinion, sort of approached it very differently. Came to the same conclusion but it was handled very differently. But I did have a sense that he had somehow—he had taken offense to White taking his prerogatives, taking it to himself to assign this opinion to himself. And he wasn't going to let that happen. White did not write that opinion, he did. And so I don't know if the two of them were as chummy as perhaps he was with others. But, again, there wasn't anything that really characterized it as being friction or ill will. It was just a little chillier perhaps.

02-00:16:20

McCreery: And, of course, Justice White was new at that time—

02-00:16:22

Pollak: Yeah.

02-00:16:23

McCreery: —to a well established group.

02-00:16:27

Pollak: He was new. Well—

02-00:16:28

McCreery: Of course, there was a lot of coming and going, wasn't there, over the years, but—

02-00:16:31

Pollak: Yeah. Yeah. And he got into things pretty quickly. I think he had been there—it was maybe his third term. Maybe it was only his second term. He had been there a little while. Yeah. And it was interesting. White at that—I mean, in terms of how his philosophy developed, he turned out to be more conservative than Kennedy's other appointment. But he was a nice guy. He was a professional football player and he made good use of the so-called highest court in the land, the basketball court that sits on top of the chambers of the Supreme Court. He'd be up there playing basketball with the law clerks a lot.

So you got to know him. I think there was probably a little more distance between the two of them than between the chief and some of the others.

02-00:17:42

McCreery:

Okay. And then we touched on the other new justice, Arthur Goldberg. Talk a little bit about his coming on. Of course, you were only there the year. But how did he fit into this group?

02-00:17:58

Pollak:

Oh, I think he fit right in. And most of us who were there really felt badly to see him leave. He fit in very quickly. I think he loved it. He made a particular effort to reach out to other law clerks in the Court. As it was, we'd all get to know our own justice, obviously, and from time to time we'd have some contact with the others. During the course of a year, we'd have lunch. All the law clerks collectively would have lunch with each of the justices who would talk to us. We'd get to know them a little bit that way. But Arthur Goldberg had all the law clerks out to his home one Sunday, I suppose it was, and made a real effort to get to know them. I remember being taken at his home to his offering a toast to the President of the United States. That kind of struck all of us. But I think he got into it very quickly and it's kind of a shame historically that he didn't stay longer.

02-00:19:22

McCreery:

Yeah. Yeah, you referred to the fact that he lasted only three years, I guess it was, and then—

02-00:19:30

Pollak:

He went off to the UN.

02-00:19:30

McCreery:

—he was pressured to become the ambassador. Yeah.

02-00:19:34

Pollak:

Yeah, his—

02-00:19:35

McCreery:

What was your view of all that? It's a—

02-00:19:39

Pollak:

Well, it was unfortunate. I certainly didn't have any inside information. Nobody who really knew ever talked to me. But the scuttlebutt seemed right that it was indicated by Johnson that he was likely to come back to the Court as the Chief Justice. That's what all the speculation was. I certainly don't know if that's true or not. But it made sense. And then the way things developed you could see that he and Johnson—I don't know if it was a falling out but their relationship didn't continue to improve. And that didn't happen. But it was unfortunate. Unfortunate that he was induced to leave. Sort of demonstrated what we read and hear and thought at the time, at how persuasive an individual Johnson could be. Because he had to be awfully darned persuasive to convince Goldberg to leave because clearly Goldberg

was not unhappy at what he was doing. It's not that he didn't like being on the Court. People said he was getting a little restless. He was involved and his mind was—he was involved much more in what was going on outside the Court. So perhaps he was a little restless. But I think he enjoyed being a justice and I think it took some persuasion to get him to go and perhaps the attraction of coming back as the chief. But that's all speculation on my part. Certainly nobody at the Court ever talked to me about it.

02-00:21:34

McCreery:

Did you have much of a sense of hierarchy among the Justices?

02-00:21:39

Pollak:

Well, no, not really hierarchy. But I think there were some who were in fact more persuasive than others and people could be more influential than others. Oh perhaps you're talking about the Chief's close friends. His closest friend on the Court was Brennan. And Brennan was also, I think, one of the more influential justices, certainly among the people that saw things generally the same. And I think Harlan was more influential with the others. I don't know that I would use the word hierarchy but they were in fact more influential. Whether it was their personality or intelligence or whatever. But they I think tended to be more the people who would sort of carve out the directions and the positions that would influence others. I think those two were probably the two leading—I'm not sure what word to use. I don't want to use protagonist because that's not what they were. But they would have the most influence I think on others in the Court.

02-00:23:31

McCreery:

Under what circumstances would you see the justices interact with one another? Either attending oral argument or you know. How did you see them with each other?

02-00:23:48

Pollak:

Well, you didn't often physically see the two of them together. But after the conference following the argument, the Chief would always call all of his clerks in and we'd go over the cases and he would tell us what other people said and what other people's views were. And so we would hear about what they were thinking in that manner. And then there was some interchange between the law clerks who were working on a case—but there wasn't a great deal of seeing the justices personally interact. I would see less of it than others because when I—where Reed and Burton's office was was a little different part of the same building. So if one of them got out of his office and walked down the hall to somebody else, I normally wouldn't have been around to have seen that. But I don't think it happened very often. There were some. Brennan would walk into Douglas's office. It would happen occasionally but I think it was rare for any of us. Certainly rare for me to really see the two of them having a personal dialogue or interaction. You'd watch oral arguments frequently and you'd see what would take place up on the bench.

02-00:25:29

McCreery:

Yeah. How much did you do that? I'm curious.

02-00:25:30

Pollak:

Frequently but not at length. If there was a case that you were interested in or if there was a particular attorney that you ought to hear or see. F. Lee Bailey came and argued a case, we'd all—the law clerks would want to go see him, which we did. When Bobby Kennedy argued his first case, first case as a lawyer, in the Supreme Court, we were all in there to hear that, of course. And then on and off we would go in. But we had too much to do. You couldn't sit there all day long and listen to the arguments. You'd get in there, I think it was more the case. If there was really a significant case you'd go in and you'd listen to it. Yeah, my wife actually—when Bobby Kennedy argued a case in the Court—I mean, that was an exciting moment. When he was sworn in as a member of the Court, we were all there and the President was there. My wife sat. It was in the courtroom. And she was sitting there. And there was a whole long row of Kennedy kids sitting there. And she still laughs about—she was sitting there and Rose comes in, the grandmother. She goes down the row kissing every—all of her grandchildren. She comes, she gave my wife a kiss, she thought she was one of her grandkids. We were all there. We heard that argument. But we would go in. What are still in retrospect kind of the leading cases of the year, we went in and we heard those arguments. That was exciting. But we certainly would not sit there as a matter of course and listen to the arguments. We had too much to do.

02-00:27:49

McCreery:

But you were involved in helping prepare them?

02-00:27:53

Pollak:

Well, we would write the bench memos. And if we had done that, we'd have an interest. So more than likely you'd go in and hear the argument and you'd be interested to hear it.

02-00:28:05

McCreery:

Okay. How did Bobby Kennedy do, by the way?

02-00:28:08

Pollak:

He did a remarkably good job. He did a remarkably good job. And his first time, apparently, that he'd ever appeared in a courtroom. He was an exceptionally bright person. He did a very respectable job.

02-00:28:26

McCreery:

Well, I was thinking about some of the cases. You mentioned *Sperry*, which as you say is—has sort of fallen into the abyss in the meantime.

02-00:28:34

Pollak:

Yeah, they—

- 02-00:28:35
McCreery: But talk about some of the other important cases this year—that year, whether or not you worked extensively on them. But just important in the public perception.
- 02-00:28:48
Pollak: Well—
- 02-00:28:50
McCreery: Let's see, *Gideon v. Wainwright*.
- 02-00:28:52
Pollak: I think *Gideon*, that was—I think that was our term. Where I get confused thinking back is in trying to remember whether the case was decided our term or whether the cert petition was granted our year for the following year. I think *Gideon* was decided that term. I know there was another—
- 02-00:29:18
McCreery: It says here '63 so presumably—
- 02-00:29:22
Pollak: The '62 term would have extended into the spring of '63. And I think that's when it was decided. There were several significant cases that term in the area of criminal procedure. That was one. *Escobedo* was another. But I remember particularly *Wong Sun*, which is the fruit of the poisoned tree. That case came down in that term. That one in particular. I'm sure *Gideon* was argued because I can remember the argument now. It was argued the year I was there. But *Wong Sun* I remember. *Gideon*, the outcome was, I think was pretty predictable and it was pretty fairly easy to see how you were going to get there and I don't think it could have come as a great surprise to anybody. It was a significant case but no great surprise.
- The fruit of the poisoned tree was a little more imaginative and I know that it was—a lot of talk among the clerks and I was joking about it at the time. There was really being—doctrine being created. And I remember we talked about that case a lot. I think one case—I think all we did our term was we were involved in the cert petitions for the New York Times against Sullivan case. I think cert petition was granted while I was there. And I know that got a lot of discussion, a lot of attention. It was immediately apparent that that was going to be a significant case.
- 02-00:31:36
McCreery: And it has been. Certainly.
- 02-00:31:38
Pollak: And it has. Yeah, and it has been ever since. But we saw that coming in. Working on the cert petition you knew that was going to be a very big case. And I guess the other area where there were some cases, significant cases—well, couple other areas. One was the voting rights area. I think Baker against Carr came down that term, I believe.

02-00:32:09

McCreery: Yeah, I think it's dated 1962.

02-00:32:11

Pollak: Yeah, yeah. Yeah.

02-00:32:12

McCreery: So I don't know when it would have started exactly but—

02-00:32:14

Pollak: Yeah. No, I think that's when it came down. We were obviously aware at the time that that was a significant case and spent a lot of time talking about it. I can't recall anything specifically the chief saying about these cases. Where he came down on these cases, it's all there—

02-00:32:42

McCreery: In the record, sure. Yeah.

02-00:32:42

Pollak: Yeah, yeah. It's all there. And he certainly was very much on top of those cases and aware of them. Obviously approved the way they came out. I guess we had a couple of other cases. In the segregation area we still had cases coming up at the time. I can remember the Chief's attitude that it was important that the Court's decisions be respected and he was determined that this was going to happen. And there was all of this, all of the aftermath. You had the segregation stuff and still foot dragging, one thing and another. And he was determined that Brown against Board and everything, that it was going to be the law and it was going to be—it was going to be respected. And that was the time, come to think of it, when there were posters, billboards, particularly in the South, other parts of the country, particularly in the South, the impeach Warren billboards were surfacing. That didn't phase him one single bit.

02-00:34:37

McCreery: Really?

02-00:34:39

Pollak: If anything, it probably increased his determination that he was right, and, by golly, it was important that the Court stand up and insist that these principles be respected. I'm sure it was no fun to see these signs. But I never saw the slightest indication that it caused him to back off of anything. If anything, I think it may have strengthened his backbone.

02-00:35:13

McCreery: Well, I wonder how much a sense you had from within the Court of the public perception of him at that time?

02-00:35:22

Pollak: Oh, I think at the time he probably seemed less of mythical proportions than he does now with the passage of time. He was vulnerable, he was out there. There was attack. And he was in there dealing with the cases and I don't think

you sensed you were necessarily living with a legend. You were working for somebody for whom you had a great deal of respect but he was in there and working on it and it seemed very much just the work of the court and he was there and he was deciding and he was in the majority some cases and some cases he wasn't. And there were people out criticizing him and I don't think there was any sense of his invulnerability or, as I say, his—I think as we look back. We see him as one of the greats in the history of the Court, at least I do. And I think historically he is and will be remembered that way. I don't think we had the complete sense of that at the time.

02-00:37:05

McCreery:

Okay. Now, when it comes to some of these key cases like *Baker* and certainly *New York Times v. Sullivan*, did you have much sense of public perception of particular cases? Did it matter?

02-00:37:26

Pollak:

No, I don't think it mattered. I don't think it mattered. I don't think that's how decision-making went about. You had some sense I think of what reaction would be and I think that may have had some influence on what he wanted said in his opinions. But, again, that sort of response to the public I think came out much more in his speeches than it came out in his opinions. In the opinions, he'd analyze it, tell you this is the way it's going to come out. And he wasn't treating the opinions as means of convincing the world in a political way. They were for the lawyers. His speeches were doing that. It's hard to imagine in retrospect that some things were not in there for the national audience and he's obviously aware of that. But I can't remember any examples where he modified things with that in mind. But on the other hand, I'm not aware of him modifying much in the first place. This is where the opinion is going, this is what we're going to decide, and on this basis, put it down on paper for me.

02-00:39:18

McCreery:

The work was pretty clear in his mind.

02-00:39:19

Pollak:

Yeah, yeah. Yeah.

02-00:39:20

McCreery:

Yeah. I just think of the *New York Times* case as growing so strongly out of the civil rights activities and just how much public feeling there was and the swelling up of that incredible change.

02-00:39:42

Pollak:

Yeah. There was still a lot of resentment down in the southern part of the country. These signs were all over the place. I don't know that anybody in Washington or around the Court took them seriously, as though there was in fact likely to be an impeachment. But it certainly was a sign of the way in which the Court was being received in that part of the country.

02-00:40:13

McCreery:

And as you say, you knew at the time how important a case that was.

02-00:40:18

Pollak:

Oh, yeah. Absolutely. Absolutely. And the ongoing segregation battle. As these cases came along, each case individually was obviously less significant. You didn't have Brown against the Board over and over again. But you saw that in historical perspective. You knew what was going on and you knew it was important.

02-00:40:50

McCreery:

Then as you pointed out earlier, there were a lot of criminal procedure decisions around that time that of course were very far reaching. Was there a sense of that whole area developing as a whole somehow?

02-00:41:09

Pollak:

I think so. I think so. I think we were aware at the time there was an expansion of the rights of defendants and the—and putting limitations on police misconduct. And I think there was an awareness of that. In search and seizure law, I think there was a sense—there was a battle going on in the country. You're handcuffing the police, blah, blah, blah. But there was a real sense that, wait a minute, you're really doing something to—in fact, protecting the rights of more people. I'm trying to remember which clerk it is. I'll tell you.

This isn't Warren but it's an interesting story. Stanley Reed, who was basically very conservative, voted with Warren. I think Warren brought him around on an important search and seizure case. I don't remember which it was. And I remember Reed telling me how he agonized over that case. He said, "Well, things have finally got to him." At that time—they may still have it today at the Supreme Court. Every justice had their man, I think they called them, and these were all black or African American men who were there to—kind of—perhaps to chauffeur and to do things for the justices personally. And the one who worked for Reed, Reed told me, had described to him how in the neighborhood where he lived, in the district, how—when there's a crime committed in the area and they're looking for somebody, how they would cordon off four square blocks or something and come around house to house breaking in, checking every house looking for the person. And he described that to Reed and I think it was what finally got through to his psychology and he recognized, wait a minute, there really is something important to this whole Fourth Amendment business in not permitting police to do this sort of thing. And between that story and Warren leaning on him.

But yes. There was a sense that these were rights that were being developed and articulated and really were curbing misconduct that up to that point had been permissible and was going on.

02-00:44:55

McCreery:

That's quite a good example of that, of how something influenced one of the justices in a very personal way.

02-00:45:06
Pollak: Yeah.

02-00:45:09
McCreery: What about instances of multiple opinions and the need, if any, to appear that the Court was—

02-00:45:27
Pollak: You mean spoke as—

02-00:45:28
McCreery: Spoke as one.

02-00:45:28
Pollak: Spoke as a whole?

02-00:45:28
McCreery: More or less. Was that much of an issue? I'm not necessarily thinking of the criminal procedures cases but any type of case that you want to name.

02-00:45:40
Pollak: I don't think that it ever seemed realistic at that period to expect that you were going to get single voices on these controversial cases. I don't think anybody ever thought it was in the abstract a good idea that you had as many opinions as you sometimes did. And certainly Warren recognized the value of a unanimous opinion. Go back to the *Brown* decision.

02-00:46:18
McCreery: *Brown*, sure.

02-00:46:23
Pollak: But decisions were coming out. I don't remember anybody saying, "Gee, let's get together here. We're writing too many opinions. Let's see if we can't come up with some way that we have fewer opinions." It was just unspoken that people would articulate their own views, their own qualifications. It was just a fact of life. I can't remember anybody ever addressing that as a realistic problem that could be solved or anything could be done about.

02-00:47:01
McCreery: Yeah. Because, after all, that is the process.

02-00:47:03
Pollak: That is the process.

02-00:47:05
McCreery: That there can be—

02-00:47:06
Pollak: Multiple opinions.

02-00:47:07
McCreery: —any number of opinions.

02-00:47:08

Pollak:

And the truth of the matter is these multiple opinions, concurring opinions, dissenting opinions, they play a real role and sometimes come to be—they affect the course of the law and future cases, future years. Personally I think it's only a problem, and I'm sure it's been recognized as a problem, is when you don't have a majority and you have these plurality of three in one opinion, two in another and you really don't know what has the Court decided. And you have situations like you had in *Bakke*, where it was one vote. That was the opinion of the Court. Four and four the other way.

02-00:48:03

McCreery:

That's kind of what I'm getting it. Did it get kind of muddy sometimes? But as you say, the process is that there can be any number of opinions.

02-00:48:12

Pollak:

Yeah, yeah. There can be. There was a certain amount. Justices would directly or through their law clerks go to each other and say, "Look. If you can change this, I can sign on. If you can take that out." And that was a process that certainly went on. Sometimes it went on directly, sometimes it went on through the law clerks. And that would reduce the number of opinions. That happened. But if somebody really wanted—they had their own view of how you should analyze the problem they'd say it. They'd put it out there. And particularly at that level I think it makes sense because they're doing much more than deciding individual cases. They're laying out standards that everybody else is looking to. So—

02-00:49:21

McCreery:

And as you've just said, it's helpful to look back at the dissenting opinions later on as a certain area of the law evolves and—

02-00:49:32

Pollak:

Yeah. And historically dissents have become majorities and things have changed. And even when that hasn't happened, when you're looking back, you have a case, related case. Sometimes what the dissent was saying will help clarify what the meaning of the majority opinion is.

02-00:49:52

McCreery:

Okay. Did you have much sense of Chief Justice Warren's view of the court system as a whole and how well it functioned or what it needed?

02-00:50:09

Pollak:

No. He was head of the Judicial Council. I guess the answer to that question is no. He did not spend a great deal of time discussing with his law clerks his role as the Chief Justice in terms of the administration of the whole federal judicial system. I think he spent time on that. But, again, that was something I don't believe he included his law clerks in particularly. Certainly I was never included in any of that. And just talking with him in our Saturday lunches and so forth, he would not be talking about the functioning of the—

02-00:51:03
McCreery:

No.

02-00:51:04
Pollak:

—federal court system much.

02-00:51:06
McCreery:

Yeah. He just strikes me as such a big picture sort of person. I wondered if it came up. Now you've touched on the Saturday lunches a couple of times and those were I guess firmly established by the time you were in the Court. Tell me exactly how those worked.

02-00:51:26
Pollak:

We were told that we're all going to go to lunch at such a time and we'd all assemble in his office and we'd walk down the street. There was a restaurant a couple of blocks away and we'd sit around there and we had lunch together and talked, sometimes watching a football game. Didn't do that as much. I mean, it happened. But more often just sitting around the table. Just had a very casual relaxing lunch. Relaxing lunch for a couple of hours and talk about anything and everything. He was one of the boys. And we were all boys. And a couple of hours.

02-00:52:24
McCreery:

This was all the clerks?

02-00:52:26
Pollak:

All his clerks.

02-00:52:26
McCreery:

Yeah.

02-00:52:28
Pollak:

Yeah. So there'd be four of us that would go with him and the five of us would have lunch together.

02-00:52:33
McCreery:

Every week?

02-00:52:34
Pollak:

Oh, I don't know that it was every week but it was two or three times a month. It was a regular thing.

02-00:52:43
McCreery:

How did you clerks view that occasion?

02-00:52:46
Pollak:

Oh, I'm sure we all looked forward to it. Yeah. Listen, we all wanted as much time with him as we could have. It was always an interesting time. We hung on every word he said. It was something I'm sure we all looked forward to. It was very enjoyable.

- 02-00:53:09
McCreery: And, of course—
- 02-00:53:10
Pollak: He would reminisce. That was a lot of the lunch. He'd be telling us stories when he was governor, one thing or another. So it was entertaining. It was fascinating.
- 02-00:53:23
McCreery: And I'm sure he also took a lot of interest in the events of the Kennedy Administration and—
- 02-00:53:28
Pollak: Yeah. Oh, yeah. He was very concerned. We'd talk about the political issues. Tell us what he thought about one thing or another. One person or another. So it was more listening than—but it was—nobody was bashful because nobody needed to be bashful. But he told us his views on things. He told us stories.
- 02-00:54:09
McCreery: And you had mentioned earlier that Judge Dyke was the leading clerk that year and made some of the—
- 02-00:54:20
Pollak: Assignments.
- 02-00:54:21
McCreery: —decisions about—yeah, about assignments and so on. What else distinguished the role that he had from the rest of you?
- 02-00:54:30
Pollak: I doubt very much, although I—because he did the same things we did. He'd write these cert memos. He wrote opinions. He wrote bench memos. Whether the chief asked him to do some things that he didn't ask others to do, honestly I'm not aware of it. And I kind of doubt it because he seemed to be spending all his time working on court stuff. I never had the sense that he was the person that the chief had helping him with his administrative affairs or anything of that sort.
- 02-00:55:19
McCreery: Thinking back, I wonder how you evaluate your experience as a law clerk to Chief Justice Warren.
- 02-00:55:29
Pollak: Oh, it was a great experience. It was a wonderful experience. Just having been around somebody who was clearly a stellar figure. Having the opportunity to work on those cases that were going on, seeing—you pick up a perspective on things, I'm sure. Hearing his views on one thing or another. It was unquestionably a wonderful experience. It was a long hard year. You worked hard but it was a rewarding year. You felt what you were doing was important. We were all young kids just out of school and here you are

working on these clearly significant cases. It was a real opportunity to be involved at that level. And it was a good learning experience I think.

02-00:56:44

McCreery:

What did you learn from him?

02-00:56:50

Pollak:

Good question. Hard to say. You saw things that you would like to try to emulate. And testing the outcome of abstract principles against real life and what this really means and a way of looking at things. Certainly something that you got from being there. I can still hear him saying how something was fair, how is it fair. And that sort of at least validates your view that by golly you're in this business, that's what you want to be about. You don't need to be embarrassed about trying to do what's right and what's fair and decent and making the law work so that it helps people and helps solve problems and so forth. You develop a respect for the system actually. He was a firm believer in the system and thought the system should work right and work for people. If any of that rubs off on you during the year you come away with something valuable.

02-00:58:38

McCreery:

And as a judge yourself for so many years you've certainly have a chance to—

02-00:58:42

Pollak:

Yeah, it was—

02-00:58:43

McCreery:

—carry that thought through, shall we say.

02-00:58:46

Pollak:

Yeah. You realize as a judge it's not just a question of doing what you think you'd like to see happen. You do feel constrained by rules of law. That it's important that you have the rules and it's important that you respect them and at the same time you see the outcome and you like to think that you can have rules that produce outcomes that seem like they're what they ought to be. And sometimes that gets to be a dilemma and sometimes you wind up reaching a decision, saying, "I really have no choice. I don't like this but I really have to do this." There's no choice. That's what the law says, legislature says. Not for me to change it. And those are frustrating disappointing times. I think Warren did the same. Perhaps he was able to find solutions more often than others that came out the way he thought was the right way. But he was not unmindful of the legal rules, the legal system, and the importance of having a system of rules that people could depend on.

02-01:00:38

McCreery:

Well, thank you. That's a very nice summary. I'm going to stop here and change tapes and then we'll get a little bit on the Warren Commission if you're willing.

02-01:00:47

Pollak: Sure.

[End Audio File 2]

Begin Audio File 3 pollak_stuart_3_04-29-04.mp3

03-00:00:28

McCreery: Okay. All right. This is tape number three. Laura McCreery continuing the interview with Justice Stuart Pollak. And it's April 29, 2004, just as a reminder. We've been just hearing your kind of summary of your experiences clerking on the Supreme Court and now I want to make a segue way to some of the things that you did afterwards. I know that you were in a private law firm here in San Francisco, well, for quite some time. But let's jump to the circumstances of your being chosen as a staff member to the Warren Commission. Just set the whole stage for me on that, would you.

03-00:01:15

Pollak: Sure. When I left the Court, the clerkship was over, I went to work in the criminal division of the Justice Department in Washington. My immediate boss there was Howard Willens. And ironically, this is a little aside, but everybody remembers where they were when John Kennedy was shot, when they heard about the shooting. I remember I was sitting in my boss's, Howard Willens' office in the criminal division of the Justice Department and word came in there had been a—what had happened in Dallas but still very fragmentary. And I was asked, told to go down to the library and to find out whether there was federal jurisdiction. The President had been shot down in Texas. And I raced down to the library and did some—[phone ringing]

03-00:02:42

McCreery: I'll put this on pause here.

03-00:02:44

Pollak: Okay. In any event, I went down to the library and did some quick research and discovered, to everybody's surprise, that killing or shooting the President—we didn't yet know that he had been killed. But shooting the President or killing the President was not a crime. It was not then a crime to shoot the President or any high—it was not then a federal crime. I mean, it was a crime, it was a state law crime, but it was not—it wasn't a federal crime. And there was really no basis for federal jurisdiction over the situation. And that word I think got parlayed up to Bobby Kennedy. Or I don't know that it was Bobby. But whoever. It probably was Katzenbach, somebody took over. But in any event, despite the fact that there was no federal jurisdiction, the Feds went in and took control over the body, whisked it back and so forth because they were—I think they were not entirely confident that things were going to get handled well. But in any event, that was a little aside.

I think it was about a week when Oswald was shot. I remember I got a call at my home from Howard Willens. Immediately the gears were in motion to

setup a commission to deal with the situation. And Howard, my boss, became the—initially he was the point man. He was to coordinate the role of the Justice Department in working with the Warren Commission. And he asked me at the beginning whether I would go over with him and get involved in that. And one of my regrets in life is that I said I didn't want to do it at that time. I was there. I was trying cases in the US Attorney's Office. I was doing stuff I was enjoying doing and I was involved in some other projects. And I said, "No, I wasn't interested." And then about four months later, after a good deal of the investigation had been done, witnesses had been deposed, lot of things had been going on, Howard called me again. He said they were getting to the point where they were really starting to write this. He asked me again if I would come over and I said—and I did. So I went over there and I was over at the Warren Commission for I think—it was about five, six months. I think they were in existence—it was less than a year. I forget exactly what it was. Ten, eleven months, something like that. Nine, ten, eleven months.

So I went over there at the point they were starting to write the report in earnest and I got involved in writing one particular chapter of the report, which is chapter four, which is the chapter that has to do with the killing of Oswald, what took place in the Dallas Police Department. And then I was also involved to a certain extent in other portions of the report. But that was primarily the area that I was working in. And then I was there until the report was finished. I said I worked hard as a law clerk and I did.

But the time that was spent in writing the Warren Report undoubtedly was the most non-stop intensive experience I've ever been involved in to this day. It was seven days a week around the clock. There were other staff members who were from out of town who I would occasionally—more than occasionally—bring home with me to dinner and then we'd go back to work. I think there are several divorces that are attributable to the Commission report. We can talk substantively about what was going on but there wasn't any pressure in my mind from the White House as to the conclusions of the report. But there was pressure to finish the report. There was an election coming up and Johnson wanted that report finished and out. And that came through the Chief, through the staff, through Rankin, who was head of the staff, and the time pressure was something that came down from on high. But not the conclusions. Not the conclusions.

03-00:08:27

McCreery:

How did the staff operate? Most of your communication with the members was via Mr. Rankin?

03-00:08:36

Pollak:

The members of the staff had very little contact with the members of the Commission. I had much less—almost no contact with Warren, for example, much less than I had when I was working for him at the Court. Everything came through—Rankin was the—I'm trying to remember his first name. But he was the Executive Director and then he had two assistants, one of whom

was Howard Willens and there was another who—that's embarrassing—who is now teaching back in—or he was teaching back in New York. I'm sorry. His name slips my mind. But anyway, everything came through those three people. I think the three of them all had direct contact with staff and with members of the Commission. But all of the staff that was reporting to them, we reported to them and we got nothing directly from members of the Commission.

So we would hear things the chief was interested in pursuing and wanted us to look into this, that, and the other thing but didn't get it directly from them. Warren I think was over—our offices were near the Court and Warren was there physically regularly, talking to Rankin and the others, and I think Warren was concerned that we look into certain matters. He wanted to be sure that they were covered. But by the time I got over there most of the significant findings had—where the report was going had been pretty much decided, I think. And decided in the sense of agreed upon. Everybody was working. We all had access to these same materials and we looked at them. There was nobody who was there working on this who had any reservations about the basic conclusions that the report reached. And the subject that's had all this commentary over the years, the one bullet theory. I think everybody recognized at the time that that was a difficult reconstruction of events but it was the most plausible. And nothing else—there was never any credible evidence of anything else that it could have been. Anyway, there was nobody challenging it's basic findings.

Some people were saying, and there was one in particular, a fellow by the name of Liebler, who wound up teaching down at USC—in fact, I'll tell you a very funny story about Liebler and the chief in a second. But Liebler is a very rough, loud, nice, interesting guy but he was always walking around and saying, "We should do more of this and more of that," and pushing us to do—look into additional things, expand additional things, which in general we did. But there is no question in my mind, and I think the staff, everybody involved in this was of the same mind. That the depth of the investigation that was conducted was far, far greater and more intensive than ever would have happened if Oswald hadn't been shot. If it had just been a trial of Oswald for murder, the resources to get thrown into a case like that are limited. There was a blank check on this investigation and we were all a bunch of young lawyers on there. And even when I was there, at the point in the development of this, working on something, writing on something, you'd say, "Gee, there's something that hasn't been covered." You pick up the phone or you send a memo and you send out a half a dozen FBI agents to go check this out, do that. We were all these young kids wielding all this authority and power and I think there was a little reaction from the FBI. Again, not substantively but get real. Wait a minute.

For example, I remember one of the colorful ones, bananas again. Oswald had made this trip down to Cuba through Mexico City and we were trying to track

that. We were looking to see had he met other people, other conspirators along the way. Was Castro tied in? Who was he meeting with? So anyway, somebody thought they had seen him or they had seen him on a bus on the way down there. And this person was eating a banana on the bus. So some member of the staff sends out a directive to the FBI saying, “Want you to go to every grocery store,” I don’t know, “from New Orleans to Mexico City with pictures. Have you seen this man? Was he in here buying bananas?” Some people thought that was a little overkill but that’s what was going on. In retrospect, I think there were things that I think law enforcement agencies that were—may not have reflected upon them in as favorable a light as they would have wanted, that they were not fully forthcoming about.

But in terms of the scope of the investigation and the confidence of people working on it, and the evidence—people still give me a bad time. I said, “Look it. If you really have any doubts, the first thing anybody should do is read the report.” I like to think it reads well. But everything that has come up since then, it’s all in there. It just gets rehashed over and over and over again.

But anyway, Warren was paying attention to what was going on at his level. Again, he wasn’t rewriting chapters or pages or anything else. But he was paying attention to the subjects that were being covered and the conclusions and directions that were being taken. But the funny story, I’ll tell you the funny story about Warren. And it tells you a lot about Warren as a man, I think. Because as politically liberal as he was, he was really very conservative personally in terms of family values and in terms of language he used. He was not a man who threw around vulgarities or anything else.

Well, Mr. Liebler, John, whatever his name was, rough, outspoken, big, red haired, burly, red haired fellow. As the report goes on he grows this big red beard. He’s got a big head of hair and he’s got a big red beard. And one day the chief is over there in the building and he bumps into Liebler in the hallway, this guy with a big beard. And beards are still—that’s a hippie thing or something, yeah. Warren apparently calls Rankin into his office. “Who is that person in the hallway with that big red beard?” And Rankin says, “That’s Mr. Liebler. He’s on our staff.” Warren tells him, he says, “Tell him to shave off the beard.” Well, the funny part of the story really is Rankin apparently calls Liebler into his office and tells him, he says, “The chief says you have to shave off the beard.” He goes storming out of the office. The next day he comes to work, he has shaved off his beard and he has shaved off his head. And honestly, I don’t know what the Chief’s reaction to that was. I can only imagine. But the chief was—he was concerned about appearances. Sort of a conservative instinct. And it wasn’t right to have a bearded guy on the staff. But anyway, that really was quite an episode.

03-00:19:09

Pollak: Everybody on the staff thought it was very funny, as I say. I doubt that the chief did. But I never asked him what he thought about that.

03-00:19:19

McCreery: Oh, that's great. Well, how were you assigned to the Oswald piece of it? Do you recall?

03-00:19:24

Pollak: Howard Willens just got me involved in that and that's where I also did some work.

03-00:19:30

McCreery: The research was all done and you were involved in writing the report mainly?

03-00:19:34

Pollak: Yeah.

03-00:19:35

McCreery: How—

03-00:19:35

Pollak: The FBI reports had come in. They had deposed people and so I got on top of all those materials and directed—I could see what were other things that hadn't been covered. I asked for additional information. I'll tell you one thing that I did. I went over to the Pentagon, I think more than one day. There was all of this media footage of what had taken place in the jail when Oswald was there up through the point of the shooting. And I remember sitting in a room over in the Pentagon where they were playing and replaying and replaying and playing in slow motion all of this footage to see what we could see and so forth. That all got integrated into what was written.

03-00:20:35

McCreery: That's something you never forget.

03-00:20:36

Pollak: Yeah, that's right. I have that picture seared in my memory. I have Oswald walking in one direction, walking in the other direction backwards. Seeing the film back and so forth.

03-00:20:51

McCreery: What do you recall about the time when the report was released?

03-00:20:57

Pollak: I remember relief that it was over. Actually, I packed my wife—I had two kids by that time. Packing our car and we took off on a trip. The conclusions that the report reached were known in advance. It didn't hit the country as a bombshell. It was out there confirming what had been in there. And as I recall, there was controversy at the time and it went on for a while. Certainly

Warren—I don't remember him, I'm sure, having anything to say about it. The report was issued and he went back to the Court.

He had been involved, I think. Again, the discussions took place between Rankin and Warren, I believe, and I know the two of them did spend a fair amount of time with each other. But as the report was—preparation of the report was drawing to an end, what was going on besides the normal job of finishing up a written project—there had been this saga going on with Mark Lane. This is months before the report came out, while the Commission was still in the middle of its work. Mark Lane had made these pronouncements that he had talked to witnesses and he had evidence which, as I recall, primarily had to do with the shooting of Officer Tippett, who is the police officer who got shot, that Oswald killed shortly after. And he supposedly had spoken to this woman whose name I can still remember. Her name was Markham. A woman I think who had seen Oswald. She was an eye witness to what had happened there, as I recall. My specifics may be off but as I recall, Lane was making statements that he had spoken to Markham and she had told him all kinds of different things and she had been pressured by the Commission to say these things. Her testimony was going to blow the whole thing apart. Okay.

So we wanted to pursue this obviously. And he was rather elusive. And he also made the mistake, incidentally, of saying that he had an interview with Markham on tape. So naturally the Commission wants the tape. Well, so what does Mark Lane do? Mark Lane, all the time he's making all these public statements, bad mouthing the work of the Commission, and he's got proof and so forth and so on, but he won't talk to the Commission. He goes off to Europe to give a speaking tour. He's getting paid, he's giving a speaking tour. Meanwhile, the Commission is trying to track him down, trying to get hold of the tape. Now we're drawing towards the end of the Commission and we still don't have him, we still don't have the tape. And then he starts bartering with the Commission. "Well, if you bring me back and you pay my expenses and you pay me so much money and so forth and so on, maybe I can finally do it." And it was rather outrageous. Ultimately, and this was very close to the end of the report. Somehow it did get worked out. He did come back. We got our hands on the tape and, of course, it substantiated nothing he had to say. This was all going on and finally we got that done and the report is done. Got issued.

03-00:25:43

McCreery:

I can see why your instinct was to leave town.

03-00:25:46

Pollak:

Yes, that's right. It was a badly needed vacation. Yeah. Now we're months before the Goldwater/Johnson election. And I had never been in the south of the country. So actually our family got in the car and we took a tour of the south. We drove through the southern states. And I remember that trip. First of all, all of the impeach Warren signs that were still up all over the place. And I

also remember—it was pretty clear what was going to happen at election. It was pretty much a landslide for Johnson. When you got down into Mississippi and Alabama, which were the only two states that Goldwater carried, it was like going into a different country at the time. And as clear as it was everywhere else that Johnson was going to win, it was just as clear down there that Goldwater was going to win. And when I was there, I had a parking sticker in the windshield of my car from the Justice Department. I remember somebody told me, I think. I don't know if they told me or I knew. But anyway, I took it out of the window and did not go advertising the fact that I was connected with the Justice Department. And actually, when I went back to work, I went back to work in the criminal division, and as chance would have it, the first thing I got involved in was a case down in Florida and Mississippi. So I spent a fair amount of time down there and really remember the hostility to the Justice Department at the time and to the Court, to Warren.

03-00:27:54

McCreery:

Interesting experience for you, though, staffing that Commission. Well, I wonder, is there anything else you'd like to say about the Warren Commission or the people you were working with there?

03-00:28:12

Pollak:

It was a good group of thoughtful people who really did approach it without any preconceptions. Howard Willens is a wonderful human being, very, very fine lawyer, a fine person. And I'm still trying to think of his counterpart—Redlich. But in any event, all of them, Rankin, the people at my level in the staff, and, of course, the Commission itself. And there, I think, among the members of the Commission may have been some concern about what was said in terms of the political ramifications. That the report would suggest that the right was responsible, the left was responsible. But there was no question from any direction as to the ultimate significant findings of how this happened. Oswald was just a sad sack and a fluke, one in a million thing that killed the President. But talk of a conspiracy and a cover-up and all the rest of it, I mean, really, really doesn't appreciate I think how thorough a job was done. And I think it's basically stood up.

03-00:30:09

McCreery:

And as you've already stated, Chief Justice Warren's insistence on confidentiality of the workings of that group meant that they didn't speak up afterwards to the extent that some of the—

03-00:30:23

Pollak:

The group was restrained in coming to its defense and getting out there and defending the report and approaching in terms of the public relations side of it to try to really sell their conclusions. Yeah. I think that's right.

03-00:30:37

McCreery:

Yeah, okay. Well, thank you. Maybe I'll just have you touch quickly on the other things you did with the Justice Department. You had a gig there of a—

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Pollak: I was there two and a half years.

03-00:30:53

McCreery: Couple of years.

03-00:30:53

Pollak: Something like that. I had a title worthy of Gilbert and Sullivan. I was the special assistant to the third assistant to the assistant attorney general or something. But I worked on a variety of things. I worked on some of the organized crime stuff that was going on in a tangential way. The Hoffa trials were going on. And I did some things in connection with that prosecution. I was involved in some bank investigations. At the time they were rewriting the federal Rules of Criminal Procedure and so I was involved in presenting the Department's standpoint on what those rules should be and so forth. For a few months, I asked for this, I went over to the US Attorney's office and just tried a whole bunch of street crimes because I just wanted to be in a courtroom and try cases. So I tried a bunch of criminal cases.

03-00:32:22

McCreery: Finally got to do that.

03-00:32:23

Pollak: I finally got to do that. That's right. That was always in my mind. I wanted to do it. And there's no place like a prosecutor's office to try cases.

03-00:32:34

McCreery: Yeah, okay. And just to follow-up on your clerking experience. Just talk about the extent to which the clerks stayed in touch with each other and the justices after the fact through the years.

03-00:32:50

Pollak: Well, as long as Warren was living, we had reunions. I'm trying to think how frequently. I don't think they were annual. I'm sure they weren't annual events. But we had several. I probably attended maybe, I don't know, five reunions or something of all the Warren clerks. And stayed in touch. Peter Taft, just fortuitously, Peter Taft was one of my co-clerks. It's funny. He wound up at one point in his career as the assistant attorney general in charge of the land's division at a time that I was representing the timber company out here having an issue. And I remember going back to Washington a couple of times, meeting with Peter. John Niles was in San Francisco for a while. John is no longer living. I saw John a little bit when he moved to San Francisco from New York. Don't regularly see Timothy Dyk, although sure enjoyed seeing him at the reunion recently. We haven't maintained a close contact. Maintained contacts with some of the other people who were clerking in the other chambers the year that I was there. There were a few that—we've stayed in touch with each other over the years.

- 03-00:34:50
McCreery: You talked about the recent reunion but we weren't taping at that moment. Maybe you could—
- 03-00:34:55
Pollak: Yeah, we had it just—
- 03-00:34:56
McCreery: —just describe it and I was interested in your musings on the fact that Justice Ginsburg—
- 03-00:35:07
Pollak: Yes.
- 03-00:35:08
McCreery: —didn't—
- 03-00:35:09
Pollak: What I was saying was that just earlier this year, first time ever, I think, clerks of a particular term had a—what we called a horizontal reunion. All the people who clerked that particular term in all of the chambers had a reunion. And most of the people, not all, but most of the people who are still around attended. And we had the reunion, it took place—we had a dinner in the Supreme Court building, which was hosted by Justice Ginsburg. And we took note of the fact there—there was a real irony and a poignancy almost to think that she was hosting this as a member of the Court because she was really a contemporary of ours and undoubtedly would have been a Supreme Court clerk herself were any women chosen to clerk. As of that time, there had never been a woman who had clerked for the Court and that undoubtedly was the reason she wasn't chosen. And at this reunion, which she very graciously hosted, we were all commenting on that and noting, fortunately, how things have changed for the better in a—I don't know if it's a short time or a long time but forty years.
- 03-00:36:53
McCreery: A little of each maybe.
- 03-00:36:55
Pollak: Yeah.
- 03-00:36:55
McCreery: And, of course, you've also come to see your old friend, Mr. Breyer, elevated to the Court.
- 03-00:37:02
Pollak: Yeah, yeah. That's right. He is loving it. I think it's keeping him young. It is a very demanding job. There's no question. And Steve, unlike Chief Justice Warren, is somebody who sits down with pencil in hand and works on those opinions and he works hard on it. Yeah, he's doing a great job, having a great time.

03-00:37:41

McCreery:

Good, okay. Well, maybe we won't spend a lot of time on your private practice, although I'm sure that would be a fascinating avenue, as well. But you have been a judge yourself for a long time here in San Francisco.

03-00:37:58

Pollak:

More than twenty years.

03-00:37:57

McCreery:

And I wonder if you could just talk about that a little bit, first the Superior Court and now the appeals.

03-00:38:04

Pollak:

Sure. Well, I was on the superior court almost—well, nineteen years approximately, something like that, before coming over to the court of appeals a little more than two years ago. Yeah, that's right.

03-00:38:22

McCreery:

And who put you on the superior court?

03-00:38:24

Pollak:

I was appointed by Jerry Brown and elevated by Davis. Superior court was a great job. It's a very rewarding job, I think. One of the benefits, which is even truer in the court of appeals. In the court of appeals we're working on cases in all areas at the same time. In the superior court, at least, you get to move around over time and you get exposed to areas that you've never been exposed before. Well, I wound up spending most of my time focused on civil practice, which is what I was doing in private practice, doing law and motion, writs and receivers, complex litigation. That's where I spent more years than anything else. And it was very, very rewarding.

As I say, the thing that really does strike you about judging, I think, is the recognition that you're part of a system. As a lawyer I was in private practice doing trial work for seventeen, eighteen years. And, of course, you look up at the judges and you almost have a feeling that a judge can do what he wants. But actually, you get on the other side of the bench you realize that's absolutely not the case and it's a system where you're playing off the attorneys, they're playing off you. And ultimately what you wind up deciding is circumscribed by these rules, which you are trying your best to follow and to apply. And when you do that and it all comes out and it seems right to you, it makes you feel good, you've done something good. Sometimes you wind up doing things that you wish you didn't have to do. There it is. You're not the legislature and you have to follow along. Sometimes you wind up throwing out cases where it could be a very sympathetic party, you wish you could help or something. "Look, you filed it too late," one reason or another. You're wrong. And you do what you think you have to do. Sometimes you are able to use some creativity and come up with solutions that are within the law, and solve problems and people walk away pleased and those are the days you go home feeling like you've done something worth doing. But it is a fascinating

thing to do. I think judging, it's a real pleasure to be able to do it because you are doing something that is impacting people and it's also challenging. Particularly doing appellate work, try to articulate the principles that apply, don't apply just in one case but apply in all the cases. It's a satisfying thing to be doing. And despite the fact that there are some financial drawbacks, it's well worth it.

03-00:42:41

McCreery:

And how do you work with the other judges in this system?

03-00:42:47

Pollak:

Very well. We have a very collegial group of people here and that's one of the things that does make it so pleasant. You disagree, toss ideas around without anybody taking things personally, which makes it enjoyable and not to mention more productive, I'm sure, in the long run. You go in to an appellate court and I think the image from outside is that you're sort of moving into a monastery or something. You're moving away from where all the action is. People are always asking, "Don't you feel isolated? Don't you miss contact?" But my feeling is really quite the opposite. In the trial court, it's true, of course, that you're having much—day to day you're having much more contact with other people. With lawyers, with parties, juries. There's lots of people. But basically, in the trial court they're your decisions to be made and they're your problems and in a sense, from an intellectual side of it, it's very isolative. You may talk to your colleagues and get advice from time to time, but basically you're worrying about your case. In the appellate situation, at least there are three of you on any one case. And my feeling is it's much more like moving back into a law firm, where we're sharing views and you're—not to mention socially, just plopping yourself down in each other's office and shooting the bull. It's much more the atmosphere of a law firm. But even in terms of the work. You're sharing the same concerns. It's not just an academic sort of thing you can listen to at lunch and give your opinion off the top of your head. You're all worrying about the same things. And I think in a significant way there's much more human interaction going on at this level, at the decision-making level. But anyway, they're both good jobs. They both got their challenges. You do move away. As a lawyer, as a litigator, I think most litigators will tell you they enjoy it, and I enjoyed it. But the aspect of it you don't like is the bickering that you do your best to avoid but somehow or other it's—I don't think anybody has ever succeeded in avoiding it a hundred percent. When you move on to the trial court you get away from most of that. But then when you—at the appellate court, when it's all on the record, you're really spared all of that friction and nastiness. It's really like going back to law school in many ways. It's almost full circle. I liked law school, the first year. It was an exciting year academically, working on all these issues. And really what I'm doing now, in a sense, is full circle. Going back and really dealing with the legal issues and divorced from the hassle of practice, sending out bills, all the other day to day practical problems that you've got to contend with in the practice. And not to mention clients and so forth. They say

practicing law would be great if it weren't for the clients. But judging you don't have the clients and you still have the legal issues.

03-00:47:06

McCreery: Well, you've certainly gotten to see the development of Constitutional law since you started out.

03-00:47:13

Pollak: Yeah. It's come a way. Wow, talk about full circle. Some of the decisions today, what's happening, taking us back to a period.

03-00:47:29

McCreery: Yeah. Well, you touched on *Bakke* a while ago and now the affirmative action's coming around again. You have lots of examples, I'm sure.

03-00:47:39

Pollak: Well, that's right. I was thinking mainly of I guess the area of state's rights and the area—

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McCreery: Sure.

03-00:47:48

Pollak: And the authority of what federal government can do in certain areas that the Court has been holding beyond the authority of the federal government and reserved to the states, which really is a development within the last ten years, if not less. Certainly would not have—did not see that coming forty years ago. When I was clerking, all the movement was in the opposite direction.

03-00:48:23

McCreery: Yeah, right. And you've gotten to see two more chiefs justice lead the Court and see all those developments.

03-00:48:32

Pollak: Yeah. Yeah, it's fascinating.

03-00:48:36

McCreery: Okay. Well, maybe we should end there. Your phone's ringing.

03-00:48:37

Pollak: Okay, okay.

03-00:48:38

McCreery: Thank you.

[End of Interview]