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Northern California U.S. District Court Oral History Series

Stanley Weigel

LITIGATOR AND FEDERAL JUDGE

Interviews conducted by
William Fletcher
in 1989

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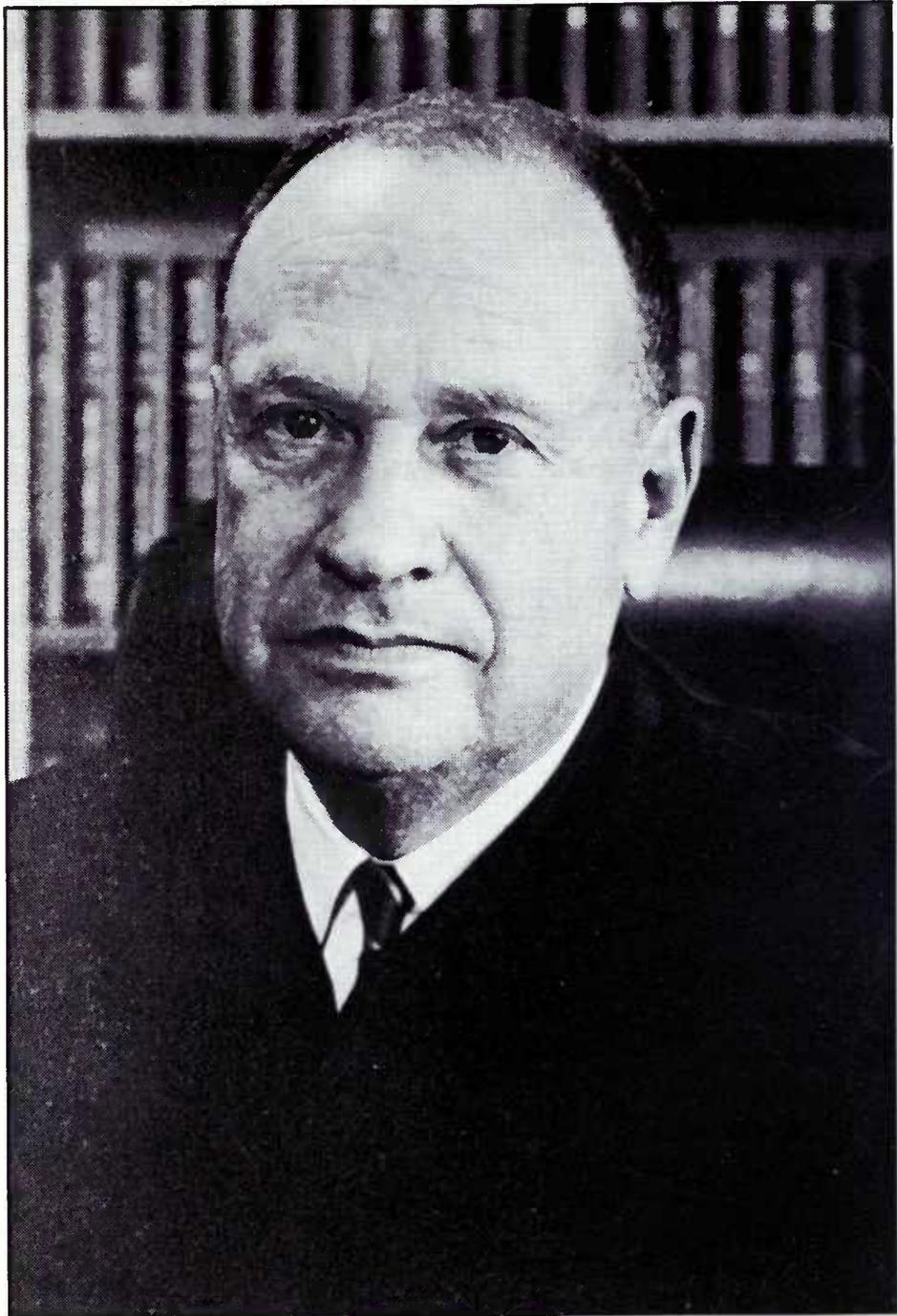
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Stanley A. Weigel, U.S. District Judge.

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Stanley Weigel (1905-1999)

Judge

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Education at Stanford University, and Stanford Law School; early work with Halsey & Leo law firm; litigator for Fitzgerald, Abbott & Beardsley law firm, discusses cases: Owl Drug Co., Fair Trade Act, Leco Products Co.; personal injury work, UC loyalty oath; World Federalists, Norman Cousins, Edward S. Rogers; federal judgeship, 1962: multi-district litigation, Yerba Buena case, 1969, Johnson case; San Francisco Unified School District controversy.

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Judge Stanley Weigel, 93, Dies; Acted to Improve Prisons

By WOLFGANG SAXON

Stanley Alexander Weigel, a retired Federal judge who had ordered California to improve living conditions in prisons and, earlier in his career, had defended professors dismissed for refusing to take a loyalty oath, died on Wednesday at his home in San Francisco. He was 93.

Mr. Weigel was considered a tough judge with a short fuse, but he was also known for his independence and his courage to render decisions regardless of their popularity.

He began his career in 1928 in San Francisco, handling antitrust cases. But in 1949 he took on a civil liberties case that many other lawyers had shunned because of its political implications.

Thirty-one professors had been dismissed by the University of California for refusing to sign a loyalty pledge. Mr. Weigel sued the university on behalf of the professors and won their reinstatement with back pay in 1952 when the California Supreme Court declared that a loyalty oath violated the State Constitution.

About that time, Mr. Weigel became friends with Pierre Salinger, the journalist and confidant of the Kennedy family. After Senator John F. Kennedy was elected President in 1960, Mr. Salinger took Mr. Weigel to

meet Attorney General Robert F. Kennedy, who was screening candidates for judicial appointments.

Mr. Weigel, who had served on the national committee of the American Civil Liberties Union, was a registered Republican.

In 1962, President Kennedy appointed Mr. Weigel to the United States District Court for the Northern District of California.

One case over which Judge Weigel presided began in the early 1970's when inmates in the maximum-security units at the aging San Quentin and Folsom prisons sued, claiming that living conditions were inhumane. The case would continue until 1984 when Judge Weigel ordered the State of California to make improvements.

The judge was also known for his leniency in sentencing draft resisters during the Vietnam War. While other judges would often send those convicted of dodging the draft to prison, Judge Weigel would routinely sentence them to community service or probation.

Stanley Weigel was born in Helena, Mont. He graduated from Stanford University in 1926 and from Stanford Law School two years later. He practiced law for two years before becoming a partner in the firm of Landels, Weigel & Ripley, now Landels



Associated Press, 1962

Stanley Alexander Weigel

Ripley & Diamond, representing corporations in antitrust issues.

Mr. Weigel also served two years as a lieutenant in the Navy in World War II.

Another highly charged issue before Judge Weigel grew out of the eviction of tenants whose homes stood in the way of the Yerba Buena

urban renewal project proposed by the San Francisco Redevelopment Agency.

In 1970, Judge Weigel blocked the replacement of the low-income apartments with hotels and tourist attractions.

He ruled that the developers had not done enough to find replacement housing for the displaced tenants, a decision that dismayed much of San Francisco's political and business community. In 1973, Judge Weigel worked out a settlement in which the tenants were provided new homes.

Judge Weigel reached senior status in 1982 but continued to hear cases until two years ago.

He is survived by his wife of 60 years, Anne Kauffman Weigel; a daughter, Susan Weigel Pasternak, of Cambridge, Mass., and four grandchildren.

In a 1995 interview with *The Recorder*, a legal newspaper in San Francisco, Judge Weigel related how the Salinger-Kennedy connection landed him in Robert Kennedy's office and on the bench.

"Robert Kennedy was wearing a turtleneck sweater and had a football and threw it at me as I walked in the door, and I caught it," he recalled. "That's how I became a Federal judge."

ACKNOWLEDGMENTS

The Regional Oral History Office, on behalf of future researchers, wishes to thank the following individuals and organizations whose contributions made possible this oral history of Judge Stanley Weigel.

Judge William Fletcher
U.S. District Court for the Northern District of California
Historical Society

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PREFACE

The Historical Society of the United States District Court for the Northern District of California is a non-profit organization established by federal practitioners and judges and is dedicated to preserve and develop the history of this court. The Society's goals are threefold: 1) to marshal the sources for historical study of the District; 2) to initiate and encourage comprehensive and scholarly study of the court; and 3) to develop interpretive programs and exhibits making the fruits of this research accessible and meaningful to the legal community and the general public.

In 1980 this series of oral histories conducted by The Bancroft Library was initiated as an important effort in the furtherance of the Society's objectives. By preserving the personal reminiscences of individuals whose experiences and memory can yield valuable "oral evidence" of the court's history, the Society hopes to enhance and amplify the written record.

In addition to historical study of the District, the Society hopes to promote greater public understanding and appreciation of the role of the federal judiciary. Except for those involved in the legal process, the operation, significance, and impact of federal trial courts remains largely a mystery to most Americans. By focusing on the history and activities of the Northern District, the Society hopes to bridge this gap between the legal and lay world and even encourage other District courts to initiate similar efforts. As the nation nears the 200th anniversary of the ratification of the United States Constitution, it is an appropriate time to raise the level of public understanding by placing the contemporary role of district courts in historical perspective.

Thanks are due to the foresight and generosity of the individuals and organizations whose support make this work possible.

Robert F. Peckham,
Historical Society of the
U.S. District Court,
Northern District of California

San Francisco, California
April 1981

Eighteen years since its founding, the U.S. District Court for the Northern District of California Historical Society continues to pursue the goals outlined above by its founder, Judge Robert F. Peckham. The comprehensive oral histories conducted by The Bancroft Library are a central part of the society's efforts to record the history of the court and of the law in Northern California. As Judge Peckham explained, by preserving "oral evidence" of the court's development, the society hopes to enhance the historical record contained in more traditional written sources.

The generosity of individuals and organizations continues to be important in making these volumes possible. Each oral history contains a list of contributors whose foresight has helped preserve a part of the Northern District Court's history.

Thelton E. Henderson
Historical Society of the
U.S. District Court,
Northern District of California

San Francisco, California
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Interviews Completed by 2000

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INTRODUCTION AND INTERVIEW HISTORY--Stanley A. Weigel

by William A. Fletcher

Judge Stanley A. Weigel, now retired, was one of the most distinguished members of the very strong federal District Court bench of the Northern District of California.

Weigel was born in Helena, Montana, on December 9, 1905. His family came to San Francisco after his father's clothing store failed when he was still a young boy. He attended grammar school in San Francisco and graduated from Lowell High School. Contemporaries at Lowell were Alfonzo J. Zirpoli, later a district judge on the same bench with Weigel, and Edmund G. Brown (Sr.), later governor of California.

Encouraged by his older brother who had not been able to attend college due to the family's economic circumstances, Weigel attended Stanford University. He worked his way through school, receiving his B.A. in 1926 and his LL.B. in 1928. (At that time, Stanford permitted undergraduates to begin law school studies during their senior year.) While an undergraduate, Weigel was student body president, chairman of the men's council, captain of the debating team, and an editor of The Quad, the school annual. He has maintained a lifelong loyalty to Stanford, lecturing at the law school beginning in 1952 and serving on the Board of Visitors from 1958 to 1963. He was honored as Alumnus of Merit by the law school in 1989.

While in law school, Weigel worked during the summer as an assistant in the firm of Halsey and Leo for \$2.50 per week. He began his legal career after graduation working for that firm, but then moved to Oakland with his friend Edward Landels, joining the firm of Fitzgerald, Abbott and Beardsley. He remembers nights eating just fruit and nuts to make sure there was enough money to pay their secretary. His early practice focused on real estate, but soon grew to include retail competition. He became a recognized expert on California's Fair Trade Act and similar acts in other states, and developed a large clientele consisting of some of the major companies in the United States. In 1938, he published The Fair Trade Acts (Foundation Press), a book that analyzed the fair trade acts of forty-four states and that helped to cement his reputation as one of the national experts in the field.

When World War II began, Weigel was married to the former Anne Kaufman, and they already had the first of their two daughters, Jane. (Their second daughter, Susan, was born after the war.) He and Landels had moved their law practice back to San Francisco, and it was thriving. Weigel nonetheless volunteered for military service, joining the navy as

a lieutenant junior grade. He was first stationed at a shipyard in Charleston, South Carolina, where his commanding officer regarded him as too valuable (to the commanding officer, that is) to leave the shipyard. Through a friend in the Navy Bureau of Personnel, Weigel managed to have himself assigned to a navy gunnery detachment on a merchant ship. Service aboard merchant vessels was among the most hazardous sea duties, though on the occasion of Weigel's appointment to the federal bench, his longtime friend, Judge Ben Deniway of the federal Court of Appeals, teased that he had fired on only one enemy submarine, which turned out to be a whale.

After the war, Weigel returned to his practice with Landels, Weigel and Ripley in San Francisco. His practice continued to be very successful, but his interests extended beyond his commercial clients. For example, he maintained a continuing interest in international affairs. Before the war he had been a member of the United World Federalists. In the decades after the war, he was active in the World Affairs Council of Northern California, serving at different times as both a trustee and president, and was president of the International Hospitality Center of the Bay Area from 1959 to 1968.

In April, 1950, the Board of Regents of the University of California passed a resolution requiring all faculty members to subscribe to an anti-communist loyalty oath, on pain of being discharged from the university. A number of faculty members refused and were fired. A number of San Francisco lawyers were approached to represent them before the regents and in court, but those approached were unwilling to take on the case, in part because of a reluctance to alienate A. P. Giannini, a member of the Board of Regents and head of the Bank of America. Bernard Witkin recommended to the professors that they ask his friend Weigel. Weigel recognized the professional risks, but after talking it over with his partners decided to take the case. In the end, he succeeded in winning reinstatement and back pay for the professors. (The California Supreme Court opinion is reported at Tolman v. Underhill, 39 Cal. 2d. 708 (1952).) What had started out as a risky venture resulted, in the end, in a defining public event for Weigel. He had always been independent, unafraid of authority, and sympathetic to those who were unfairly treated, but now these characteristics were on display for the world.

Weigel was a Republican, so an appointment to the federal bench during the Kennedy administration seemed unlikely. But Pierre Salinger, President Kennedy's press secretary, had been a reporter on the San Francisco Chronicle during the loyalty oath case and had become friendly with Weigel. Salinger suggested the appointment to Attorney General Robert Kennedy, who met, talked with, and liked Weigel. (Weigel recounts being thrown a football as he walked into the Attorney General's office.) His nomination was so uncontroversial that he was confirmed by the full Senate on the same day as his hearing before the

Senate Judiciary Committee. He took his seat on the bench of the Northern District of California in 1962.

Judge Weigel viewed law as an instrument of justice and fairness, not merely a game to be played between adversaries with the judge serving as an umpire. In his words, "I have not as a judge been prone just to call balls and strikes." Judge Weigel also did not take kindly to ill-prepared lawyers. His vigorously expressed view has always been that ill-prepared lawyers cheat their clients. As a result, San Francisco is full of lawyers who have done extra preparation before appearing in his courtroom.

During his career on the district bench, Judge Weigel decided a number of important cases. In Tenants and Owners in Opposition to Redevelopment ("TOOR") v. United States Department of Housing and Urban Development, 406 F. Supp. 1024 (N.D. Calif. 1970), he halted an extensive redevelopment project in San Francisco on the ground that over 3,000 units of low rent housing would be destroyed without making sufficient provision for relocating the displaced tenants. This case was controversial, and Judge Weigel was subjected to considerable political pressure, some of it verging on improper. Typically for Judge Weigel, it made not a whit of difference. In Johnson v. San Francisco Unified School District, 339 F. Supp. 1315 (N.D. Calif. 1971), he ordered mandatory busing to desegregate the San Francisco public elementary schools. The clarity of his thought and legal vision is captured by words at the beginning of his opinion: "The law is settled that school authorities violate the constitutional rights of children by establishing school attendance boundary lines knowing that the result is to continue or increase substantial racial imbalance. The law is settled that school authorities violate the Constitution by providing for the construction of new schools or enlargement of existing ones in a manner which continues or increases substantial racial imbalance. The law is settled that school authorities violate the Constitution by assigning black teachers and teachers of limited experience to 'black' schools while assigning few, if any, such teachers to 'white' schools. The evidence in this case makes it unquestionably clear that, as to the San Francisco elementary schools, the San Francisco school authorities have done all these things persistently and over a period of years." 339 F. Supp. at 1318.

Judge Weigel decided two important prison cases. The first was Wright v. Enomoto, 462 F. Supp. 397 (N.D. Calif. 1976), in which he sat as a member of a three-judge District Court with Court of Appeals Judge Ben C. Duniway and District Judge Albert C. Wollenberg. Judge Weigel wrote an opinion for the court requiring that California state prison authorities at San Quentin, Folsom, Soledad, and Tracy prisons comply with the due process guarantees of the Fourteenth Amendment before subjecting prisoners to confinement in maximum security units. The second was Toussant v. McCarthy, 597 F. Supp. 1388 (N.D. Calif. 1984),

in which Judge Weigel found that conditions of administrative segregation at San Quentin and Folsom state prisons violated the Eighth and Fourteenth Amendments. He enjoined the unlawful conduct and appointed as special master one of his former law clerks, Robert Riggs, to supervise the implementation of his order.

In Northwest Indian Cemetery Protective Association v. Peterson, 565 F. Supp. 586 (N.D. Calif. 1983), Judge Weigel enjoined the construction of a United States Forest Service road near remote wilderness areas used by Indian tribes for religious purposes, finding that the Forest Service had no compelling need for the road that could not have been served by some less intrusive means. The Court of Appeals for the Ninth Circuit affirmed but the Supreme Court reversed in Lyng v. Northwest Indian Cemetery Protective Association, 485 U.S. 439 (1988). In an opinion that has been severely criticized as unnecessarily infringing on the "free exercise of religion" clause of the First Amendment, the Court held that the United States, because it owned the Forest Service land, had no obligation to consider the impact of road construction on Indian religious practices.

In Dellums v. Smith, 573 F. Supp. 1489 (N.D. Calif. 1983), 577 F. Supp. 1449 (N.D. Calif. 1984), Judge Weigel held that a member of Congress and several private individuals had standing to enforce the Ethics in Government Act and to require the Attorney General to investigate whether the United States was violating the federal Neutrality Act by supporting paramilitary operations against the government of Nicaragua. Judge Weigel regarded Dellums v. Smith as possibly his most important case. The Court of Appeals for the Ninth Circuit reversed, 797 F. 2d. 817 (9th Cir. 1986), but Judge Weigel continues to believe that his reading of the statute was correct: "[I]t seems to me that [the statute] serves no useful purpose whatever if the attorney general is free to disregard well-founded complaints, well-founded evidence of violation of the law on the part of government officials."

Judge Weigel believed strongly in the importance of a district judge's discretion and judgment, not bounded by mechanical rules. This belief appears strongly in an article objecting to the federal sentencing guidelines that took away much of the sentencing discretion that district judges had previously exercised, published shortly after the guidelines took effect. See Weigel, "The Sentencing Reform Act of 1984: A Practical Appraisal," 36 U.C.L.A.L.Rev. 83 (1988). He also believed strongly in the importance of clear expression by lawyers and judges. See Weigel, "Legal Education and the English Language," 10 Nova L.J. 887 (1986).

During his years on the district bench, Judge Weigel was sought out by other judges for advice and help, both formal and informal. He sat for over a decade as a member of the Judicial Panel on Multidistrict

Litigation, a court charged with evaluating the suitability of consolidating multiple cases in complex litigation for pretrial treatment under 28 U.S.C. section 1407. (For a description of the panel's work, see Weigel, "The Judicial Panel on Multidistrict Litigation, Transfer Courts and Transferee Courts," 78 F.R.D. 575 (1978).) For a number of years, even before he took senior status, Judge Weigel also sat by designation as a member of the Court of Appeals for the District of Columbia Circuit. New district judges in the Northern District of California have frequently recounted his kindness and encouragement during their early years on the bench.

The interviews for this oral history were conducted in the spring and summer of 1989. Judge Weigel was at that time a senior judge, but he was still carrying a substantial load of cases. The interviews were conducted in Judge Weigel's chambers in the federal building at 450 Golden Gate Avenue in San Francisco, with sweeping views over the city to the south. The interviewer had been a law clerk for Judge Weigel during the 1975-76 year, and was, at the time of the interviews, a professor at the University of California, Berkeley, School of Law (Boalt Hall). Judge Weigel appeared to enjoy reminiscing about his practice and career on the bench, and was his typical gracious, humorous, and insightful self at every session. The tape of the last interview stops before the end of the interview, but the interviewer believes that no more than two or three minutes of the interview were cut off. As is readily apparent from the interviews, Judge Weigel's mind was sharp and his memory acute. Judge Weigel did not correct the transcript of the interviews, but the interviewer and the Regional Oral History Office of the University of California have gone through the transcript to correct any obvious errors in names, spelling, and the like.

The reader of Judge Weigel's oral history will find much of value. Of particular interest will likely be the life of a young lawyer before World War II, the loyalty oath case after the war, and the important cases decided by Judge Weigel during his time on the bench. From these interviews emerges a portrait of San Francisco's history during almost the whole of the 20th century, and a portrait of an intelligent and courageous judge who contributed importantly to that history.

William A. Fletcher
Judge, Ninth Circuit Court of Appeals

San Francisco
1999

I BACKGROUND

[Interview 1: June 7, 1989] ##¹

Growing Up in San Francisco

Fletcher: Can we start at the beginning? Where were you born and when?

Weigel: Well, let me respond by saying I'm particularly honored that you, [William Fletcher], a former law clerk of mine, a professor on the faculty of the University of California Boalt Hall Law School, are taking this oral history. What was your first question?

Fletcher: Where and when were you born?

Weigel: I was born in Helena, Montana, on December 9, 1905.

Fletcher: And how long did you stay in Montana? Obviously you're in San Francisco now.

Weigel: I'm not exactly sure how long I stayed in Montana, except to say that I'm sure I came here to San Francisco, or to California at least, soon enough to graduate from grammar school here.

Fletcher: So what brought your parents from Montana to San Francisco?

Weigel: Business conditions. My father owned a large clothing store in Helena, Montana, and it failed.

Fletcher: And then he came to San Francisco more or less trying to find a new situation?

¹## This symbol indicates that a tape or tape segment has begun or ended. A guide to the tapes follows the transcript.

Weigel: That's right.

Fletcher: How many siblings did you have?

Weigel: I had a brother nine years older.

Fletcher: And so the whole family came down from Montana to San Francisco. Was that then seen as the place of opportunity?

Weigel: I really don't remember.

Fletcher: How does that relate to the timing of the earthquake? You must have come down after the quake.

Weigel: Oh, yes.

Fletcher: When the town would have been rebuilding.

Weigel: Yes.

Fletcher: Where did you live in San Francisco?

Weigel: To the best of my recollection, we lived at one time in what is now known as Jordan Park and another time, somewhere on Hayes Street in apartments.

Lowell High School

Fletcher: And you went to school here in San Francisco, and as I recollect you went to Lowell High School?

Weigel: I went four years to Lowell High School.

Fletcher: Can you tell me something about your schooling here in San Francisco: good schooling, bad schooling, friends, incidents you remember?

Weigel: Well, my most vivid recollections, to the extent that I have vivid recollections, relate to high school. I was particularly influenced by a Latin teacher named Tucker, and a teacher of Spanish whose name I don't recall at the moment; it may come to me. One result of that is that although I only took a year of Spanish in high school, a good deal of it has remained, so that I speak sufficient Spanish to get by as a tourist. And sometimes in court when a translator will translate I think incorrectly, I'll correct them.

- Fletcher: Will the translator then disagree with your correction?
- Weigel: The last time, no, the last time I remember.
- Fletcher: What was the quality of the education that you got here in the San Francisco public schools?
- Weigel: It was excellent.
- Fletcher: What were your classmates like? How would you describe the student body?
- Weigel: One of my contemporaries was my colleague Alfonso [J.] Zirpoli. Another contemporary--I'm not sure if it was the same class--was Governor [Edmund G.] Brown [Sr.], not [Governor Edmund G.] Jerry [Brown, Jr.] but his father, Edmund. And I was sort of envious of a contemporary named Newman, because he was the pitcher on the varsity baseball team, and I wasn't very athletic. But his athletic prowess greatly impressed me.
- Fletcher: Now did the school at the time have activities comparable to what a modern high school would have--student council, student body president, and so on--and were you active in any of those affairs?
- Weigel: I was active in debating. I'm not positive about this, but I think I was valedictorian. If I wasn't valedictorian, I was the so-called orator of the graduating class.
- Fletcher: How large was the class?
- Weigel: I don't remember. My guess is thirty or so. I should say that I in part worked my way through high school. I ran errands, and sometimes during Christmas rush time, I was active as a salesman for a jewelry store located at Grant Avenue and Geary Street where Granat Brothers now is. So I worked a good part of my way through high school.
- Fletcher: Was this common among your classmates to work in this fashion during high school?
- Weigel: No.
- Fletcher: Was your father--
- Weigel: Excuse me for interrupting you, but another thought that just comes to me is the time I was here. I remember being sort of a star salesman, perhaps when I was in high school, for liberty bonds, probably during war time; I'm not sure. I remember

coming from work and taking a streetcar up there to high school. I would solicit riders in the streetcar to buy liberty bonds.

Fletcher: And would they buy them?

Weigel: I had some success.

Fletcher: On the streetcar?

Weigel: Yes.

Fletcher: Now at this time, high school and so on would have been through World War I and shortly thereafter. What was the physical look of the city at this time? Can you recollect what it looked like during high school period?

Weigel: Downtown there weren't many highrises. As to the outlying areas, I don't remember a great deal of difference. For example, sometimes now I drive past the apartment house where we lived on Geary Street, and I guess it was Jordan Park I mentioned, and that building seems the same as it was when I lived there. I don't remember much change.

II STANFORD UNIVERSITY

Choosing A College

- Fletcher: Now after high school I know you went to Stanford as an undergraduate. What took you there?
- Weigel: I think what took me there was a sort of paternal interest of my brother nine years my senior whose name was Garnet. He was not only an older brother but also the father. He hadn't gone to college himself. My father's financial adversity required him to work, as he did, but he was very anxious that I should have a college education and that Stanford was the place to go. Just what directed him to direct me to Stanford I don't know.
- Fletcher: Were your parents still alive at this time, when you went off to college?
- Weigel: Only my mother.
- Fletcher: So when you say paternal, your brother had to some extent stepped into the void after the death of your father?
- Weigel: That's right.
- Fletcher: Now you had a perfectly--this is a parochial question I admit--good university across the bay that you didn't go to.
- Weigel: That's right.
- Fletcher: And in fact this is true now, and I expect was to some extent true then, that the University of California is the good school for people who are not wealthy and Stanford now is, at least relatively speaking, the school where people who are a little more comfortable tend to go. Was that true then?
- Weigel: To the extent that has validity, it was true then as it now.

Fletcher: But nevertheless you went to Stanford. I expect then from what you say, you were probably a scholarship student?

Weigel: I was not a scholarship student. I worked most of my way through Stanford and I borrowed my way through Stanford. You could sign notes payable after graduation for your tuition fees at Stanford. And I lived, at least for a time until she died, with my mother in Palo Alto.

Fletcher: Did she move down then to Palo Alto when you were in school?

Weigel: Yes.

Fletcher: In order to be with you or move down independently?

Weigel: I'm not quite sure. I guess my brother probably arranged for it. I don't remember.

Fletcher: What do you particularly remember about Stanford during this time?

Recollections of Days at Stanford

Weigel: Well, I remember an almost naive, wide-eyed acceptance of everything at Stanford. I remember friendships, some of which have persisted through the years. Was your question relating just to the start at Stanford or to the whole--

Fletcher: I'll take the whole time, although I'm about to--I'll get after a time to the fact that you were the student body president. So I'll save that for a separate question. Let me ask about the courses you took. How did you find the place intellectually?

Weigel: I think I was perhaps too naive to judge the place intellectually and judge the teachers or professors intellectually. By and large there was an unquestioning, almost naive--although that's perhaps too pejorative a word--acceptance of Stanford and everything there. Some professors I liked better than others.

Fletcher: What subjects or professors did you particularly like? I won't ask about the ones you don't like.

Weigel: Just before you asked that question I was thinking of a Professor Hume who I think taught history. I remember his

references frequently during lectures to this phrase: "The world of multiplicity and change." At the moment at least I have very little recollection of specific undergraduate courses.

Fletcher: In those days, were you required to take a major? And if so, what was your major?

Weigel: In those days, you could take a year of law in your last two years of undergraduate work--there were normally four years for an A.B. degree--and then get a J.D. by taking two years of law after you got your A.B.

Fletcher: And did you take advantage of this program then?

Weigel: Yes, I did. So I didn't have any major in that sense.

Fletcher: But you ended up concentrating on law during your fourth year?

Weigel: That's right.

Fletcher: What was the social atmosphere at Stanford like during that time?

Weigel: Well, there were 500 women, 500 in quotes, and about 2,500 men, and there was a tradition of saying "hello" when you met somebody or passed somebody on campus whether you knew them or not. There was a sort of social diversity of kinds between the Row, that is, the fraternity and sorority people, and the Barbs--short for Barbarians--who were either unaffiliated altogether or belonged to eating clubs. I became a member of an eating club known as Los Arcos. I did various things in Stanford to help pay my way through. I hashed, which meant waiting on tables, occasionally at Los Arcos, not infrequently at one or more sororities. Also, I worked as a clerk at a music store called Dodsens in Palo Alto, which had primarily phonographs and some musical instruments. I wrote the newspaper advertisements for that store. I think I gave it the heading of--it was a column called Music Notes in which I would review records and things of that kind. One of the privileges of that work was--and I hadn't recalled it until just now--was I had a key to the store and I could go down in the evenings or at times when the store was closed and play phonograph records. One of my contemporaries at Stanford was Dalmer Days, who later became a very well-known movie director. He and I would sometimes go down and listen to records together. The popular artists at that time were, among others, Paula Pipeman.

Dalmer Days brings to mind an incident. I went out for the sophomore play, that is, to be cast as a member of the play given by sophomores annually. The play was Captain Applejack. The lead in that play was played by Lloyd Nolan, who became a well-known movie actor. Based upon, I guess, my voice, I drew the part in Captain Applejack of--two parts: one was a villain who fought with Captain Applejack on a ship that he captained, and another was some kind of--I don't know how it fit into the plot of the play--a soothsayer. I got that part.

I also went out for the debating team simultaneously. I remember that after getting that part, when I walked on the stage on my first entrance, the faculty director of dramatics, a man named Davis, greeted me with a shout, "My God, man, don't you know how to walk?" I attended several rehearsals. The cast recruited an absolutely lovely girl named Marjorie Allen whom I worshiped from afar.

I didn't last in the cast, and I suspect that what happened was that the dramatic coach went to the debate coach and implored the debate coach to say to me that I was far too important for debating and I ought not to try both things. I think that's what happened. In any event, I didn't finish in the cast. However, my dramatic needs were to an extent sustained later on in Stanford when I attended summer sessions, and some female professor who taught dramatics I think down at UCLA [University of California, Los Angeles] directed a number of Greek plays and I played leads in those Greek plays, including one named Agamemnon. They were conducted on the steps of the museum at Stanford.

Fletcher: Did you have to walk in those plays? [Laughter]

Weigel: I got high marks from her. Well, those things came round. It's interesting to me, for the moment at least, I recall very little of the courses I took or of the professors I had at Stanford. I remember the dean of men very well, probably because I was chairman of the Men's Council, which had to do with disciplining students who violated rules or cheated on examinations or anything of that kind. I remember being in some awe and a great admirer of Ray Lyman Wilbur, who was president of Stanford. One of his claims to fame was the statement that "alcohol and gasoline don't mix."

Fletcher: Was that a problem even back then, students drinking and driving?

Weigel: I don't remember that it was much of a problem, no. Automobiles weren't allowed on the campus for a long time, at

least on the inner parts of the campus where there were roads but no cars.

Fletcher: Did many students have cars?

Weigel: Not too many. That brings to mind that with two of my classmates, three of us went together and bought a very old and dilapidated Maxwell roadster, which was a great pride. We used to drive it to the city. Also, before my mother died, I had a --I find myself wondering why all these things at the moment come to me and nothing about classes. But in any event, they come, so let them come. I remember, speaking of transportation, that when I lived with my mother in Palo Alto, I think on Everett Street, I had one of these motorcycles that the power was communicated to the wheels by a strap, a leather belt. It was a wonder, and it was very hard to start in the morning. On cold mornings I had to crank unmercifully to get the thing going. Every now and then, the strap would break, and I took it regularly to the shoemaker who would repair it, and finally at one time he said, "Well, this is the last time I'm going to fix this strap." That, I think, was the end of the motorcycle.

Fletcher: Now when you say crank, did you have to crank it by hand?

Weigel: No, with your feet.

Fletcher: Were motorcycles then regarded as dangerous, as they are today?

Weigel: Yes.

Fletcher: Did your mother object to your having a motorcycle on that account?

Weigel: She didn't like it very much.

Fletcher: So when the strap broke for the last time, she probably didn't mind a bit.

Weigel: She was pleased.

Fletcher: Tell me more about the car and what you and your friends would use that for. To the city for dates?

Weigel: Yes, we would go to the city for dates. I think on one occasion I, by arrangement--we traded off--I drove with a friend of mine named Gene Walker up to Yosemite, got there and back as far as transportation is concerned without much

incident. This was really a broken down old Maxwell, but it ran.

Fletcher: What was the social life in the sense of dating? Would people have dates on campus? Would they regularly go to the city? I can obviously smell some consequence of having many more men than women on campus. How did that work?

Weigel: Well, the way it worked was that there would be dances and some of the men would have dates with Stanford women and women from Mills College or other places. That brings to mind some parting comments about Mills College which I won't repeat now. The typical dance, whether it was a fraternity or an eating club, would be that around the windows and around the outside of the dance floor, there would be a large number of men who were called roughs; they were roughing it. Occasionally I guess they'd tap one of the men who had dates and get a dance but not very often.

Fletcher: I know that Mrs. Weigel had the good taste to go to Cal [University of California at Berkeley]. Did you meet her during this period?

Weigel: No.

Fletcher: So, that's for a later period.

Weigel: Much later.

Fletcher: Now, I know that you became the student body president at Stanford, at least I think this is correct. Am I right?

Weigel: At Stanford I think I held almost every--I was chairman of the Men's Council; I was captain of the debating team; I became student body president; I was an editor of the annual, *The Quad*, for which I wrote dramatic reviews; I think I had other student body positions which don't come to mind now.

Fletcher: It's beginning to be clear to me why you can't remember your classes. [Laughter]

Weigel: Me too.

Fletcher: In those days, I assume they had the same expression that I knew when I was a kid from the University of Washington, the Big Man on Campus phenomenon. Were you considered to be a Big Man on Campus? It certainly sounds that way.

Weigel: I think so.

Fletcher: What impelled you in this direction? Number one, what made you want to do this sort of thing and how did it happen that you were so successful?

Weigel: I'm not altogether sure. I was quite gregarious and extremely fond of Stanford, to which I'm still very much devoted, and for example, I suppose that to some extent I became well known for debating. I debated on the team, the Stanford team that met the debaters that came over from Oxford. I was asked by the so-called Barbs to run for student body president and did.

Fletcher: You were yourself a Barb, as I understand the social system.

Weigel: That's right. I was a member of this eating club. That was a Barb, as distinguished from belonging to a fraternity.

Fletcher: Was it typical that a Barb would become a student body president or was this a coup for this to happen?

Weigel: No, it was not a coup at all. The Barbs were beginning to lose their political ascendancy about the time that I ran. And not too long thereafter I think the tragedy happened when some member of a fraternity became student body president.

Fletcher: But during the period that you were student body president, that was more or less the political path?

Weigel: That was routine, yes.

Fletcher: When you say the Barbs asked you to, was it an informal caucus, a sort of a party primary? How did that come about?

Weigel: Well, I may want to excise this but I'll tell you about that. There was a secret organization known as The Gang which I didn't know about until I was asked to run for student body president. The history is--or at least I think it was the fable--but in any case, I was given to understand and believe it may have been true that the gang was started by [President] Herbert Hoover, and it consisted of a small group of students, nonfraternity students, who met annually or semiannually and secretly in San Francisco at some restaurant, and they sort of ran the student body politics. I was invited to come one night to the track field where about twenty or twenty-five students were. I was told about The Gang and I was asked if I would be willing to run for student body president, and I said I would. And that's it.

Fletcher: And were you then asked to become a member of The Gang at that time?

Weigel: Yes, I became a member of The Gang, and I did attend one or two meetings in San Francisco. But I think the gang no longer is.

Fletcher: Although if it's a secret organization, it may still be very secret.

Weigel: I don't think it's there anymore.

Fletcher: Once nominated by The Gang, was the election then relatively assured?

Weigel: No, because there was another Barb who ran, as well as a fraternity person, and I was elected over both of them.

Fletcher: What would the student body president do in those days? What were your responsibilities?

Weigel: Well, you presided at meetings of the student body. You presided at football rallies. You'd present to the administration whatever matters were of interest to the students who wanted a hearing or wanted something changed. You just ran student affairs generally.

Fletcher: What was the relationship between the student body and the faculty and the administration at Stanford in those days? Today we're accustomed to a fairly adversarial relationship between students and administrators. Was that true then?

Weigel: I don't think so. I think it was much more harmonious than what it appears to be now.

Fletcher: Can you speak more generally about the Stanford of today, which I know you keep quite close to, and the Stanford when you were a student? What has changed? What is the same?

Weigel: My guess is that there's much more emphasis on scholarship. I would doubt that there's as widespread and devouring an interest in athletics, particularly football, as there was in my time, although I realize there's still a great deal of interest in it among the students. I think by and large the student body today is much more oriented toward scholarship and social and political issues than it was then.

Fletcher: This question may not be easy to answer or to have a meaningful answer. Obviously you had a very enjoyable and profitable time at Stanford. If you had to choose between going to school at the Stanford of your time compared to the Stanford of today, which would you think would be a better place to go to school?

Weigel: I don't know if the tape will show it, but there's a long pause here, and there may continue to be. I think for undergraduate work, the Stanford of my day, because of the closer contact between students and faculty; because of smaller classes; because undergraduates were taught by people whom I think today would not do much in the way of undergraduate, by distinguished faculty members, who wouldn't do so much today. And because it was a smaller school and had the elements in the very loose sense of family relationships. One got to know a large number of members of the student body. In my case I think I knew perhaps by name, certainly by sight, 75 percent of the students. The totality of these elements, some of which I haven't mentioned and won't try to delineate, tended to be inspirational. There really was a something that was not inappropriately called the "Stanford Family," not in the sense of the Stanford founding family, but in the sense of the school.

I'm inclined to believe that at least for most people, certainly for me, the consequence of personal relationships with fellow students as well as with faculty members is a very important thing.

Fletcher: I agree with you, particularly at that stage in one's life. Maybe later in a professional school it can be more intellectual.

Weigel: Right.

Fletcher: What's your sense, if you can give it to me--and you might not have a sufficient knowledge of comparing say the University of California, Berkeley, at that time--was this a product of the change of times or was it a student characteristic simply of Stanford?

Weigel: I'm not sure I understand your question.

Fletcher: Well, would the University of California, Berkeley undergraduate, at the time you were at Stanford, have anything like this intimate feeling? I know it does not today. One of my major complaints about Berkeley today is its large, impersonal character.

Weigel: Well, I think in pockets it may have. For example, one of my best friends is Bernie Witkin, and Bernie was the center of a small group at the University of California who met regularly at bull sessions as they were called. But on the whole, the sense of family that I referred to and haven't adequately described or properly described, was nonexistent I think at

Berkeley and was existent at Stanford, probably as a matter of function of size. For example, I'm very pleased that my grandson is going to Carlton College, which is a small place, because I think that will be more useful to him in terms of molding and inspiring than had he gone, for example, to Harvard as a freshmen.

Fletcher: Was there prejudice at Stanford at that time?

Weigel: Yes. What kind of prejudice are you referring to?

Fletcher: I'm thinking specifically that here I have a poor boy, a Jew from San Francisco who's elected student body president at what was then and I think still is a school where a number of privileged and rich people go. And I'm saying now, was that a puzzle?

Weigel: Well, it was. I wasn't going to mention it, but when I was asked to meet with The Gang, and they asked me to run for student body president, I said, "Well, do you know that I'm a Jew?" And they said, "Yes, of course. That makes no difference." But it certainly would have made a difference in the fraternities. There wasn't a Jewish fraternity at Stanford and they just didn't take Jews. When I was student body president, to emphasize the fact that I was a Jew--not a religious Jew, because I'm not; I'm an agnostic and I never really was a religious Jew although I remember going to Sunday school--but what I did at Stanford was to come up to San Francisco every Sunday to teach Sunday school at the Temple Emanu-El here in San Francisco, because I for some reason or other wanted it to be known that I was a Jew, at least in the sense of the term that gets used by most people.

Fletcher: Were there other Jewish students who were prominent in student life?

Weigel: Yes, there was a student named Paul Bissinger, who was a dramatics manager. He was extremely wealthy. He came from a very wealthy family, a San Francisco family. Rhoda Lewis became president of the women students. And later on, Janet Weinstein became president of the women students. Also, to Stanford's discredit, I think at the time I was there, there may have been one black. I don't know if that was a matter of design, but another possible answer to your question, if it was a question, is that except for exclusion from fraternities with a very rare exception, I don't remember any prejudice based upon Jewishness or blackness or any other ethnic prejudice. I don't remember any.

Working as Campus Newspaper Correspondent

Fletcher: As you look back on those Stanford years, what would you say was the very best thing that happened to you?

Weigel: I don't know. I think the self-expression and sense of achievement that came from a number of things. For example, I, later on, earned a good deal of my way through school by working as a campus correspondent. That came about because in my sophomore year I conceived the idea, when the big game was then as it is now a major athletic event--then much more than now; there was no pro football--of having a football debate in the newspaper. The first newspaper was the *Call Bulletin*, the evening newspaper, along with the *Examiner*, which was the morning newspaper. I went up and I talked to the editor, a man named Pat Frame of the *Call Bulletin*. I said, "Look, why not have a football debate? And I'll--"

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Weigel: "--before the big game, and one day in the sports page there will be a discussion of the left ends, for example, and I'll write about the Stanford left end, and you get somebody at Berkeley to write about the right end who would be playing opposite, or any position on the team." He thought that was a great idea, and it worked out quite well. I think he got Dick Morse, who was an avid California sportswriter. No, Roy Cummings he got, who was from California, to write the Cal side, and that was a success. And then I became Stanford correspondent for the *Call-Bulletin*. I would get paid by the number of inches that would run in the paper. And I used to run down to the train that brought the first edition of the afternoon paper to Palo Alto along with a ruler to measure the number of inches that I was going to get paid for.

The sports thing had a lot of interesting perquisites. For example, I could sit in the press box, which I did. I got to know the coaches and the leading football players, who became very good friends of mine. One time, I didn't have enough money to go to the USC [University of Southern California] game in Los Angeles, and I'm afraid I violated the law; I got on the train without a ticket and the assistant coach, Tiny Thornhill, assistant to Pop Warner, saw me wandering around and asked me what was the matter, and I said, "I don't have a ticket." Can you imagine the great glory of this sophomore, maybe a junior, of sleeping in a compartment with Pop Warner and Tiny Thornhill, coaches?

Fletcher: Pop Warner was then the Cal coach. Was that right?

Weigel: No. Pop was never. You're thinking of Andy somebody-or-other.

Fletcher: I'm mistaken that way. So this was the head coach of Stanford whose compartment you were in?

Weigel: Yes. Oh, he was very famous. The denouement of my working for the *Call-Bulletin* was quite interesting. One day I went on down to the train to see what space I had, and on the first page was a great, big Hal Bunch drawing of Dudley the Grout, "who will now be writing sports for the *Call-Bulletin*." I dashed up with fire in my eye. How could have Pat Frame done that to me? He was very shamefaced, and he said that what had happened was--I was just a sophomore, you must remember, or maybe a freshman--that at Stanford the tradition was you couldn't be a correspondent for a San Francisco newspaper unless you had worked your way through the *Stanford Daily*, the student newspaper. And he said, which may or may not have been true, that anyway it was better to have Dudley the Grout, who had been captain of the football team, because Al Masters, the graduate manager, had said I didn't know much about Stanford background as a freshman.

But this turned out to be a blessing in disguise, because I immediately high-footed it over to Oakland where the [William Randolph] Hearst paper was called the *Post Enquirer*, and I got an interview with the publisher, a man named Carl Hoffman, who was a colleague of one of the great newspaper editors of all time. His name escapes me at the moment; it will come back to me. But Mr. Hoffman I persuaded that the paper ought to have a Stanford correspondent, and he agreed. I got a better job with them than I had with the *Call*, and I didn't have to worry about deadlines so much because that was way across the bay and they didn't care much about deadlines as they did about interesting copy.

In the summers I cubbed as a newspaper man. I was a cub reporter, and I was enamored of it. I used to occasionally broadcast on the radio station in Oakland, broadcast sports and news and one thing or another, and I really thought I wanted to stay and be a newspaper person. And I envisioned myself as being a great correspondent like Ernie Pyle, a war correspondent or something like that.

Fremont Older was a colleague of the great editor, a very famous editor. Fremont Older was a colleague of Mr. Hoffman. When I got my law degree, I went to see Mr. Hoffman and I said, "I thought I would like to stay in the newspaper business."

And Carl Hoffman said, "You've got your law degree. You're a good newspaper man, but look at all the drunks and so on that are on the newspaper. You get out of here and go practice law." [Laughter] And so I did. Well, that was a considerable digression, but I was very happy at bouncing really up from being fired by Pat Frame without cause and getting a better job with the other paper.

Fletcher: All parts of that are a good story.

Weigel: Let me tell you another part of that. The *Oakland Post Enquirer*, the Hearst paper, was absolutely dominated by the *Oakland Tribune* at that time. Who was the senator from Formosa?

Fletcher: [William] Knowland?

Weigel: Yes. The *T* was acting as a cub reporter--and I must tell you what a college education does for you in that connection--I had learned that the *Tribune* Stanford correspondent got about twice as much pay as I did. And you must remember, and I'll repeat, the *Tribune*, say, had a circulation of 250,000 and the *Post Enquirer* may have had a circulation which was struggling, maybe 75,000. So I went into Mr. Hoffman's corner office. He had the newspaper up in front of his face. He let me sit there. He had a sense of what was coming, I guess. Finally he put it down and he said, "What do you want?" And I said in tremulous voice, "Mr. Hoffman, do you know what the *Tribune* pays their Stanford correspondent?" Hoffman said, "The *Tribune*? Are they still publishing a paper?" [Laughter] And I got out.

Now about the college education and cubbing. I sort of hero worshiped the city editor of the *Post Enquirer*. His name was Homer Thomas, and he was a very daring person. He'd go to any lengths to get a story. There was a murder in Oakland; Bessie Ferguson was murdered, and she had been a nurse. One of the interesting things about the murder was that her body had been sawed up into different parts and different parts were buried or thrown away in various parts of Oakland. And this was a great mystery. As I say, some writer wrote a story about it, a book about it. The *Post Enquirer* and the *Tribune* were doing everything they could to get an advantage to get leads on this breaking story.

I once rode with Homer Thomas, who followed a police car with a siren out to the Berkeley police station, drove terribly fast through all kinds of traffic. He kept his car right on the tail of the police car, and we ended up at the police station in Berkeley, where apparently the mother of Bessie

Ferguson was being interviewed by the police. All the reporters gathered outside the door waiting for something to happen. But I had a college education, and I went around the side, and there was an open window, and I heard the total interview. I went back and slept in the ladies' room where there was a couch at night. But as a result of this great lead that I got for the paper, they put me up in this swank hotel, the Hotel Oakland, for one night. And that was a great achievement for me, a great luxury.

Then to just play the finishing thing on that Bessie Ferguson murder, our paper had the lead until the *Tribune* got some sheriff with a badge who had no jurisdiction from some outlying county to go to Bessie Ferguson's mother's house and flash his badge and get a trunk containing all of Bessie Ferguson's correspondence out of that house. And that gave the *Tribune* a lead for a real long time.

But in any event, to get back to Stanford. I would choose Stanford over Cal for undergraduate work. I think if I had to do it over again, I would study much harder than I did, particularly in law school. Apart from that, I'd go to Stanford all over again.

Fletcher: It's twelve-thirty. Why don't we break now? What I want to do is to pick up next time around. I want to talk about law school, what took you into law and so on. But let's not wear you out here.

III STANFORD LAW SCHOOL

[Interview 2: June 21, 1989] ##

Recollections of the Law School

Fletcher: Last time we talked about growing up and your experiences as an undergraduate at Stanford, which brings us up chronologically to law school. I understand you went to law school at Stanford and did it in two rather than three years, because you started as really a senior in your law school studies.

Weigel: That's right.

Fletcher: Can you describe the Stanford Law School and what you liked about it?

Weigel: Well, the school was not large. I don't remember the exact number, but my impression would be that the average class was thirty or less. But I'm not sure about that.

Fletcher: Average graduating class or average instructional class?

Weigel: Instructional class.

Fletcher: Do you know about how many in your graduating class?

Weigel: No, not offhand. I should have looked some of these things up. But in any event, what I liked about it primarily was the faculty. I remember particularly well the professor who taught Torts, Cathcart, of whom you may have heard. I don't know if you did or not.

Fletcher: I know the name.

Weigel: The dean who taught Real Property; his name for the moment escapes me. The professor who taught Bankruptcy and Future Interests of all things, who was supposed to have modeled his

teaching upon that attributed to Earl Warren at Harvard: "Look to the right, look to the left of you; only one of you will be here," something like that. But he was a very inspiring teacher. There again his name escapes me, which is too bad.

Professor Ranier, who taught Personal Property and who had a very earthy manner of speaking and always spoke of a piano as a "pie-ana." My principal recollection of law school was the inspiration of these teachers and perhaps others who don't come to mind right now.

Fletcher: What was the method of instruction? Was it the classic Socratic method where they would ask questions and not give answers?

Weigel: It was a mixture. Some used the case book method and some of the professors would call on you to recite the facts of the case and ask questions about it.

Fletcher: Is it greatly different from what you gather goes on in law schools today?

Weigel: I just don't know, because I'm not sure what goes on at law schools today.

Evaluation of Effectiveness of the School

Fletcher: This is a classic question for law schools today, but also I'm sure for your law school: how well did the law school prepare you for practice?

Weigel: I don't think too well. In my time, there wasn't any such thing as trial advocacy courses and so on, as I remember it.

Fletcher: Were the students conscious of this at the time, that this was not going to be a full preparation for what they were going to encounter?

Weigel: I think so. I think that's the case.

Fletcher: Any complaints about it? Modern students do complain about this.

Weigel: No, I don't remember any complaints about it.

Fletcher: Was there any one subject or two subjects that were particular favorites of yours?

Weigel: Another teacher comes to my mind--I'll answer your question in a moment--Professor Whitaker; he taught Contracts. The faculty, I thought, was excellent. Favorite courses? I can't recall any that were particular favorites, probably Constitutional Law, but I wouldn't even be sure about that. At the moment, my recollection about law school is far short of what it ought to be.

Summertime Work at Halsey & Leo

Fletcher: Now, modern students will often work in the summertime for law firms while they're going to school. Did that happen then?

Weigel: Yes. I did that, and I started to work at a law firm called Halsey & Leo. I wrote letters to the various law firms--I think my elder brother supplied a list of some of them--indicating I wanted to find out what the practice of law would be like, and I got two or three responses that involved no pay, and the Halsey & Leo firm offered \$2.50 a week. Because I had no knowledge of the characters of the different firms, I took that.

Fletcher: And to get some sense as to how poor a wage that was, what would a beginning lawyer be making at that time?

Weigel: My guess is about \$150.

Fletcher: So inflation has not been that much. Two dollars and fifty cents is as bad as it sounds.

Weigel: That's right.

Fletcher: And what did you do for the firm during that summer?

Weigel: I ran errands; I served papers; answered telephones and carried briefcases; did some research.

Fletcher: Did you feel that the summer was worthwhile?

Weigel: Yes. It was very worthwhile, because I got the feel of a practice as it was in those days for a very small firm, just the two partners. So I knew, by actually handling papers, what a demurrer was, and some of the terms that were abstractions in

law school became realities--because you saw the actual documents and saw how they related to the practice.

Fletcher: Now would you have studied in Civil Procedure what a demurrer was, so you had heard of it but hadn't seen it?

Weigel: Well, I think I knew what a demurrer was, what its effect was. A demurrer was perhaps not necessarily a very good example, but working in a law office brought a measure of concreteness to what was without that experience sort of academic concepts.

Fletcher: Yes. You sound exactly like my students today. Did you work for the same firm after your--. Well, I guess now you only had two years of real law school, so there was only one intervening summer.

Weigel: That's right.

Fletcher: So between your senior year in college and your first year in law school you didn't do this. Was it customary for your classmates to work for law firms?

Weigel: Not necessarily. I don't think so.

Classmates

Fletcher: When you and your classmates sat down to talk things over, over lunch or wherever, what were their aspirations and what were yours at that time?

Weigel: I'm not sure that I can recall with any accuracy. I think my aspiration, in any event, was to be useful and to be successful and to do well enough to support myself.

Fletcher: Now the generation that's gone to law school in the seventies had notions of changing the world. That's less so now. And from the sound of it, that wasn't really why people went to law school when you were going through school.

Weigel: I think there's a good deal of idealism to that effect.

Fletcher: Was there the sense of public duty and public service that we know lawyers always talk about, but did they feel it at that time?

Weigel: In law school?

Fletcher: Yes.

Weigel: I'm inclined to think so.

Fletcher: Where were your law school classmates drawn from? Primarily California?

Weigel: Yes. Primarily southern California.

Fletcher: And they would come up here, then, from Los Angeles. Was there a law school at UCLA at that time? I should know the answer, but I don't.

Weigel: I don't either; I don't know.

Fletcher: Did many of them go back to southern California, or did they tend to stay up here? Was there any pattern, do you know?

Weigel: I think they went back to southern California. But this is hazy in my mind.

IV HALSEY & LEO LAW FIRM

Joining the Firm

Fletcher: When you got out of school, what kind of job did you take?

Weigel: Out of law school?

Fletcher: When you finished law school.

Weigel: I went to work for the firm that I'd worked for during the summer.

Fletcher: Halsey & Leo.

Weigel: Halsey & Leo. And I did that on the arrangement that in addition to my salary, which as I remember was \$150-200 month-- I'm not sure about that--but any business of my own I could keep. I didn't have to share it with the partners.

Fletcher: What kind of work did you do during those first years?

Weigel: I'm not sure that I remember. The firm had a good deal of real estate practice, and Halsey, although I liked him and became a family friend of his and his wife and children, I thought was borderline ethically, because what he would do in a lot of instances would be to fend off for lessees of apartment houses unlawful detainer suits, so that the lessee could collect rents in the meantime, to delay the removal of the lessee from the premises and so on.

Fletcher: Let me make sure I understand this. So he would be defending the tenant?

Weigel: He would be defending the lessee of a large apartment house. The lessee would lease the entire building and sublet the various apartments. The lessee that Gerald Halsey represented

would fail to pay his rent or for some reason or other would have violated his lease. The lessor would sue to get back possession of the building and collect the rents.

Fletcher: I see. And the game for Halsey was to delay this as long as he could so that the lessee who would have the subleases would collect as long as possible.

Weigel: That's right. On the other hand, his partner Leo was an idealistic sort of person, and I had a good deal in common with him and his standard of ethics and his goals. But he was subordinate to Halsey. Halsey, I think, went to Stanford Law School and Leo, I think, went to what was then--what was the predecessor of the University of San Francisco Law School?

Fletcher: You've got me.

Weigel: There again the name will come to me.

Fletcher: Were their offices here in downtown San Francisco?

Weigel: Yes, at 275 Bush Street.

Fletcher: How common was it for firms to be that small at that time?

Weigel: There were quite a few that small and quite a few solo practitioners. Which reminds me of something that I find absolutely incredible. Did you see the Recorder this morning?

Fletcher: No.

Weigel: This has to do with the fifteen large law firms in San Francisco and their gross income. Pillsbury, Madison & Sutro, for example, \$136 million. And the lowest among the fifteen is a gross income of \$32 million. And the operating income, that is, I suppose the amount to be shared among partners, of the \$136 million for Pillsbury, Madison & Sutro is \$41 million. And on the lower end of the scale, the gross income was \$32 million and not to be shared among partners, operating income, net operating income it's called, was \$13.4 million. Absolutely nothing like that. I do remember Pillsbury, Madison & Sutro in those days. Nothing like that.

Fletcher: Was it then a dominant firm?

Weigel: It was then a dominant firm. It represented Standard Oil [Company of California]. They were just down the street from where Halsey & Leo were in the Standard Oil Building. We were at 275 Bush [and Belden], which was a very attractive four-

story brick building which no longer exists down there. We were on the fourth floor. And while I'm at it, I think one of my most vivid memories of that building was the elevator operator who was a grizzled little fellow named Ike. I came in one morning and Ike said, "Congratulations." I said, "What for?" He said, "You passed the bar." That's the way I learned I had passed the bar; he'd read it in some paper; it missed the Recorder.

Bar Examination

Fletcher: Was the bar a difficult hurdle in those days?

Weigel: It was a frightening thing. It was one of the big ordeals, one of the worst ordeals for, I think, all law school graduates.

Fletcher: Was the percentage rate of passing about as it is now? It's about 50 percent in the summertime now.

Weigel: I think, yes. I don't remember taking any review course. I don't think I did.

Fletcher: Did review courses even exist at that time?

Weigel: I'm not sure.

Fletcher: I know Bernie Witkin started one, but I think it was later.

Weigel: Yes. I knew Bernie Witkin, as I mentioned earlier, who was one of my best friends. But I knew him through college connections. I debated in college and I think he did to some extent.

Fletcher: So that meant that you were pretty much on your own studying for the bar, just going back over your class notes.

Weigel: That's right. And going through the codes. I think you could get hold through some source of past examination questions. So you got some idea of what to expect, assuming history repeated itself to some extent.

Fletcher: Were your classmates, say from a school like Stanford, of that quality--I understand they would be anxious, but were they in the end in serious danger of not passing?

Weigel: No, I think a large percentage did pass. I think a very high percentage.

Fletcher: So it would be in that sense not too dissimilar from today, where the students from the good schools do relatively well and the weaker schools have more trouble.

Weigel: That's right.

V FITZGERALD, ABBOTT & BEARDSLEY LAW FIRM

Reasons for Change

Fletcher: What made you choose to go to Halsey & Leo as distinct from other firms at that time, when you got out of school?

Weigel: There was some interest in me of a Lillich law firm. I somehow or other had come to know Ira Lillich. You know that firm exists today.

Fletcher: Oh yes.

Weigel: I'm quite sure they weren't interested in me, because I was a Jew. I don't think that's true anymore, but I think in those days there was a more uncovered discrimination, perhaps based upon the nature of their practice, their own predilections. But in law school I had come to know a man who was ahead of me somewhat named Edward D. Landels. I admired him and we always thought that some day we'd practice together. After I'd been with Halsey & Leo for perhaps two years, I was making more money than my salary based upon my own practice. I don't remember its nature particularly now, but Landels had gone to practice with Fitzgerald, Abbott & Beardsley in Oakland, which was a large firm. Beardsley was at one time president of the American Bar Association, and then he left and went into partnership with a man named Harrison Travers.

Landels was a brilliant lawyer, a great analyst, and a very solid person. And one day he called up, and I knew he was going to ask me to come over and join that firm, and I did. I left a relatively large income of \$450 or so a month to go to that firm, where I would start out at \$175 a month, out of which I paid some small amount for partnership interest in the law books.

We had a secretary named Agnes MacGregor, and she was a very loyal, fine person. We had difficulty sometimes in meeting the overhead. I remember living, long before I was married, in the Elks Club in Oakland, and eating very light dinners, sometimes just fruit and nuts so that we could be sure to pay the secretary.

Owl Drug Company

Weigel: The firm represented a real estate firm named White and Pollard. White and Pollard handled the leasing for the Owl Realty Company, which was a subordinate of the Owl Drug Company. And one of the Owl Realty Company's tenants, an optician whose name for the moment escapes me, had gotten behind some \$3,000 in the payment of rent. And White and Pollard were supposed to collect the rents for the Owl Realty Company, and this wasn't paid, and they referred it to our firm.

I went over to see this optician and made an arrangement whereby he would pay the current rent, but to settle the \$3,000 back rent that he owed--let me interpose by saying I'm not sure of the exact figures, but I'm exactly sure of the idea of the thing. He agreed to pay \$2,000 on account of the back rent and to keep his current rent going.

As I came back to the office having had that arrangement, the telephone rang and Miss MacGregor said, "There's a Mr. Porter of the Owl Drug Company who wants to talk to you." Porter said to me, "Mr. Weigel, you won't need to worry about that account because we've settled it." I said, "Do you mind telling me what you've settled at?" And he said, "We've agreed to take \$1,000 for the back rent and he'll pay his current rent promptly." I said, "Mr. Porter, you're throwing \$1,000 out the window." He said, "Is that so, Mr. Weigel?" I said, "Yes." He said, "It's back in your hands."

So I went over to this poor guy. I feel a little guilty about it now. I remember this poor optometrist, and I think I gave him the impression that I was going to have the sheriff and the whole law enforcement agency on top of him for going behind my back and making a better settlement with the Owl, and I demanded a check then and there, and I got the check then and there, and I had it certified, and I put it in the mail to Mr. Porter, who was the secretary/treasurer of the Owl Drug Company, which was a big chain.

Two or three days later, Mr. Porter telephoned and asked me if I'd come over to San Francisco and talk to him. I said I would, of course. I incidentally got a nice fee out of that. I guess I got a fee of \$300-400 out of it. I went to see Mr. Porter at his request, and he said that--he didn't say this, but I knew this to be the case--the Owl Drug Company was in strong competition with a number of chains including the Thrifty stores and the Sonntag drugstores and the Walgreen drugstores, and they were vying with each other for corner leases. In order to get corner leases in most of the cities, they'd have to buy the building and sublet the parts they didn't use. So the Owl Drug Company did that through this subsidiary, the Owl Realty.

They had a number of tenants, and these were Depression days--I finished law school at the height of the Depression [1928]--and they had a large number of accounts in Los Angeles and San Francisco, tenants who weren't able to pay their rent. Mr. Porter explained this to me and asked if I would be interested in handling these accounts for the company. And indeed I was interested, and what would be the basis of my handling it? Well, I thought a retainer of several hundred dollars a month and maybe a percentage of collections, maybe 25-30 percent. I don't remember the exact details. But he said, "That's fine."

Porter, I should add, was a very, very much the English gentleman. He was a very erect, very distinguished-looking man, and a very meticulous person. And so we finished our talking, and he said, "That's fine. I'll give you a letter to that effect and you can go ahead. I'll give you this letter." So I went in his outer office there and sat there. He came out about an hour later and he said, "Well, Mr. Weigel, what are you doing here?" I said, "I'm waiting for that letter." [Laughter] He said, "You'll get it; don't worry." I did get it.

I worked out a system for the collection of back rents which essentially was really, I think, a very fair system. I asked the tenants to provide information as to their financial condition. And then I worked it out with them on a fair basis, paying the current rent, perhaps sometimes reducing their current rent, and paying small amounts on the accumulated back rent. And this worked out very well.

Mr. Porter thought I was the greatest lawyer in the world, and he couldn't wait until somehow or other he got me connected with the president of the company, a man named Berg, a Lincolnesque type of man, a very fine human being, who was the

head of the Owl Drug Company. And Mr. Berg finally came to me and what he came to me with was--are you interested in all this?

Fletcher: Oh, absolutely. And I want to interject here, I'm realizing as I'm hearing the story, you're basically a kid. You're twenty-five years old when this is happening.

Weigel: That's right.

Fletcher: So you're still wet behind the ears.

Weigel: You can tell I'm wet behind the ears as you'll see in a moment. What Mr. Berg had done in order to get one of these leases, he had become the unconditional guarantor of the purchase price of the building, and he was absolutely hooked. The owner of the building was represented by Pillsbury, Madison & Sutro. There just wasn't any escape. It was a flat-out guarantee and that was that. But I decided I'd see what I could do, and I finally went over and had an appointment with Oscar Sutro, who was the head of that firm. And Mr. Sutro, I'll never forget it, in this huge office talked to me about book collecting. And wouldn't I like to join some fancy book club. [Laughter] I couldn't afford to pay for one volume, let alone belong to the club.

But finally we got down to talking about Mr. Berg's problem, and I'd cooked up some theories that were really very thin, but I made it clear that Mr. Berg had made this guarantee in good faith, and he morally shouldn't be stuck with it and that I was prepared to go all out to defend him, and the result was Mr. Sutro agreed to a very favorable sum. As a result of that, both Mr. Berg, the president of the Owl Drug Company, and Porter, the secretary/treasurer, were both convinced of my brilliance as a lawyer. [Laughter] And I was beginning to believe it myself, I guess.

Fair Trade Act Cases

Weigel: For a long time nothing happened. Our practice was getting along pretty well. Harrison Travers, who was not a very able person but a nice person, died. Landels and I carried on. One day I got a call from Mr. Berg. What did I know about some California statute? I forget the name of the statute. Its official name was the Fair Trade Act. The Bannon Act it was called. I said, "I don't know anything." He said, "Well, look

into it, will you?" I said, "Certainly, Mr. Berg." So I studied that act. It was a price-fixing act. That is to say, the owner of a trademark could establish a resale price by contract with one or more customers, and that would be binding upon any retailer who had notice of the price; and a retailer, even though a nonsigner, could make no use of the trademark without selling for the full price. The idea was a trademark protection act. So I studied it, and I knew what there was to know about it. He had [a trust] and everything else; I really worked hard.

I never heard from Mr. Berg, and one day, perhaps a month or two later he called up and said, "Did you find out about the Bannon Act?" And I said, "Yes, Mr. Berg, I did." I told him what I found out. The fact was that the Owl Drug Company was not probably the most efficient operator, because Berg was a humanist, and as a result, Thrifty and Sonntag and Weinstein's, in San Francisco, cut-rate people and so on, were really slashing prices. The Owl hated to meet those prices, because they would lose money. But the Owl was a substantial buyer of trademark goods in the drug field.

The result, to make a long story short, was that Mr. Berg told these various manufacturers to come and see me to get this protection. And there came into my office a parade of the presidents and chief executive officers of names that to me as a young lawyer were names to conjure with. Bayer Aspirin, Alka Seltzer, Sunbeam Corporation, Parker Pen, you name it. They beat a path to my door, and I knew how to qualify them under this statute, which wasn't all that well known by others. Then in a sense the fun began, because people who didn't sign would cut the price, and the manufacturers who had come to me to put them under the statute would retain me to enjoin the price-cutters. I took these cases to court.

One of the first cases came before a judge named Fitzpatrick here in San Francisco, Timothy Fitzpatrick. Now you must remember that politically the pharmacists in this state were very much in favor of this law, because the corner drugstore, the independent pharmacist, was having a hard time based upon drug products they sold; products such as I've mentioned would be sold at low prices, cut-rate prices, often loss-leader prices by the big chains, so the California Pharmaceutical Association had been a great lobbying force for the enactment of this Fair Trade Law. They're a political force.

I went before Fitzpatrick and prepared a brief in support of a motion for preliminary injunction. He took most of that

brief and issued an opinion which made him a darling of the pharmacists, and actually made me a darling of his in a sense, because he was grateful for the work I'd done and the favorable consequences of his opinion upholding the constitutionality of Section 1 1/2 of this statute.

Fletcher: Now I want to interject. I think I know the answer to this, but this was then a state court judge, Judge Fitzpatrick?

Weigel: Yes.

Fletcher: And you were coming in under state law, enjoining the price-cutters. My understanding is that, as to the economic arrangement, they were buying say Bayer Aspirin or Alka-Seltzer or something subject to the contractual agreement that they were not supposed to cut prices but then they cut them anyway?

Weigel: No, no. They didn't sign the agreement.

Fletcher: They would buy it but they refused to sign.

Weigel: Yes, but the law, the nonsigner clause, was called Section 1 1/2 of the Fair Trade Act. And it read, and I remember it because this was a good deal of my practice, "willfully, knowingly advertising, offering for sale, or selling at less than the price established by these other contracts constituted action of an unfair competition, involving a wrongful use of the trademark." This was the nonsigner clause of the famous Section 1 1/2.

The genesis of that statute was this: the greatest trademark lawyer of that day was Edward S. Rogers, who had a leading law firm in New York and also one in Chicago. The New York firm was Rogers, Vogue & Hills; the Chicago firm was Rogers, Boysen & Rogers. Rogers, who handles trademark work for Coca-Cola, Ford, you name it, is an absolutely outstanding, wonderful man, comfortable as an old shoe, was told about the problem with these independent druggists in California when he was in Los Angeles. And he took the menu of the Biltmore Hotel and wrote on the back of it what became Section 1 1/2 of the statute, which the pharmacists got passed. Well, of course there's a great question of the constitutionality of such a statute. I was in nearly every case in this state and prevailed in upholding its constitutionality in the state courts.

A case went up to the Supreme Court, a case of this kind, one from California, the Max Factor case, and one from Louisiana, the Swegman case. Rogers was retained to act in the

Supreme Court. The California Pharmaceutical Association said they wanted to have Mr. Rogers act for them. Rogers said, "I'll accept the assignment provided that you let me associate with Stanley Weigel." So they were happy to do that. I well remember staying at the hotel, I forget, the Carlton? Across the street from the Hilton there in downtown Los Angeles with Rogers, working on the argument he made the next day. We were discussing something and he said, "Well, Stanley, why don't you argue that? If that point comes up, why don't you argue before the Supreme Court?" I got butterflies.

Happily or unhappily, it never came up. But we won the case before the Supreme Court. I have a very vivid recollection of Mr. Justice Brandeis. And that recollection was this: he had written a number of articles against price-cutting, very, very eloquent articles about the evils of price-cutting, containing such language as "and thus, Americans are invited to sell their souls for a mess of pottage" or some such flamboyant or very strong language. So he had been, in his practice, an advocate against loss-leader selling. I just am sure as I am of almost anything, he saw me there, a young man very anxious and very worried about what was going to happen in this case, and just by the way he looked at me, perhaps slightly nodding, I felt very comfortable as to what the result would be. The result was that the constitutionality of the statute was upheld. Later, however, it was reversed, much later.

But in any case, as a result of that experience, my practice blossomed. The tail began to wag the dog, and we moved our law firm over to San Francisco, and I found myself doing not only work of this character, but became in effect for a number of these corporations, almost the equivalent of their West Coast or certainly their San Francisco counsel. Ultimately, for example, I became part of a triumvirate that would advise Sunbeam Corporation on its antitrust problems, how to avoid getting into trouble in the matter of pricing policy. We would go back to meet with the president and their general counsel and one or two other experts. One was a member of the prestigious law firm of--

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Weigel: Well, in any event, I'm trying to think, what was the name of the antitrust--Oppenheimer, did you ever hear of him?

Fletcher: Oh, yes.

Weigel: From the University of Michigan, wasn't it? Yes. He and I and Dan Merrill and his partner in the Washington firm would frequently go back to Chicago to be an advisory counsel for Sunbeam Corporation. Also as a result of this, I was invited to become and did become a director of the Parker Pen company. And one of the real regrets, about the only regret, in a sense, about my becoming federal judge was that I had to give up that directorship, because I enjoyed that very much. It was a worldwide corporation and family run and a very good company.

Fletcher: Can I backtrack into an earlier part of this story and as it ties into the firm? Did Landels come along with you as part of this business or was he doing independent things?

Weigel: No, that's a good question. No, he, as I said, was brilliant. He became sort of an expert in land title law and banking law with the result that the firm became counsel for the California Bankers Association, the California Land Title Association, and Landels handled the work of the California Pacific Title Insurance Company, which was the owner of the building that I had started out in, and which later on we had our offices in. Halsey & Leo had I think by that time disappeared from the scene somehow.

Description of the Firm

Fletcher: What happened to the firm's size during this time?

Weigel: Not very much. We had, I think, at the most during the time I was there until I left when I came on the bench in '62, my best recollection would be that we had more than a total of--we had one other partner who left us named Crocker, and Ripley, and my guess is we may have had two or three associates but not more. It was a very small firm.

Fletcher: It was small even by the standards of the time for a firm as successful as yours?

Weigel: I think so. Yes, decidedly so.

Fletcher: What did you do? I mean, a modern lawyer would be in some sense scandalized to be expected to work under those conditions, to have jobs as complex intellectually as yours were without a raft of associates to help him out. Did you feel that you were pressed too hard to be doing this work without serious assistance?

Weigel: No, because I'd had one or two assistants who I felt were quite competent, and I knew this field; I kept current, I studied on it. I did largely my own research, not altogether, and worked hard, nights and sometimes weekends, but didn't feel terribly put upon. It was very exciting. You have to remember I came from an impecunious background. You remember my father failed in business in Helena, Montana. These firms that I represented were nationally known and advertised in the *Saturday Evening Post* and this was great stuff. This was very impressive in terms of its prestige and financial returns.

Fletcher: I can well understand this. My sense in a way is almost--the question always comes from realizing how important this work was and to see how small a firm it was that you were working out of to do such high-powered work.

Leco Products Company

Weigel: Well, we were hard workers, all of us in the firm, that were members of the firm. Well, let me see if I can think of anything that should be added. I don't know what brings this to mind particularly, but one of my clients was Leco Products Company. They were the manufacturers of the then very well-known, widely advertised brand of toothbrushes and toothpaste called Dr. West. I don't know if you've ever heard of Dr. West.

Fletcher: Oh, yes; I was around.

Weigel: The president of Dr. West was a hard-driving salesman named John T. Woodside, Jack Woodside. Woodside would come and testify. I handled cases of this kind in a number of different states, because the other states passed laws modeled upon our California law. And Woodside would testify in some of these cases against the price-cutters. Woodside was an intense, hard-driving person, and he'd come out to testify on the weekends, he'd allegedly want to take me for a drive in the country or something and all he'd do would be to talk about the cases. I finally told him, "Look Jack, if you don't let go of this for good, I'm not going to really represent you." So he'd calm down for a while and that would be that.

But in any event, Mr. Woodside was greatly impressed with me as is evidenced by this fact: he told his wife, Peggy, that if he died first and anything ever happened where she needed a lawyer--she lived in Chicago--she should call upon me. Some

months after he died, Mrs. Woodside called me, and apparently there was a small group of executives in the Leco Company who were determined to get rid of her and freeze her out and cut dividends and so on. She told me about this and asked me to come back, which I did, to Chicago. Her only remedy, it seemed to me, was a matter of getting an injunction, a restraining order, to restrain certain action that was about to take place at a meeting of the shareholders. This had to be done in state court, in the Cook County courts of all things.

Well, through my fair trade work I had come to know a lawyer in Chicago named Morris Liebman. Morrie became and still may be--well, he became the managing partner of Sidney & Austin, of which you may have heard. I consulted Morrie about this problem. And he said, "Stan, what you need is you need an honest," I think he used the word "crook," but he meant politician. It was going to be in the Cook County courts, and he recommended somebody whose name for the moment escapes me. So I retained this man on behalf of Peggy. He was politically powerful, but so was the other side. I remember he was a stickler. He wanted to have every "t" crossed and every "i" dotted in terms of the right to get a restraining order, and he had me do the work. I remember spending Easter weekend in a downtown hotel and working there and in whatever law library was available, I forget where, in really preparing the papers, which I did.

Well, we went into court before a judge named Cunningham and prevailed, got the restraining order. And then the problem became not a legal problem, but the problem became one of finding a buyer for the company, so that she could get out of the company. I was asked to find a buyer, and I went to various people who I thought might be potential buyers of this company and finally found one in Boston named the Kenway Corporation, which did buy Leco, and Mrs. Woodside got her money out and it all ended very happily.

I don't know why I tell this story. But there's one other thing that I'll tell about this that may be interesting too. Two other things. I had an almost unbroken run of successes in every one of the lawsuits I brought, whether in the trial courts or the appellate courts, except I brought a suit in the trial court in Eugene, Oregon. The trial judge was a fairly new judge there named [Theodore] Goodwin. And Goodwin flabbergasted me by ruling against me. I think he was correct in doing so, but the connection is this: he's now the chief judge of the Ninth Circuit [Court of Appeals].

Fletcher: I was going to say, I recognize that judge. That sounds like Ted Goodwin.

Weigel: Ted recently asked me to take some case in a suit involving all of the judges in the eastern, southern, and central districts. The federal judges were defendants and I said to Ted, "Well, I'll take it even though you were wrong up there, all those years ago." [Laughter] So that may be a good stopping place; I don't know.

Fletcher: Okay. Actually, I have one question that takes me back to the early part of the story as you're working for the Owl Drug people. It strikes me that the work you were doing there at the beginning for Porter, and to a lesser extent for Mr. Berg was--well, I would say is much more sort of business work for them than actual law work, going out and renegotiating the lease and so on.

Weigel: I don't think there's any question about that.

Fletcher: Was that typical for a lawyer at that time to be doing that sort of work? Obviously they had the right man for you to be doing this, but I'm wondering about the practices of the time.

Weigel: I don't know. Probably not. I really don't know. Good question.

More Early Work Experiences

Fletcher: Another thing that occurs to me as I'm hearing these stories is that partly this is a run of good luck, but more it strikes me as I hear this as a story of initiative, good common sense, and although you were awfully young, a fair amount of sophistication. Where is this coming from out of a kid with as you describe it an impecunious background?

Weigel: Well, I think it's because of all the work I did. As I think I mentioned, I've worked on a newspaper as a cub reporter and as a Stanford correspondent. I hashed, worked as a waiter at the school. I did a number of things. For example, I don't remember if I mentioned it, but some student association had a program of trips to Europe. Did I tell you about that?

Fletcher: No, this I don't know.

Weigel: The idea was that if you got ten students to take one of these European trips, you could lead it and you would get your trip paid for. I did that. Also, one or more summers there was a company that made maps. I forget the name of the company. But what you would do, you would go out to a small town--or not a small town, a town--and go around to various stores and point out about this map that was going to be published and get advance orders for it. You'd get paid a commission. So I did all kinds of different work, and I have no doubt that that experience helped me. I also think that perhaps my student body activities--chairman of the Men's Council, president of the Stanford student body--which involved relationships with the faculty and the administration, I think all of those experiences were helpful. Of course, it could be just native brilliance and so on. [Laughter]

Fletcher: Well, I'm sure that's true, but I like to hear the native brilliance sort of educated and formed through these experiences. And your explanation seems to me quite sensible. Well, maybe we should take a break now. We can pick up again. We're set for this coming Monday if that works for you.

Weigel: Yes. I think perhaps as a reminder, perhaps we ought to think --have I discussed at all the professor's case yet?

Fletcher: No. I've got that in mind to ask about, but we haven't touched that yet.

Weigel: Well, are we done now with recording? Let's leave.

Thoughts about Law Firms and Law Practice in Depression Times

[Interview 3: June 26, 1989] ##

Fletcher: Last time we talked about your early days in practice and the early success with the Owl Drug Company and the Owl Realty Company and how that led on to a number of things. It got me thinking as I walked out of here about what in some ways might be seen as sort of a chance occurrence of your stopping back in the office, getting the phone call and saying to Mr. Porter that he was throwing \$1,000 out the window, and one thing led on to another. What would have happened and how might things have developed if you hadn't had that break? My guess is that you would have had another. But can you speculate as to what the practice might have turned into or where you were generally headed anyway?

Weigel: No, I don't think so. I don't have present ability to speculate as to what would have developed so far as my legal fortune was concerned had that not occurred. I suppose on a mousetrap idea, it would have come out all right. As a matter of fact, until you brought it up I hadn't even stopped to think about that. I really don't know.

Fletcher: What were your similarly situated classmates doing during this period? This was early Depression time when you started out. I guess you got out of law school just before the Depression hit, but you're establishing yourself in the early Depression and then the height of Depression time. What was the legal practice generally and what were young people of your sort of age and ability doing and what kind of time were they having?

Weigel: I don't remember offhand. Perhaps the next time I'll take a look at the volumes of the Stanford Quad. I don't have the yearly volumes of the *Stanford Law Review*, assuming there was one in those days. But I don't remember.

However, I do recall that toward the end of the last session you asked about the nature of the facts then as compared with now, about small firms as compared with the gigantic firms we have now. I think that probably the difference is accountable to a large extent by the proliferation of laws. I think there were not as many laws, and my recollection is that there weren't the complexities and refinements, except perhaps in the tax field. I'm not sure that that's a valid counter. But it struck me that might be the case.

Fletcher: It's interesting to speculate. You've got to be right about the greater quantity of laws, and that seems to feed in that direction. Were lawyers generally at this early period struggling? Businessmen were struggling, lots of people were struggling; how about lawyers?

Weigel: I think they were.

Fletcher: I know of course your early partner, Landels, was a law school classmate. Did you keep in close contact with other people from law school?

Weigel: You mean classmates?

Fletcher: Classmates.

Weigel: No, I don't remember that I did.

Social and Community Activities

Fletcher: What was the social/business life of a young lawyer? Would there be rotary club luncheons; would there be some things that you could kind of get yourself out and about in the community and known?

Weigel: No. I think that was desirable for purposes of building a practice, but I didn't do much of that. I belonged in Oakland to something called the Executives Club, which was presumably sort of a scratch-your-back civic organization, not of the stature of Rotary or the better-known ones. What was the other one? Rotary and I forget the other.

Personal Injury Cases

Fletcher: Would there have been a Lions Club in Oakland at the time?

Weigel: Yes, Lions and that sort of thing. I have the feeling that I may have gotten some cases--I can't recall specifically--which was a result of recommendation from judges before whom I appeared. While I can't pinpoint it, I think that I did get one or more clients as a result of judicial recommendation. I also remember that I took on contingency a case involving personal injuries, and the facts as I now recall them were that my client was injured because the car she or he was driving rear-ended another car, which was not exactly a very good case.

Fletcher: No.

Weigel: But my adversary in the case was undoubtedly the leading personal injury defense lawyer in the area. His name now escapes me, but as a result of the efforts I made in that case, he referred several matters to me.

Fletcher: Did you lose that case?

Weigel: I certainly did lose that case, despite some very brilliant theories. I also remember early on taking a case in which--again, it was a personal injury case--a worker had injured her arm in some kind of a laundry establishment, and was suing not for workmen's compensation, but was suing the manufacturer of the ironing mechanism for failure to provide adequate guard rails. I do remember, as I recall it now, that this was a case which should have been thrown out on demurrer, because there

just wasn't any product liability. But I remember that before some judge in the superior court--there was a packed court room--I made an impassioned argument against the demurrer by telling what a horrible thing this was for this unfortunate woman and her family, and the court should have no part of not giving her an opportunity to present her case to a jury. And the result of that was a settlement--legally, probably undeserved.

Fletcher: And your sense was that the judge was swayed by partly the justice of the argument and partly the number of people in the courtroom?

Weigel: My sense was that I made a powerful impression on the spectators in the courtroom and that that rubbed off on the judge to some degree. These were the days when some members, at least, of the superior court judiciary in San Francisco were thought to be not altogether free from being influenced, to a degree, on a corrupt basis.

Fletcher: I want to talk about two things. In a moment I'll talk about the corruption, but first I want to say that even without corruption, these are elected judges, and so what the people in the courtroom think may make some difference.

Weigel: Yes. I think that did.

Corruption

Fletcher: Could you tell me though, second, about the suspicions of corruption that existed in that time?

Weigel: Well, one thing that occurs to me--and here again I'm not sure how correct my memory is, but substantially it's probably true --there were, I believe, two local transportation companies operating streetcars. One was the Sutter Street Railway and the other was the Municipal Railway. In any event, there was a private company. It was thought to be very difficult before some judges to run a case for a plaintiff, before certain judges, who presumably had some ties with the private company.

Fletcher: Any ideas as to the nature of the tie? Prior business associations, back [Inaudible] payments?

Weigel: I think it was probably contributions.

Fletcher: I recognize this is a long time ago and these things weren't even then spread on the newspaper, but I want to press a little bit. Contributions in the sense of to a campaign or direct almost bribes?

Weigel: Well, the thought among a number of lawyers was both.

Fletcher: How widespread would this be? How many judges on the San Francisco bench would this be true of?

Weigel: Oh, say there were ten judges, maybe two or three, just for instance.

Fletcher: Now, that's clearly not so with either the federal or the state judiciary these days.

Weigel: I think that's so.

Fletcher: Do you have any memory as to when that changed?

Weigel: No.

Fletcher: But that was just the sense in those early days of practice?

Weigel: That's correct.

Quality of Lawyers

Fletcher: What was your sense as to the quality of lawyers at that time?

Weigel: My sense is that they were quite good. One of the leaders of the bar was McNab; he was a Lincolnesque sort of lawyer, well read. I think the quality appeared to me to be good.

Fletcher: Those were the days, certainly as to the federal rules, and I'm going to guess also true under the California procedural rules, before what we would call a modern procedural system. The federal court would still have had the federal, the state rules, and without much discovery, did that make much difference?

Weigel: Oh, yes. You went to trial without a sufficient knowledge of what to expect from the adversary. There was little or no discovery.

Fletcher: How did that change the type of practice? Obviously, there's a certain amount of surprise at the trial. Did it make some cases unbringable? Did it make the litigations in the end cheaper and better? What's your sense of it?

Weigel: Certainly less expensive. I think the effect on quality was not at all devastating; that is to say, I think there's a great deal of excessive discovery today.

Fletcher: So your guess is that in maybe some categories a case is to one side, but you wouldn't be too unhappy if we cut back on some of the modern discovery?

Weigel: Not at all.

Fletcher: And the quality of justice in many cases wouldn't suffer much?

Weigel: I think that's correct.

Fletcher: That might lead a little bit into this question of the size of law firms; there's less work to be done if you don't have all that money going around.

Weigel: I think that's a valid comment. I agree.

Firm Moves to San Francisco

Fletcher: Now, I think you said last time--and I just simply forget--you started out with your colleague, Mr. Landels, in Oakland, and then brought the firm back to San Francisco. When was that, when you came back to San Francisco?

Weigel: I don't know. For no good reason, the year 1936 comes to mind, but I wouldn't be sure of it.

Fletcher: And what brought you back to San Francisco?

Weigel: Because most of my clients were headquartered there, and I think it became true also of Landels, the title company and the title association, the bankers association. I remember in those days they had an air ferry--there was no bridge, of course. There was an aquaplane ferry, and I found myself having to take that a good deal of the time to save time to keep appointments and so on.

Fletcher: Did you live in Oakland when the firm was in Oakland and then move to San Francisco?

Weigel: That's right, I did. I lived in Oakland, had a very pleasant apartment which I shared with a Stanford contemporary of mine named Gene Walker, a male, overlooking Lake Merritt.

Courtship and Marriage

Fletcher: You can redirect the questions if you want and, as I say, you may want to talk about this later. At some point during this period of early practice, you met the woman who was to become Mrs. Weigel. Can you tell me when that happened?

Weigel: I think Ann and I first saw each other about--let me just do a little figuring here on a piece of paper. I wouldn't be sure, but let me put it this way. I'm not very good on dates. Ann and I first met ten years before we were married. Then, on a blind date, we met and I chased Ann for about two years before we were married. And I think--here again I'm not sure; I have no vivid recollection--but I think that it may have been that the blind date was arranged by the wife of an attorney named Louis Heilbron, who was the father of the recent president of the State Bar.

Fletcher: Can you tell me some of the circumstances of--I know only the barest outlines. I know that Mrs. Weigel went to Cal and that you went to Stanford and that you met on a blind date. Can you fill in a little more for me please?

Weigel: Well, we dated for a long time, and one day, somewhat impulsively I proposed to Ann, and she professed not to believe that I was serious, and I was serious, and she made the mistake of saying "yes." Ed Landels' father was a minister of some Protestant faith, and he married us at his home. And we, after that, took off on an extended honeymoon, which included Mexico, Cuba, and ship travel through the Panama Canal. As I say, it was a long honeymoon. I remember that one of the things that my partner Landels said on our return was that if we were able to weather that long of a honeymoon, we certainly were probably going to survive marriage, or words to that effect.

Fletcher: It turns out to have been right.

Weigel: Yes.

- Fletcher: Now the date of your marriage was--I think I know, but I'd rather hear it from you.
- Weigel: I think it was 1940.
- Fletcher: That's the date I recollect. That would have meant that you were at that time thirty-five years old, and by then quite well established.
- Weigel: That's right.
- Fletcher: Had you either consciously or subconsciously waited a time to get married until you were well established, able to support a wife and family, or it just happened to work out this way?
- Weigel: I think to an extent, it was a matter of wanting to be sufficiently financially well-to-do to be sure I could support my wife.
- Fletcher: Was Mrs. Weigel herself from San Francisco?
- Weigel: Yes. Ann was born in Austria. At the age of two she came with her parents to Los Angeles. And then at a very tender age she came up to San Francisco.
- Fletcher: And did she live here in the city?
- Weigel: She lived in the city. She went to Girls High School and to the University of California.
- Fletcher: And after you were married, you must then have moved out of the apartment and bought a house here in the city?
- Weigel: Are you talking about the apartment in Oakland?
- Fletcher: No, I'm thinking after your marriage you must have bought a house here in the city, or had you already had a house by that time?
- Weigel: No, no. At the time we were married, I had an apartment on Telegraph Hill in San Francisco, and we moved into that. And that was interesting: not only was it a very beautiful apartment with a spectacular view, it was on--the building still is--halfway between Coit Tower and Julius's Castle. We used to have the automobile fixed so we would leave it at the Coit Tower and walk downstairs, and then the garage people would bring it around the lower level so we would be able to go downstairs to get the car again, which is a minor thing. But

the apartment was really a flat, and the flat above was leased by Paul C. Smith. Does that mean anything to you?

Fletcher: I wish I could say yes.

Paul Smith

Weigel: Paul Smith was the boy wonder, managing editor of the San Francisco *Chronicle*. He was a protege of I think the name was Tolman. I'm not sure of that. He was a publisher of the *Chronicle*. He had started as a financial writer. But he was a very flamboyant individual, and he regularly had parties of very famous people in the apartment above us. These parties frequently went late at night and interfered with our rest. One night, despite Paul's important position in the community, I got some instrument and pounded on a pipe that ran between the apartments there, the flats. And the result was that thereafter we were invited to all those parties. That was really a very delightful result, because we not only came to know Smith very well, but some of the parties were memorable, included famous stage and screen stars. I remember particularly Gertrude Lawrence. So that that complaint, hitting on the pipes, was very good.

Paul Smith was a very interesting person. I think he may have been an in-the-closet gay. During the war, if I'm not mistaken, he suddenly left the *Chronicle* and enlisted in the marines as a private. This is World War II. I'm not quite sure what happened to him in the long run, except that apparently after the war, which I think he survived, he came back and lived somewhere down in the Carmel area. He rose the heights and then suddenly sort of disappeared.

Fletcher: He almost voluntarily tossed it in, and said, "I'm going off--"?

Weigel: Yes.

Fletcher: How old a man was he at the time of the beginning of the war?

Weigel: I'd say in his late thirties. Paul was brilliant, friendly; we liked him. A highly sophisticated individual. Basically I recall him as a very good man with great, good instincts. There's an apocryphal story about him which I don't know whether he told me or what, but it went the rounds. It was suggested that the reason he was so powerful at the *Chronicle*--

I said the publisher was Tolman, that may have been later; the publisher at that time was DeYoung--and it was suggested at the *Chronicle* that the reason that he rose so high and became so important, had such an important position was that he was the illegitimate son of Mike DeYoung, the publisher. This rumor came to his attention, and the story is that he brought in all the people on the *Chronicle* staff and said that he had heard the rumor that he had this position, that he was the boss based upon the allegation, the rumor that he was the illegitimate son of Mike DeYoung. And he then said, "As I've often told you all, the only way to stifle a rumor is to tell the truth, to get the truth out, and the truth is that I am the illegitimate son of Mr. DeYoung." Long pause. "How do you all like working for a bastard?" [Laughter] End of the story.

Fletcher: During that period, and you talk about these parties, prompts me to ask the question, what other prominent figures in San Francisco or California society did you and Mrs. Weigel encounter?

Weigel: Well, during that period I'm not sure just what the time frame is. But certainly after I took the professors' case, we encountered a good many who might be considered leaders of the University of California, any number of faculty members. Offhand I don't think of anyone in particular.

Professors' Case: Loyalty Oath at UC

Fletcher: Since you mentioned it I'll pursue it now. Can you tell me about the professors' case?

Weigel: Haven't we talked about this before?

Fletcher: Not at all. I've been saving it.

Weigel: Well, let me interject something that's totally out of the present context and we'll come back to the professors' case. I've been wondering about my interest in pursuing possibly a career as a newspaper writer. It occurred to me as I was thinking about this the other day, that when I was finishing grammar school in San Francisco, the evening paper, I think it was then called the *Call-Bulletin*, had an essay contest. It may have been for high school students and you'd get a prize. The topic of the essay was "Why San Francisco is the queen city of the West." I remember getting the first prize in that

contest. That may have had some bearing upon my interest in journalism; I'm not sure.

But to get back to the professors' case, what happened there was that--this may not be in precise sequence--but there was a great rift between the president of the university, Robert Sproul, and one of the regents, Francis Neylan, who now is a powerful lawyer. Again, I'm not sure; it may have been John Francis Neylan. In any event, he was a powerful lawyer. He represented, among other clients, the Hearst newspapers. He was a political factor. He was a member of the group that used to meet at the Palace Hotel. I think it was called a Monday or Thursday round table when the powerful people in San Francisco used to gather round and discuss things and make decisions affecting the city and some of its politicians.

But John Francis Neylan hated Sproul for some reason or other. The state of California passed a law which required state employees, including members of the faculty of the University of California, to take a special loyalty oath in effect requiring them not only to formally agree to support and defend the constitution of the United States, but in addition they said that they were not now or had never been members of the Communist party and they didn't believe in violent overthrow of the government. I forget for the moment the name of that oath. It will just take me a moment to recall it, I think. Do you remember it by any chance?

Fletcher: No. All I know is--the loyalty oath is the only tag I've got.

Weigel: Yes, it was a called a special loyalty oath. Well, the name of that oath may come back to me later on. Now a number of members of the faculty of University of California, including notably by virtue of his leadership, Edward C. Tolman, who was a professor of psychology, refused to take the special loyalty oath based upon their view that it was an intrusion of academic freedom to violently knock on the door when teaching a classroom and so on. And the rule for tenured members--you probably know this better than I do--of the University of California faculty was that they couldn't be discharged except after full hearing before certain--I guess a committee on tenure. What is it?

Fletcher: There's a Committee on Privilege and Tenure.

Weigel: Privilege and Tenure. And they could not be discharged without cause. A great rift occurred on the Board of Regents, some of whom wanted to have the people who refused to sign the special loyalty oath fired for that refusal and for no other reason.

President Sproul felt they should have the requisite hearing before the, what's the name of the committee?

Fletcher: Privilege and Tenure.

Weigel: Privilege and Tenure.

Fletcher: At least that's the modern committee. It's probably the same.

Weigel: I thought it was the same then. The professors who were thus threatened with arbitrary expulsion sought to get a lawyer to represent them. There was a problem about it. For one thing, these were the days of [Senator Joseph] McCarthy. And for another, equally important in the circumstances, one of the regents of the university at that time was [A.P.] Gianinni, who was the head of the Bank of America. The Bank of America, huge as it was then--not as huge as it is now, but the largest bank in the state--had some involvement with almost all the law firms in San Francisco, in one way or another. I was told that the professors sought one law firm after another to take their case but none would, and for the most part I'm told it was because of the fact that it would involve a conflict with their representation at one time or another and in one way or another of the Bank of America headed by Gianinni.

I'm told that they finally went to Bernie Witkin. And Bernie Witkin suggested that they come to me. They did. I was greatly intrigued with their case. I felt that they were being outrageously treated, and after getting their story, saying I'd let them know, I consulted with my partners, George Crocker and Ed Landels. There was some concern that the firm couldn't take the case because of the nature of clientele including the bankers association and so on and so forth. It would be bad for our business. But finally I said I wanted to take the case, and they said, "Well, you can take it as an individual, but not as a firm." So I did.

These professors, some twenty-one in number, I guess it was, formed a group known as the Group for Academic Freedom. I thought the first thing to do was to try to solve the controversy by winning sufficient votes on the Board of Regents, isn't it?

Fletcher: Yes.

Weigel: Among the regents of the university, to get a majority in favor of their being given usual hearings by the committee to which we've referred.

Fletcher: Oh I see. Now you'd said this before, it is clear. But I had not quite grasped the full significance. I can't spell his name, Neylan?

Weigel: John Francis Neylan.

Fletcher: Neylan wanted them simply fired?

Weigel: He wanted them fired.

Fletcher: And the only thing Sproul was fighting for, at least as an initial matter, "We'll give them due process and then maybe we'll fire them."

Weigel: That's right.

Fletcher: But the initial fight is over whether they get the hearing.

Weigel: That's right. I found out the lineup on the Board of Regents.

Fletcher: Yes.

Weigel: I think it was twenty-three. I think we felt pretty sure of ten votes anyway. The crucial meeting was at a time when one of the regents--we're going to have to correct this, but as long as we're at it I'll improvise on the names.

Fletcher: Yes, we can come back.

Weigel: I think one of the regents was Admiral [Chester] Nimitz. On the thought that his vote might be decisive, somehow or other I got in touch with the perennial runner for president who had been one of his aides, [Harold] Stassen. I had Stassen get in touch with Nimitz, who was vacationing somewhere in the mountains on the East Coast, possibly Vermont or Maine.

Then came the day when this was to be decided. It was supposed to be a public meeting and it was. I got a court reporter to attend the meeting, not with anybody's permission but as a member of the public, to make a transcript of the proceedings. We lost by, I think, a vote of 12 to 11, or something of that kind. My best recollection is that Nimitz--he was the admiral; I think he was--we couldn't get his vote. I don't know who was governor at that time--it may have been [Edmund G.] Pat Brown; I'm not sure--but I know the lieutenant governor was Goodwin Knight. Knight was very active in supporting Neylan. I acquired a great distaste for his position, and was very distressed by the fact that he voted the wrong way.

In any event, I decided that this was a matter for a writ action. I felt that if I went into the superior court, I'd never get anywhere. So I brought an original writ action in Sacramento, and here again the names escape me, but we appeared before an outstanding panel that included a fine woman justice of the--

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Fletcher: So this writ action was brought before the California Court of Appeal directly, not the California Supreme Court but the intermediate court of appeal?

Weigel: Yes, that's right. I think there was some procedural reason why it was inadvisable to go directly to the supreme court. In any event, the court of appeal in Sacramento finally came down with a ringing decision granting the writ of prohibition or whatever writ it was. I might say that the Regents had hired Pillsbury, Madison & Sutro as special counsel. They acted through Gene Prince, who was an outstanding lawyer of that period.

I remember with the utmost pleasure meeting with the Group for Academic Freedom, my clients, in one of the sessions that we had in discussing strategy and so on. There was an appeal to the supreme court of the state, and I argued that. The result was the reinstatement of these professors was ordered. But then it developed that the order didn't provide the back pay. The pay had been suspended. So I had to bring a separate suit for that, which ultimately they won, or ultimately the university caved in--I forget which--and paid their back salaries.

Now perhaps it's self-aggrandizing, but my feeling is that these decisions helped turn the tide against McCarthyism. They received nationwide publicity. I felt very pleased with that.

Fletcher: Did the university, after they lost in the California Supreme Court, even attempt to bring this before the Privilege and Tenure Committee?

Weigel: I don't remember. No, there was a flat order of reinstatement. I don't think so.

Fletcher: They probably recognized that if they had to go before the professors' peers it was a loser.

Weigel: Well, one thing I particularly remember, as I may have mentioned earlier, I had become really the West Coast counsel

and almost an advisor on antitrust matters to the Sunbeam Corporation. The president of the Sunbeam Corporation called up one day--didn't I tell you this?

Fletcher: No.

Weigel: Called up one day and--in those days long distance was something much more than it is now--and he said he wanted to congratulate me. He said, "I knew you were a good lawyer, but now I'm convinced of it," he said, "because you were on the wrong side of the case, but you won." I remember with great pleasure telling Bob--again, the name escapes me. It shouldn't. Robert Glenn. I spent a half hour of his time and his money on the long distance call explaining to him how property rights and civil rights were strongly intermingled and that this was a very good thing for him, and he ought to get wise to himself. Not quite in those terms. I'm using the vernacular now. So it turned out that the fear that I think were somewhat genuine that I or my firm would lose clients because of taking an unpopular cause, was not well taken.

I might add that I used to love to tease Bob Glenn. I'd go back there on these matters of sitting on with Oppenheimer and Van Nell and some partner of the Howry, Simon firm in Washington, advising Glenn and other executives on antitrust problems. As I say, I love to tease. We were driving along the lakeshore one time when I said, "Bob, I've been thinking. You know, the Japanese are getting very interested in electronics and things that we make here. I was thinking of going over there and see if I couldn't start a corporation that would be called the Moonbeam Corporation to go into competition." He said, "Oh Stan, you wouldn't do that, would you?" [Laughter] I had to tell him I wouldn't.

Fletcher: But you had him going.

Weigel: I had him going.

Fletcher: Tell me a little more about the professors' case, if you could. First off, where did the professors even get the money or the wherewithal to resist? This must have been a tremendous sacrifice for them.

Weigel: There was indeed. They got the money for this Group for Academic Freedom and received contributions from a large number of the faculty who had signed the oath but were sympathetic to their cause. This included some professors, faculty, at their staunch supporters and a nonsigner was a professor named John Caughey, who was a wonderful, dedicated professor. I don't

remember what his discipline was at the moment. And incidentally, who's the present president of the university?

Fletcher: David Gardner now.

Weigel: I think David Gardner was a supporter of the nonsigners, as they were called. He might have been.

Fletcher: He would have been quite a young man at that time.

Weigel: Yes, but he may have been. I'm not too sure about that. We'll have to find out. My charges were very minimal, because this was a cause that I felt privileged to represent. The only charge I made was the minimum consistent without not being unfair to my partners. After all, I couldn't expect them to lose too much on account of this case, lose too much in the sense of my time not contributing to the partnership.

Fletcher: How much of the case was in some sense a--how do I say this? The part before you go to the court of appeal for the writ strikes me as good strong lawyering in the tactical sense. There probably wasn't very much law at that point; it was tactical advice: how do we get from here to there? Or am I wrong? When you were trying to persuade the Board of Regents to vote in your favor. Now you lost at that stage, I understand.

Weigel: Yes. But what's your point?

Fletcher: Well, I'm wondering how much did they need your lawyering skills at that stage, and how much did they need your--how do I say it?--your savvy?

Weigel: Oh, I think they very much needed both. I had worked very hard in research on the legal questions involved to ascertain what their position would be if we lost at the level of the Regents. I advised them on strategy as to what position should be taken before the Board of Regents, so that before the fateful meeting, I had done for me a tremendous amount of research on the strength of their legal position, or its weakness.

Fletcher: So you were ready then quite promptly after you lost to go to court of appeal's procedure?

Weigel: That's right. There wasn't much delay.

Fletcher: Did you yourself get much adverse reaction as this was going forward: letters, phone calls, whatever?

- Weigel: A fair amount. I don't remember any threats. I think there were some bad newspaper articles. The reason that I ended up with a grin or a laugh--here again, I think this was the case--but I was told and I believe that Neylan heard about the bringing of the suit, he said he never heard of this shyster, referring to me. [Laughter]
- Fletcher: That brings something to mind: when the vote of the Board of Regents took place, were you allowed to make a presentation to the board on behalf of your clients?
- Weigel: I anticipated this question and I really don't remember. I think that I was not. I think that, for one reason or another, there was no appeal made by me. My recollection is that I armed the Regents who were on our side with materials and arguments. And there was one particular regent who was most supportive of the nonsigning professors. Let me see if I can recall his name. Well, can you turn that thing off for a minute?
- Fletcher: Oh, sure. [tape interruption]
- Weigel: I must say that I'm handicapped by virtue of an unfortunate fact which is that my personal files for this period, what's been called the year of the oath, and sometime before and sometime after, were somehow inadvertently destroyed. So I have more difficulty than I would have otherwise in recalling names. You asked how long--
- Fletcher: Yes, how long was it from the time that these professors first came under serious threat until you were able finally, successfully to resolve their case?
- Weigel: My guess is it was the better part of two years, but I would want to verify that.
- Fletcher: So a substantial amount of their time and your time went into this?
- Weigel: That's right.
- Fletcher: Well, maybe we should stop now and we can reconnoiter for tomorrow.

Writing a Book on the Fair Trade Act

[Interview 4: June 27, 1989] ##

Fletcher: Judge, last time we went over, among other things, the professors' case and some of the things in practice. Between the time we last met and this time I dug out of the library a book that you published in 1938 on the Fair Trade Act. I wondered if you would--and I realize this pertains to things we've done earlier--pick up a little bit how you came to write that and the consequences of that book.

Weigel: Well, I'm not sure how I came to write it, but at the time I was regarded as an expert in the field of these statutes. It seemed to me there was room for at least a handbook on the subject; I didn't intend it as a scholarly treatise. So I wrote to various people and one of them, the [] Foundation Press, agreed to publish it, and it had a very, very modest sale, and it had some interesting reviews. The *Harvard Law Review's* was that it was a worthless book. The University of Pennsylvania praised it to the skies and said I ought to write more. So naturally Harvard went down and University of Pennsylvania went up.

More on the Loyalty Oath Case

Weigel: It's not quite logical, but I'd like to go back on the professors' case. Because since we've talked, I found this book written by one David P. Gardner. Is that the president of the university?

Fletcher: That's got to be the president, right.

Weigel: It's captioned *California Oath Controversy* by David P. Gardner. It's described as "the story of the Loyalty Oath controversy, which for three years convulsed the nation's largest institution of higher learning." And having glanced through this book since last we spoke, I must say a little bit about matters relating to the controversy and my representation of the nonsigners, the Group for Academic Freedom. They were a very distinguished group, a group of people whom I came to really completely identify with and greatly admire. The leader was Edward C. Tolman, professor of psychology, and the way things evolved, the turn of the wheel is quite interesting.

He was discharged from the university for refusing to sign a special loyalty oath that singled out professors. Since then, he's been honored by the university, and there's an Edward C. Tolman Hall, which is named after him. So this shows how public opinion and time change people's minds and their estimation of issues and of human beings.

While I hate to single out any of them, the people I remember perhaps most vividly are besides Tolman, John Caughey, who taught history at UCLA. Kantorowicz, a very fiery person, professor of history at Berkeley; Jacob Lowenberg, who was a professor of philosophy, a very learned young man; and perhaps Gian C. Wick, a professor of physics who was a very distinguished scholar in that field.

I'd also like to mention that in the course of this work I became very well acquainted with Earl Warren, who was governor. And he supported the nonsigners. Occasionally I would review the [Inaudible] as to how he would get the Regents to do the right thing with regard to these professors. One of our conferences that I may have mentioned earlier, was to try to get the vote of Nimitz. One result of that was that Nimitz did wire that had he been present before the meeting--at which these people are discharged by a vote of the regents of 12 to 10--he would have voted against their being discharged. So we were successful, at least, in gaining his understanding of the issues and his approval in standing with the professors.

World Federalist Organization

Weigel: In thinking about yesterday's session, which struck me so far as my participation is concerned, not yours--it was sort of counterproductive; my recollection was not very good--I thought of a number of things that I'd like to cover, perhaps not necessarily in any chronological order. Is that all right with you?

Fletcher: Absolutely.

Weigel: As I was saying, a number of things occurred to me that I, to a degree at least, remembered. I may speak of them out of chronological order in terms of historical formality. Do you have any problem about that?

Fletcher: No, not at all.

Weigel: One thing that occurred to me was that in high school I became a great, avid admirer of [President] Woodrow Wilson. And when it was thought, before the California vote was counted, that he had lost the reelection, I remember really crying. One principal attraction of him was his espousal of the League of Nations. From his views on that subject--as I say, I was in high school--I became a very strong believer in soliciting for some kind of a world organization without absorbing the autonomy of individual nations within their own borders which would outlaw war as a means of accomplishing national justice. This led to my becoming interested in and very active in the World Federalist Organization. Have you ever heard of that?

Fletcher: No.

Weigel: The World Federalist Organization was founded by an overseas marine named Meyer--the first name escapes me now--who advocated the strengthening of the United Nations by giving it sufficient power to provide for international law. This cause developed a nationwide interest and membership called United World Federalists, and they attracted support of one of the great lawyers of this generation whose name again will come to me in a moment or two.

One of the national figures who was a strong supporter of and member of the United World Federalists was a very distinguished New York lawyer--Root, Clarke, Butler & Valentine, was it?

Fletcher: I'd have to check. My [Inaudible] is Dooly and Valentine. Was there a successor there?

Weigel: Well, in any event, I haven't the name of the lawyer I want, who was a founder and member of that firm. He convened a group up in his home in Dublin, New Hampshire to consider writing a constitution for strengthening the United Nations. And later on, he was, I think, the joint author with a Harvard professor of a book called *World Peace and World Law*. He was a superb lawyer and a superb human being. I became very active in the United World Federalists here in California, and through it I became very well acquainted with Alan Cranston, who later became the president of the United World Federalists, the national organization.

Norman Cousins and the Saturday Review

Weigel: I also became very well acquainted with the editor of the *Saturday Review*, Norman Cousins. As a matter of fact, that acquaintanceship, to digress for a moment from the Federalists, added another possible shift in my career. Cousins and the business manager, I guess it was, of the *Saturday Review*, had equal ownership of the magazine, and they had basic disagreements, and it was imperative that one or the other of them take over the reins. They both seemed to have great confidence in me, and they requested me to come to New York and to make a decision as to which one should take the odd share that would put them in control.

I took on that responsibility. I went to New York and I interviewed all the members of the staff as they sat there at [Inaudible], including the famous poetess, Amy Lowell, and many famous writers. I came to the conclusion, and it was unhappy one because I liked both of the men involved--but an overwhelming conclusion that Norman Cousins should be the person to have control. However, during the course of my work for them, both of them asked me to come and take over. And I often wondered what would have happened had I done so.

Fletcher: So you would have been in control and not just actively--

Weigel: That's right. I would have, in effect, been the chief executive officer over [Inaudible]. That was tempting.

Edward S. Rogers

Weigel: That brings to mind another thing that happened to me that was quite tempting. Remember that earlier we spoke of the great trademark lawyer, Edward S. Rogers?

Fletcher: Oh, yes.

Weigel: Rogers had this outstanding New York law firm, still a leading firm. I think it still carries his name. At that time, it was named Rogers, [Inaudible], & Hills. I remember one evening when I was back in New York working on some case for Mr. Rogers. He invited me to come to his apartment. He had an apartment in New York and a home in Winnetka, Illinois, where he had his law firm too. I had a ticket for some theater that night. I'm just as certain as one can be of anything that

isn't in writing and definite that he wanted to talk to me about going to New York and becoming a member of his firm. He didn't make any outright offer, but what he said communicated to me that that's what he had in mind. Well, I begged off, not because of any desire not to pursue the matter further, but I didn't want to leave my own firm. That could have brought a great change in my career. I don't think I would have been very happy because of the pressures of New York practice.

One of the members of that firm was a young man about my age named George Chapman. George was a very ambitious, hard-charging type, whom I liked; we got along very well. But there were certain rivalries, a certain amount of rivalry between us, in connection with certain plans we had in common. But George ultimately became burned out, and he retired to Chapel Hill, North Carolina, to a very small and limited practice. I wondered if I had gone to New York whether I would have similarly worn myself out.

Fletcher: If I can interject just one minute, I'd like to point out that Mr. Rogers wrote an introduction for your Fair Trade Act book, in which he very graciously says that in his opinion it is a very useful book. But *Harvard Law Review* ignored him as well as you. [Laughter]

Weigel: That's right. The *Harvard Law Review* is a little smart-alecky. But in any event, I'll tell you who wrote that review was Phil Graham, who became publisher of the *Washington Post*.

Fletcher: He always was a little unstable, that man. [Laughter]

Weigel: I'm glad you noticed that about him.

Fletcher: Oh, yes, I know him very well.

More on the World Federalists

Weigel: Let's see. Well, this takes me back to the World Federalists. I think it should be noted that the World Federalists became very close to being on the subversive list of the attorney general, who was the famous [William Connor]. I don't know if he was the attorney general at that time, but it was thought to be un-American and so on. I was honored by--as was Cranston with others--some polemics about this subversive organization in coming to curtail the sovereignty of the United States, which, of course, is a bunch of nonsense, because when it came

to international affairs, there wasn't any sovereignty. The only way you can assert sovereignty in case of serious disagreement with another nation is by war.

But in any case, I remember Alan very well, and I liked him then and admired him and I still do. At the same time, I was aware of the fact that--or I had the impression; I can't say it was a fact--but Alan rather operated in the United World Federalists organization as a sort of test tube for political aspiration on a larger scale. The way he handled himself at conventions, for example, of the World Federalists and so on. One would observe that he was learning and was highly skilled at political organizations and meetings and reconciling conflicting views. And among the Federalists there were conflicting views. Some of us felt that we should stick only to the line of advocating world peace through world law. Others wanted to take sides on current issues that were not directly related to that basic goal. Well, in any event, the World Federalists Organization died out.

Fletcher: Can I interject and ask a question that will tie it down in time? About what time period was this that you and Alan Cranston are working in this organization of the World Federalists?

Weigel: Well, my guess is, although I'm really not sure, that it was probably in the early fifties.

Service in the U.S. Navy

Weigel: That brings to mind another thing. I was--and this is something that I should be very careful and precise in articulating it if I can--I've always been and still am conscious of the fact that I'm a Jew. When it comes to defining what constitutes a Jew, I concluded and still conclude that one cannot say it's a matter of religion, because if a Jew adopts the Catholic religion, there's a tendency to refer to such a person as a Jew turned Catholic, whether they become in the real sense a Catholic would be shedding the label of being a Jew, a Jewish label. It isn't altogether really a matter of religion, because the view--[tape interruption]

And also I'm now and long have been an agnostic, so that I can't be said to be a Jew by virtue of religion, because while I like the idea of faith and wish I had it in a religious sense, I don't. But I still consider myself a Jew. Now, I

mention this because in the forties and earlier I was absolutely horrified at what [Adolph] Hitler was doing to the Jewish people. And although I was not of military age, I simply wanted to do something about it, and I wanted to do something that was meaningful. I really wanted to put my life on the line. Therefore, at approximately the age of thirty-seven or thirty-eight I sought to enlist in all the services of the military. Because I wanted, so to speak, to put my money where my words were, [or my heart was, my [Inaudible] instincts].

I was turned down for all the services. But ultimately I left an application for the navy and ultimately I got an acceptance from the navy and was commissioned lieutenant junior grade, approximately, and received orders to proceed at once to Charleston, South Carolina. I bid Ann and our little baby girl, Jane, a tearful farewell, and proceeded to Charleston. And there I reported to the commandant of the navy yard, and there I found that the reason my application had been accepted was that the personnel relations officer of the Charleston navy yard had gone through various applications at the Bureau of Personnel and had seen my record as a lawyer and concluded that what was badly needed at the navy yard was somebody with elite skill to gain deferments for the young men who were working at the navy yard to do the necessary work. So I was in a position of frustrating my basic desire. I really wanted to get into active service. As I look back now, that may have been silly, but it was certainly an idealistic motivator.

When I reported to the personnel relations officer--his first name was Jack; his last name will come to me--he was sort of a superficial person who had been a PR man for some airline. I told him I wanted out. He said, "You'll have to stay here for a year and then we'll see about it." Well, I stayed there for a year, and one thing that happened was this: semiannually, on some regular basis, a commission from Washington would come down to investigate the conditions at the navy yard. And they would file a critical report. That critical report would come to Jack, my superior officer. Jack asked me to prepare a response to it, and I prepared responses to it.

As a result, I became more valuable to that navy yard than President Roosevelt was to the country, an indispensable man. At every interval I would make an application for active sea duty, but would come to Patterson's--Jack Patterson was his name--to Patterson's attention, and he would say, "This man is over age; he's too valuable here; denied," and it would go to the admiral and the admiral would approve its denial. My

desire for active service was frustrated, but something happened.

In connection with my draft deferment job for these young men, I occasionally had to go to Washington. If you were an officer in the navy, you had the right to take a look at men's personnel file in the Bureau of Personnel called Bu Pers. I went to the Bureau of Personnel, and I was walking through there, and I heard a voice say, "Hi, Stan!" It turned out to be an old contemporary of mine at Stanford. He too was a second lieutenant. We started talking and he asked me how things were going and I said, "Well, they're going terribly. I wanted active service. I wanted to go overseas. I want to fight." He thought this was kind of silly, and it probably was. Is this too long-winded?

Fletcher: No, no; keep going. I love all of this.

Weigel: As it turned out, it probably was silly on my part. But he said, "If you really mean it, they need officers of the armed guard. I'll tell you what: you give me your home telephone number in Charleston, and when I think the time is right, I'll call you up and you put in an application for armed guard duty, and I think perhaps I can put it together." So he did that; I put in the application; Patterson said, "Disapproved: this man's too valuable here"; the admiral said, "Disapproved: this man's too valuable here"; three days later I got orders to go to gunnery school. The admiral's aide, Doc [?] Brown, who became head of the Atheneum school here, and a good friend of mine--the admiral's aide came over and he said, "Well, what the mischief happened, Stan? You got orders." And I said, "Well, I've got to obey the orders." The result was that I did go to gunnery school just outside of Jackson [?]. It'll come to me in a minute, the name of the town where the gunnery school was; it was along the coast.

Now I think I ought to say this: I'm enjoying this recollection, as you can see. I hope it's not boring you.

Fletcher: No, I love it.

Weigel: In regard to firearms, I like the theater; but whenever on the stage anybody would pull out a revolver or a gun of any kind, I used to freeze up and I used to worry about the damn thing going off. I didn't like firearms. But the training at gunnery school--Camp Shelton, Virginia--was superb. Because what happened was, you went as sort of an enlisted man through gunnery school, and you fired these large--they were large for me--3 inch 50 guns and 4 inch 50 guns, which were on the

merchant vessels that were protected by the navy [ensign] on guard, and you had various positions that you worked on these guns. You were first loader, which means a big shell was handed to you and you pushed in the thing in the near end of the gun--I forget it's name now.

Fletcher: The breech?

Weigel: Well perhaps. You pushed it in the breech. That's fair enough. And then there was first loader, second loader, and hot shells. Well, hot shell was after the gun was fired, a hot shell would come and and you had to take it and throw it away. I worked all those positions as an enlisted man. Then what you did, because when you're an officer, you took a group of enlisted men and trained them in all the things that you had learned after you had been through it. And for the last of your training, you and five other officers would go out to the firing range overlooking the ocean, at the edge of the ocean, and you'd simply have a squad. The performance of your squad would be rated by the officers. My squad got the best rating of all and I got to the point where I kind of wanted to pet these guns as friendly people and as a friendly instrument. I was very proud of that. That was a great achievement for me.

But the result of all this was I was assigned to duty as an armed guard officer and I forget the name of the--it was a refrigerator ship of some well-known steamship company on the Pacific Coast, and I was in charge of the crew to defend that ship. I was a senior naval officer, and that included outranking a supply officer who handled the provisions that we took to forward areas of the Pacific. We were a fast ship and we didn't travel in convoy; we traveled alone. I have to add this: I won't mention his name, in part because I've forgotten it for the moment, but the supply officer, who was junior to me, I thought was really a very nice person but kind of a dumb person, not very bright. One of my principal memories of him was, and this may be a little rugged, but I--did I ever tell you this story?

Fletcher: No.

Weigel: I was very strict; I followed the book: there was to be no liquor on board the ship; I didn't allow any liquor, and I wasn't very popular with the men, and for that reason, nor with him. But we went into Auckland, New Zealand, to get fresh provisions to take [Inaudible], and so on. And after a long stretch at sea, my young friend, this junior officer, just couldn't wait to drink some nice, cold beer. We dashed up to a nice pub there and [they went down for some] beers. Of course,

it wasn't cold, and he started to drink. His eyes rolled and he said, "Pour it back in the horse." [Laughter] That's a funny thing that I happened to remember.

We didn't see very much action, although some. I shot at things that were thought to be enemy submarines. We also had broken--I didn't know this had happened--the Japanese code. I was the communications officer; I was the medical officer in charge of the navy crew on the ship, and I got this message that when it was deciphered said to expect an attack at dawn from the Japanese [Inaudible]. Well, we were in neutral waters, just off site of some group of islands--I don't remember which--on a clear sunny day, and at the time this attack was supposed to occur, and there were other naval vessels. One of the naval vessels sent out a small boat that discharged smoke and went around the vessel from which it came, and that was a serious thing because it made a perfect target. But it didn't eventuate; there wasn't any attack that day.

I was in the Philippines and saw some of the Filipinos carrying Japanese severed heads on sticks and that sort of thing. Well, we got back to--

Fletcher: Before we get back, I want to ask a couple of questions if I may.

Weigel: Sure.

Fletcher: First off, the modern expression today for a supply officer is, they're called pork chops. Were they pork chops then?

Weigel: No, I don't remember that.

Fletcher: When I was in the service, there were 1105s, line officers, and there were pork chops.

Weigel: Well, he was a line officer.

Fletcher: The second question I had is more substantive. I want to understand the ship you were on. It sounds like it was a merchant ship with a small naval detachment that operated the guns.

Weigel: Yes.

Fletcher: So basically this was merchant marine with a navy detachment to protect it.

Weigel: That's right.

Fletcher: I think, then, I understand why the navy was having trouble getting people to volunteer for that duty, because you were a sitting duck.

Weigel: Yes.

Fletcher: If you had been on a freighter you would have been a lot safer.

Weigel: I think that's true. But in any event, that reminds me of something else. The captain of the vessel, a fine dedicated merchant seaman, and the engineer had the traditional rivalry. They fought all the time. I ate at the officers' table with them. The engineer became a friend for life because of this. We were going along and I looked out the porthole and I said, "Captain, we're going southeast." He said, "Weigel, the hell you say that. You're one hundred degrees wrong." And I said, "No, no. We're going southeast." He said, "You're absolutely off base." I said, "Will you give me five dollars if I'm wrong?" He said, "Sure." I said, "I am wrong; give me the five dollars." [Laughter] And the engineers loved me from that day forward.

But let's get back to the supply officer. He appeared to admire and like me very much. And I did like him. He was this dumb person. Two or three years later I got a letter on the letterhead of Gimbels, the great rival of Macys. "Office of the President." How was I and so on and so forth. It was signed by this fellow I thought was so dumb. The man and I later on met in New York and I enjoyed seeing him.

So that's why I interrupted my practice; that's what happened. I came back to San Francisco through the Golden Gate, as I think I told you. One of the letters was the loss of this client that [was written aboard].

Another instance was that when I came off the ship, my daughter Janie ran up to me and said, "My daddy's coming home today." She didn't recognize me. So that's the end of my war stories. Except I must tell you one other thing to get into this matter of consciousness of being a Jew.

Naturally I felt that prejudice of any kind, particularly prejudice of this kind, was intolerable. I heard, in the early days of the state of Israel's having become a state, a leader of the Zionist movement named Chaim Weizmann. I was so greatly moved by his talk--it was at the Commonwealth Club in San Francisco--that I seriously considered--this was before I was married; this goes back in time, I guess--I seriously considered perhaps going to Israel and throwing my lot in. I

was a member of the Zionist Organization, which was on the attorney general's subversive list, because the Zionists advocated a state of Israel, a nation of Israel. I supported that organization because I had reached the conclusion that in terms of reality, that probably Jewishness, for want of a better term, had the earmarks of nationality rather than anything else. There was a common language, more or less a common literature, there was common music.

Also, having that feeling about the nature of Jewishness, I had this feeling: I noticed that an Irishman could laugh at himself and so could a Swede, so could an Englishman, and I felt that that was because they had roots through their ancestors that they were the natives and the other guys were foreigners. But the Jews had no such place. And it seemed to me that if the state of Israel were formed, this would provide at least a psychological as well as physical base for Jewishness and it would be a place where the other guy was born and not the Jew. So I was in favor of the establishment of a Jewish nation and was very glad when it became established, and I thought it was too bad that it had to be established where it was. There were all these conflicting claims to the territory.

A Fair Trade Case in Montana and One in Los Angeles

Fletcher: Yesterday you mentioned after the tape was turned off, you had a signal success in Montana.

Weigel: Yes. Well, I should have mentioned that with some sarcasm, some reservation. What happened was this: I had taken these fair trade cases to the highest courts in a number of states, and I had tried the cases in different states and throughout California and almost without loss. I must tell you about one spectacular loss, though. Finally I was asked to argue the constitutionality of the nonsigner clause of the Fair Trade Act in the state of Montana, and in the town where, until I was about ten, I had lived. I had visions of the conquering hero coming back to hometown, and all this stream of victories, made one of the most brilliant arguments before the supreme court of Montana that they'd ever heard, and only lost by a vote of six to one. [Laughter] So that was that.

Another thing came to mind about a loss. I undertook to get an injunction in Los Angeles against a price cutter based upon the nonsigner clause of the Fair Trade Act. This was for Alka-Seltzer. It was then called the Dr. Miles Medical

Company, later to become Miles Laboratories. At some time prior to my--and unknown to me until it was brought out by the defense--prior to my arguing for preliminary injunction for the superior court in Los Angeles, Alka-Seltzer, the Miles people, had entered into a stipulation in effect admitting to a claim of misleading advertising. That was thrown up as an obstacle to my seeking preliminary injunction. It was convincing to the judge there, and he denied the motion. His denial was not well taken, because the denial was on the basis of clean hands; you see, [Inaudible] clean hands doctrine. But the real basis for that doctrine, at least at that time, was clean hands with respect to what we were seeking in court, and this had nothing to do with the rights of the Alka-Seltzer people to a preliminary injunction.

Well, the head of that company was a pretty rigid fellow and had threatened the loss of that client. His attitude was--but it didn't turn out that way--in contrast to his successor, because in another case in Los Angeles, I went down there and got a preliminary injunction. The local manager now decided we'd come back and tell the president that we'd lost the case and see what would happen. So we did, and his reaction was, "Well, that's too bad. Let's have an Alka-Seltzer," which was kind of different than his predecessor.

Fletcher: Yes. I asked the question--while we're on the subject of losses, did you ever have a loss or maybe losses, where you thought not only that it was a mistake, it could have gone one way or the other, or you were just outright wrong, but one that really rankled in the sense that it was simply unjust and outrageous?

Weigel: No, I can't recall any. At least your question brings nothing to mind now; maybe it will percolate and I'll think of something in another session, but I don't recall anything now.

Fletcher: Of the cases that you've won, of which there were a lot, is there any case or are there several cases where you've thought you really--how do I want to say this?--you really earned your money, you really pulled one out of the fire that another lawyer, another chance, or maybe even you on another day might not have been able to have quite the success you did?

Weigel: Well, I alluded to one where I got the demurrer overruled because of the appeal I had made to the audience as well as the judge. But no, I think this is probably self-serving and vainglorious, but I believe it was only a combination of legal skills and complete identification with a cause that brought me a victory in the professors' case at a time when the whole

psychology of the country was McCarthy, the days of McCarthyism. And that I feel was a singularly satisfactory victory, two victories, which I think might not have been the result if the people were less able and less identifying persons. Their cause was my cause. And while that is thought in some cases to result in a lack of a surgical detachment that makes for good lawyering, I don't think so. I think that the best advocate is one who really identifies with his client.

Discussions of Advocacy, Beliefs, and Memory

Weigel: Which brings to mind something that bothered me. As you know, I recently went to Harvard to attend some classes given by professors there. And one of the events, not a class--of course, they had what they called a colloquium. Do you remember the first name of the Solicitor General Fried?

Fletcher: Oh, Charles.

Weigel: He was the speaker or the discussant at this colloquium where perhaps two or three hundred lawyers and judges and others tell about the experiences in the office of the solicitor general. He espoused the view, when a question was asked about supposing the government wants you to take a position which you didn't believe--did I tell you this?

Fletcher: No.

Weigel: His response was that if you didn't want to do it you could be overruled by your boss, the attorney general, and if you didn't like the overruling, you could resign. That brief before the Supreme Court had to be signed either by the solicitor general, on behalf of the government, or by the attorney general. If the attorney general signed the brief, he would. But he said there was another way of meeting the situation where you weren't convinced that the government was correct legally or otherwise: you could state in your brief that you didn't share the view that the government had, that this was the law, that you advocated the law. Now that struck me as--if I were a judge and saw a brief of that kind, I'd be suspect right away. I brought that up with Professor Fried, and he didn't see that idea at all; he couldn't see how that would make the brief less effective or create any concern on the part of the judge. I was surprised that he would express this view, but he did.

Fletcher: That's very interesting. And he was using this as a way--

- Weigel: I don't know that he did, but he said one of his predecessors did and he thought it was perfectly all right. I have no question about his expressing that view and not backing away from it when I suggested to him what I did.
- Fletcher: There may be an exceptional case, but I can't think of it. It seems to me much more likely that the strong and effective advocate is one as you were in the professors' case that believes whole-heartedly in what's going on, and if you can't believe whole-heartedly, at least you don't admit openly that you disagree.
- Weigel: Yes, that's right.
- Fletcher: This may or may not trigger something. As you were talking about the Montana case leading up to this great victory, you said, "Which reminds me of a case that I did win," and I wanted to come back to that and see if that--was there a case you had in mind that you'd like to bring back?
- Weigel: No, it slipped my mind. It may have been in my mind at the time.
- Fletcher: It may come back later.
- Weigel: But the thing--let me just add this digression--the thing that really, as I mentioned before, is the forgettery that I have, and I'm not very proud of it. I was thinking about that; I was thinking how yesterday I had a hard time remembering names or events, dates and so on, and I'm wondering whether there's something in my nature which tends to--this is an overstatement and an exaggerated statement--make me less concerned with the past than with the present and future. There are so many people who have almost photographic memories, in fact, which I lack. I certainly have some vivid memories as the taping today shows, but I'm self-analytical in trying to figure out why I am so remiss in remembering so many things that it seems to me I ought to remember.
- Fletcher: Well, this may be a little bit beside the point, but I'm reminded of a colleague of mine at the university whom I won't name who has the most spectacular memory of anyone I have ever met. He reads something and he'll be able to recite pretty much the whole thing without difficulty even though he might have read it ten years earlier. I think partly as a consequence of this property of mind, though, he writes almost nothing, in a sense of sort of making new things his own and rearranging. He's almost, whether psychologically or

intellectually incapable I don't know, but memory in some ways, some cases I think simply gets in his way.

Charles Wyzanski and Others

- Weigel: Now your comment brings to mind something that is the other side of the same coin, and that's Charles Wyzanski. Did you ever know him at all?
- Fletcher: I met him here in these chambers when I worked for you.
- Weigel: Well, Wyzanski has the kind of memory that you described in your friend. He remembers every detail, but it's accurate and he was there, and it doesn't seem to me that his photographic memory--he said to me once that he felt one secret of his success was this memory. But in him it didn't stultify either his brilliance or his writing ability.
- Fletcher: No, no. He's somebody who had it all. And I admired him greatly.
- Weigel: So that's very interesting.
- Fletcher: Can I seize on this occasion--this is a diversion from what we've already been talking about--how did you meet Judge Wyzanski and could you tell me about him?
- Weigel: I'm not altogether sure how I met--I'll get some refreshment on that if I can. But we came to be very good friends. He sat on the court here. One interesting thing was that I had a case sent back to me--I think it was an antitrust case--by the court of appeals and it had to be retried. Charlie retried it. And his jury and his attitude came out exactly the same as mine. I think the losing side got discouraged and didn't appeal, because it was exactly the same. It was a very curious thing.

Let's see; what about Wyzanski? A very warm, a very decent person. Very valuable. We'd go down to lunch here and he would hold the floor--nobody could get a word in. But he'd tell fascinating anecdotes about his experiences in Washington as attorney for the Department of Labor. His head of the department was some woman--I forget her name.

- Fletcher: Was it Frances Perkins?

Weigel: Frances Perkins. I came to know his family, his wife Casella, and his son and daughter, both of whom have gone into law. Charles was a leader in Boston. He belonged to the most exclusive clubs that normally excluded Jews. He himself was not a practicing Jew. His wife, however, had been very active in getting children out of the hands of Hitler, and I suppose she's probably religiously Jewish as well as sympathetically, essentially.

He was a kind person who didn't believe in heavy sentencing, although he was hard on anyone convicted of violent crime or drug sales by a person--not an addict, by a wholesaler, big dealers. He was not the most tactful person in the world. For example, he once demanded--I don't know just how the demand was to be met, but any attorney who prosecuted a marijuana case had to certify to him that he, the prosecutor himself, never used marijuana. I think it was in this connection when the papers rather took it up that he recanted and said he'd talked the matter over with his wife and his wife thought he was wrong. [Laughter] He had that kind of dealing with the press, for example. He was an idealistic person, completely and effectively dedicated to the concepts of liberty and freedom that are enshrined in the Constitution. A really great man.

Fletcher: And if I could add something here, because I met him here in your chambers, he used to come in and talk to us law clerks, and he'd sit in that chair in the clerk's office and talk to us for a half an hour, forty-five minutes without the least sense of--how do I want to say this?--of demeaning himself. He talked to us clerks as if we were his friends and had been his friends for twenty years.

Weigel: He wasn't talking down.

Fletcher: No, not in the least. And occasionally we had to do a little work and would sneak off. But we very much enjoyed his coming in and talking to us.

Weigel: Well, I miss him greatly. He was not a prophet without honor in his hometown. He was really revered and highly regarded. I remember at one of these clubs he took me as his guest, the publisher of the Boston, what is it *Globe*?

Fletcher: Probably *Globe*, yes.

Weigel: Yes, that was the name of the paper there.

Fletcher: Yes, it's the *Globe*.

Weigel: His every opinion was treated with great respect. He was a long-time overseer of Harvard, and very well regarded at Harvard. His relationships on the bench with his colleagues were not altogether the best, because he just so completely outshone most of them in terms of intellectual capacity that they operated on different wavelengths. I think he was somewhat badly treated when he took seniority in terms of chambers and so on. He was not either beloved of or himself beloved the chief judge for the period that I knew him. He, of course, relished sitting and did frequently sit on courts of appeals, including in Washington.

Which brings to mind another thing; I don't know just what the relevance is. But for example, going back again to the Group for Academic Freedom, at home somewhere I have a really wonderful scroll that they presented me with as the champion of academic freedom. I was looking through the book I had for my eightieth birthday. Did you ever look through that?

Fletcher: Oh, yes.

Weigel: I was touched and flattered by, for instance, Shelly Wright, one of my heroes, saying I was a role model for him, which was really laying it on, but nice to hear. I knew him and his wife, Helen, very well. We were close, almost family friends as we were with the Brennans, and to a lesser extent with Dave Boslin. It was one of great joys that early on and almost every year I get invited to go back there, and that persisted since. I didn't get invited to go last year; I'm not quite sure why, but almost every year without exception I've gone to the court of appeals.

Fletcher: Let me interject, this is back at the D.C. Circuit Court of Appeals?

Weigel: Yes.

Fletcher: You were doing this I know when I worked for you.

Weigel: You probably wrote for me.

Fletcher: Oh, I sure did.

Weigel: Probably made me look good.

Fletcher: I wish I had.

Weigel: You did.

Fletcher: I remember there was a case we had--it was an odd libel case--where I--in fact, I was really regretful I had not done as good a job for you as I wanted. There was a man of a certain name--I forget what it was--and a story had been written defaming this man. Well, it turns out it was about another man of the same name. He was now bringing suit. And you were quite unsatisfied with the opinion I wrote for you.

Weigel: Was I?

Fletcher: You were very nice to me. But somehow we couldn't quite get a hand on what was distinctive about this case.

Weigel: I just can't imagine that that happened. [Laughter]

Fletcher: I can. [Laughter] I can remember.

Plan for Automobile Accident Commission

[Interview 5: July 5, 1989] ##

Weigel: In the early part of 1959, California Governor Edmund G. Brown asked me to prepare a plan as to the wisdom of establishing an automobile accident commission, perhaps modeled upon the Industrial Action Commission. I prepared a recommendation to him which was submitted on June 15, 1959, and the essence of it was that a study should be made as to the feasibility and desirability of establishing an automobile accident commission. I pointed out the shortcomings of the present system, which is still the present system, of compensating injuries and deaths resulting from automobile accidents and I pointed out the dangers of a commission and a detailed recommendation for study. I don't remember whether anything came of it. I don't know what the governor did about it. But I do remember that he expressed great appreciation for it and said he intended to follow up on it.

Fletcher: Do you recall how he came to choose you to do the work?

Weigel: I have no idea.

Fletcher: Did you know the governor at this time?

Weigel: Yes. He and I, although I didn't know him at the time, went to Lowell High School and we were there at the same time. We knew each other and we knew each other quite well later on. I don't

remember the genesis of why you're asking me, or the reason why you're asking me.

World Affairs Council and Other International Affairs

Fletcher: I want in a moment to get to your initially becoming a judge, but there's one topic that I haven't pressed you on yet that I want to, but it's chronologically prior. I know that you had a very long-term interest in world affairs, and I wanted to ask you about your activities with the World Affairs Council here in San Francisco, because I know you've been quite active in that over the years. Can you tell me about that?

Weigel: Sure. Early on, many, many years ago, I became a member of the World Affairs Council, and at some point in its history there was a real danger of its dividing in two because of a schism between many members who thought that the governing board, the whole slant of the organization was too conservative, that it was dominated by corporate fat cats. The matter became so hot and so threatening to the continued life of the council that I was asked to chair a committee to work out some kind of agreement between the contending factions. I was successful in doing so, and some people were kind enough to comment that I had really saved the council. But since then, it now has become a really important factor in the community dealing with world affairs, the idea being that world affairs are your affairs. The importance to the individual citizen is some knowing what's going on in international relations and foreign affairs.

Fletcher: Could I interrupt and ask you about when it was that you were able to work out this reconciliation?

Weigel: I'm afraid I can't; my guess is that it was--[tape interruption]

My guess would be, not too reliable, is about the middle of the 1950s.

Fletcher: Okay.

Weigel: Since then I have served two terms as president of the council, and that presidency makes me a permanent member of the board of trustees. I first became a trustee, I think, in 1960. Let me see. Yes, it was 1960.

Also, I was the president for eight years of an organization which had the cumbersome title of the International Hospitality Center of the Bay Area, and the function of that organization was to provide hospitality and education and sponsorship for foreign visitors to the community. And members of the organization, which still exists, would take visitors in their homes or provide for sightseeing and that sort of thing. Sort of a people-to-people business. It was affiliated with a national organization known as the Coserv, which is still very much in being and has headquarters in Washington in a building or structure known as Meridian House International.

As I think I may have said earlier, my interest in foreign affairs and international affairs continues. I am thoroughly convinced that the time is bound to come--I may have said before--barring destruction of much of the civilized world if not all of it through the use of nuclear weapons, that there will have to be some effective species of international law. That problems of prevention of pollution of international waters, international air, and a myriad of other problems can be solved only by enforceable world law. Treaties are only good as long as the parties to them feel them to be advantageous, because the concept of national sovereignty prevents their enforcement, affects their enforcement.

One of the great mishaps--in a sense a tragedy, if tragedy is the wrong word--recently was the failure of the United States to submit to World Court the question as to whether or not its activities in the harbor in Nicaragua--I forget the name of the harbor--was tantamount to war and therefore outlawed and subject to reparations. Although we signed a protocol to submit such disputes to the World Court, we failed to do so. [tape interruption]

Quite recently, although I don't find it handy now, I made a list of the problems facing the nations and people of the world, which made it requisite, it seems to me, that somehow we find a means of providing for enforceable world law. I remember earlier that I spoke of the interest of a distinguished New York lawyer in the activities of the United World Federalists. The name of the law firm at that time, of which he was a member, was Root, Clark, Butler & Balantyne-- [tape interruption]

The name of the lawyer to whom I referred is Grenville Clark. Mr. Clark was a leader of the American Bar. I think he was credited with having drafted at the request of President [Franklin D.] Roosevelt legislation for providing for a draft

in case of war, with the prospects of being involved in world war. He wrote a book I think he titled *World Peace through World Law* with a Harvard professor named Louis B. Sohn. Mr. Clark and his wife became--as a matter of fact, his daughter became, to a degree at least--family friends of my own wife and myself, and this was a very enriching association for me. He held a conference on drafting a world constitution at his home in Dublin on the east coast--Dublin, New Hampshire I guess it was--and among the participants was the then president of Yale, who I think became ambassador to London, didn't he?

Fletcher: Oh, is this Kingman Brewster?

Weigel: Yes, Kingman Brewster. I came to know him at that conference. I said we were there to draft a constitution. That wasn't what we were to do; we were to draft a declaration which was known as the Dublin Declaration. Unhappily I don't have a copy of that, because many of my personal papers for the period before I came on the bench were lost in transferring from my private practice office here to the courthouse.

Fletcher: Have you been able to continue in a significant way your activities and interests in world affairs after coming on the bench?

Weigel: No. My interest has been so significant that I've thought for a long time I would prepare a letter or statement expressing my views as to the necessity of some kind of effective world law, and undertaking to interest some financial and political and intellectual leaders in it, but I never followed through.

Fletcher: I think I know the answer to this, but let me pursue it for a moment. Was there anything in your practice that was an international business practice that would have led you in this way?

Weigel: Not at all, no. The nearest thing to any international experience in the law was probably connected with my directorship of the Parker Pen Company which had offices in nearly all of the major countries of the world. Traveled to some extent to one or more of those offices. And I think I may have mentioned--did I mention about how significant the Parker pen was?

Fletcher: I think you better tell me again if you haven't already.

Weigel: It was interesting. We noticed that in some countries, including I think China and India, there were many sales of not the barrel that contained the lid, but simply the caps which

had the clip, and the clip had the distinctive Parker symbol; it still is on the Parker jobbers, for example.

Fletcher: Yes, I know the symbol.

Weigel: We found out the reason for the sale of just that cap was that people could wear them showing the top part of the pen with the Parker symbol, clip sticking out, and was a mark of erudition and learning.

Fletcher: Is that right?

Weigel: Yes.

Fletcher: Can you even buy those separately today in this country? I've not seen that.

Weigel: I don't know.

Fletcher: To come back to this question of relationship between practice and your interest in international affairs, it strikes me that this was really altruistic, extracurricular activity on your part. This really was not tied up with business in any fashion.

Weigel: Not at all. But it greatly enriched my life. As I say, through the World Federalists I came to know Norman Cousins and Grenville Clark, Alan Cranston, Cory Meyer--the United World Federalists was founded by a marine who had fought overseas named Cory Meyer.

It's quite interesting as to what happened to Cory, whom I didn't know all that well. He traveled the country setting up local groups of the United World Federalists, and was regarded as an ultraliberal. As I say, the World Federalists were sometimes thought to be a subversive organization. Cory Meyer wound up as a right-wing activist in the CIA. I've never seen him. I always meant to call on him--I think he's deceased now --to find out how he progressed or regressed to that extent.

VI FEDERAL JUDGESHIP

Appointment to the Bench

Fletcher: I don't know whether there's some connection here, but my next series of questions I wanted to ask about how you came to become a federal judge, and I noticed among those people that you just mentioned, Senator Cranston's name. I know that you became a federal judge during John F. Kennedy's administration. But you were, I think, at that time and still are a Republican.

Weigel: Yes.

Fletcher: How did all this happen?

Weigel: Well, I really am not altogether sure as to how it happened. I always wanted to be a federal judge. In 1962 or actually a year or so before, I think that President Kennedy had been criticized for establishing too much of an imbalance in federal judgeships and putting them in the hands of Democrats. As to factors that resulted in my nomination, I haven't even yet persuaded myself to believe what I tried to tell my daughter: that it was due to my brilliance and scholarship and judicial temperament.

In the reality situation, I think somewhere all of the following factors resulted in my becoming a federal judge: I think my taking of the professors' case greatly endeared me to liberals, including, of course, many Democrats. In connection with that case I worked quite closely, for example, with a Democratic--I think it's Democratic--[follower] named Ed Heller, who was a regent of the University of California. Also there were a number of lawyers to whom I indicated my interest in becoming a federal judge who really wrote wonderful letters to their Democratic senator, whose name will come to me in a few moments. My only contact with him was that there was a federal bill that came to be known as the Miller-Tydings Act to

reconcile the federal antitrust laws with the states that had the so-called Fair Trade Act. And in connection with that, the senator asked me if I would prepare a memorandum for him which he adopted and put into the Congressional Record. Also, I remember testifying in support of the Miller-Tydings Act before a congressional committee, and as I recall either the member or the chairman of that committee was--[tape interruption]

Fletcher: Excuse me. We were having hearings on the Miller-Tydings Act in front of the senate committee chaired by--

Weigel: Yes. And there was some opposition to the Miller-Tydings Act. Senator [Hubert] Humphrey had been a pharmacist in Minnesota and was very much a champion of the Fair Trade Act. The testimony before the committee became somewhat heated. There was a lot of opposition by the discount stores, including [Schlegmans] of New Orleans, I guess. It was a famous case that decided the constitutionality of the Fair Trade Acts and I suspect it was [Inaudible]. But in any case, it became quite heated, and I was very flattered because afterwards Senator Humphrey told somebody that he'd be glad to have me as a lawyer anytime. So that was very flattering to me because I thought very highly of Humphrey.

Let's see; we were talking about what led to my becoming a federal judge. I'll tell you something that may have had a modest impact on it, and that was through the professors' case I came to know Pierre Salinger quite well. Pierre Salinger had been a reporter on the *San Francisco Chronicle*. He was the press secretary to President Kennedy. One Saturday when I happened to have been in Washington, probably during the prior week for some case or some work or other, I dropped in to see Pierre in the White House. We were chatting and I mentioned I would like to be a federal judge. Pierre said, "Stan, I'd like to see you be a federal judge."

He picked up the phone--it was a Saturday morning--and called [Robert] Bobby Kennedy, who was then the attorney general. He said to Attorney General Kennedy, "A friend of mine, Stanley Weigel's here. I think he ought to be a federal judge and I'd like to have you see him this afternoon if you could." Apparently Kennedy said, "Well, let him come over." I wasted no time in going over, and he had a huge office. As I entered, he was wearing a crew neck sweater, and he had a football in his hand and I no sooner opened the door than he threw it at me and I caught it. And I think that that undoubtedly accounts for my having become a federal judge. Actually, I think that he had little if anything to do with it; I don't know.

I'm quite sure that something else was a factor, and that is that I believe that his successor, Katzenbach, and maybe Bobby Kennedy too would like to have seen me nominated. I believe that the California senator who would call the tune had some commitment looking toward the appointment to the federal bench in Los Angeles of a man named Carr. And Carr was apparently the son or brother to the United States attorney, or possibly district attorney in Los Angeles. He was not well thought of as I recall by the Department of Justice. It could have been that, to use the vernacular, that the senator in question said, "Well, I'll give you Weigel if you'll give me Carr."

I don't know what else may have contributed to my nomination. Nothing comes to my mind. But I do have a vivid recollection of the hearing. Did I tell you this before?

Fletcher: No, not at all.

Weigel: I do have vivid recollection of the hearing before the subcommittee of the Senate Judiciary Committee. Mr. Carr and I appeared before the committee at the same time. As we went up in an elevator, the Republican minority head of the subcommittee said he was glad that at last the president showed some sense in that he nominated a Republican. I do not remember at the moment--it may have been the Southerner--who was chairman of the committee. But my wife was back there for the hearing; she sat in the back of the hearing room. There weren't very many people in the hearing room. When Carr was called up to appear before the subcommittee, he sat in front of me on one side; I sat on the other side. No significance to that particularly. But Carr had great sponsorship. Who was the from the southern states? I forget his name. [tape interruption]

In any event, after the hearing there came in this impressive senator, a candidate for president who gave Mr. Carr a very strong send-off. Quite oratorical with many oratorical flourishes. Then they asked Carr some questions. And then the first question I was asked was, "Well, Mr. Weigel, you've undoubtedly had a great deal of experience in criminal law." My answer was, "I've never had a criminal case in my life." [Laughter] I swore to tell the truth.

But in any event, I had written a brief on some constitutional question for some church in Boston; a leading member of a law firm there had asked me to write the brief. He was sitting with my wife at the time of the hearing. He remarked to her that he felt sorry for me because there was

nobody there sponsoring me, and so maybe he ought to go up and tell them what a fine man he is. But the hearing ended, and then we went to an ante-room and there was Eastman, and he said, "I don't mind telling you that you're both in."

So the next episode was that this senator who had appeared for Mr. Carr invited him to lunch, and Mr. Carr said, "Well, as long as you ask Weigel too." And so he did. We went to lunch in the senate dining room and I held senators in great awe at that time, and still do some of them. However, Carr was not very reticent. He said to this senator who supported him, "Now look, I want to be confirmed. I don't want any delay; I want to be confirmed this afternoon." And I thought, [Inaudible]. And then he said, realizing I was there, "And you might as well take care of Weigel too."

So the next thing was I went to pay my respects to, I guess, Katzenbach and then I went over to see Bill Orrick, who was in the Department of State in the personnel relations office. I think he had been sent there by Kennedy to see if Kennedy couldn't move the iceberg which was the Department of State; it was practically unmovable. I felt that my friend, Bill Orrick, wasn't getting very far even though he had his sleeves rolled up. I called on him. Then I came back to the hotel--we stayed at the Hay Adams--knocked on the door, and I'll never forget my wife in her voice said, "Come in, Judge." I had been confirmed and they had called there to tell her that.

Fletcher: So just like that.

Weigel: Just like that. It was a really wonderful thing for me. I never thought much of Carr, but I had a certain amount of gratitude to him and Lindley for saying, "You might as well take care of Weigel too."

Fletcher: What was the reaction of your friends here in San Francisco? Were they sorry to see you get out of the practice and leave them behind, happy to see you get on the bench, all of these things?

Weigel: Well, if you're talking about my partners I think they had mixed feelings. I think they felt it was--one at least thought it was almost a matter of desertion.

Fletcher: Not just desserts but rather desertion.

Weigel: Yes. I may overstate that. No, but by and large it was very flattering. As a matter of fact, somewhere I have a newspaper

account of my induction hearings by the court, at which one of the principal speakers was my life-long friend Ben Duniway. Going back a bit, I'm told and I believe that Ben Duniway made a very strong talk to the senator from California urging my appointment, and I gather he was then a judge himself.

Fletcher: Judge Duniway was then I think on the court of appeals.

Weigel: Yes. And someone told me he had made a very strong statement or appeal or recommendation at some meeting to the Democratic senator whose name I have shamefully forgotten.

I also remember a little instance; they're small things but sometimes they're very pleasant. When I mounted the bench at the induction ceremony, I tripped over my robe. I didn't fall, but I stumbled over my robe. I had a wonderful bailiff named Hugh Lemo and a very knowledgeable, street-wise courtroom deputy named Walter Moniz, and afterwards when I expressed some embarrassment at having tripped, I remember a juror said, "Well, Judge, don't worry about that. You're not used to wearing skirts." That was a nice remark.

Fletcher: Let me pursue just a little bit, because I'm seeing something of some interest here. Obviously the story of your becoming a member of the federal judiciary is not closely tied with senatorial politics. That is to say, you're having a little trouble even recalling the name of the senator.

Weigel: No, it wasn't. I was not active in politics. The only thing that I did in politics was really the wrong thing. I was a Republican and I somehow or other got tied up with some chairman of the San Francisco Republican Committee, which was opposed to Governor Warren as being too liberal. I think Governor Warren found out about that; I think he has a long memory.

Fletcher: This is when Warren was governor and before he became--

Weigel: Yes, that's right. And this, I think, he remembered. But I very soon, because it seemed to dead end, had nothing to do with that committee and had nothing to do with politics--except for one thing. In the professors' fight, the lieutenant governor contrary to Earl Warren was a regent, and he supported the John Francis Neylan effort to, successfully for the time being, to fire these professors. I thought that his action was so insensitive to the important principles of academic freedom and so completely political that I lent my name to the man who ran against him, a Democrat, who didn't have a chance of election. Instead of him, he might possibly be lucky to be a

footnote in California history. I don't even remember his name. But my name was listed as among the Republicans who supported this candidate for governor. That's the only political activity.

Fletcher: Yes. The lieutenant governor at that time, was that Goodie Knight?

Weigel: Goodie Knight, yes. I think that's about all I can recall, at least for the moment, having to do with my nomination and confirmation to the federal bench.

Fletcher: How typical was it of the people who came on the bench about the same time you did, a few years after, a few years before, that you would be this unconnected to the world of politics?

Weigel: My guess is it's atypical. And this is nothing for me or against my colleagues, but I think if you checked you'd find that most of the federal judges of our court had had some activity in politics and I think several of the present members of the court were United States attorneys, for example. And even an outstanding judge like Judge Duniway was very active as a Democrat. He was a dedicated Democrat. He was a member of various Democratic committees. He worked hard for the Democratic cause. And he's one of the great judges of the ninth circuit, as you know.

Fletcher: Oh, yes. I have great respect for him.

Weigel: So there's nothing to suggest, really, that--with one or two exceptions here and there--that the path to the bench made by political activity is a bad path, that you don't get good judges [Inaudible]. I think you do.

Fletcher: If I can interrupt and tell a slight story from my side. You know, my mother is a federal judge now. She was for many years a partner of someone who was very well-connected to one of the Washington State senators, Senator Magnuson. And she very much hoped for a judicial appointment through that route with Senator Magnuson. She had it all set, all wired. She was greatly disappointed when President Carter announced that he would get away from this political system and appoint on the basis of merit.

Weigel: Knowing your mother, that shouldn't have disappointed her.

Fletcher: But she was terribly worried that all of a sudden we were going to move from a political system to a merit system, because she had the political system wired.

Weigel: Isn't that interesting?

First Impressions

Fletcher: What was the federal district bench like when you joined it?

Weigel: Oh, smaller than it is now. The chief judge was George Harris. Ollie Carter was there. Albert Wollenburg was a fine judge who I think had been a senate spokesman for a California senator somewhere. He was very close to Governor Warren. Bill Sweigert, a top-ranked judge, had been a private secretary to Governor Warren. And incidentally, Sweigert had tremendous influence in determining who would be the judicial appointees for Governor Warren in the state system. Who else was there then? Well, those are the people who I remember.

Fletcher: When did Judge Zirpoli come on the bench?

Weigel: Oh, Judge Zirpoli. Outstanding judge!

Fletcher: He was already then?

Weigel: As a matter of fact, Judge Zirpoli was appointed immediately prior to me. A great judge and he was very political. He had been extremely active in the Democratic party, in local and state politics, and one of the best judges on this court.

Fletcher: Where was the federal court building at that time?

Weigel: It was where the court of appeals is now, at Seventh and Mission, and being at the bottom of the totem pole, I had a very small courtroom. The present building, of course, which is on Golden Gate Avenue, was in the course of construction. And the district court was going to come over here. The court of appeals thought they'd stay at Seventh and Mission, but as the building got closer and closer to completion before they finished the Golden Gate, they changed their mind and wanted to come over here, but it was too late. And so they stayed there, and they now have a very remarkable old building. It's very old-fashioned and somewhat ornate, but it is a beautiful courtroom.

Fletcher: So you tried your first cases then in the old Post Office Building with those beautiful old, pre-earthquake courtrooms?

Weigel: That's right. Mine wasn't that beautiful. Mine was sort of a box on the alley.

Fletcher: I've noticed in those courtrooms when I hear arguments that the acoustics were quite bad. Was that true then?

Weigel: Not in my courtroom, but it may have been in the others.

Fletcher: What was the business of being a judge like after all those years in practice?

Weigel: It was absolutely exhilarating. I thought it was really sort of Valhalla. I think I was in my fifties then. I had looked forward to being on the federal bench, and I thought then and still think now, what more could someone trained in law ask for than to be in a position to try to do justice unto the law? That seemed to me to be a wonderful thing, and I found it very exhilarating, and to some extent I still do, despite the fact that the novelty has worn off. I remember, particularly in criminal cases, I felt I really ought to--

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Fletcher: Okay, you were talking about criminal cases.

Weigel: I thought that instead of being paid, I almost should be paying for the experience, the opportunity to see and play a significant role in the process involving the liberty of human beings and justice under the law in criminal cases particularly.

Which brings me to another thought, two thoughts as a matter of fact. I have not as a judge been prone just to call balls and strikes. It has seemed to me to be important or useful to bring out facts that were not brought out by counsel, and I would ask the requisite questions. If I saw a tremendous imbalance between the quality of lawyering on one side against the quality of lawyering on the other, and if it appeared to me that that imbalance was so extensive that it might well result in what seemed to me to be a miscarriage of justice, I would not hesitate to try to bring out truths which should have been brought out by the less competent, or indeed incompetent lawyer, particularly in jury cases, so that the facts could be fully before a jury.

The other thought I had was this: I never went to court that I can remember unprepared. I worked very, very hard. I felt a sense of deep responsibility to my clients, and a sense of great obligation to the court. So I really carefully

prepared before I went to court, every case that I ever went to court on, big or little. As a consequence, I was early on, on the bench, more impatient than I should have been, I suppose, with lawyers who were not well prepared, who hadn't really worked. I thought they were kidding themselves and their clients, and I may have been more severe with them than I should have been, although I never had in all the years I've been on the bench held a lawyer in contempt, but I may have been rather more harsh in their direction and less kindly than I should have been. That still disturbs me to this day. To some extent, I'm afraid that that reputation has carried over, although I think it's no longer justified, because I try to avoid any really harsh treatment or criticism of the counsel, unless there's something overbearing.

Juries

Fletcher: Let me ask the question that comes out of what you have just said: how much do you think you are able to compensate for bad lawyering? Are you able to bring it back more or less to an even fight?

Weigel: I think if it's necessary I do indeed. You don't need to worry about it so much when there's no jury. But in the case of a jury, the jurors almost invariably hold the judge in--the judge is seen as a really great arbiter of justice and fair, and there's nothing lawyers can do to undermine that regard that the jurors have for a judge. As a consequence, any questions the judge asks or any comments the judge may make carries a great deal of weight for the jurors. I make it a regular practice now--I didn't earlier on--in a jury case of, after the case is over and the verdict's come in, I go in and talk to the jury and get their impressions of the lawyers and even invite them--I feel I'm capable of doing it--of their comment as to whether the judge showed any impartiality or anything of that kind. That's a very enlightening experience. It's helped me to become a better judge.

Let me say this about juries--I don't think I've said this before. I believe--I was about to say passionately; I guess that's not too strong a word--in the jury system. There's something absolutely remarkable about it. Let me put it this way. Let's say, just to illustrate the thought, that I tried perhaps a thousand jury cases. I would say that in 995 of them, the jury verdict would have been the same verdict I would have given if I had been a juror. As to the remaining five, in

perhaps three, while I wouldn't have decided that way, I believe the evidence justifies the verdict. And in only two, for example--2/10 of 1 percent I guess it would be, probably less than that--I would say that the jury verdict was wrong.

Now the interesting thing about that is--and that's even true in complicated cases--that you found out when you talked to jurors that very often they reached the right decision for the wrong reason. But there's something that results in a remarkable creation and provision of justice as a result of a jury trial.

Fletcher: This question is designed to get at part of that: have you had much occasion to use the special verdict as distinct from a general verdict?

Weigel: No.

Fletcher: Because if you use a special verdict you get them to tell you why and they may in fact give you the wrong result because their reasons are in control of how they go.

Weigel: That's right. No, I very rarely ask for a special verdict. There are some cases; I can't think offhand what kind, but there are some cases in which it's appropriate to advise a special verdict.

Fletcher: What prompts the question is something I read a long time ago, a federal admiralty judge in Maine, which was then part of Massachusetts, in the early 1800s was retiring and this was one of the testimonials that they had then, as they still do, on the occasion of a judge stepping down, and he commented on how lonely he had been as an admiralty judge, never having a jury. I was struck by your comments here, and your great valuing of the jury. Have you found over time that the jury keeps you in touch with the morality or mores of the community in some significant way? Not just from the sense of do you agree are they right or wrong, but do you, as following along with this, get a sense as to how the mind of the community works?

Weigel: Well, to a degree. Let me see if I can be more specific by way of example. I'm not sure I can. One thing that comes to mind; I don't know if this is responsive. I tried a case involving a defendant named Craig, who was charged with four separate counts of bank robbery. In my view, the evidence supported the view, but not beyond a reasonable doubt, that he was guilty on all four counts. The primary evidence, however, related to identification of four cases was not very good. But I went in to discuss this after they came back and found him guilty on

one, which he was clearly guilty of beyond reasonable doubt, and the jurors has taken that "beyond reasonable doubt" instruction very seriously, and some of them thought that that might not be a good idea; it was too strict a test. But most of them felt, yes, if you're going to take a man's liberty or rights, beyond a reasonable doubt was a good test. That may be somewhat responsive to your question; I don't know.

But in drug cases, for example, the jurors would always agree as to the terrible problem of drugs and how to deal with it. But I don't know that my experience with juries would provide me with sort of a private Gallup poll at all--it didn't in a meaningful extent.

Fletcher: Let me ask a further unrelated question. How much do you think the jury is able to focus on and understand the legal instructions that you give them?

Weigel: Let me think about that for a moment. I think they do understand by and large pretty well. I think they pay careful attention. I make a practice of avoiding sing-song reading instructions, and make a practice of inviting any juror as I read the instructions who doesn't understand not to hesitate to raise their hand so I can explain it. I do know that some judges have written copies of the instructions in the jury room. Some judges do that. That probably heads off requests for rereading of the instructions. I think, however, it's useful both for the court and to counsel. If they want a rereading of the instructions, it provides some insight as to what's really troubling the jury. I feel that giving the written instructions may tend to make them concentrate too much upon language and tend to make them, to use the vernacular term, Philadelphia lawyers. So I think it's better not to provide them with a copy of the instructions in the jury room.

Fletcher: I'd like to stop now and we'll resume next time around. [tape interruption]

Weigel: I'd like to make a further comment about juries. I've never yet, after talking to jurors after a case is over in scores of cases, found a jury which failed to take their responsibility very, very seriously. They're very concerned and they're impressed with their power and impressed with the importance of exercising it wisely and effectively and humanely. They took their jobs very seriously.

Fletcher: In fact, I'd like to add a story now that, a story of your courtroom. It happened when I was your law clerk. It was a criminal case. The defendant was charged with having submitted

false time cards over at the Alameda naval yard on Sundays. The scam was, assuming that this is what was happening, that nobody would show up in the shop except for one guy who'd put all their time cards through. The defendant's defense was, "I was in church," which didn't seem to us a very good defense. Because the charge was that you weren't at the navy yard.

The jury was largely white, middle class, and the defense basically was that this was not properly proved by the prosecutor. It wasn't the defense of "I'm completely innocent" so much as just focusing on "This is not been fully proved." And the jury came back with a verdict of not guilty. I remember very distinctly a conversation that you had with the lawyers and the jurors afterwards, where the defense lawyer said, "Look, this is just one of these cases where I like this kind of a jury that takes it very seriously of the responsibility of proof beyond a reasonable doubt." They did exactly as you're now describing. I can't remember the name of the--

Weigel: I vaguely remember the case.

The Business of a Federal District Court Judge

[Interview 6: July 17, 1989] ##

Fletcher: It is the 17th of July and we've had a hiatus of about ten days, and as I recall we last left this having recently arrived in Valhalla as a U.S. federal district judge. I'd like today, if I could, to ask you general questions about life as a district court judge. Maybe the best way to start is to ask, what's the course of business that comes through your court? How much criminal, how much civil, business, and what other ways would you describe the business that you do?

Weigel: Well, my description would be generally that there's a tremendous variety of cases. I'm not sure whether statistically I'm correct about the relationship between the criminal and civil, although I think I'd be fairly accurate until recently at least. I stated that a majority of filings were civil. I think, however, that what's going to happen now is that civil cases are going to have--there will be real problems in bringing civil cases to trial, because of the sentencing guidelines and the delays that will be involved in meeting the requirements that the statute provides for the sentencing guidelines. I think that there will be a long delay

between a plea of guilty or a verdict of guilty and sentencing, because of the impact of the pre-sentence report in determining where on the guidelines a defendant falls.

There are requirements for hearings in case there's a dispute between the probation officer in this pre-sentence report and the party or parties as to the facts of accuracy of the pre-sentence report. So that a real problem now is facing the federal courts, particularly in jurisdictions where there are a good many criminal cases, as distinguished from relatively small communities and states where there isn't a great deal of crime. But I think in areas such as San Francisco, Los Angeles, San Diego, and northern counties where district courts are in urban populations, that could be a real problem in getting civil cases to trial.

Fletcher: Let me interject just a moment and give the premise for what you're talking about. I know exactly what you're talking about, but it may be that others are less familiar with it. We have a new system by statute whereby quite recently the federal judges are controlled by so-called sentencing guidelines and quite strictly limited in terms of what they can do. You have written recently in the *UCLA Law Review* an article called "The Sentencing Reform Act of 1984: A Practical Appraisal." The citation is 36 *UCLA*, p. 83, 1988. Many of the criticisms that I am now hearing are criticisms that you've spelled out in this article. I noticed, preparing for today, that in fact you had a long-term interest in sentencing. We'll come back to civil in a little bit, but I want to now go on with sentencing; I'm very interested in that. You wrote an earlier article in the *Stanford Law Review*, volume 20 *Stanford*, p. 405, 1968, in which you argued for some appellate supervision of sentencing, without spelling out in precise detail how that ought to work, nevertheless saying that some disparities in sentencing were too great and unjustifiable. It sounds as though--and I'm putting words in your mouth only so you can take them back out if you like--the problem that you perceived in 1968 has been cured, but cured with a vengeance, creating its own new set of problems. Is that how you see it?

Weigel: I don't think it's been cured. Let me refer to that article as best I recall it. I haven't reread it since shortly after publication. I was concerned about disparity in sentencing, and I believe I'm right in saying that in the English system there could be an appellate review of sentencing imposed by the trial court, either by the crime or by the defendant. I gathered that that didn't create any serious problems in the English system. However, I was acutely aware of disparity in sentencing, for example, in connection with the draft cases

during the Vietnam War, when some judges were very heavy-handed in sentencing those who refused the draft, and there was a great disparity in that regard. I also was aware of the fact that some judges were extremely heavy on sentencing and some perhaps even notoriously light. It seemed to me that that sort of thing could, to a degree at least, be corrected by a right of review. Perhaps not a right, perhaps something in the nature of certiorari that would allow a review in court to see whether a sentence was excessive or too lenient.

Now while you credit me with some foresight on this business of disparity of sentencing, I think that the guidelines to which you've just referred are not going to eliminate disparity, because the guidelines call for interpretation by the judge imposing the sentence, and I think different judges will have different interpretations. I have no doubt, however, that the effect of the guidelines would be to result in harsher, longer sentences than was the case statistically and perhaps individually before the guidelines. I have a real quarrel with this, because in my view heavy sentencing does not operate as an effective deterrent except with respect to the deterrence of the individual confined by the sentence. I do not think it has a great effect on deterring others from committing the crime.

It may be that with respect to white-collar crimes--embezzlement, perhaps, securities frauds, and that sort of thing--that it operates as a deterrent. But with respect to the great majority of crimes--drugs, crimes of violence, murder, and the like--my view is that heavy sentencing is not a deterrent. Witness the fact that in some states which have had capital punishment, which is the ultimate in heavy sentence, as compared with states with a similar demographic population which lack it, that the murder rate was just as great or greater in the state which had capital punishment.

It seems to me that the heroin addict who commits crime in order to get their money for a fix doesn't count the consequences; nor do the underprivileged, particularly in the city ghettos, count the consequences. For example--and this is just one example; I don't think it's hypothetical, though indeed it may be--the untrained, uneducated, unmotivated in the sense of good motivation, who has to choose between getting a minimum wage if he has the opportunity to work at someplace like McDonald's and being able to make fifty or twenty times that amount by dealing drugs, they'll deal the drugs and they'll take the chance on getting a long sentence.

Well, I've gone off a little farther than I should have in response to your question.

Fletcher: Let me ask a question about a sentence that in some ways the whole situation is quite atypical in current events. As you know, Oliver North has just been sentenced by Judge Gesell in Washington to a suspended sentence, to a fine of \$150,000, to a period of community work. What was your view as to the appropriateness of that sentence?

Weigel: My first reaction was that it was unfortunate that there wasn't an imposition of at least a short prison term, even as short as thirty days, because it might result in the public impression that if you were an important person, relatively highly based in a governmental position, you got off too lightly.

On further reflection, I have come to the conclusion that the sentence was just what it should have been. I think that the judge correctly assessed the reality of the nature of North's makeup, and I think that he correctly assessed the fact that although it's not a defense, in a sense North was following orders.

I believe that the judge avoided making a martyr of this man had he been sentenced to prison and went to prison waving the American flag, which he was supposed to do. I think that the public who feels the sentence was too light underestimates the heavy consequences of that sentence upon a man of North's character: he's deprived of holding public office; he loses privileges of citizenship; he's stigmatized, if the sentence holds up, as a felon for the rest of his life, unless he's pardoned, and even so he's considerably stigmatized; his fine was heavy.

The community service ordered by Judge Gesell, I think, was a very brilliant concept because it could be that that community service, directed at his working on the drug problem in the District of Columbia--it could be that that would catch the imagination of a competent person, such as Colonel North is, and really result in something constructive and useful. So on second thought, my view is that Judge Gesell's decision was just exactly on target.

Now that brings to mind something I never said in that early article in the *Stanford Law Review*. I think there's something to be said for the idea that the punishment should not so much fit the crime as it does fit the criminal.

Fletcher: Yes, meaning that one bank robber is not quite the same as another bank robber.

Weigel: That's right. And there's a very easy illustration for that. Should the man who has had no prior record who's desperate to get money for an operation to save his mother's life, who heretofore has been a model citizen, get the same punishment as the person for whom this is a repeated offense? And so on.

Although this is somewhat self-serving, I think this may be relevant. When I first came on the bench, there came before me a man who--I can get the name later, the defendant--from about eight years and maybe a little later in his life than that until the time he came before me had spent nearly all of his life in prisons. He had been in a prison where there was a riot, and although he didn't participate in any violence, he in a sense lent himself to the riot. He was about thirty-six years old. He had an IQ bordering upon genius. A very wise probation officer suggested to me that maybe this man's rebellion had burned out. The question that I had to deal with was this, as I recall it: whether or not his term of service in a state prison should be credited against a federal sentence.

I decided that what I would do would be this: I would ask this man before I sentenced him if he would just submit a statement of his views about what should be done. As a result, I had a reply from him in writing which was nothing short of completely genuine, bordering upon the brilliant. One thing I asked him was what he would do if he got the benefit of the concurrency in sentencing.

I decided then that I would make the sentence concurrent. I was faced with a problem, because my view was that this man, through his life in prison--most of his life was spent in prison, juvenile detention or prison--he had always been dealing with superiors who handled him on the basis of categorical imperative: do this, don't do that, and so on.

I rather wanted him to have a copy of what he submitted to me, but I felt that if I gave him a copy without any explanation he would feel that this was to pin him down to live up to what he said. So when the time came, instead of doing that, I said, "Now I'm concerned that if I give you a copy of what you've written here, which I think is so very good, that you'll think it's an effort to tie you down, an effort to impose something upon you. On the other hand, I think this would be useful to you. I want you to decide whether or not you'd like to have a copy." He decided to have a copy. He was then a model prisoner at the state prison; I called on him

there. After he left he married and became a hematologist--he had done some work in that field in the state prison--and led an exemplary life. I don't know. That's a rare thing, that kind of experience. But it was a very satisfying experience for me.

Fletcher: And this you say was early on in your career?

Weigel: Yes.

Fletcher: Do you have other examples or other ways in which your views were educated in your early years? Perhaps, have they changed over the years that you've been sitting on the bench as to how sentencing works or should work?

Weigel: No, I still feel exactly the same way as I did.

Fletcher: Were you in any way handicapped or did you feel yourself somehow at a disadvantage coming on the bench dealing with criminal cases when your litigation work had been all civil?

Weigel: Not at all. I didn't feel handicapped in the slightest. As a matter of fact, I rather enjoyed the criminal cases. Enjoyed may not be the word. I perhaps had more interest in criminal cases than in civil because of the high stakes involved and the drama involved.

You asked earlier, perhaps before when we went on the record, my inexperience as a judge particularly in criminal cases, what did I do about it? Am I going too long?

Fletcher: No.

Weigel: Well, for one thing I did something that wasn't very good. When I first came on the bench, I went and sat in the courtrooms of other judges to see, to learn. [Laughter] I don't know if I was criticized for that; I think people understood. But that helped me. I didn't feel any disqualification based upon my lack of criminal experience or lack of judicial experience.

Fletcher: This question isn't quite related to our immediate topic but it comes to mind with you sitting in watching other judges. I sometimes think about the court of appeal judges and many of them not having significant or any trial experience, and sometimes wonder whether they ought to spend some time sitting in a district court courtroom. What's your sense as to whether the court of appeal judges have enough practical sense of what goes on in trial court?

Weigel: I feel they do not. And for example, wasn't Judge Noonan [in a [Inaudible] of yours at one time]?

Fletcher: Yes, he was.

Weigel: When he first came on the court of appeals, by chance we had him for a luncheon--we have a dining room here in the building for the judges, down in the conference room--and I chanced to sit next to Judge Noonan. I encouraged him to try some criminal cases, and within a week or two he was on this district court sitting in for one of the judges of this court. I urged the same thing upon Judge O'Scannlain.

Fletcher: Oh, the fairly new judge still up in Portland.

Weigel: Yes. I think he did that. I believe that this is a useful thing for appellate judges, because it may bring life and better understanding to the cold words of the printed or typewritten record.

Fletcher: There's one question I've let slip. We now have a great number of criminal cases effectively disposed of, at least as to the guilt or innocence, like plea bargaining. To some extent, then, plea bargaining even constrains the sentencing. How much plea bargaining was there when you first came on the bench?

Weigel: There was a great deal. As a matter of fact, that resulted in currency in the calendar. We were pretty close to currency in the calendar. The way that worked was this: at the time of the plea, the parties would announce a plea bargain, the nature of which was, if the government agreed that if there were a plea of guilty the government would recommend a sentence that was a light sentence, or the dismissal of a number of counts, or a combination.

My practice was, and still would be, still is--I say would be because I'm not taking criminal cases right now because of my dislike for guidelines; as a senior judge, I have that privilege--but my practice was and will continue to be in criminal cases, where there is a plea bargain, I will not agree to it but will state that depending upon a pre-sentence report, my own assessment of the propriety--unless there's some reason to believe that it's improper, I will consider it favorably. But I would retain the right to disregard it. I make it clear to the defendants and to the U.S. attorney representative that I will not be bound by it. But almost invariably I have found it appropriate and have acceded to it.

Fletcher: Are you unusual among your district court colleagues in withholding that final approval?

Weigel: I don't think so. I'm not sure, but I doubt it. There's another unusual type of thing that I've done. When a case involving no serious crime--I can't think of an example at the moment, but one may come to me--in which there's a plea of guilty and the defendant has no prior record and, as confirmed by the prosecuting attorney, appears to merit probation, I will sometimes ask the attorneys whether they feel that this is a case for summary disposition. And if they say yes, I will sentence on the spot without a pre-sentence report and grant probation. That's worked out very well. I didn't have them very frequently, but it has happened. It saves a trial and saves the laborious task of preparing a pre-sentence report.

Fletcher: I think you answered it, but I wanted to make sure that I heard it right: it sounds as though the amount of plea bargaining has remained relatively constant from the time you came onto the bench until now.

Weigel: Oh, no. Now as a result of the guidelines, plea bargaining is much less frequent. Because under the guidelines, the defendant pleads guilty or not guilty. If he pleads guilty, the guidelines are such that the sentence to be imposed doesn't take that into account, except that it may show what's called remorse or something of that kind; it's an element in the measure in the guidelines. But since a plea of guilty doesn't [Inaudible] much for the defendant, man or woman, why not take the chance and see if you can't get found not guilty before a jury?

Fletcher: That's very interesting. Before the guidelines, there was a great deal of plea bargaining?

Weigel: Yes.

Fletcher: But with these new guidelines, the game has changed significantly.

Weigel: Significantly.

Fletcher: Let me ask you a little bit about the civil litigation side. We know that most civil cases filed end up in settlement.

Weigel: Right.

Fletcher: How active a hand do you take in settlement of civil cases?

Weigel: That depends upon the case and it depends upon the stance of the attorneys relative to settlement. Ordinarily I will not act myself as a settlement judge in a case before me in which there would be no jury. [What I'm going to do is find the [Inaudible] in determining the law].

If it's a jury case, and the attorneys want me, as they not infrequently do, to act as settlement judge, I will put something on the record like this: I'll have the record make it very clear that they're aware that I'm going to be trying the case, that I will be deciding the law but not the facts, and that if I act as a settlement judge, I may in the interest of bringing the parties together appear to take one side or the other, or change. I may or may not be critical of one party or the other for not agreeing to what appears to me to be a reasonable settlement. I want the counsel to know that in advance and that I will try to do my best to make sure that their position of settlement will not influence me in the course of trial, in the course of further proceedings, if settlement doesn't result from my efforts of settlement, but that I can't guarantee it. I can't guarantee that I will not be affected by their positions in settlement.

If that was fine, all that, and they want me to act as a settlement judge and agree on the record here and now and there that no matter what transpires during settlement efforts they will not ask for my disqualification, I'll do it. And they invariably accept it. I think the better practice which I followed, however, was that lawyers that particularly want me to try to settle the case, is to refer them to a magistrate and another judge as a settlement judge.

Also, even in a court trial, there have occasions when the attorneys will employ me to act as settlement judge, and in a courtroom case I occasionally do that. I've been very lucky or perhaps successful, perhaps both, in being able to bring parties together. I really think that that's a very useful role played by the judge, because it means ordinarily that neither party loses all. It saves time, tribulation, expense of protracted litigation, perhaps appeals. So I think settlement of civil cases is a very healthy process, except perhaps where some matter of great principle in that area is involved.

Fletcher: Has there been any change that you've seen in the practice of the bar during the time that you've been here in civil litigation: willingness to settle, being hard-nosed in litigation, whatever other changes you might have seen?

Weigel: I think there's at least a slight tendency to be less hard-nosed about settling.

Fletcher: Now?

Weigel: Now.

Fletcher: More ready to settle now?

Weigel: Yes, I think so.

Fletcher: Any idea why?

Weigel: Because of the complications of litigation and the increasing delay and perhaps, and I'd like to think this may be true, a more enlightened bar.

Fletcher: I'm sensing this between the lines, and this may be pressing it too hard--do you sense that there's a higher quality of practice now than when you first came on the bench?

Weigel: On average, yes, with notable exceptions.

Fletcher: Any idea as to why that's happened?

Weigel: No.

Fletcher: No, nor I.

Multi-District Litigation Panel

Fletcher: Let me change the subject to some degree and ask you about something that in some sense is extracurricular, at least out of your courtroom. For many years you were a member of the panel on multi-district litigation.

Weigel: Yes.

Fletcher: How did you first happen to come on to that panel? And then I want to hear about your experiences on the panel.

Weigel: Well, I don't know whether I told you early on that as a Republican I became temporarily affiliated with a group opposed to Governor Warren. Did I mention that?

Fletcher: You did, but very briefly, so we'd better do it again.

Weigel: The governor's supposed to have a long memory. But we did work together, as I think I mentioned, in the professors' case and on the same side. When he became chief justice of the Supreme Court--I'm inclined to believe that one of my colleagues, Bill Sweigert, a person whom I've loved and revered and whose memory I hold in the highest regard and who was very close to Governor Warren--he took care of the governor's appointments and so on and so forth; he was a close confidant of the governor. I'm not positive but I think it may have been that then Chief Justice Warren may have told me this one time when I called upon him. But I think Bill Sweigert said, "Why haven't you made use of Judge Weigel's talents?" It was flattery, but I think that's what happened. So the chief justice appointed me to this panel.

I enjoyed that very much. It was intellectually stimulating. It wasn't all that difficult, because you had a very competent staff, and the standards for determining whether pretrial proceedings in a multiplicity case involving the same issues should fall to or [Inaudible] one judge where the standard was fairly clear and easy to dispose of. And the panel itself was a very nice group. It included Judge Wisdom of I think then the Fifth Circuit in New Orleans, and I think Judge Weinfeld was on it, from New York, and quite a few.

There's an interesting thing about that; I have some regrets about it. Either by death or resignation, the chief judge of the panel left and the members of the panel wanted me to become the chief judge. I was a little too new in the judicial hierarchy relationship so that I thought since our decisions might be reviewed by a court of appeals, it may not be too appropriate for a trial judge to be the chairman. I persuaded the panel not to ask the chief justice to appoint me, to my great regret in a way, because now the chief judge of the panel is a district court judge. Also I think had I not been reticent, I might still be on that panel.

Fletcher: Now tell me what you mean by that.

Weigel: What I mean by that is that I think the concept has grown that the panel, instead of being a committee, where members are appointed periodically by the chief justice, it's more like a court, as indeed it is. And so, since I left--although I was on the panel for approximately ten years--there have been no changes at all in the composition of the panel.

Fletcher: I see. And you left because it was in the ordinary course of events that you serve a certain period and kind of rotate in and rotate out?

Weigel: That was under the aegis of the former chief justice. He wrote me a letter saying how busy I was, and I'd be glad to be relieved.

Fletcher: Now this is a change in characters. This is the former Chief Justice [Warren] Burger, not the former Chief Justice Warren, right?

Weigel: I'm talking about Chief Justice Burger, yes.

Fletcher: For the uninitiate reading of the transcript, I should say that this multi-district panel hears cases under 28 USC 1407. So if somebody's reading this trying to figure out what we're talking about, that's the statutory citation.

Weigel: Well, the idea is very simple. I think I've stated it, and I'll state it again: there arises in different parts of the country cases which are based upon similar factual situations, in which there may be a hundred cases, or maybe several hundred, involving claims against a particular defendant, a particular manufacturer, for example, in product liability cases or in patent cases and right infringement cases and other kinds of cases.

For instance, an airplane accident: all two hundred or more people are killed in an airplane accident. [Relatives of] Each files suit. They're all over the country. The basic facts are the same. Why should the preliminary steps in the litigation--propositions, motions, and so on--all be decided in thirty or forty different courts? Since the issues are all the same, why not concentrate these proceedings before one judge? It is the role of the panel to decide whether a particular group of cases is appropriate to be centered in pretrial purposes in one judge.

Fletcher: Correct me if I'm wrong, because I might not get this quite right--my recollection is that the statute was originally passed after some experience in a very complicated antitrust litigation involving Westinghouse. You were on the panel during the period fairly shortly after the enactment of the statute. Is that right?

Weigel: That's right.

Fletcher: And so while you were there, in some sense, your panel was making the common law under the statute, making the thing work?

Weigel: I think that's true. Also, in one of the recorded volumes, I wrote a piece--I don't know what volume--about the work of the panel. I don't remember just where that is.

Fletcher: It's in the--

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Fletcher: How much contribution did the panel make to creating a common law under statutory section 1407?

Weigel: I think a moderately substantial contribution. I think the standards, from what I've delineated, pretty clearly by the statute still call for interpretation.

Sitting on Other Courts

Fletcher: This was only one example of your extracurricular activities. I know that for quite a number of years you sat by designation on other courts, particularly the D.C. circuit. How did that come about?

Weigel: Well, let's begin with the Ninth Circuit. I think it came about in the Ninth Circuit simply because it was the practice of the court of appeals in the Ninth Circuit to enlist the aid of district court judges, and probably not only in the interest of helping out, but also in the interest of perhaps contributing to the education of a district court judge.

I'll come back to your question in a moment. But in that connection, I originally tried to avoid service on the Ninth Circuit because I felt a little uncomfortable in sitting in judgment on my colleagues, district court judges of the Ninth Circuit. I wasn't sure how appropriate that was, even though one never sat in cases involving judges of one particular district. But I knew a good many of the district judges in the Ninth Circuit, and I felt uncomfortable in second-guessing them. But ultimately, and I say this with some degree of humor, I decided that the Ninth Circuit could benefit by some additional help.

I believe, although I'm not too sure about this, that somewhere in the course of my work, I became acquainted with Judge Bazelon, who was the chief judge of the District of Columbia court of appeals. As a result, I was invited to sit there, and have every year since, with the exception of a short

period of time when the chief justice, not Warren and not the present chief justice, but Burger, ruled, I think inadvisably, that you couldn't sit outside of a circuit under certain circumstances. In any event, a few sessions I sat there, and I think the genesis was my acquaintance with Judge Bazelon. I don't know; I'm not sure. But in any event, I greatly enjoy that because of the nature of the cases and also because of the individuals who are sitting on that court. It's brought me in touch with, for example, Judge Skelly Wright, whom I greatly revered.

Fletcher: Could we take a moment to talk about Judge Wright? Would you describe him?

Weigel: I describe him as an absolutely brilliant judge, as a compassionate, understanding human being. I think perhaps the greatest compliment that I ever had came from him. Did I mention that to you?

Fletcher: No.

Weigel: On my eightieth birthday, apparently my secretary wrote [the [Inaudible], of my daughters, [Inaudible] birthday]. Judge Wright wrote and I think in his letter he said he regarded me as a role model, which was laying it on, but sure made me feel good.

Fletcher: Well, he may have been laying it on, but there's a way that that had to have been meant also.

Weigel: But he was, I think, one of the all-time greats.

Fletcher: Did he ever describe to you his early career as a district judge in Louisiana?

Weigel: Yes, he did. He told me about being essentially driven out because of his protection of civil rights of blacks, burning a cross in his yard, the fact that he was relieved of that by his appointment to the court of appeals in the circuit court in the District of Columbia. Also, his wife Helen was--I think she's still alive--a remarkably fine woman. It was my good fortune and my wife's to come to know the Wrights very well indeed.

I also thought very highly of Judge Bazelon, who was a somewhat different personality, but again a very humane and very able judge.

Fletcher: Can you describe Judge Bazelon for me?

Weigel: Well, Judge Bazelon had a great interest in psychiatry and psychological matters. I think he had some role or some association with a psychological association. A very humane judge and very liberal, as was Skelly Wright.

Fletcher: This may be taking us a little outside the immediate conversation, but I want to see how far we can get with it. It's well known--and I'm to absolve you; I didn't find this out from you--it's well known that Chief Justice Burger, stated gently, didn't get along very well with his colleagues, and then later former colleagues, on the D.C. circuit, Judge Bazelon and Judge Wright among others. Did you see any pieces of that when you were back there sitting by designation and any fallouts from that disagreement and so on?

Weigel: No, I didn't. As a matter of fact, my recollection is--it may not have been when I first went there to sit on that court, but at some point during my service there I think that Judge Wright at least said that the chief justice had gone out of his way to show his respect to Wright. This may have been an inference that wasn't justified by anything that Judge Wright said. But to me at least, subjectively, my interpretation of what he said was that Chief Justice Burger was attempting to sort of make amends.

Fletcher: Were there other judges on the D.C. circuit that you got to know or have some real sense of?

Weigel: Yes. Let me just take a look for a moment here at the personnel of the court as it now stands. [tape interruption]

I think Spottswood Robinson was for a time the chief judge of that court. I came to know him quite well. He was very slow in making decisions, but a very conscientious judge. I gather he was not the world's best administrator.

Well, of course, Pat Wald, the present chief judge, I came to know. A very able person. A good administrator. I sat with Abner Mikva, who came to court from Congress and brought some useful insights as a result. I also came to know, socially as well as collegially as a judge, Ruth Ginsberg, a very able judge. I also came to know, although our viewpoints were disparate--I was very fond of George McKinnon. Did I tell you about my brilliant performance in regard to him?

Fletcher: No, you didn't. But before you do, let me say--and I'll absolve you, this is not a nickname I heard from you--but when you say, because of a disparity in viewpoints, when I was in law school he was widely known as Mad Dog McKinnon.

Weigel: I was very fond of George. I'm sorry to hear that he's been quite ill. What happened was, I had this great distaste for the sentencing guidelines, and when I was sitting back there, not infrequently I would take lunch with the district court judges who also in their lunchroom would have court of appeals judges. I was sitting next to George McKinnon, and I proceeded to sound off on these terrible guidelines. He was a member of the commission. [Laughter] And I forgot. That afternoon I got a note from him, "Couldn't I find something constructive to suggest?" I felt very badly about that, because I really liked George personally. Just as for example, on my own court I doubt if there are two judges that I've heard have more disparate views generally than Judge [Samuel] Conti and myself, who are good friends.

Let's see if there's anyone else that I remember. Yes, I sat the year before last with Judge [Robert] Bork.

Fletcher: Oh, what was your sense of Bork?

Weigel: My sense of Bork was that he's brilliant intellectually, rigid intellectually, and while a pleasant person enough in an ordinary social exchange, inclined to be very impatient with viewpoints as to which he didn't agree, and to--snobbish is a little harsh word, but to feel that his viewpoint was much more solid and well-based than those of any who disagreed with him. Snobbish is a little--intellectually arrogant, I would say. But he's actually a brilliant, an extremely able person.

Fletcher: He, of course, is the judge who was not successful in getting onto the Supreme Court. Also from that court was Judge, now Justice, [Antonin] Scalia. Did you ever happen to sit with him?

Weigel: Never sat with Scalia. But as a matter of fact, Ruth Ginsberg and her husband, who's a tax lawyer, had us to dinner on two occasions when Scalia was a guest. And he was an extremely pleasant person--this was before he came on the court--and socially a good raconteur and a very likeable person.

I'm not sure that this is the case, but I think it may be: I think we had dinner with them, with the Ginsbergs, the night of the publication of the morning paper or the day before, which suggested that Judge Scalia--I think it was Judge Scalia --had written an opinion with a view to getting on the Supreme Court. And this was a very mean criticism, but it was said. He didn't refer to it. I remember the juxtaposition of that meeting and that story. Now I'm sure there was a story that somebody, that a court of appeals judge, maybe not Scalia but I

think it was Scalia, maybe another judge--but some legal publication or some columnist had written an opinion authored by a court of appeals judge had definitely been written with a view to getting on the Supreme Court.

Fletcher: Well, it may have been a nasty dig, but it turned out to be absolutely right. Well, we've gone through Judge Bork, who hoped to become and was unsuccessful, and Judge Scalia, who has been. I have one more candidate, and that's Ken Starr, who was on the D.C. circuit, who's now the solicitor general. Ken's a friend of mine. Have you run across Ken?

Weigel: Yes, I did. I sat with him, and despite the fact that you say he's a friend of yours, I say despite that, it doesn't color what I'm about to say. I regarded him highly and enjoyed sitting with him; I thought very well of him.

Fletcher: Now I will say as you've said of some of these others, I disagree with Ken on many substantive issues, but he's quite a nice man.

Weigel: It didn't seem to me he was all that rigid--I may be wrong--especially as compared to Bork.

Fletcher: I agree with you on that. A lot more flexible. Now, not on the D.C. circuit, never has been on the D.C. circuit, I know that you have been for many years good friends with Justice [William J.] Brennan. How did that happen?

Weigel: Well, it happened because for several years running I moderated the Aspen Institute, sort of an intellectual watering place for executives at Aspen, Colorado. One time we took the train to some station on the way east that you got off to get up to Aspen, and it chanced that a train coming from the other way arrived about the same time and we rode up with the Brennans to Aspen from I think it was--the name of the station escapes me--and became acquainted during that bus ride. I was really awed by this. You know from your own experience the wonderful human being that Justice Brennan is and his social grace and warmth and so on. I moderated a roundtable discussion with some of these executives, as to which Justice Brennan was a resource person. That happened for about a week or two running. So we came to know each other quite well. We were very fortunate in that beginning and became what I treasure as a very close friendship and relationship.

Fletcher: Yes, and I want to say for the record here, that I am eternally grateful to you for having helped me get a job with Justice Brennan.

- Weigel: Well, I did him a favor, too.
- Fletcher: Well, I wish that were so. And I can also tell you from my side that I've heard him out of your hearing express the greatest admiration for you.
- Weigel: That's nice. Thank you. That's good to know. Well, is this an appropriate--
- Fletcher: Let's call it quits for today.
- Weigel: All right.

Some Significant Cases

[Interview 7: July 18, 1989] ##

Yerba Buena Case, 1969

- Fletcher: Judge, during your career on the bench you had an awful lot of cases, most of them cases that looked much like cases that any other district judge would have had during that period. But you had several cases of great interest and even great notoriety. I'd like, over the next several days, to talk about several of them. The first one is the Yerba Buena case, known more formally as TOOR vs. HUD--TOOR, Tenants and Owners in Opposition to Redevelopment, vs. HUD, Department of Housing and Urban Development. This case, as I understand it, arose in connection with the planned redevelopment of an area south of Market with a proposal to build a convention center, a series of hotels, and so on. You got involved in the case, according to the information I have here in front of me, some time in 1969. Do you want to tell me about the case?
- Weigel: Well, what I remember about it is this: the basic question was whether or not the proposal to build what's now called the Moscone Center, which involved displacing residents in the area--low-income, poverty-stricken people--and moving them to suitable habitations elsewhere. The law, as I recall it, required that adequate, appropriate--appropriate in the sense of low income--housing be made available outside of the area. There was a failure on the part of, I guess it was the Redevelopment Agency for HUD, to meet that requirement of the law. And this TOOR group prosecuted to enjoin the project

until such time as adequate provisions had been made as required by the law for alternate housing.

The legal issues didn't seem to me to be at all complicated, but the political fire storm was excessive. Real estate developers and then "important" city figures such as Benjamin Swig had an interest in making money from the proposed center, and it just happened that both newspapers owned property in the area, both the *Chronicle* and the *Examiner*. When I became satisfied that there was a failure to meet the requirements of the law protecting the rights of the people who would be displaced, I issued an appropriate injunction, and from then on the fur flew.

Fletcher: As I've got the chronology here, you issued a preliminary injunction in, I think, December of 1969, a restraining order halting both relocation of people living there and the demolition, and then you went on a scheduled vacation for several weeks. At that point I gather Judge Harris was the duty judge and the litigants came back before him. Do you recall that?

Weigel: Indeed I do. I recall that with a degree of amusement. Despite my absence--I think I was in Europe--I kept in touch with the matter--some people might change--including my one law clerk, Steve Dunham. Steve was a son, incidentally, of a professor I think either in Chicago or--

Fletcher: Chicago.

Weigel: And an able law clerk; I think he's now the general counsel for the University of Minnesota.

Fletcher: That's exactly right. I saw Steve a couple years ago.

Weigel: Both sides agreed that Judge Harris's proposal with the matter be resolved by then Governor Brown satisfactorily. I think that it's calling a spade a shovel, but the people who were on the side of the realtors and business interests felt that they had successfully used a good deal of leverage to get an appropriate arbitrator, so to speak. But what happened was that Governor Brown relied almost entirely upon Steve Dunham, who was my law clerk. [Laughter] And Steve kept in touch with me, and the result was extremely disappointing to the people who opposed the injunction. I don't remember just what the Governor decided.

Fletcher: I can give it to you in general terms; I can't give you the precise numbers. He came in with a recommendation that a

certain number of housing units should be provided. I can't remember precisely the number, but it was a lot more than the defendants wanted to provide.

Weigel: I think that's true. I don't know what happened after that; I don't recall. I think the thing went on.

Fletcher: Well, now you're going to have to help me, because I know this only in the most general terms, but at some point there was a settlement that the parties agreed that the injunction would be lifted, that the construction could go forward and the relocation could go forward upon the representation that somewhere between 1,500 and 1,800 new units of housing be provided within, I think, three years. Then after a time it became apparent that the defendants had absolutely no intention of providing those housing units. Is that roughly accurate?

Weigel: I think so. I'm not too clear about it. This was in '69?

Fletcher: Yes.

Weigel: The details are not clear in my mind. But I remember some episodes in the case. For example, I got calls, which I refused to take, from a number of city big-wigs, and at least one lawyer who considered himself politically powerful. I didn't talk to them.

Ultimately, the people who opposed the provision of housing hired a lawyer named Fred Furth. Fred Furth has since become a multimillionaire, based upon, I think, antitrust litigation. One afternoon, when I had expressed myself somewhat vehemently about the failure of the city or the private--whatever it was, the people who had the obligation to arrange for this housing, they failed to do so, the next day a motion was made by Furth to disqualify me on the grounds that I was too emotionally involved and not capable of being fair and objective. What I did immediately was to disqualify myself temporarily, turn the matter over to the chief judge of the court, Oliver Carter, to decide whether or not I should continue with it.

Judge Carter wrote a blistering attack upon the people who tried to disqualify me, and one of the memorable lines was, he studied the record and found that on several occasions in preliminary matters I had moved favorably to those who now wanted to disqualify me, and he said something in his otherwise erudite opinion to the effect that the defendants enjoyed the game when they drew winning cards, but didn't like it when luck turned against them. The opinion was a very satisfying one to

me. I don't remember the name of the city official who was in charge of the city's interests.

Fletcher: Well, at one point, and I may be on the wrong track here, but there was a man named Justin Herman.

Weigel: Justin Herman, that's right. He vociferously opposed compliance with the law. Ultimately he changed and ultimately, as I recall it, I brought the parties to an agreement which was satisfactory. That's about as much as I remember of the case.

Fletcher: This is outside your involvement with the case, but as we drive past that area today, we see the Moscone Center still surrounded by vacant lots.

Weigel: Yes.

Fletcher: --and this is not speaking to you as a judge--but rather just to somebody living in San Francisco, why it's taken them so long to go forward? I mean, this lawsuit's been dead and gone for over a decade.

Weigel: No, I don't know. There's another thing that occurred that may be worthy of mentioning. You remember that I said that the newspapers had property in this area. The San Francisco *Examiner* wrote an editorial at one point that began, "How long, O Lord, will we have to put up with Judge Weigel?" Now that was the way the editorial went. Later on in connection with another matter, the *Examiner* ran a very flattering editorial about me. And I never carried this out, but I intended to put those two editorials, frame them, put them side by side, [and the [Inaudible] to be defending his people,] and have them to say, "Will the real Judge Weigel please stand up?" But I didn't do that.

Fletcher: As I read through the file underlying the case, I was struck by the number of names, not just Fred Furth, but some of the other names of people who were at that time already prominent, others who weren't yet prominent. But the list of characters there is quite extraordinary.

Weigel: I don't remember them.

Fletcher: Well let me just run a few names past you.

Weigel: Sure.

Fletcher: On the plaintiff's side were both Anthony Kline and Sid Wolinsky.

Weigel: Yes.

Fletcher: Could you describe your impressions of them, or do you have any recollection of them in the litigation?

Weigel: Yes, I thought they were conscientious and dedicated. They were not only extremely able legally, but they were believers in the cause. They identified with their clients and were tireless and unafraid. Anthony Kline became a judge in the state court system where I think he still is, a court of appeal judge.

Fletcher: Yes, and I think I recollect properly that he was appointments secretary to the second Governor Brown.

Weigel: May have been.

Fletcher: Which would have been, of course, between his work on the Yerba Buena case and then work for Governor Brown and then off to the bench. And Sid Wolinsky, as we both know, has continued to be active here in the city, was one of the founding partners of Public Advocates, and I think has had subsequent cases in front of you.

Weigel: Yes, including the prison case.

Fletcher: Yes, and I want to talk about the prison case in a day or so. I gathered that through all the time that the lawsuit was pending, the mayor was Mayor [Joseph] Alioto. What role did he play in the litigation?

Weigel: Well, a behind-the-scenes role. He made one or two efforts to speak to me on the telephone. I didn't talk to him.

Fletcher: Did he ever appear in court as a lawyer? He is, of course, a lawyer, so he would have the right to.

Weigel: I think not; I don't remember that he did.

Fletcher: I was struck as I read through the file--you probably remember this, but didn't want to perhaps recollect it in quite these words--you said the newspapers carried on a campaign. It struck me as a vitriolic, nasty campaign really. Editorials in both the *Examiner* and the *Chronicle*. At one point there was apparently a hearing before the Board of Supervisors, and one of the supervisors, a man named Peter Tamaris, criticized you and was then--this was reported then in the *Examiner* and I think the *Chronicle* as well--"He lives in a penthouse on Russian Hill; he's never had to look for a job. Maybe he has

some guilt and this is his therapy." Do you remember that attack?

Weigel: I remember it very well. My then reaction and my current reaction is that this man professed some knowledge of psychiatry and he badly needed to go to one, because obviously, although I was comfortably well-off financially, I had worked my way through Stanford, and in the early days of my practice I remember over in Oakland that I may have mentioned earlier, that in order to enable the secretary to get paid, I sometimes when I was a bachelor ate fruit and nuts for dinner in my room. So I was aware of what it meant to work.

Fletcher: Yes. This struck me as an attack that was designed for the newspapers rather than anything else. Through this period as far as the newspapers show up, you were absolutely silent in public. I assume that that's right.

Weigel: Oh, yes.

Fletcher: So they knew they had a free shot at you.

Weigel: That's right. I was an easy target.

Fletcher: Right. Did you get any sense--and here there's nothing in the file at all to suggest anything of this sort; I'm just interested in how this works within the court system--did you talk over the case over lunch with your fellow judges; did they give you their advice, their support; was there anything of that sort?

Weigel: I think not; I don't remember. I think had there been any discussions about it I would have remembered; I don't recall any. And I think had there been any expressions of either "support" or criticism I would've remembered; I don't remember. I think that as is often the case, the *cause celebre*, that the judges on our court don't volunteer to advise or criticize the judge who has the case. I'm not sure; I don't recall.

Fletcher: This question goes not just to this case, but to difficult cases in general, whether legally difficult or politically difficult: do you wish the ethic were otherwise, there were somehow an ethic of more general talk and gossip among the judges? Do you feel lonely in these cases?

Weigel: As to this specific case I don't recall having felt lonely. Maybe I did; I don't remember. But I think it's not inappropriate for judges on different courts, this court for example, to discuss pending cases and problems involving

pending cases and seeking and getting a reaction of other judges. It's not so much in terms of soliciting a view as to which way a decision should go on the merits, but rather in dealing with particular legal problems that arise during the course of proceedings. Some motions are novel in character, and no judge has such tremendous experience that he knows how to handle every question that comes up in a case in terms of procedure particularly. So I think there's an enrichment of the judicial process in the kind of exchange that I've described perhaps not too well.

Fletcher: I should correct a word that I used. I said "ethically." What I really mean is not ethical in the moral sense, but I mean etiquette more, what's habit among the judges.

It's very apparent that the people on the side of the city thought they had something to gain by. Clearly it didn't gain them anything in your courtroom.

Weigel: No.

Fletcher: Did it gain them something as sort of a long-term aim, which, of course, included the courtroom but weren't confined to that?

Weigel: No, I think not. I have no solid basis for expressing a conclusion in that regard. But I wouldn't be at all surprised if the public reaction was that these poor people, not homeless, but prospectively homeless people, were being pushed around. I don't think the newspaper publicity was helpful to those who engineered it, that it used the newspapers in the way that it was done.

Fletcher: I have sometimes found in the twelve years I've been in the Bay Area that Herb Caen has been an independent voice and in some ways, much more perceptive than the newspapers for which he worked. And I was struck at one point by a column that was preserved in which he quoted some press release out of city hall, and then he must immediately have called up Sid Wolinsky and he gave a sentence to the city hall release which was basically calling Wolinsky a radical chic lawyer from Berkeley. And then he gave Wolinsky about two paragraphs, which I found very effective as a way of rebutting the publicity. On the editorial page you're getting lambasted, yet in Herb Caen's column next to the Macy's ad, at least Wolinsky's doing pretty well.

Weigel: Yes.

Fletcher: Again this is outside the case itself, but as I look at this as an episode--[tape interruption]

--Yerba Buena: Land Grab and Community Resistance in San Francisco by Chester Hartman. I'm encouraged to see this case as a turning point in the history of San Francisco whereby what had previously been a virtually unreviewable authority by the San Francisco Redevelopment Agency, all of a sudden that the game was no longer something that could be played that way after this case was over.

Weigel: I think that's true.

Fletcher: Can you help me put that in a larger political sense? This is obviously long before I came to San Francisco; it was only book learning to me.

Weigel: I don't know quite what you mean by your question.

Fletcher: This isn't a question where I'm asking about the case itself but more a question as to what the real estate development climate was like in San Francisco in the years prior to Yerba Buena. How did the system operate and how did it then run up against this case?

Weigel: Well, I think that perhaps the effect of this case was temporarily to slow up, retard, real estate greed. But I think the effort to make money in real estate and influencing the judge with zoning laws and that sort of thing--I don't think that's been greatly retarded. I think it may be that there's a little more finesse in what's done, and I think it may be that the result of the case retarded a willingness for some to break the law in a pursuit of avarice.

Fletcher: It was striking to me that at the outset the real defendant--not the nominal defendant--the real defendant was the San Francisco Redevelopment Agency.

Weigel: Yes, right. Herman.

Fletcher: Herman as part of the San Francisco Redevelopment Agency. It turns out to be a nominal case against HUD. HUD at the outset failed to provide anything for the TOOR people, but midway through the dispute ended up coming in on the side of the TOOR people, saying that the development people have not complied with federal law. Do you have some sense as to what triggered the HUD people to see this differently?

- Weigel: I think they followed the case with interest and saw its conclusion and felt some sense of obligation as a result to do more. But I'm not sure.
- Fletcher: But they might have themselves been educated in a way that they had not previously--
- Weigel: I think that's quite possible. It lurks in my mind that they were peripherally involved in the case. I don't remember just how now. But I'm quite sure they followed it very closely. I don't remember now whether or not they had constant legal representation in the case. I don't know; I can't remember.
- Fletcher: Yes, and from my reading I can't tell you either. I do know that the plaintiffs before they filed suit in the district court here had tried to get administered relief from HUD, which they failed in getting.
- Weigel: That's right.
- Fletcher: And it was not until after this case had had some success for the plaintiffs that HUD finally came around.
- Weigel: Yes. I think the case may have had that consequence.
- Fletcher: I had one more thought and I've lost it. [tape interruption]
- I know during part of the time that this case was pending in your court, the elementary school desegregation case was pending in the court, which then would have made you not only famous for the Yerba Buena case but for another case that became notorious. Did you feel that you would become somehow the focal point fairly or unfairly for a little too much attention?
- Weigel: No, I don't know that I felt that. I do recall, however, that one of my colleagues, Judge Wollenberg, now deceased, had a rather close relationship with the managing editor of one of the newspapers. Judge Wollenberg told me that that managing editor wanted to know whether there weren't any other judges out in this court besides this one. [Laughter]
- Fletcher: Yes, all those other judges, they just do bank robberies.
- Weigel: Yes.
- Fletcher: I know the answer to this, but how were you chosen for these cases?

Weigel: You know, you anticipated something that I was thinking upon. When I first came on the court, we had a master calendar system in the operation of which instead of a case being assigned to a particular judge at the time it was filed, for all purposes there was a judge sitting as a law and motion judge and presiding judge and then the other judges tried cases. I think that the way the trial of cases went was that whatever judge was free at a time the case was ready for trial, he would be assigned that case. But the probability is that the assignment of the TOOR vs. HUD case and the school desegregation case probably it was after we adopted an assigned case system, which meant, as I've explained before, that the time since it was filed it was in effect a lottery. The person could reach in and pull out an envelope when the case was filed and in that envelope would be the initials of the judge and that would be that judge's case from then on for all purposes, down to final judgment. It was entirely random. It was very carefully administered to prevent judge shopping. The same thing is now done by computers.

Fletcher: So if there's any suggestion that you were getting more than your share of big cases, that's just not the way the system worked then, nor does it work that way now.

Weigel: I think that's true.

Fletcher: This anticipates a little bit, but while we're on the subject of how you get certain cases, I want to float a hypothesis by you about a case that we'll talk about in a little bit, your prison litigation case, the Toussaint case, which was a prison conditions case. It occurs to me with that sort of case, given the number of both habeas and civil rights complaints that every judge gets coming out of both the federal and the state prison system, in some sense is there asking to be tried in many judges' courts. Is that right? That is to say, you got a complaint filed by a prisoner that if read sympathetically could turn into a prison conditions case.

Weigel: Well, I don't know. Let me think about that. If an individual prisoner, for example, claimed that he was subjected to unconstitutional treatment, in violation of the constitution, it seems to me that that would not necessarily involve the entire operations of the prison as to other prisoners and the like. It would center in on his claim. And the prison case, which is a distinct case, was a class-action case, which made it a much broader case.

Fletcher: I'm doing this out of turn, but while I'm on it, was it filed originally as a class-action?

Weigel: My recollection is it was.

Fletcher: So it just plain old started out that way?

Weigel: Yes.

Fletcher: It wasn't one of the cases that grows as it goes along?

Weigel: I think not.

Johnson Case

Fletcher: Well, that's the end of my questions about Yerba Buena. Let me try out and we'll see how far we get today, if it's worth starting in on the Johnson case. The Johnson case was a case in which desegregation of the public elementary schools in the city of San Francisco was sought.

Weigel: Yes.

Fletcher: Which was a long-running case in which you had a number of years of involvement and again a great deal of public attention.

Weigel: Yes.

Fletcher: Can you tell me a little bit about that case?

Weigel: Well, the thing I remember most about that case was that it was a hotly contested case, a case as to which the public was greatly divided. It was a case in which when I ordered desegregation, there were protests, there were placards of women carrying signs, "We will not wiggle for Weigel."

I think the thing I remember most clearly about the case is that I made the mistake, I think, of trying to avoid making villains of the Board of Education by not ascribing to them in strong terms a knowing support, conscientious support of segregated schools. Because I thought some of the people on the board were perfectly good and doing what they thought was best. The result of that was that when I finally handed down a final judgment or an injunction or whatever calling for desegregation, calling for busing, I said that the motivation of the board that not necessarily bad.

What happened was that the court of appeals in returning the case to me confused what I think is horn-book law the difference between motivation and intention. I made it clear that this was intentional but not badly motivated. They picked up my opinion and my memorandum, the one statement that I made to the effect that the school board's motivation was not evil and not bad. In reflection, that was a mistake. I should have been less concerned about the feelings of the school board.

One thing that I erred in was I treated Asians as the equivalent of whites. I don't think that was an error in terms of the obvious situation because generally speaking, the Chinese students--most of them are Chinese and Japanese students--are very bright and contributed as well as whites to the elevation of standards of peer impact upon other students.

But a lawyer named Quentin Kopp appeared and demanded special status and demanded representation for a group of Chinese, and I denied that. On reflection I'm not sure if I was right or wrong. But in any case, this definitely was the making of Quentin Kopp, because he won the complete support of the Chinese community. And he left the law firm of Pillsbury, Madison & Sutro and ran for supervisor and became supervisor and then he ran for some position in the state legislature where he is now, and he's well regarded. I saw him just the other day, and he realized that I had started him on his successful political career. He said indeed he did realize that.

Fletcher: I know the case, or the part of the legal proceeding in which this was because I teach this material, and on occasion I'll use this case as an example--you denied the intervention by the Chinese litigants represented by Quentin Kopp on the ground that their attempted intervention was far too late; had they sought to intervene earlier when remedies weren't so far along and so on, it might have been quite a different case, and here it was the eleventh hour and maybe even eleven-thirty and it's too late. The ninth circuit reversed you, saying "Well, but it's terribly important." I must say that I end up, reading that opinion by the ninth circuit, rather more sympathetic to you than to the ninth circuit.

Weigel: Well, I'm glad to hear that. You know, one thing that occurs to me to me that distresses me, to a degree throughout my career on the bench once a case has been disposed of I tend not to remember the legal niceties or the legal details, not from lack of concern, not from lack of attention to it, but a feeling that what's over is over. That may be healthy but I

regret it. For example, my recall on these matters is not as sharp as I wish it were, and I'm distressed about that.

Fletcher: Well, I don't know whether this is only giving you another criminal to put in the cell with you or whether it will make you feel better: Ken Starr was at Berkeley I guess a year and a half ago, then Judge Starr, now solicitor general. He is, as you and I both know, a youngish man, a little younger than I am, very bright, as memories go, a very good memory, and he admitted at lunch time that three weeks after a case was off his desk he couldn't remember the first thing about it.

Weigel: Well, I think my memory's a little longer than his if that was a literal statement. But in any event, that to a degree distresses me, but I appreciate your kind comment.

One other thing: one of the most difficult tasks, one of the most trying tasks that a judge has, at least I as a judge have, was in determining the sentencing of individuals who have been found guilty or plead guilty, because prior to the advent of sentencing guidelines, berries, for example, is twenty years imprisonment and some huge fine--I forget what it was--on the one hand to complete probation on the other.

Based upon the view that a year in prison--I've visited prisons--is a really quite a severe punishment, my sentencing philosophy has been wherever there's a real prospect, probability that a convicted criminal would make good on probation, then I give probation. And except in the case of crimes of violence or in the case of wholesale drug dealers who didn't have the habit themselves, who were not trying to get enough money to get a fix for themselves, in certain crimes I would impose substantial prison terms, but habitual offenders--

But, by and large, one reason I've been able to sleep all night is that I do not recall an instance--and this may be a little vainglorious, but I think it's true--in all the years I've had on the bench and the hundreds of people that I've had to pass judgment on, that I've ever been unfair or excessive. That has enabled me to sleep nights in connection with personal responsibility of determining whether a person shall have liberty and if not how long he should be deprived of it.

I can give you an example of that, of where it went the other way.

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Weigel: --where it went the other way.

Murder On Treasure Island

Weigel: There are very few capital cases in the federal system. I drew one of the few involving a murder committed on Treasure Island, which is a naval reserve, or--what do you call it?

Fletcher: What do they call it? It's a special statute for federally owned properties, yes.

Weigel: Yes, well, it will come to me. In any event, this murder took place on Treasure Island, and therefore the conflict was one having to go in federal law, a murder. What happened was that two young punks, I think nineteen and twenty, quite young, had taken another young boy whom they felt had cheated on a drug deal, drove him around San Francisco tied up, threatened to kill him, took him to Treasure Island, the naval base, and ordered him out of the car. As he was walking away, they both shot him in the back. Neither of them had any remorse; neither of them felt they had done anything bad; and I sentenced them both to life imprisonment. For some reason I don't think they could have been sentenced to death.

They have made repeated efforts since then to get their sentence vacated, reduced, and I have constantly refused, and I have no regret about it, because it just was a vicious, premeditated, cruel murder, with no remorse. In their efforts to get the sentence changed--there was no legal basis for success in that regard--they still haven't shown remorse. That's the only time where I felt that a very, very heavy punishment was appropriate. I'm sorry that it's so and I'm uncomfortable, but that's the way it is.

Fletcher: That's the way it is. Good. Thank you.

Toussaint v. McCarthy

[Interview 8: July 19, 1989] ##

Fletcher: Today is the 19th of July. Yesterday we talked at some length about one of the major cases that you had in the late sixties and early seventies, the Yerba Buena case. Today I thought we would jump forward to two fairly recent important cases. The first one is Toussaint v. McCarthy, a prison conditions case; and the second one is the so-called "GO Road" case, a case involving Indian sacred lands. If I could I'd like to start out with the Toussaint case. The citation of your major

opinion for the record is 597 F Supp. 1388, Northern District of California, 1984.

Weigel: Turn it off for a minute and let me get the--[tape interruption]

Fletcher: The citation is 597 F Supp. 1388, Northern District of California, 1984. The case involved prison conditions in the so-called administrative segregation in both San Quentin and Folsom prisons. Can you give us some background as to how this case started, how this happened to be in your court, what happened in this case?

Weigel: Well, I'm sure that the case happened to be in my court because in the filing, I just drew it as if in the lottery, from the wheel. It's an arbitrary, random assignment. That's how I got the case.

Fletcher: What did the case involve exactly?

Weigel: Well, what the case involved was a claim that conditions in San Quentin and Folsom were such that the constitutional rights of some of the prisoners were violated by the specifically eighth amendment prohibition against the infliction of cruel and unusual punishments. The case was a particular one it seemed because it was extremely hard fought, and as I remember it, the position of the State of California--John Van de Kamp was then the attorney general and Cal Merrill was the deputy who handled the case for the state--their position was that practically nothing constituted improper treatment or unconstitutional treatment of prisoners and that no conditions were of a nature which violated eighth amendment rights of the prisoners.

Indeed, I have the impression now that--although it may not be accurate--that the position of the defendant, which was really the State of California, was basically the idea that prisoners had virtually no rights at all.

Fletcher: Now, I know from reading a newspaper article on the case that much of that position was announced in the newspapers, with the state characterizing the prisoners claim as to "Look, we want free TV, we want conjugal marital visiting rights, you know, we want all this great stuff." And their response was, "This is supposed to be a prison. We're not supposed to take care of you in that way."

Weigel: Well, I think that's true. But as I recall it, the evidence in the case was overwhelming in showing really disgraceful conditions of celling. The plaintiffs had constructed--and it

appeared in the court room, which is quite unusual--an exact replica, in terms of size at least, of a cell in which more than one prisoner, two prisoners were confined. And the dimensions of the cell were such that anyone could see that two human beings would not have anything approaching any modest room for living, for spending a great bulk of a twenty-four-hour day, just terribly cramped for two people.

The evidence produced showed that prisoners were denied access to law books enabling them to seek appropriate writs for reconsideration of their sentences or habeas corpus in the case of desire to escape from inhuman conditions. As I recall, too, the evidence was overwhelming in showing lack of reasonable exercise and lack of adequate medical attention. Now, I'm not sure, but it seems to me that the case primarily involved--I'm really not sure about this--conditions for segregating prisoners. Do you recall if I'm right about that?

Fletcher: It was administrative segregation.

Weigel: Yes.

Fletcher: And I wasn't quite sure what that meant.

Weigel: Well, that meant solitary confinement. What that meant was that the prison authorities had found little or no evidence and they'd assign a prisoner to what might well be considered solitary confinement, or deprivation of many rights and privileges afforded other prisoners accorded the general population.

Fletcher: So this was [assented] in the minds of the prison officials, these were particularly undeserving--I'm not sure I want to say bad, but particularly undeserving--prisoners.

Weigel: Yes. That's right. I think the position of the prison officials was that these were prisoners who were intractably violent.

And also there were troubles in the prison based upon what was thought to be gang membership, and resulting in violence, I think to arise very often as between whites and blacks, Caucasians and blacks. I should say blacks and whites. My recollection of the details is not too clear except that the prison authorities were warranting, in the case of ordering administrative segregation--a euphemism really for solitary confinement--would want to deny any hearings, deny an opportunity on the part of a prisoner to show that he should not be confined in so-called administrative segregation. And

they went pretty much to the suspicion, not necessarily well-founded, that a prisoner to be sent to administrative segregation was based upon unfounded suspicion or undocumented suspicion by gang membership.

Fletcher: Now, let me, this one goes back further in time, and preparing today I ran across a case--well, your law clerk Chris Gibson put me onto it--Rake v. Animoto, in which you and Judge Duniway and Judge Wollenberg sat as a three-judge court dealing with procedures for putting people away in various forms of administrative segregation. And you and the other judges struck down those procedures, or maybe I should say required them to institute realistic procedures for determining this.

Weigel: I think that's true. I don't remember the details, but the thrust of that decision was to ensure at least a species of reasonable due process before they could be such assigned.

Fletcher: And in the case of the Toussaint case, I saw a picture in the paper. In fact, maybe let me read this into the record for the date. It was in the *San Francisco Chronicle*, Tuesday, November 8, 1983, on page 23. There's a photograph of your courtroom and of the cell that's constructed in the courtroom. Did you ever actually go into that cell?

Weigel: I'm sure I did. Yes.

Fletcher: Just to kind of go in, turn around, see what it felt like?

Weigel: Yes, and I also visited San Quentin prison on an unannounced basis. The marshal drove me over--one of the marshals did. And that was an interesting experience, because before you entered the prison, you were advised that in the event you were taken as a hostage, they couldn't be sure you'd be released. You were prepared for that sort of event, in the case of a prison riot or anything of that kind.

Fletcher: What was your impression of the prison, the actual prison, now, as you walked through?

Weigel: That the conditions in these so-called administrative detention cells were as bad as the testimony of a number of witnesses specified. And the conditions were crowded. Also, I remember that there was some effort on the part of the prison officials or personnel that took me through those areas, there was some effort to try to prevent me or the prisoners from communicating. I don't remember how successful that was. I doubt that it was successful. But there was that effort.

Fletcher: Were you accompanied on this visit to the prison by the lawyers in the case?

Weigel: I don't remember. I'm sure that one of these two things was true. Either I was so accompanied, or if not, that during the course of proceedings in open court I had advised both sides that I intended to make such a personal inspection and that there was no objection to my doing it.

Fletcher: Could you tell from the attitude of the people in control at the prison, the warden or his employees, how happy they were to see you?

Weigel: No. Except for what I mentioned a moment ago about--an impression which I'm not too sure is reliable now, but it persists--that there was some effort made to prevent prisoners communicating with me, I don't remember any particular, any hostility or any failure on the part of the people who took me through the prison, any failure to, any hostility or any unpleasantness.

Fletcher: Now, in the end, in this opinion in 1984, you entered a fairly comprehensive order, requiring the prison to do quite a number of things to bring the conditions up to a level in compliance with the cruel and unusual punishment guarantee. The ninth circuit thereafter, partially affirmed and partly reversed your decision. Do you remember that reversal? Or maybe I should say, do you remember that affirmance? [Laughter]

Weigel: I don't remember. I really don't recall. Do you recall what I was reversed on?

Fletcher: Well, I can give you this much of it, but I'm going to need some help from you. There was an opinion written by Judge Beezer. The panel was Judge Beezer, Judge Wright, and Judge Kennedy--now Justice Kennedy. They affirmed you on a number of findings of unconstitutionality, but reversed saying that there had been too much control retained by you. And they thought more discretion should have been given to the prison authorities.

Weigel: I'm sorry, I don't recall.

Fletcher: Well, I must say, I'm annoyed by that opinion, because I read it when it came out, and quite early on in the opinion, Judge Beezer, in the part where he's reversing you, quotes and recites an article that I wrote having, I thought, very little to do with the case at hand.

Weigel: [Laughter] That's interesting.

Fletcher: Now, I know at a time when the decree came to be implemented that you had a special master supervising some of this. Can you tell me how that worked?

Weigel: Yes. Throughout that case, one of my law clerks was Bob Riggs, who had been a law clerk to Judge [Betty] Fletcher, your mother. And he was familiar with all aspects of the case. And I had great confidence that he would be an excellent monitor to buffer complaints and to, as a matter of fact, to reduce court intervention with prison management. His appointment triggered a good deal of adverse publicity generated by the prison authorities. They claimed that he lacked experience and overpaid and that sort of thing. It was a mean continuation of an effort to discredit the court and its judgment and a mean effort on the part of the attorney general's office.

Fletcher: How did his job work and how did his function relate to what you did?

Weigel: Well, as I remember it, I prepared and made a broad order of reference, requiring that complaints as to violations of the injunctive decree be first presented to him and considered by him. I think I provided for some authority in him to hold hearings, all pursuant to relevant statutes. And that was about the idea, that he was--monitor is a little too strong a term, although that's the normal designation. He was to monitor compliance. But he did that. He was to make periodic reports, I think quarterly, but he was also to consider complaints by prisoners, or for that matter by the prison authorities with respect to compliance of the terms of the decree.

Fletcher: Now, an injunction by its terms will often run for a very long time or even forever unless modified. How long did this injunction stay in effect?

Weigel: It's in effect today.

Fletcher: It's still going on?

Weigel: Yes, it's still going on. Just today I signed an order. Let me--Turn this off for a minute. Let me just refresh my memory about this. [tape interruption]

Fletcher: There we go.

Weigel: Your last question was related to how long the judgment of injunction's in effect. It's still in effect. And as I started to say only today in connection with an application I think by the defendants, the prison authorities, for the appointment of a special due process monitor. See, in regard to the order's provision requiring notice, et cetera, giving a prisoner the opportunity to be heard before he was assigned to administrative segregation, these harsh conditions of confinement. And only today I signed an order saying that there is no need for the appointment of a special due process monitor, because the number of prisoners involved in that condition, particularly if a prisoner's awaiting determination of the validity of death sentences, that they were being moved to other prisons.

There's another thing that occurs to me, that is fairly recent in connection with this case. The monitor noticed that at the Folsom prison that a number of prisoners that were covered by this decree had been moved from Folsom prison, which was one of the two prisons covered by the decree, to another prison called the New Folsom prison. And there had been suggestions that the prison authorities were moving prisoners covered by the decree and members of the class of prisons covered by the decree to the New Folsom prison where there were violations of the decree. And I authorized the monitor to inspect conditions in the so-called New Folsom prison as a basis for determining whether these charges of this evasion of the injunction were well founded.

That, however, was appealed by the prison authorities, and the court of appeals in a decision written by Judge Kozinski held that this exceeded the authority of the district court, my court, and of the monitor, because the decree applied only to prisoners in Folsom, not in New Folsom. And a suggestion was made by the author of that opinion that any prisoners in New Folsom that felt that their constitutional rights were being violated could take appropriate action.

I felt outraged by this decree, by this decision by the court of appeals, because it seemed to me to overlook two things: the first was that the court was not undertaking to assert any control over New Folsom prison, but rather to assert control if necessary, if the conditions justified it, over the authorities conducting in the Folsom prison to prevent them from a ruse or invasion of the decree. I was further outraged by the fact that Judge Kozinski--is that the name?

Fletcher: Yes.

Weigel: --in his opinion made some quotation to the effect that his order, the order of the court, the decision of the court, was particularly appropriate in a situation where a district court judge had been shown to be prone to disregard the orders or judgments of the court of appeals.

And this offended me so much that I telephoned Judge Kozinski, brought that to his attention; it may be said to his credit that he immediately corrected it. He saw to it that the opinion to be published in the bound volumes deleted this unjustified comment regarding the district court judge, but it wasn't corrected as to--it couldn't have been corrected--as to the slip opinions that were circulated prior to [Inaudible], published prior by newspapers or legal services, prior to the bound volume.

But he took pains at some meeting honoring the judges of the circuit court to which all the judges of the district court here in San Francisco had been invited, some meeting, took pains to look me up and apologized again, which I thought was fairly redeeming. But it didn't satisfy my sense that that decision was an unjustified, improper intrusion upon reasonable power and duty, really, of a trial court judge to insure compliance with his decree against any subterfuge or evasion by indirection.

Fletcher: Now, I'm jumping ahead triggered by what you're saying here to point out a pattern that will only emerge as we go forward. The judge who wrote the ninth circuit opinion that partly affirmed and partly reversed was Judge Beezer.

Weigel: Yes.

Fletcher: The judge who wrote the opinion that reversed on this supplementary opinion was Judge Kozinski.

Weigel: Yes.

Fletcher: As we're going to see in a moment, the judge who dissented from the appellate court opinion affirming your judgment in the GO Road opinion was Judge Beezer, and he ends up getting the Supreme Court to agree with him.

Weigel: Yes.

Fletcher: The common denominator is that these are fairly recent appointments by President Reagan. Have you noticed, and if you haven't noticed, has it affected how you are forced to do your

business, the changing opposition of the ninth circuit over the last, oh, eight to nine years?

Weigel: Well, to a degree. I think now when I have a case that's likely to go on appeal to the ninth circuit, I may do what I honorably can to be more specific in findings and more careful in phraseology in the interest of making sure that an appellate court panel which may be, philosophically, may be composed of two or more members who are philosophically ultra-conservative, to make sure that the basic facts are adequately presented. I don't know that I can say that so far as my decisions are concerned that the recent appointments have made much difference as to whether my decisions are affirmed or not.

But I'm aware of that, and I suppose that it's common knowledge that district court judges are of the view that very often affirmance or reversal depends upon the luck of the draw with respect to the panel of the court of appeals to which the appeal's assigned. I'm not sure that--well, I'll take that back. I started to say I'm not sure that that's a justified view of district court judges. I'm inclined to think it is.

Fletcher: Now, if I can put in my own view, I know practicing lawyers feel that: that on certain cases--not all, but on certain cases--who they draw in their ninth circuit panel determines whether they win or they lose.

Weigel: I think that's right. As a matter of fact, they just ended a judicial conference of the ninth circuit earlier this month. I heard remarks by lawyers that they'd be very pleased to know earlier than they found out what panel the case has been assigned to.

Fletcher: Yes. Let me kick that question back down to the district court level and start out from the proposition that this case, since it was a case in which an injunction was sought, was a case in which you sat alone; in other words, there's no jury.

Weigel: That's right. That's true. In this case, because of its nature and the remedy sought, the court sitting alone, single judge, was a trial not only of the law but of the facts.

Fletcher: How much variation do you think there would have been, and I realize this calls for some speculation, figuratively speaking, up and down the hallway, if this case had been randomly assigned to other judges up and down the hallway? What answers might have been obtained in this very case?

Weigel: I don't think it may have been different. I have no doubt that some of the conditions that were indicated, that were established by the evidence--well, I'm not even sure there. I have no doubt that assignment to different judges on this court would have resulted in some instances--the result would have been much different. I think maybe some judge would have not found that there'd have been cruel and unusual violations of the eighth amendment. I think other judges might have found pretty much as I did. Perhaps one or more of the other judges might have gone further than I did; I'm not sure.

I thought you were going to ask me, what would a jury have done?

Fletcher: Oh, I should have asked. What would a jury have done?

Weigel: Well, your question triggered a little speculation, put speculation in my mind. It's hard for me to say. My first reaction was that if this were a time when people--and it may well have been; what was it '84?

Fletcher: Yes.

Weigel: That this was a time, as it was, when people were concerned about the crimes of violence and a tremendous amount of street crime and so on. I think a jury might not have been very sympathetic to some of these things. On the other hand, as I say that, I come back to my view that juries take their duties very seriously and follow the law as it's given to them by the district court, by the judge. And I'm not so sure that if it had been a jury case that the result might not have been very close to what it was before the court.

Fletcher: Could you get a sense ever--and you may not have gotten at all because of the etiquette of the situation--did you get a sense ever from the prison authorities as to whether or not when the case was, when the essential result of the case was in, that they resented the result, that they welcomed the result, that they were reconciled to it?

Weigel: I don't think there's any question that they resented the result. And I was particularly disturbed by the misleading release is the word, information they had given to the papers, wrong slants by the, not necessarily by the prison authorities themselves but by the attorney general's office and some of the attorneys and perhaps in some cases some of the prison officials.

But I took pains every time that, almost every time there was an extended court hearing on any matter--in printing the case in chief and subsequent hearings related to whether or not there had been violations of the decree--I took pains to point out that all citizens have a reason to be grateful for the attention given by prison authorities to keep the people who ought to be incarcerated, to keep them off the streets and keep them from harming the population.

And I frequently alluded to the serious problems, and recognized the serious problems they had, the prison authorities had, in dealing with vicious criminals and people prone to violence, and I indicated an awareness of their problems. And none of that ever was acknowledged by any of the prison authorities or the state attorney general's lawyers. That really disturbed me.

In a way it goes back to something that I did in the school case and probably shouldn't have done; that is, I didn't want to accuse the school board in that case of bad motives, nor did I want in the prison case the prison authorities to feel or have any basis for feeling that I wasn't aware of the serious problems they had in managing and providing for confinement of a number of vicious, violent criminals. And that probably reflects--whether it's a desirable attitude on my part I'm not sure--a desire to bring people together if possible, a desire not to use the powers of the judge to be excessively harsh on one side of the case. It certainly didn't stand me in good stead with respect to the, my views at least in good stead, with respect to the school case. And I doubt that it made the prison authorities any more, the people really in charge of the prisons, any more comfortable in complying with the decree.

Fletcher: Did you get any communication either directly or through the attorneys from prisoners affected?

Weigel: Well, I--

Fletcher: You know, did they send a thank you note saying "Life is better now!" [Laughter]

Weigel: No. As a result of this case, I received many letters from prisoners with all kinds of complaints, and I of course referred them to the monitor. And the volume of the letters from the prisoners became so large that I either ordered or asked, in any event it was provided for, that notice be posted in the prisons saying that they could take their complaints to the monitor, not to the court.

Fletcher: So, instead of getting thank yous, you got more complaints.

Weigel: That's right. There may have been some thank yous; I don't remember.

Fletcher: Yes. This case strikes me as one in which--from my perspective not as a participant in the case--as one in which you had not only the opportunity but the duty to do some good in this world. Now, maybe the state of California prison authorities didn't agree with you as to what "good" constituted, but it seems as though you did exactly what the right thing was. Let me ask you--

Weigel: Let me just say something in defense of that. I think Winston Churchill said that you could judge the standard of civilization of a nation by the manner in which it treated its prisoners. Churchill made a quotation out of that.

Fletcher: That's a very interesting thought. In fact, that's a better transition into the next case. How do we judge our civilization based on how this country cheats its native American population? That's too loaded a way to say that.

Weigel: No, that's right.

GO Road Case

Fletcher: Let me get to the specific question in the case. This is the so-called GO Road case, named after two towns that were to be connected by a disputed road, both of them in northern California. Gasquet--maybe you can pronounce it better than I can--and Orleans: G and O, the GO Road. This road ran through Forest Service land, and the United States Forest Service wanted to complete a portion that was going to run very close to so-called Indian high country sacred territory. The Indians as well as several environmental groups came into your court asking that the construction of that road be enjoined. Now, in--I think I've got the citation--in 1983, you enjoined the construction of that road and you, as a further matter, you asked that more environmental impact statements be prepared. Could you give me some background on that case?

Weigel: Yes. Before I do, however, I want to interject a species of non-sequitur and something that I hope is understood as a matter of humor. In the GO Road case I was reversed by a higher court, as I was in the school case. The GO Road case

was by the Supreme Court; in the school case it was by the court of appeals. And in both of those cases I still think I'm right, on the law, on the merits.

But that reminds me of a story which is somewhat apocryphal. We have a judges' dining room and a conference room where frequently, well every day there's some judges, and frequently many of the judges of that court are there for lunch. And the story is that a judge comes down and announces to the others there, "I've just been affirmed by the ninth circuit on cause, and I still think I'm right." [Laughter]

In this case, I would apply that reaction normally to the ninth circuit--in these cases I've referred to--my cases, but also the Supreme Court of the United States, I was reversed and I still think I'm right. There's an interesting thing on the Supreme Court decision: it seems to me, I checked it, that Justice Brennan didn't join the minority, didn't join the dissents.

Fletcher: No, he wrote the dissent.

Weigel: He did? Well, let's turn it off for a minute. [tape interruption]

Fletcher: We're back in business.

Weigel: Well, on the GO Road case there's an interesting--

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Fletcher: Okay, let's do the GO Road and then we'll quit. Okay, I think we're all right now.

Weigel: On the GO Road case there's this to be said: the matter first came before me on a motion for preliminary injunction. And based upon what was presented there, I denied the motion for preliminary injunction. I felt the evidence was not sufficient to establish the violation of the clause guaranteeing, so to speak, religious freedom.

At the trial, however, I was persuaded and the evidence seemed to me to be overwhelming in establishing the bona fides of the religious belief, despite its unorthodoxy, and the importance to the Indians of having that high ground, a sacred territory that was essential to the preservation and exercise of their religion. And it seemed to me unthinkable that in balancing the rights of the federal government with respect to land it owned or over which it had control, balancing those

rights against the religious rights of the Indians, there just wasn't any basis, any rational basis, for holding that the federal rights in the land prevailed. Because the road itself was not an important road, and while it may have entailed some engineering difficulty to build a road connecting those two communities, small communities, in a manner and in locations which would not have interfered with the religious freedom of the Indians, it wouldn't have been all that expensive.

So that I was particularly unhappy with the opinion of the Supreme Court in that case. As to the [inaudible], remanded was there sufficient environmental impact statement, survey or whatever it was, about the effect upon fishing and so on. That didn't seem to me to be so important. But I was distressed by the blindness of the majority in the Supreme Court to the realities. I think far too often reviewing courts, courts of appeal in the federal system, fail to make an appropriate assessment of the evidence considered and weighed by the trial court. And the GO Road case I think is a prime example of that.

Fletcher: To give me a better sense of the concrete case, could you describe the high country and how it related to the Indians' religious claims?

Weigel: Well, I can't describe in detail. I think reference to the opinion in the case--have you cited it already? I don't remember that.

Fletcher: Oh, okay, in fact let me read it in right now. Your opinion is 565 F Supp. 586, Northern District of California, 1983. That was affirmed by the ninth circuit, 764 F 2d 581, Ninth Circuit, 1985, and then on rehearing 795 F 2d 688. And I still think you're right anyway. Reversed by the Supreme Court: 108 Supreme Court 1319, 1988, in an opinion written by Justice [Sandra Day] O'Connor.

Weigel: But the details of the nature of religious belief and the necessity of preserving a high ground for the practice of the religion are set forth in my opinion. And there was practically no contrary evidence. There was really no challenge to, no evidence to the contrary. Like I say, the details escape me now, but I'm satisfied that an unfortunate blow was rendered to religious freedom and particularly involving Indians--that's as an extra, as an overload--but it was done by the Supreme Court. It's unfortunate.

Fletcher: Now, this may be gilding the lily a little bit, but I want to add to that that I reread the majority opinion and then Justice

Brennan's dissent this morning before coming over as well as rereading your opinion. Justice Brennan dissenting says that he would allow a road to be built in circumstances like this where the government showed it had a compelling interest; that is, he said it wouldn't make this an inviolate right of the Indians, but it would weigh things off.

Weigel: Yes.

Fletcher: As I read the majority opinion by Justice O'Connor, it's a very easy syllogism. This land belongs to the United States government and it can do with it what it likes. Period. So, as we're trying to assess whether we agree with the majority or the minority, I think that's where it [a stain comes]; I mean, that's what the fight is about. And a majority wanted, the majority said the government need give absolutely no weight to the Indians' religious interests.

Weigel: I don't think that that doctrine--if it be the doctrine of the case and I think it is [Inaudible]--I don't think it will stand up. I don't think the government right is that absolute, nor do I think it will be so held in other cases which may come before the court.

Fletcher: Well, I very much hope you're right. The court, of course, was split on this point. Can you tell me something about the trial? How long was it? Did you have Indians coming in to testify in front of you? Or was it summary judgment case? How did it work?

Weigel: No, it was a fairly lengthy trial. The Indians were present, quite a few of them. They were quite respectful. I think that I had to have the bailiff ask that every one of the Indians to have him remove his headgear, but they presented no problems. It seems to me, although I can't find it now, that I had a letter from one of the--

Fletcher: Is that it? [tape interruption]

You're back on.

Weigel: Well, this letter from, signed by one Russ Morrow, perhaps bears reading. He says: "Dear Sir: The first day of the GO Road trial you sent a page to tell me to take my cap off. At the time I wondered that so much attention paid to the trappings of respect. But for today's groundbreaking decision, my headgear is off to you forever. No one in my deepest conviction should have the power that was given you over life: the life of other human beings, other species, of the unborn.

Not to have it is best. Next best and best in our society is to use it as you have done on life's behalf. Our gratitude swelled by those who do not and cannot know, who do not and cannot speak, for all you have saved, we thank you." That was a very moving letter and, of course, very nice to get.

Fletcher: Yes. Now, I first heard about this case after the Supreme Court made its decision and one of my Indian students and a friend of his came into my office asking if I would join a panel discussion of the opinion. And it was only then when I read the opinion and read the lower court opinion that I'd known that it was your case. And I know that the Indian students at Boalt Hall, this continues to be a live fight for them. That is to say, it's finished in the Supreme Court, but they could save themselves in Congress. They have not let this one go away.

Weigel: Well, I'm glad to hear that. Well, this was one of those cases, and we'll talk about another tomorrow which particularly appealed to me as being basically extremely important. The prison case attracted a great deal of controversy, and it is important. We must treat prisoners humanely, and there will be more and more pressures to avoid that I think, based upon prison overcrowding. That's beginning to crop up in a case that I now have. Yes, that's important, but I think the guarantees of the constitution to religious freedom, and I would say that includes the right to irreligious freedom--

Fletcher: Yes.

Weigel: --that strikes me as particularly important. And also in the GO Road case the fact that it was an Indian, American Indian religion brings to mind the sometimes sinful way that Indians have been treated.

I wanted to say that even the Johnson case, which we'll talk about I guess later, with its headlines and public division, controversy, is in my view perhaps less important than the decision that I made in the Dellums case, which we'll consider at another time. Because that involved, it seems to me, an important basic question as to the accountability of public officials high or low, accountability for wrongdoing to citizens of the United States. And that turns, in part, upon the so-called Ethics in Government Act, which we'll consider later.

Fletcher: We'll get to that next time around. Okay, thank you.

Weigel: Thank you.

Dellums v. Smith

[Interview 9: July 24, 1989] ##

Fletcher: Today is the 24th of July, Judge. We are back together to talk about a case that I found enormously interesting as I was preparing for it today, and I remember you last week described it as potentially one of the most important cases you ever decided: Dellums v. Smith. The plaintiff, Dellums, as you know, [Congressman Ronald V.] Ron Dellums, a congressman from the East Bay, he was joined by two private plaintiffs. Smith is the then attorney general, William French Smith, of the United States. Your opinions are reported at 573 F. Supp. 1489, 1983 and then two supplementary opinions 577 F. Supp. 1449, 1984 and then 577 F. Supp. 1456, also 1984. And I'm sorry to say there is a reversal by the ninth circuit: 797 F. 2d 817, 1986. [tape interruption]

Ninth circuit decided in 1986. Could you tell me about this case?

Weigel: I'll be glad to. I think I suggested at our last session that I regarded this as perhaps the most important case I've had-- one of them surely and perhaps the most important. And the reason for my view of that is this, and I'm improvising now in expressing the basic thought. It seems to me that for a long period of time government officials in the federal government-- as well as others, but I'm talking about the federal government officials--have been derelict in their duties, and that perhaps seriously, in many cases seriously. And there's no adequate remedy on behalf of the public to bring about correction.

Certainly, very recently it would appear there had been serious dereliction of duties for example in the area of savings and loan associations, and supervision and the like in the area of HUD, and really also as well in the area, for example, of the rights and duties of the president with respect to the troubles in Nicaragua.

So that there are a host of responsibilities in our democratic republican form of government--republican in the sense of elected representative rather than pure democracy--a host of duties imposed by plain law upon government officials. And if those duties are neglected or not complied with, what remedy is there on the part of the general public outside of the pressures of political influence, outside of self-interest? What remedies are there to bring about a correction of such wrongs?

It seemed to me, based upon consideration of a statute called the Ethics in Government Act, a particular subsection thereof, that this was intended, and certainly the title of the act itself suggests that it had been well intended, to provide a remedy on the part of injured citizens against dereliction of duty on the part of public officials.

Now, in the particular case that I decided, the Dellums case, the relevant law was this: the Neutrality Act of, I forget what year, '31, you can check it--the Neutrality Act, which is now on the statute books for a long time--I don't remember the exact date of its enactment--provided that whoever within the United States, and I'm quoting in part, "takes part in any military or naval expedition or enterprise to be carried on from the United States against the territory or dominion of any foreign prince or state or of any county or district of people within the United States as peace, shall be fined not more than \$3,000 or imprisoned not more than three years or both."

Basically, it appeared to be that there could be no question as to what officials of the United States, one or more officials of the United States, were providing means, furnishing money for a military naval expedition or enterprise against the territory or dominion of a foreign prince or state, or state, with which the United States was not at war. The suit was generated based upon the claim of violation of that statute, as well as one or more other statutes of similar import, by three persons, the plaintiffs.

One was Dellums, a congressman from Berkeley, who claimed that the violation of this Neutrality Act deprived him of his constitutional right as a member of Congress to vote on the question as to whether the United States should make war on Nicaragua. And another plaintiff, one of the two others, was one Eleanor Ginsberg, who claimed that paramilitary training near her home in Florida constituted a nuisance and disrupted her enjoyment of her property, that is paramilitary training looking toward military action against the forces of the Nicaraguan government. And the third plaintiff was one Myrna Cunningham, who complained that while serving as a doctor in Nicaragua, she was kidnaped and raped by members of the paramilitary forces supported by the United States.

The Ethics in Government Act provided that when the attorney general received credible information that law was being violated by any official of the United States without limitation from the president on down that any such official who was violating the law--in this case the Neutrality Act--if

the attorney general received credible information that there was such a violation, the attorney general had the duty to conduct an investigation for a period of ninety days. And if he found there was no violation, that was that, is my recollection of statute. If he found that there was a violation, I think provision was made for, as I recall it, provision was made for the appointment of special counsel to prosecute, because if it was against the government there would be conflict of interest on the part of the attorney general, if it was against any federal government official.

Now, there was no question about the reliability and credibility of the information supplied by these people. Indeed, the attorney general didn't question that, but affirmed that they, the plaintiffs had no standing to sue. The credibility of the information, the reliability of it, to trigger the investigation was not questioned; but the attorney general claiming that this involved a political question which is not worthy of consideration--wasn't heavily relied upon--but relying principally upon his claim that the plaintiffs had no standing to sue.

And implicit in that argument was that no private citizens, no citizens of the United States have the right to, on any basis, to require compliance with the duty imposed upon the attorney general by an act of Congress. Well, it seemed to me in that case, and it seems to me that in the future if the court of appeals decision reversing my decision stands up, it seems to me that the consequence is that there is a statute that says I can see that it serves no useful purpose whatever if the attorney general is free to disregard well-grounded complaints, well-founded evidence of violation of the law on the part of government officials. And here, I think, is a real danger to the public in not being able to get redress, or dealing with, or careless disregard of the law by the officials that are supposed to represent the public.

Well, that's a less eloquent and perhaps a scholastic statement [Inaudible] based upon improvisation at the moment of what underlay entering my decision.

Fletcher: Well, I would recommend to anybody who is seriously interested in this in looking at the first two of those three citations, your long opinion in 573 F. Supp and the first of the two opinions in 577, which lay these things out in great detail with great eloquence--not to say this wasn't eloquent right now.

Weigel: Well, it wasn't all that eloquent.

Fletcher: Speaking for the moment, in almost political rather than legal terms, which it's become much more apparent now than at the time that you were deciding this, that you had a piece of the tail of the tiger. Maybe that's the wrong metaphor. But had the attorney general been forced to make a bona fide investigation at that time, who knows what's now become known as the Iran-Contra Affair might then have come out.

Weigel: Yes.

Fletcher: I was struck by a newspaper article in your file in which Congressman Dellums eventually abandoned what must have been his appeal to the Supreme Court when the Iran-Contra hearing got well underway. At that point, he said, "Well, you know, this is what I was really after was some sort of an open investigation and public hearing on this matter, and I finally got it, as it turns out, through another route."

Now, the point that the ninth circuit reversed you on was not the question as to whether or not the attorney general had the duty. They were willing to assume that the attorney general had some duty. The question was rather on whether or not these individuals, two of them private and one of them a member of Congress, should have the right judicially to enforce that duty. I assume that even the ninth circuit would have been content and would have sustained you had Congress--I guess we'll do this in a hypothetical case--repassed the statute and explicitly said, "We want private individuals to have the right to enforce this statute." And what I understand you to have done was simply to read as a logical inference of the duty that they could not have wanted to prescribe the duty without providing for some means of judicial enforcement.

Weigel: Well, it seems to me absent such means that it was an idle statute. The attorney general was at liberty to, if he or she wishes in that office, to disregard plain violations of the law by government officials. So what remedy besides that statute is there for such a situation? And if the statute doesn't give that, doesn't provide that right, why isn't it just an idle act? It has no effect whatever, it seems to me.

Fletcher: Yes. Now, was the attorney general arguing in your court that he was willing to investigate it, he just didn't want to be forced; or was he saying nobody has any standing, and besides that I'm not going to investigate it anyway; or was he very clear on that?

- Weigel: He wasn't very clear on whether he [Inaudible] to investigate it anyway, but there was obviously no disposition to investigate.
- Fletcher: Yes.
- Weigel: And there was resistance all the way down the line. A witness, as I mentioned earlier, that one of the claims of no need to investigate was that this was a political question as to which the court had no jurisdiction.
- Fletcher: Right. And that one certainly goes to the point of "You have no business here, and we'll do exactly as we please."
- Weigel: Yes, yes.
- Fletcher: This is clearly part of a very specific and particular political fight over our policy in Nicaragua. It's also part of a larger fight by the executive branch vis-a-vis the Congress. That is to say the executive branch is saying, "Look, we don't want these people from Congress telling us what to do." I don't think it was accidental that one of the main plaintiffs was a member of Congress. How useful do you think the federal courts can be in refereeing fights between the Congress and the executive?
- Weigel: Well, in the context of this case, it seems to me that the result of a different outcome, the result of enforcing what I think is plain to be the intent of the Ethics in Government Act would be to unmask criminal activity and make it public and probably resulting in a cessation of it or prosecution of those who are criminals.

Let me take another example. Maybe this is not well taken, but let's think about it. Apparently, in a number of cases as to individual savings and loan societies or corporations there was rampant neglect, if not criminal neglect, on the part of the savings and loan commission or authority, whatever it was or is, to protect depositors against embezzlement and the like on the part of wrongdoing or fraud on the part of the managers and directors and officers of the savings and loan company.

Now, if those depositors whose deposits may have exceeded the \$100,000 protection for them by the relevant statute--including the obligation upon the government to insure--lost much more, what remedy would the depositor have to bring to justice those who ought to be brought to justice in terms of failure to properly supervise the laws that apply to those savings and loan associations?

Suppose, for example, people who are entitled to protection under various provisions of the statutes relating to HUD were denied the homes or the facilities they ought to have, provided for by the statute, because of the wrongdoing of HUD officials. What should they do? What can they do to bring these wrongdoings, these criminal deeds to light? People in positions of high or low office are not prone to expose their wrongdoing to light. Such a situation, what remedy is there on the part of injured citizens, particularly if it should happen that the normal prosecuting authorities are beholden to, directly or indirectly, to those who do you wrong?

Fletcher: Let me pick you up on that very last point. I take it to be an underlying theme or motivation of the Ethics in Government Act that they're worried about precisely this problem, that if there is an allegation of wrongdoing by members of the executive branch that the attorney general, himself of course a member of the executive branch, will be very slow to investigate the wrongdoing and even slower to bring some sort of prosecution.

Weigel: Yes.

Fletcher: And hence, the Ethics in Government act under certain circumstances requires the attorney general to institute some sort of an investigation, which puts it on quite a different footing from the ordinary investigation where the U.S. attorney or a district attorney is asked to investigate and to prosecute one private citizen upon the request of another private citizen. And we protect the discretion of the attorney general or the U.S. attorney to an extraordinary extent there. Here, where there's some sense of self-protection or self-dealing or somehow party interest, the statute works differently. So I'm now trying to spin this out as to why you would want to have some realistic enforcement mechanism outside the Justice Department.

Let me ask--now this is an ahistorical question because I'm going to put the Ethics in Government Act into effect long before it was actually passed. My understanding is it was passed in, I think, 1981 or 1982. Had the Ethics in Government Act existed in the 1960s when there was significant controversy as to the legality of the Vietnam War, would your vision of the Ethics in Government Act have allowed private people to investigate at least the possibility of wrongdoing on the part of the administration in various forms of--I'm not quite sure what they would have been, but lying to support the Gulf of Tonkin Resolution and so on?

Weigel: Sure. Also, it may be--I'm not suggesting that it is but just for illustrative purposes--that the taxpayers of the United States are possibly paying for corrupt practices and overcharging the government for development of the so-called stealth bomber. If that exists--and it may well exist based upon what we know in other instances of where defense contractors have overcharged the government, fraudulently charged the government--this is a direct loss to the taxpayers of the United States--if that goes on and can't be stopped by a taxpayer who provides credible information to the attorney general to trigger an investigation, and this meant a report by the attorney general, and he finds there wasn't any violation in a certain period of time--then the matter must go to an independent prosecutor to proceed. Actually, this is what remedy the taxpayers have.

It seems to me that in our form of government that it isn't sufficient protection to the public against the kind of wrongdoing to which I've referred and the kind of wrongdoing which was asserted by the plaintiffs in Dellums case, to rely upon the election process to remedy these wrongs. In the first place, that process is too slow and in some respects too cumbersome. And in the second place, the issues involved in the course of an election are so varied and in many ways so extensive that perhaps issues of fraudulent conduct on the part of government officials may not be sufficiently important in the light of the totality of issues to merit an election decision, a voter's decision, based upon the wrongdoing alone.

So, I think I wondered what your feeling about it was. It seems to me that based upon what we now know about the activities of government officials, that there ought to be some avenue by which victims of wrongdoing can, through the courts, require at least an investigation. It may require at least what the Ethics in Government Act calls for. What do you think about that?

Fletcher: Well, I agree with you. And I want to underline what you've said in a way as to the modesty of the remedy provided by the Ethics in Government Act. The only thing that you thought you were entitled to order under that act was to require that the attorney general investigate. Period.

Weigel: Yes.

Fletcher: And whatever the attorney general might find, that becomes pretty much the attorney general's business.

Weigel: Well, within--

Fletcher: Within limits.

Weigel: But he has to--the statute has to be complied with.

Fletcher: That's right.

Weigel: Oh, the attorney general also argued, it seems to me, that the Ethics in Government Act interpreted to allow injured individuals who presented credible information interfered with the attorney general's prosecutorial discretion, which is nonsense because he wasn't required to prosecute; he was required only to investigate.

Fletcher: Yes. Well, you've thought longer and harder about this than I have, so I guess I should say I'm beginning to notice something that I've been only dimly aware of as to the timing of this Ethics in Government Act. It's responding quite directly to a breakdown in trust of the government, and to some extent it's not just a breakdown in trust in 1981, it's a breakdown in trust stemming from--well, it's hard to say when we go back--at least in the 1960s in the conduct of the Vietnam War by the Johnson administration. At an earlier time, [Inaudible] Congress didn't feel the need for this.

Weigel: Also, this thought occurs to me. Again, I didn't suggest this in my opinion, in my writings in the opinions I wrote in the case, but if the Ethics in Government Act were given the interpretation that it logically should have to provide rights to injured citizens as to the wrongdoing in government officials, at least cause an investigation, who knows with what the existence of that right might be a curb upon wrongdoing on the part of government officials.

Fletcher: Oh, yes. That is to say the greater likelihood of being called to account, and who knows what follows after that.

Weigel: So that my perhaps egregious assessment of the importance of this case and the correctness of my ruling, it seems to me, is pretty much vindicated by what's happened since then, already referred to scandals in the Reagan administration and who knows what else.

Fletcher: I'd like to say, this isn't directly on point of the particular case, but obviously it's related in some sense. I'd like to read into the record a citation of a long and very interesting essay you published in the *San Francisco Chronicle*, Wednesday, July 15, 1987, on the page "Issues and Ideas," in which you discuss generally the constitution and foreign policy. I don't know whether it was triggered directly by the Dellums case, but

it's close enough in time that I think that it might be so.
Was I right?

Weigel: No, I think not.

Fletcher: Oh, it was not?

Weigel: I don't think so. I forget what prompted that brilliant essay, but I don't think it was the Dellums case. Was there anything in it that caused you to wonder, to see a connection?

Fletcher: Only in the following sense. The essay generally discusses the lack of clarity in the constitution as to who has responsibility for foreign policy. And obviously a great deal of the fight in Dellums that was underneath the case was the fight between Congress and the plaintiffs, to who should have control--

Weigel: I can see your connection. I think, as I recall--I don't even remember that piece in the *Chronicle*--but I think it dealt with the question as to who really had the right to make war.

Fletcher: Yes.

Weigel: And that was certainly involved in a sense in the Dellums case. There's a minor and totally unimportant footnote, but I'm glad it came to my mind. The plaintiffs and the main defendants in the Dellums case included the one attorney general, William French Smith, and D. Lowell Jensen, the assistant attorney general. Lowell Jensen, a defendant in that case, is now my revered and greatly admired colleague on this court. And only today at luncheon I mentioned to him did he realize that he was a defendant in the case that I decided? And he said he didn't --he said in substance that he didn't realize it, that he didn't have anything to do with it, so he apparently was a nominal defendant.

Fletcher: Well, too bad. I was going to ask what he thought of the case [Laughter], but he wasn't there.

Weigel: No. I didn't venture to ask for that, about that.

Fletcher: This raises a question directly out of that. How seriously did the administration take this case while it was in your court?

Weigel: Well, I think they took it very seriously. It seems to me they brought out--I don't remember just who they were--some big-wigs from Washington to argue the matter. It was very vigorously contested.

Fletcher: Yes. Well, I can tell you from the clippings in the file, this case made not only the local papers but it was in and out of the *New York Times* repeatedly. "News of the Week in Review," I mean they list it as a--this was a big deal as I saw it.

Weigel: Well, I'm just sorry that it wasn't decided differently. I suppose that could still happen. I took a look at the annotation of the relevant section, and there hasn't been too much litigation on it. The 28 USC 591, et cetera. The annotations don't indicate very much in the way of litigation except my case. So it may be that we haven't heard the final word on the effect of the statute and its enforceability.

Fletcher: Well, that's absolutely, that's got to be right. And there are two obvious mechanisms by which you could be vindicated. One is a different decision by another court of appeals or the Supreme Court or a couple of courts of appeals. Or second, if Congress in its political wisdom could get sufficiently exercised simply to pass a clarification saying that we agree with this broad view of standing.

Weigel: Provide specifically that any member of the public who was injured and so on had a right to require the investigation, provided there was serious evidence presented the attorney general.

Fletcher: Yes.

Weigel: Credible evidence. [Looking through papers] I'm looking at the decision, and I'm looking for a reference which I now found to the case of Nathan v. Attorney General, 557 Fed. Supp. 1186, in which it appears to me that Judge Gesell of the district court in Washington had reached the same conclusion I did. Whatever happened ultimately in that case I don't know.

Fletcher: Yes. I don't know either. But as I read your description of Judge Gesell I thought that was quite right. I've got a little passage of his excerpted. Well, I think this is a fascinating case, one that in the nature of things was unlikely ever to provide a definitive answer. I'm thinking when I say that of the series of cases brought during the Vietnam War, trying to get some clarification as to the respective roles of Congress and the president and the question proved so difficult, so multifaceted and so intractable that you never get a definitive resolution. And in some sense this case is a rarity because of the clarity with which you were able to see and articulate some of these issues.

Digression: Back to Stanford

Weigel: Well, thank you for that. I just wrote down a list. Since we've started, various things have come to mind about my shady past, and I remembered one thing at Stanford College: I was very active in debating. One of the main events when I was at Stanford was a debate with a team from Oxford. I was on the Stanford team. And the team from Oxford included the son of Ramsey McDonald and another luminary in, became quite a famous luminary, or did after the debate, in affairs of Great Britain. And I'm terribly sorry to say I can't remember his name. I think it's Hollis. But in any event it was quite an interesting experience to have that today.

Fletcher: Do you remember the subject of the debate?

Weigel: No, I don't.

Fletcher: Do you remember the style of the debating? I've always heard that the English have a different way.

Weigel: Well, the English tended to be somewhat less formal than we were. I do remember a comment in the, and I think it was in the Stanford Crier, the annual, describing the debate in which it suggested that to leaven the--I may be overstating this--but the idea was to leaven the [seriousness] of our approach that I indulge in what was described inadvertently as Polish humor. [Laughter] They meant polished humor. [Laughter] But it was a great occasion, and attended by a large portion of the student body and faculty.

Fletcher: And those were the days before there was such a thing as a Polish joke?

Weigel: I guess so. [Laughter]

Fletcher: Did you get a chance to meet and speak with the English participants, the son of Ramsey McDonald and the others?

Weigel: Yes, we did, and it was enjoyable, but I have no vivid recollections of it, unhappily. As we've done this, I think it in some ways is too bad that I didn't keep some kind of a diary.

It also occurs to me--and I want to try to get hold of it and I may by the time between now and the next session, but maybe I can--that when as I think I mentioned I led a group of Stanford students on a trip to Europe, I did keep an extensive

diary. And I'm going to try to look through that tonight to see if anything comes to mind that's of interest. I did mention it, didn't I?

Fletcher: No, I don't know that you did.

Weigel: Well--

Fletcher: What was the occasion and so on? How did it work?

Weigel: I was active in student affairs, as I'm sure has been mentioned, and as a result there was a national organization of students called the National Students Federation, and I don't know just what the financial sponsorship was but one could as a student through that association, if one got a certain number of students to take a trip to Europe, if you signed up enough students, you could get a free trip. And I think you had to get at least ten. I think I was able to get eight or nine. I fell short one or two, but nevertheless they let me take the trip. And I had never been to Europe, was a leader of the tour. And it was quite interesting in many ways because we traveled the length of the Danube from Passau down to the Black Sea. And it may be--I did keep a very comprehensive diary on that--and it may be that taking a look at that would perhaps provide something interesting in this oral history.

Fletcher: Oh, I would be interested in that.

Weigel: I'm not sure.

Fletcher: Whether tomorrow or at a later time. We could pick that up again at a later time. I'd like tomorrow, I think, to get to Johnson, and I think let's save that one for tomorrow.

Weigel: All right. And I'll do a little more preparation on Johnson, thanks to the short stack of newspaper clippings you've provided. [Laughter]

Fletcher: A short stack, about a foot high, I'll say.

Weigel: Yes.

Johnson v. San Francisco Unified School District

[Interview 10: July 25, 1989] ##

- Fletcher: Today's the 25th of July. Judge, today I'd like to ask you about a case that resulted in a number of headlines. The case name is Johnson v. San Francisco Unified School District. The citation for your opinion in 339 Fed. Supp. 1315, Northern District of California, 1971, vacated and remanded three years later by the circuit, right under F 2d 349, Ninth Circuit, 1974.
- Weigel: Well, I wonder if that's quite correct. It was, in a sense it was vacated; it wasn't remanded. But the injunction that I ordered was left in place.
- Fletcher: Was it?
- Weigel: Yes. I'm quite sure that's the case. We can double-check that.
- Fletcher: No, I think you're quite right.
- Weigel: The essence of the federal appeals decision was that between the time of that decision and the time when I handed down my final judgment, there had been some changes in the law, and the court of appeals indicated it wasn't quite satisfied that the segregation of the San Francisco schools had been de jure as distinct from de facto.
- Fletcher: Right.
- Weigel: They suggested more evidence on that. I think unnecessarily, but they did. In any event, they left the injunction in place. Yes?
- Fletcher: I'd like to start by saying I have here in front of me the *San Francisco Examiner* for Friday, July 9, 1971, a headline that takes up almost half of the top half of the page: "Judge Orders School Busing Starts September 8." That is to say, this was a case that obviously attracted a great deal of public attention, and one of great significance here in the city of San Francisco.
- Weigel: Well, that's indeed true. As a matter of fact, my recollection is that the other San Francisco newspaper, the *Chronicle*, had similar headlines. And if that's not as in such bold face and

so on, but it was a feature story on the front page of the *Chronicle*.

Fletcher: In fact, I've got that one in front of me, too. That's the next morning: the *San Francisco Chronicle* of July 10, 1971. The headline's smaller. On the other hand, they have, pardon the pun, a bold face on the headline. [Laughter] That is to say they have a picture of you which the *Examiner* didn't have.

Weigel: Yes. Well, I might comment upon the lack of shall I say handsomeness in that picture. It wasn't very flattering.

But in any case, this was a long-simmering problem in San Francisco. And the decision was preceded by lengthy court proceedings. And there's no question but what the city was divided; indeed, one might more accurately say, subdivided. There were all kinds of opinions. There was even an effort on the part of one lawyer to provide for all-black schools. But the basic question was the constitutional requirement of eliminating segregation in public schools, stemming from the famous unanimous decision of the Supreme Court in Brown v. Board of Education, which I think was some fifteen years, sixteen years earlier than my decision.

The evidence in the case established that the San Francisco school authorities had violated the constitutional rights of children by establishing school boundary lines--I'm now reading from my opinion--"knowing that the result is to continue or increase substantial racial imbalance." The law was also settled that school authorities violated the constitution by providing for the construction of new schools or enlargement of existing ones in a manner which continued or increased substantial racial imbalance. The law is and was so at that time that the school authorities violated the constitution by assigning black teachers and teachers with limited experience to black schools, while assigning few if any such teachers to white schools.

Now, this case stirred up almost an unbelievable amount of not only public interest but public controversy. And one of the main concerns was whether or not the only way of effectively desegregating the schools was to provide for busing, and the issue of busing was paramount in the minds of both those who favored desegregation and those who in effect didn't.

In any event, after prolonged hearings before the court, after efforts which I made repeatedly to have the school authorities voluntarily eliminate the desegregation, which

their rulings and practice had made necessary--that is to say their prior rulings and practices. They were unsuccessful. And finally, I ordered that the key parties--I think the plaintiffs were a small group of black children and the defendants--I ordered that both sides, each side prepare a plan of desegregation which would meet standards that I delineated.

The school board came up with a plan called a horseshoe plan. And it seems to me the symbolism of that may be somewhat pertinent. [Laughter] And the defendants came up with a plan which they called the freedom plan. My decision in the matter left it up to the school board to adopt and implement whichever of those two plans it preferred. And that decision left to the board was supplemented by injunctive provisions which carefully spelled out the requirements which would have to be met in the implementation of either plan to eliminate segregation.

Now, about the busing. That always has seemed to me and still does to be a red herring issue in a way, because those who oppose busing--particularly those in the upper middle classes oppose busing--many of them were sending their children to schools in buses across the bay to Marin County, some even to Oakland or to Berkeley. Now, this was not done for any reason except to give those children the benefit of what the parents conceived to be better educational opportunities in those communities. And they had no qualms really about their children being bused long distances. So, it seemed to me that there was a certain amount of hypocrisy in arguing as a substitute against busing. And also, as my decision pointed out, busing was perhaps the safest way of getting children to and from school.

In any event, I took pains in my decision to point out--and I'd like to read that--what the decision did not do. I said that it favored no racial nor ethnic group, that it was fashioned so that benefits and burdens were shared equally. I record, describing the injunction accurately, that "nothing whatever in it de-emphasizes quality education, and the plans, both horseshoe and freedom, which approved provide actually for better education."

I pointed out that nothing in the decree requires gifted children to be held back. They could be given special preferences or attention or handling, in any matter which didn't promote racial segregation. That would have to include bilingual classes. "They could be provided in any manner which didn't create or intend to foster segregation." And I carefully avoided anything which would prohibit courses

teaching the cultural background and heritages of various racial/ethnic groups.

I also pointed out the decree didn't "preclude innovation or experimentation or creativity in educational practices," and elaborated upon that. I point out that the decree did command the school authorities "carefully to provide for physical safety and security of all students during their school attendance and bus transportation." And I pointed out that the "desegregation required by the injunction would have to be carried out solely by the school authorities themselves, and not by the court."

And I concluded with this, which seems to me to have been true then and is true in cases involving strong public disagreement. I said, and I'll read from my opinion, "The judgment decree now to be entered is of less consequence than the spirit of community response. In the end, that response may well be decisive in determining whether San Francisco is to be divided into hostile racial camps, breeding greater violence in the streets, or it could become a more unified city demonstrating its historic capacity for diversity without disunity."

And I concluded, "The school children of San Francisco can be counted upon to lead the way to unity. In this and in their capacity to accept change without anger, they deserve no less than the wholehearted support of all their elders." There was no evidence before me in the case that any of the children had problems with the busing or any of the anticipated requirements of the decree.

Well, the problems weren't ended with my opinion; they should have been when my decision was ordered, but they weren't. And problems simmered and people came to court on one thing and another. And there was a great deal of personal attack upon me. For example, I remember very well--I think I may have mentioned this earlier--that a number of parents opposed to the order of desegregation carried banners saying, "We will not wiggle for Weigel."

And I also remember getting a telephone call at home early in the evening, and upon answering it, the person at the other end of the line said, "At 2:00 this morning your home is going to be bombed." For reasons, I'll mention in a moment--I think the statement was, "Your house is going to be bombed." At 2:00 in the morning I was sound asleep and the phone rang. And [Inaudible] he said, "This is your wake-up call." Of course, I hadn't provided for any wake-up call. The obvious intent was

to frighten me to equate that call with a bomb. One reason I wasn't too concerned was I think that the term used in the threat was "house," and I lived in an apartment rather than a house. So that--

Fletcher: I see.

Weigel: But in any event, it wasn't too pleasant. And--

Fletcher: May I ask a question?

Weigel: Yes.

Fletcher: Did you notify the federal protective service of any kind on this instance?

Weigel: I don't think. I don't remember that I did. I might have; I just don't remember. I--

Fletcher: In any event, you didn't leave the apartment; you stayed there, and all you got was the telephone call at 2:00 [A.M.]. Yes. Let me--

Weigel: Wait a minute. I don't know whether it's important. I'm not quite sure. I think it was in connection with some other matter. I don't remember which matter. I did call, have the marshall's office come out to check, see whether there was any bomb or explosive device in my car. But what prompted that I don't remember. Probably not this case.

Fletcher: Was your telephone number unlisted at that time?

Weigel: I think not. But what I did to head off telephone threats was this. I called the telephone company and arranged with them whenever a call came to my home number to divert it to an operator who would inquire, "What number are you calling?" And if they said they were calling my home, they would put the call through. But that inquiry from the telephone company operator forestalled any further calls of that nature. Because I think the callers were concerned that maybe the call was being tapped or traced.

Fletcher: Yes.

Weigel: So that worked really well.

Fletcher: Before I let it slip past me, I was quite struck in reading your opinion by that last passage that you just read aloud. Obviously, this was directed not only at the parties, although

clearly at them, and not only at the absolutely unerring. Here it is in the *Examiner* story, prominently quoted that entire passage as the concluding part of the story. So, just to be understood in part as an exhortation to public spiritedness, it clearly was picked up by the papers in exactly that spirit.

Weigel: Yes. I think I did something else. Consistent with my view that in the end the success of the effort to desegregate would depend upon public acceptance and really an informed public opinion, I think that before the decision came down--but after I'd made it, was ready to sign and file it or perhaps right after it was filed--I had a press conference. And I was very anxious or desirous that, whether the papers were for or against it, that the news accurately described what I did, so there could be no misunderstanding of the terms of the injunction and of the provisions of the decision.

I held a somewhat lengthy press conference with the understanding of the press that this was simply for background, and not to be any quotation or attribution, but in the interest of making it easy for them to understand a somewhat long and complicated opinion and the injunction. I think that was useful.

Fletcher: Yes. I compared the stories written here with your opinion and while, of course, they're much shorter, it strikes me that they are unusually accurate for a newspaper reporting of legal affairs.

Weigel: Well, I'm not clear what followed after the case was remanded to me. Apparently, it was [looking through papers] remanded--the decision was in '71, the exact date having been July 9, as you mentioned earlier, 1971. And the court of appeals decision didn't come down for three years later, in 1974.

At some point, having in mind that the efficacy of desegregation would depend upon the school authorities, not upon the court--the court couldn't very well supervise and run the schools--it would depend upon compliance, and the only remedy of the court would probably be contempt for failure to comply to the court order.

I think that there was a lack of any real follow-through on the part of the plaintiffs. And one result of that was that on June 22, 1978, some four years after the court of appeals had upheld the injunction and sent it back to me for further proceedings, which I undertook to carry out, I was impressed with the fact that the original plaintiffs and their lawyer weren't very diligent in prosecuting the case. And on June 22,

1978, in a memorandum opinion that accompanied an order dismissing the case without prejudice, I pointed out that from June 2, 1975, until April 12, 1978, a period of nearly three years, there had been no action by any party in the case. And my efforts to have the parties proceed effectively seemed to be unavailing.

And new counsel came in and the witnesses in the earlier case who had testified may not have been available later on in 1978 to testify. Also, the law had been elaborated and somewhat changed. I decided that the case ought to be dismissed for failure to prosecute, ruling that the burden of diligent prosecution rested squarely upon the plaintiffs which they had not exercised. I pointed out that although the case could have been dismissed with prejudice, it wouldn't have been justified to do so. While the policy of the law favors prompt disposition of litigation, it also favors dissolution on the merits.

And in a sense I felt there was meekness, that there was no case or controversy before me because of the failure of the parties to contest it. Apparently, maybe they were satisfied with the injunction, thought it had been properly carried out. But in any event, I made it clear that while I was dismissing the case without prejudice, this meant of course that the courthouse was not closed to new litigation relating to alleged segregation. I point out that "the court neither implies nor suggests that litigation provides the best path for desegregation." And then I vacated the injunction and dismissed the action without prejudice.

If I'm not in error--let me backtrack a moment. I pointed out that the original plaintiffs were no longer proper class members. They had graduated from the elementary schools. Now, my recollection is--it may be somewhat faulty but I think not--that shortly after I dismissed without prejudice, the NAACP brought a new suit to compel desegregation. What happened in that case was that I learned that my son-in-law might be involved in connection of his representation of an agency, I think, an educational agency connected with NAACP, and I felt that in the light of the fact that he, even though not directly connected with NAACP since he was connected with a funding organization for that organization, that I should disqualify myself, which I did. And the case went into the lottery and went to Judge [William H.] Orrick.

Now, here it is--what was it?--some eighteen years after I decided the case, and my guess is that the school segregation

case is still pending. Let me take a moment and find out, would you? [tape interruption]

The case is still pending before Judge Orrick. Apparently, it resulted in the issuance of a consent decree. And I gather that since then, there have been various charges and counter-charges with respect to whether or not the consent decree has been complied with. And I'm reliably advised that only a few days ago there was a status conference and that the problems still hanging fire on the case [Laughter] relate to compliance with the consent decree. So there you are.

Fletcher: So here we are, 1989, and it's still fussing along.

Weigel: Yes.

Fletcher: I have a question about the reaction of the school board to this case. I was reading an account this morning in preparation for talking to you this afternoon, by David Kirp at the University of California, who studied this quite carefully. In his opinion the school board, and I think this was his word, was actually "relieved" to have your order entered against it. Was that your sense?

Weigel: Well, I don't recall that; they may have been. I think the school board was somewhat divided. I think there was dissention within the school board. That may have accounted for some relief. But I'm really not sure about it.

Fletcher: When you dismissed the case without prejudice in 1978, was the school board pressing you very hard to do this?

Weigel: Oh, not at all. No. This action was largely, to use the legal phrase, *sua sponte*. It was my own voluntary action. I looked over the proceedings and saw that there had been a long period of total inaction. All the parties, the court was open to all the parties to insist upon compliance with the judgment or to complain about failure to comply or to seek modification. And there it was. No action was being taken. I didn't feel that I had any duty to impose any views or any role that I might have had upon the parties, that there was no real cause or controversy before me.

Fletcher: Now, this is interesting to me now. I think I'm understanding this right. The court of appeal in 1974 says that the standard as of '74 had been, I guess the right word is "tightened," and that a fairly clean showing of actual intent to discriminate was required. At the time you decided your decision in 1971, a lesser showing of intent or perhaps we should say a showing of

consciousness of what was going to happen was sufficient. And the court of appeal remands it to you for further hearing as to under this new standard.

Weigel: Yes.

Fletcher: Did the defendants not move for a dissolution upon failure of the hearing? Did such a hearing ever take place in your courtroom under this new standard, pursuant to the '74 order?

Weigel: I really don't remember. I'm sure there were proceedings. I think there were probably a good deal of proceedings. I think that Quentin Kopp intervened after the court of appeals I think provided that the Chinese had a right to intervene. I don't know that I ever excluded them, except on the basis of a tardy effort. There were subsequent proceedings but they petered out for some reason.

Fletcher: And what I'm guessing here is that after the court of appeal decision, both sides for whatever reasons of their own had lost their stomach for the fight and were content to let it sit there.

Weigel: Probably. I'm not sure.

Fletcher: Now, I've got another question. It's a little bit off to one side. Oh, I'm sorry, go ahead.

Weigel: I think what I had decided was that if no one--I think my feeling was this. The conclusion was this: that if no one in San Francisco having a right to require school desegregation or having a right to oppose any such efforts, that if there was no willingness on the part of either side to act, what was there for the court to decide? It didn't want to act on its own without some controversy being before the court for decision.

Fletcher: Your mentioning of Quentin Kopp stimulates me to ask you about his participation in the case. Now, I know that he tried at the very last moment to intervene or rather he sought on behalf of his clients to intervene--

Weigel: That's right.

Fletcher: --which you denied on the basis that it was--

Weigel: Untimely.

Fletcher: --untimely. If he'd come earlier that would have been a different matter. As I read the court of appeal, I thought it

was an uncharitable job the way they wrote it. They were remanding anyway. I would have preferred that they said, "So long as we are remanding, Judge Weigel should permit the intervention," which I think in fact was what was in their minds. As I read the opinion, they said that you were wrong in not permitting them to intervene. Can you tell me about the intervention and what that has led to in various ways?

Weigel: Well, first of all, let me comment that it's not particularly unusual. It's not a rare occasion when a court of appeals is incorrect in stating the facts of what transpired in the lower court. This was one example. The reasons for that perhaps I can go into at another time.

But all that I remember is that Mr. Kopp had been a partner, probably was a partner at the time, in a leading San Francisco law firm, Pillsbury, Madison & Sutro, and had political aspirations, and I think they were furthered by his championing a large group of a Chinese community who wanted no part of segregation, wanted no part of busing. These Chinese strongly of that view accepted Mr. Kopp as a champion of the Chinese. And I think that gave him a political constituency which was valuable to him, and indeed it resulted in his, I think, election initially to the Board of Supervisors and ultimately the state legislature. There's no question but that was opportune. Indeed, as I may have mentioned to you, not too long ago I met Mr. Kopp on a social occasion and chided him or teased him about my contribution to the advancement of his political career, which he graciously acknowledged.

Fletcher: So, in fact, whether you personally or this case, it helped him get started. Let me ask a political question in relation to Mayor [Joseph] Alioto. I remember that he was in some way interested in the Yerba Buena case. I know from reading the political account that he had been a public figure in the school disputes before the suit was discovered, I have seen no mention of him in the law suit. Did he ever participate in any way in the suit?

Weigel: I don't remember that he participated in the law suit. I do recall reading somewhere that--I think I'm correct in this recollection--that the mayor was opposed to the court mandated desegregation and that, I think I read somewhere in a gossip column or something of the kind, that Mr. Kopp felt that Mr. Alioto was a shrewd assessor of public opinion and he, Mr. Kopp, felt that this might be a useful springboard for him, that is representing the Chinese in opposing this. That may be somewhat unkind in the direction of Mr. Kopp. He was competent. He worked hard on the case and effectively.

- Fletcher: And clearly, as to the position he advocated he prevailed, in the sense of--
- Weigel: Chinese, sure. As he should have. As they should have.
- Fletcher: During this period--the late sixties, early seventies--there was a great deal of school desegregation litigation across the country.
- Weigel: Yes.
- Fletcher: Some of it resulting in serious confrontations, even violence.
- Weigel: Yes.
- Fletcher: That didn't happen here. Can you give me some assessment as to why San Francisco and why your case worked out differently?
- Weigel: No, I'm afraid I can't. I would hope that my efforts to achieve the proper legal and factual result in a manner which would diminish controversy may have helped. It could be, although I doubt it, that San Francisco is a more tolerant community than other places, although to some degree that's the case. And as I think I mentioned to you earlier--perhaps not in this recording, in connection with this recording of the oral history--I took pains not to excoriate the school board. I think somewhere along the line I made it clear that I didn't assume that their motivation was bad, that their intention but not their motivation, and their actions were bad. But it may have been that my efforts to diminish a basis for heated controversy and disagreement may have had some success. I hope so. I just don't know.
- Fletcher: Did you get communications about this case from your fellow judges, either on this court or from elsewhere in the country?
- Weigel: Well, my recollection is that communications and expressions of view, my recollection is that there were a number, at least two or three judges on this court, who disagreed with my decision, on grounds I suppose of practicality, opposition to busing not on mean racial grounds. And as to communication from other judges, I don't recall any, except that I did visit with Judge Garrity when I had occasion to be in Boston who handled the Boston desegregation case, in a much more volatile situation in Boston than here. I have admiration for him and his courage and he prevailed and was upheld. Otherwise, I don't remember much.

Fletcher: I was struck in reading the account in David Kirp's material of your handling the discussions that led up to the approval of the two different plans, both the school board's horseshoe plan and the freedom plan. David Kirp assesses your participation after he inspected the record very carefully that you had a very firm grip of the nuances and details of this case, yet at the same time you ended up leaving the school board very much on its own. After having decided that his plan and the NAACP plan both qualified, you took your hands off. My guess is, and here I don't want to interject too much, but my guess is that that had a great deal to do with the success, such as you were able to achieve. You did not become the president of the school board.

Weigel: Exactly, yes. I felt in the school case, as I did in the prison case, that the court should not be the administrator of schools nor the administrator of prisons, and that the role of the court is, in proper cases where the law requires it, to order public officials to do their duty.

Fletcher: Now, this takes you way outside the particular case, but I want to ask your sense, I guess, mostly as a public-minded citizen as to whether you think that school busing for desegregation has had a real success in the country.

Weigel: I don't know. I think it's varied. I hadn't followed it up. I really don't know.

Fletcher: As you decided the case, did you have--how do I ask this question?--did you have a sense as to whether it was a good or a bad idea?

Weigel: Well, I think it was a necessary idea. I think it was well established and probably is still true that effective education calls for reasonably effective, capable people. I think that if you have a school composed of a group of children, all whose peers are not interested in education, not interested in learning, that that hurts the educational process. Whereas, if you have a school in which there are students seriously interested in learning and capable of learning and making it a reasonable objective of their own that that rubs off on students who otherwise would not be so interested. Just as I think that in any educational institution, the success depends upon three basic elements: the character of the student body, the character of the teachers, and the character of the administrators.

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APPENDIX

Letters from Former Law Clerks of Judge Weigel

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July 21, 1986

Michael Griffith
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Historical Society
United States District Court
Northern District of California
P. O. Box 36112
San Francisco, CA 94102

Dear Mr. Griffith:

This is in response to the letter you sent dated June 25, 1986, reminding me about your upcoming oral history project concerning the Hon. Stanley A. Weigel of the United States District Court for the Northern District of California.

In my mind, the two most significant cases before Judge Weigel during my tenure as a law clerk were Dellums v. Smith and Toussaint v. McCarthy. Dellums centered upon the issue of the legality of the quasi-covert backing provided by certain government officials to the "Contras" seeking to overthrow the government of Nicaragua. Judge Weigel ruled that the legality of this aid was at least sufficiently questionable to require an investigation by the Attorney General pursuant to the Ethics in Government Act. In Toussaint, Judge Weigel ruled that broad relief was warranted to remedy the indecent conditions prevailing in segregation, or "lockup" units of San Quentin and Folsom State Prisons.

Both of these decisions are reported in West's Federal Supplement, and I would advise you to read these before you talk to Judge Weigel. Incidentally, both of these decisions are, I believe, still pending on appeal before the United States Court of Appeals for the Ninth Circuit.

For my own part, the years that have passed since my service with Judge Weigel have made me appreciate incidents in

Letter to Michael Griffith
July 21, 1986
Page 2

my clerkship that I barely even noticed at the time. One of these happened when a case pending before Judge Weigel involved two Oregon parents who had guaranteed a note made by their son, who had started a family farm. After the son's farm encountered financial difficulties, the lender, a California bank, sued the parents in federal court here in California, and the case was assigned to Judge Weigel.

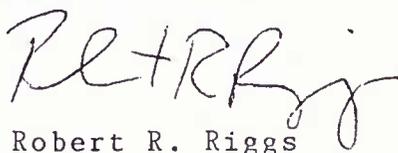
As the law clerk assigned to write a bench memo, I concluded that the court almost certainly could exercise jurisdiction in the case, because the guarantee had been signed in California. I recommended, therefore, that the parents' motion to dismiss for lack of jurisdiction ought to be denied.

For one of the rare instances during my time in his chambers, the Judge overruled the carefully considered legal opinion of one of his staff of clerks and externs. These Oregon parents were little people; it would cost them tremendously just to defend the case in a forum as far away as San Francisco. Why, the Judge asked in court, couldn't the Bank go to Oregon if it wanted to collect on this guarantee? When the attorney for the Bank advanced no suitable reason, the Judge dismissed for want of jurisdiction, leaving the Bank to pursue its remedies in Oregon.

At the time, I hardly thought this would be one of the more memorable aspects of my clerking experience. After all, the decision was somewhat questionable from a strictly legal point of view. However, as time has passed, I have come to realize that this little vignette shows why Stanley Weigel is not merely an eminent jurist, but a fair and compassionate judge. To the Bank, the case was just a matter of dollars and cents, but to the parents, it was their life. Judge Weigel, while fully comprehending the legal nuances, penetrated these layers of formality to decide the case on its fundamental human premises.

I hope that these brief comments will assist you in compiling your work of oral history. If I may answer any questions, or provide any additional information, please feel welcome to contact me at (415) 528-1060.

Sincerely,


Robert R. Riggs

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November 26, 1985

JOHN E. BRYSON
EXECUTIVE VICE PRESIDENTTELEPHONE
818-302-2265

Stanley A. Weigel
United States District Judge
San Francisco, CA 94102

Dear Judge Weigel:

My warm congratulations on your eightieth birthday.

The sixteen years since Steve Dunham and I left Yale Law School, for our first full-year jobs as your law clerks, has passed very quickly. While I have held a variety of jobs, married, had three children, and moved eight times since the clerkship with you, the events of 1969-70 remain vivid.

As you will recall, that year was the peak of domestic opposition to U.S. participation in the Viet Nam war. The Northern District of California, and you in particular, were pioneering in recognizing and delineating the rights of objectors to that war. One landmark case involved the rights of a Catholic who felt that the Aquinas Doctrine of good and bad wars required him to make the moral choice to oppose the Viet Nam war. Other cases were equally difficult. I recall particularly the case of the resistor who refused to assert a conscientious objection defense and insisted on being sentenced to prison because he did not want to dilute his expression of opposition by what might be seen as personal advantage in avoiding military service.

That was also the first year of challenges by the Tenants and Owners in Opposition to Redevelopment to the Yerba Buena redevelopment project. Your decisions there enforced a statutory right, protecting those about to be displaced, which had been neglected in most of the earlier redevelopment projects around the country.

In addition to those and other nationally significant cases, (such as the beginning of the prosecution of police officers in connection with the People's Park incident) there were lighter moments as well. You may recall, for example, my ineffectual effort to "arrest" the pregnant woman who was seated one day as a member of the jury and then failed to show up the next day until late in the morning. When she arrived she announced that she had told you she couldn't conscientiously participate in any criminal case, because an immoral government was the prosecutor.

Marge suggested that some notes on what has happened to me since the clerkship might be of interest. After leaving the clerkship, I co-founded the Natural Resources Defense Council, along with others from our law school class. We set up offices first in New York, then in Washington D.C., and finally two years later in Palo Alto. In the fall of 1974, I was married to Louise Henry, whom I met during the year of the clerkship, and at the end of that year we moved back to my hometown, Portland, Oregon. I went into private law practice and was appointed a member of the state energy regulatory body. About a year later, we moved back to California where I was Chairman of the State Water Resources Control Board during the drought years of 1976 and 1977. In 1977 Louise returned to Stanford to go to business school and I taught at the law school part-time for two years overlapping my appointment as President of the California Public Utilities Commission where I served for four years. Since we were able to have lunch at that time you know some of that story.

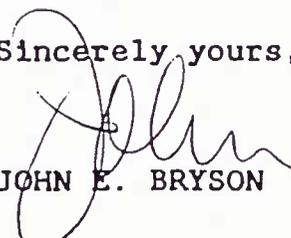
After leaving the Commission, I joined Morrison and Foerster, where Steve had been a partner before me, and in February 1984, I joined SCE where I am now Executive Vice President and Chief Financial Officer. My responsibilities include the Law Department.

Some of all this is recounted in the attached article which appeared in the NRDC's Amicus Journal. I should make the disclaimer that not all press is equally sympathetic, but it is nice to have this to pass along.

Louise has been equally busy. She is now General Manager of the Z Channel which is an excellent movie channel distributed through cable television only in Southern California. Most of our non-professional time is involved with our three daughters, Julia (age 9), Jane (nearly 6), and Ruth (who will be 3 next week). You could offer a larger perspective on the subject but I find daughters very nice.

I hope that this note and those of your many law clerks contribute to a very happy eightieth birthday. I regret that I cannot be in San Francisco to drop by and convey my greetings in person, but I was delighted by the note from Marge providing the opportunity to send these reminiscences and birthday greetings.

Sincerely yours,



JOHN E. BRYSON

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 CYNTHIA M. HAMILTON
 CHRISTINE A. DURHAM
 TIMOTHY J. KOZEL

16 May 1986

United States District Court
 For The Northern District Of California
 Historical Society
 P. O. Box 36112
 San Francisco, California 94102

Attention: Michael Griffith
 Oral History Coordinator

Your letter of March 6, 1986, requests my recollection about cases handled by Judge Stanley A. Weigel during the time I was his law clerk. I was his first law clerk, serving in that capacity from August, 1962 to September, 1963.

I have reviewed the cases on your list that were possibly decided during my era as a law clerk, but unfortunately I can recall nothing of substance about any of these cases that might be of assistance to you in your project.

APL v. U.S.A. I do recall the oral argument on the case of APL v. U.S.A., a first class job done by Mr. Fort and Mr. Ledebur. It was a well-rehearsed performance, having been given elsewhere in companion cases before they took it on the road, a subject of amused comment from the bench. I must confess I have absolutely no recollection of participating in the research or assisting in the preparation of the Court's opinion, which may in fact have been done by my successor, Gordon Lapedes. However, there were two other cases of possibly some significance on which I offer my recollections of anecdotal nature.

The first involved a prosecution for contempt of Congress, which seemed to me at the time to be one of the final writhings of the McCarthy Era. This was the case of U.S.A. v.

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LAWYERS

United States District Court
For The Northern District Of California
Attention: Michael Griffith
Oral History Coordinator

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Hartman,¹ in which Judge Weigel wrote an opinion which was probably not published.

Hartman's original conviction was reversed by the U.S. Supreme Court because of a defective indictment which, on remand, was dismissed by the District Court. Subsequently, a new indictment was returned and preparations were made to bring the man to trial again. The American Civil Liberties Union intervened and then staff attorney Marshall Krause moved to dismiss on the grounds that the U.S. Attorney had delayed too long before returning the new indictment. I believe that the statute of limitations had in the meantime run, so that the limiting statute was 18 U.S.C., §3288, which then provided that the new indictment had to be returned not later than the end of the next succeeding regular term of the trial court after the term in which the indictment was found defective or insufficient.

It seemed as if the ACLU was correct, in that there was too much delay to re-try this old case, but the law was not clear simply because there were no more terms of Court in the Northern District of California.

I recall doing some rather interesting historical research which took me back to the early days of the Court. I found with some pride that the Northern District was the first District Court in California. I traced the changes in the local rules from a time when terms of court made sense, to modern days when, by 1962, the Court was in "continuous session," as now provided in Local Rule 105-1.

I think I recommended that the Court apply the time limit of the last version of the local rules that specified terms of court. I believe that on this technicality this indictment was dismissed. It was my feeling at that time that it was the last prosecution of its sort, heralding the end of a rash of McCarthy Era prosecutions.

¹Professionally, Hartman was a radio personality of some local fame, broadcasting under the name of "Jim O'Grady," or something of the sort.

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As Hartman was (possibly) the last of its kind, Judge Weigel tried a case which may have been of first impression. It was a prosecution for violation of §605 of the Federal Communications Act, Title 47.

I was unable to recall the unique issue involved, but reference to USCA shows this case to be U.S.A. v. Kenneth G. Fuller, and supplies the lack. Judge Oliver J. Carter had previously ruled on some legal issues in a motion to dismiss. His opinion is at 202 F.Supp. 356 (N.D.Cal. 1962). The facts are shown in that opinion. Briefly, plaintiff was in the business of monitoring police and fire department shortwave broadcasts and divulging the information to a local radio station for inclusion in their news releases. The defendant asserted that it was the first case under §605 of a prosecution against what he termed a "newsgathering agency," and he raised constitutional questions because of this.

At the trial following Judge Carter's denial of motion to dismiss, I believe that the main contention made by the defendant was that he came within the proviso of §605 relating to radio broadcasts for general public use. See 202 F.Supp., at 359. My recollection is that the jury exonerated the defendant, but the high point of the trial for me, if not for the defendant, was that during quiet moments in the courtroom, radio communications transmitted by police cars in the nearby alley were inexplicably picked-up by the courtroom's public address system and broadcast for all in the courtroom to hear, presumably in further violation of §605. It seems to me that Walter Moniz had a good, clear recollection of these events, as he corrected my slightly faulty retelling in my letter to Judge Weigel on the occasion of his last birthday. Surely, Walter must be an ample source of information for you on this project.

Some of my recollections of the personalities are mentioned in my letter to Judge Weigel of December 9, 1985. Further such thoughts may be of interest and assistance in your project. For instance, His Honor may not recall that his next-door neighbor in that marvelous old Post Office Building

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was a young, very young, Donald Constine, for some years now a Superior Court Judge. He was installed as the one and only U.S. Commissioner in those old pre-magistrate days, handling, as I recall, minor federal violations such as speeding on the Presidio. The Commissioner's budget being rather low, he had to stoop to borrowing books from the Weigel repository.

A significant figure from the law clerk's point of view was the late Dick Goldsmith, later U.S. Commissioner. Dick was Judge Harris' law clerk for a number of years, and a kind of mother hen to the younger, one-year law clerks to the rest of the judges. He was always generous with help and information, and he knew his way around behind the scenes.

I also received help when the court was involved in maritime cases from Keith Furgeson, an old-timer win the old Admiralty and Shipping Department in the U.S. Department of Justice. "Captain" Furgeson was happy to let me use his American Maritime cases, not found in the District Judges' chambers library if, but only if, I would listen to some of his old sea stories.

A couple of hallway characters come to mind. Perhaps Judge Weigel recalls Marie Antoinette LaPleux, who haunted the courtrooms and clerks' offices as well as the halls, nursing some long-held grudges against society arising out of some previously unsuccessful litigation. Another was a nameless character, an old, grizzled man with a vacant but happy face and an unforgettable slap-slapping gait who would check on the progress in the courtroom at any moment, noisily and happily moving out after seeing that all was well.

The District Court Clerk's office, Jim Welch, Clerk, was incredibly small, as I think back and compare it to today's comparatively huge operation. Somehow, they managed to keep things going.

The court reporters were an interesting group. I recall Harry Cannon was the head reporter, and he had a few old-timers on his staff who eschewed the reporting machine in

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United States District Court
For The Northern District Of California
Attention: Michael Griffith
Oral History Coordinator

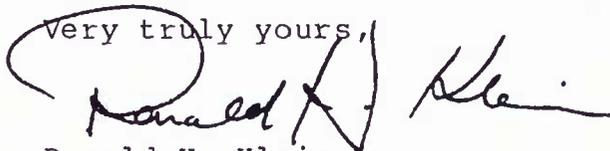
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Page Five

favor of the pen dipped in the inkwell. I remember one old fossil seemed to do his job while sound asleep. Another could never read back his handwritten notes, much to the chagrin of Judge Weigel.

An ancient tradition which seems no longer to be followed, although authorized by Local Rule 235-10, was the old dismissal calendar each judge regularly held. This entailed a morning or afternoon, or both, with the courtroom packed to overflowing with eminent counsel, each with his own meter running, waiting to see if the plaintiff's inactivity would justify peremptory dismissal, or whether ingenious excuses would carry the day. It seemed to me that Judge Weigel was particularly adept at separating the wheat from the chaff in these as well as other situations.

I hope that these random musings will be of some interest and perhaps even of some help to you in your project. Please call on me if there is anything else I can do.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ronald H. Klein". The signature is written in a cursive style with a large, looped initial "R".

Ronald H. Klein

RHK/nd

cc: The Honorable Stanley A. Weigel



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April 14, 1986

Michael Griffith
Oral History Coordinator
United States District Court
for the Northern District of California
Historical Society
P.O. Box 36112
San Francisco, California 94102

Dear Mr. Griffith:

I am writing in response to your letter of March 6, 1986 requesting information about my experiences as a law clerk in 1969-70 which will help you collect oral history from Judge Weigel. I believe there are two cases in particular which were active during the 1969-70 year about which you should ask Judge Weigel.

1. The Judge heard a criminal case in which the defendant was charged with refusing the draft. The defendant was a Catholic who argued that the conscientious objector provisions of the Selective Service Act were unconstitutional because they distinguished between religions - i.e. individuals who were against all wars could qualify for C.O. status whereas individuals, such as the Catholic defendant, who believed in just and unjust wars, would not qualify. The Judge accepted this argument and acquitted the defendant at the close of the government's case. Judge Zirpoli granted a motion to dismiss on similar grounds later and his case was appealed and reversed and resulted in a written opinion. It was Judge Weigel, however, who made the first decision on this issue. I do not recall the name of the case, but my recollection is that the acquittal was shortly before Christmas, 1969.

2. Tenants and Owners in Opposition to Redevelopment (TOOR) - this case has several published opinions which I am sure you have available. I think an interesting focus in interviews with Judge Weigel would be the political pressure which the City of San Francisco sought to bring to bear on him. This pressure took

Michael Griffith
April 14, 1986
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several forms. First, at one point the city hired Mayor Alioto to represent its interests. This led to the bizarre circumstances that the Mayor was to appear in court on behalf of the local defendants. Second, Judge Weigel took a vacation after issuing a preliminary injunction, and the defendants immediately tried various means to have a different judge reverse his decisions. Third, the parties agreed that former Governor Brown would be a Special Master and this introduced yet another political angle into the case, although this step had, as I recall, Judge Weigel's approval. In any event, of all the cases that were pending in 1969-70, this was the case in which there was the most public pressure against Judge Weigel's position. I thought he demonstrated an extremely high level of courage and principle in supporting the cause of the poor tenants.

There are of course other cases and incidents which I recall, but I believe the above matters were the most significant. Good luck with your project. It sounds like a good idea.

Sincerely yours,



Stephen S. Dunham
General Counsel and
Vice President

SSD/mam

GORDON D. LAPIDES

ATTORNEY AT LAW
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TELEPHONE
(415) 391-1896

April 10, 1986

Michael Griffith
United States District for the Northern
District of California Historical Society
P.O. Box 36112
San Francisco, CA 94102

Dear Mr. Griffith:

Thank you for your letter inviting me to suggest topics for the interviews of Judge Weigel.

My tenure as law clerk for Judge Weigel was during his second year on the bench, from September of 1963 to September of 1964. That year saw the move of the Federal District Court from the old courthouse at 7th and Mission Streets to 450 Golden Gate Avenue. As you know, Judge Weigel was in charge of setting up the excellent law library in the new building.

I think it would be interesting to inquire about the difference between the types of cases presented to the Judge at the outset of his judicial career and those which have come before him in the succeeding years. I suspect they may be as different as the architecture in the old courthouse and the new. For example, case number 179 on the list that you sent me, Halstead v. Globe Hoist, was a patent case in which the Judge was called upon to determine whether a certain automobile hoist, with a different kind of extension than had been previously employed, was really something new and patentable or was merely a natural outgrowth of the previous methods used for raising automobiles off the ground. Quite a different kind of case from those raising the social issues on which the Judge would have to rule in latter years.

During 1963-1964, Judge Weigel sat as Law and Motion Judge for the entire Northern District for approximately four months. In those days, the Federal Court operated on a master calendar system under which no case was assigned to a particular judge until time for trial. All pre-trial motions were handled by one judge sitting as the Law and Motion judge. The Federal Court later decided to adopt the present system under which cases are assigned to a particular judge at the moment they are filed. That judge then handles all motions in the case from the outset. At about the same time the Northern District decided to make this change, the San Francisco Superior Court decided the opposite and switched to the master calendar system. The Judge may have something to say about the pros

Michael Griffith
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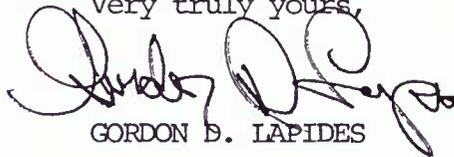
and cons of this change and othe matters involving court administration.

Finally, I recall a criminal case in which an army captain named Cline was accused of mailing a bomb to his wife from Vietnam. The bomb exploded in the San Francisco Post Office sorting facility. At issue was whether Captain Cline had actully sent the bomb or whether it had been put in Captain Cline's package by the Viet Cong. Each side presented expert testimony which reconstucted the explosion in order to prove the bomb was of a type which supported their theory of the case.

The increasing use of experts in cases may be a matter on which Judge Weigel has some views.

I hope the foregoing has been helpful. If I may assist you further, please call upon me. I look forward to reading the interview with Judge Weigel.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gordon B. Lapidés", with a long horizontal line extending to the right.

GORDON B. LAPIDES

GDL:nh

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March 21, 1986

Mr. Michael Griffith
Oral History Coordinator
United States District Court
for the Northern District of
California
P.O. Box 36112
San Francisco, CA 94102

Dear Mr. Griffith:

Thank you for your March 6, 1986, letter about the oral history of the District Court. I am enclosing a recent letter I sent to Judge Weigel for his eightieth birthday. Many of the Judge's former clerks also sent letters -- this will be a good source of information for you.

Some of the references in my letter to Judge Weigel may be a bit obscure to you. The school redistricting case is obvious; the "south of Market" litigation probably was more complex and difficult. Both of those cases originated before I clerked for the Judge, 1971-1972, but the implementation continued through my year.

The Selective Service cases were particularly difficult. The attorney who broke down and cried during closing argument (because he, like the defendant, was an orphan) is a prominent defense attorney now in San Francisco. I can't remember his full name, but he clerked for Judge Zirpoli and he is now defending the attorney who went underground fifteen years ago in connection with the escape from the Marin County Courthouse. I believe the attorney's first name is Paul. Any prominent defense attorney in San Francisco can identify him.

One case I didn't mention in my letter was a patent case involving automatic pool sweeps. I believe a famous (and long-dead) patent attorney in San Francisco named Carl Hoppe was involved and he had many heated battles with the Judge.

Judge Cecil Poole was a frequent visitor to chambers -- this was after his appointment had been blocked once or twice by

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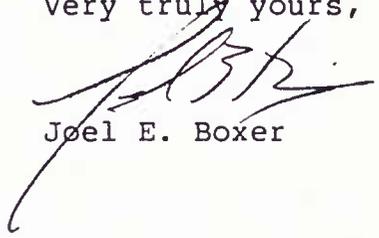
Senator Murphy. Judge Poole was not appointed to the District Court until two or three years later.

Judge Weigel spent a lot of time with new judges. I particularly remember his spending hours with Judge Renfrew when he first took the bench. He even "loaned" me to Judge Renfrew to help him organize his chambers.

Please note: the reference to Angela Davis in my letter does not refer to a case that Judge Weigel handled. I can't remember which judge worked on that matter; however, there were very major security problems associated with that trial (or hearing?) and Judge Weigel was always very concerned about security. He led or was on the judges' committee which instituted the severe security measures in the courthouse (I think in a response to the Marin County Courthouse incident). You may wish to discuss the origins of the security program with Judge Weigel.

One last bit of advice: the best source of information is his secretary, Marge Peterson. Aside from being a terrific lady, she has a great memory. You should interview her as a separate subject of your oral history project. Best of luck to you.

Very truly yours,



Joel E. Boxer

JEB/pcg

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December 9, 1985

The Honorable Stanley A. Weigel, Senior Judge
United States District Court
Northern District of California
United States Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Judge:

A jury trial scheduled to start this morning in Los Angeles Superior Court will keep me four hundred miles away from this afternoon's fete, but I join with your friends in this small way in your 80th Birthday celebration.

There are few who have done as much simple good as you have done between two passes of Halley's Comet. It is wonderful to know that you are still burning bright.

It was fourteen years ago, just after Labor Day, when my clerkship began. Your order to desegregate the San Francisco schools was about to be implemented. My most vivid memory, my first memory, of our year together is of the first thing I did, the first morning on my very first day. I picked up the ringing telephone and there was a hating woman on the other end speaking her bile. The hate mail, those terrible phone calls that Marge tried to screen for you, went on for weeks, but you never waivered, you never expressed anger, you continued to do the right thing.

My memories of that year are so strong they seem three-dimensional. The trivial and the titanic are woven together: Dick Diamond, taking his first step on his brilliant career, helped along to the U.S. Supreme Court by your strong recommendation . . . Sid Wolinsky and his monthly TRO applications (it seemed always on Friday afternoon) to protect the poor South of Market . . . the little figurine (elephant, if I remember correctly) on the bench where only you could see it . . . defense counsel crying during his closing argument to the jury in a Selective Service case because the defendant, like counsel,

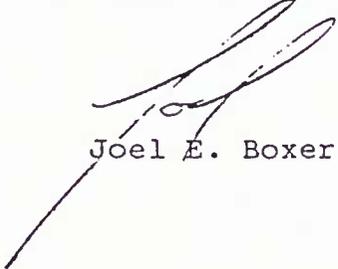
The Honorable Stanley A. Weigel, Senior Judge
December 9, 1985
Page Two

is an orphan . . . watering elephant-ear plants . . . the pain on your face visible to all in chambers after you met with the probation officers about sentencing . . . your attempts to look as dignified as possible as I chauffeured you about town in my Volkswagon "bug" . . . a gentle, disappointed but not bitter Cecil Poole stopping by chambers to chat and help us all put the school case in perspective . . . dinner at home with the Weigels . . . the monotonous monthly multi-district panel docket . . . memorizing the local rules . . . learning from you what it was really like to fight McCarthyism . . . arguing some days it seemed about everything from fair price legislation to world government . . . Angela Davis in handcuffs on the 18th floor . . . Sweet Judge Wallenberg and his even sweeter bailiff smiling as they went to chambers . . . two back-to-back modular housing antitrust trials starring Jim Brosnahan . . . writs, writs and more prisoner writs . . . and throughout the years, lovely loving Marge keeping it all together.

For these memories, I thank you. For the great opportunity to learn, I thank you. For confirming my desire to be a trial lawyer, I thank you. But most of all, I thank you on behalf of the thousands of plaintiffs and defendants who have appeared before you over the decades for being, always, a good Judge.

Happy 80th Birthday!!! For your 90th celebration, I promise to extend my good wishes in person.

Warmest regards,



Joel E. Boxer

JEB:cag

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July 14, 1986

Mr. Michael Griffith
 Oral History Coordinator
 United States District Court
 for the Northern District of California
 Historical Society
 P. O. Box 36112
 San Francisco, California 94102

Dear Mr. Griffith:

Thank you for your letters regarding the Historical Society's planned oral history on Judge Weigel. I apologize for not responding sooner. I hope that the following is responsive to your request.

I cannot recall any "doctrinally important cases" during my year with Judge Weigel. As you probably know, Judge Weigel disposes of most matters by means of a short order rather than a lengthy opinion that finds its way into a case service or a reporter. Because he wrote sparingly, apparently desiring to publish opinions only when he perceived them to be of true consequence, his contribution to the body of published opinions was small during my tenure. In fact, I am unaware of any published district court opinions authored by the Judge during my time with him. As he was active at an appellate level (both as a member of TECA and setting by designation on the Ninth Circuit), he may very well have written or participated in published appellate opinions. The only one of which I am aware, *Chisolm v. _____*, _____ Fed.2d _____ (9th Cir. _____) is a fairly short opinion confirming a district court's dismissal of plaintiff's case for failure to comply with court orders and/or procedural rules and is of little consequence. For the most part, my co-clerk, Joel Perlstein, worked with the judge on appellate matters. While I do not recall any of these cases being terribly important, my recollection is extremely vague as my knowledge was based on discussions with Joel rather than actually working on the matters.

Mr. Michael Griffith

July 14, 1986

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As far as interesting cases during that time, there were several. Two which received substantial publicity involved unrelated individuals named Green or Greene. One of these fellows was referred to in the press as the "Knob Hill Cocaine Connection." The case was mainly of interest because of its press appeal and later developments involving the defendant's father-in-law who, if my recollection of press reports is correct, was later convicted of conspiring to attempt to murder the United States Attorney and one of the other federal judges in San Francisco. As is often the case in criminal matters, the trial was a foregone conclusion after the defendant failed in his attempt to suppress 24 pounds of cocaine which had been seized from his Rolls Royce and his apartment. Indeed, the closing argument began as follows:

"Ladies and Gentlemen of the jury, my client knows he is going to jail. However, he is charged with two counts of possession of cocaine with intent to distribute and he had both stashes of cocaine at the same time. Therefore, you should only convict him on one count."

This drew an immediate objection from the government which was sustained with the instruction that "that is not the law." As you might guess, it took less than five minutes for the jury to elect a foreman and convict Mr. Greene on both counts. He was eventually sentenced concurrently on the two counts.

The other case of a Mr. Greene was a tax evasion case. This Mr. Greene also received considerable press coverage. I believe that he was written up in Time Magazine after he donned a suit of armor and marched across Golden Gate Bridge to publicize his battle with the IRS. The government presented a "net worth" theory in order to prove that Mr. Greene had fraudulent deductions and unreported income which allowed him to claim substantial losses in two years when he actually had taxable income of well over \$100,000.00. The trial took about a month as the government had to show a beginning net worth, ending net worths, and deductions which were proper. After doing so, the government arrived at figures for taxable income which should have been reported. Mr. Greene was convicted.

Perhaps the most celebrated civil rights case during my tenure with the judge was one involving prisoners on death row or in maximum security at San Quintin and three other prisons. The judge entered an injunction which I believe was reversed. The case was very educational as to the conditions of prison life and

Mr. Michael Griffith

July 14, 1986

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the problems of supervising the most violent convicts. I believe the judge took a rather active role in the case and may have held settlement conferences as well as hearings. I have no recollection of the final conclusion of this matter and believe that it probably was still pending when I left.

Three other cases upon which opinions may have eventually been published also come to mind. The first is *R. C. Dick vs. _____ Geothermal et al.* This was a purported antitrust suit involving the use of plaintiff's property to generate geothermal heat for fuel purposes in the Geysers area of Northern California. The case generated a massive record including a stack of briefs and affidavits on cross-motions for summary judgment which literally were four or five feet high. The judge responded to this by issuing an order that each side should file a new brief stating its positions in twenty pages or less. I believe that eventually the judge issued an opinion which may have later been withdrawn due to a recusal. I believe that the case eventually spawned a published opinion (in CCH Trade cases) by another judge who, after trial, reached the same result as Judge Weigel had reached on summary judgment.

The second case was *Handguards v. Johnson & Johnson*. This was an antitrust case involving disposable plastic gloves. Well-known plaintiff's attorney Max Bleacher previously had tried this case in front of Judge Orrick, and a substantial plaintiff's judgment had been reversed by the Ninth Circuit. The case was eventually transferred to Judge Weigel's court. During the time I was there, motions for summary judgment were filed and denied. I believe the case may have eventually been retried and that another plaintiff's judgment, this time for more money, may have resulted. I remember that the case had some rather complicated collateral estoppel and patent/antitrust issues. However, I do not know if any of these issues are reflected in any published opinions. Certainly, any trial of this case took place after I was gone. I believe that the adversaries in this case had been fighting either an earlier patent case or the antitrust case since the 1960's.

As far as personal experiences, I found the judge to be a very demanding, but fair taskmaster. Our hours were very long. Week-end work was the rule, not the exception, and we typically worked until 10 or 11 on weekdays. The judge moved his docket very efficiently. In that year, the judge held his law and motion calendar on Thursday afternoons. Matters were routinely set for oral hearing on 21 days advance notice and, sometime during the year, there may have been a rule change to require 28 days notice. Generally, the judge ruled from the

Mr. Michael Griffith
July 14, 1986
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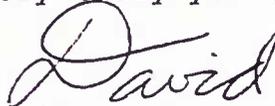
bench in all matters and issued an order that afternoon or the following day. Now that I am a practicing trial lawyer, I can better appreciate such decisiveness in a judge. I know that in some quarters of the local bar, he had a reputation for being very difficult to appear before. However, while he was "no nonsense" and expected direct answers from counsel, I felt that he rendered decisions that were both fair and correct.

I am sure that you will have talked with the judge's secretary, Marge Peterson, in preparations for your interview. I am sure that her many years of loyal service would enable her to provide you with a good deal of information regarding the judge's long and successful career.

You may find Judge Weigel to be rather imposing; however, below the surface there is a wise and sensitive man. Judge Weigel has a keen ability to cut to the root of a problem and to ask the tough questions. I believe him to be exceptionally perceptive, straightforward, and candid. I am sure that it will be an interesting experience to interview Judge Weigel.

Please let me know if I can be of further assistance.

Very truly yours,

A handwritten signature in cursive script that reads "David". The signature is written in dark ink and is positioned above the printed name.

David E. Sharp

DES/er

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P.O. Box 36112
San Francisco, CA 94102

Dear Michael:

In response to your inquiry about Judge Weigel and his docket during the year of my clerkship, I'm afraid I can offer few suggestions. The most significant cases to come before Judge Weigel last year were really ongoing proceedings, Toussaint v. McCarthy, a massive structural injunction/prison conditions case, and Donovan [later Brock] v. Mazzola, a case involving improper loans by the pension fund of the U.A., the union of pipe-fitters and apprentices. In the latter case, the courtroom proceedings were marked by an interesting performance by former Mayor Joseph Alioto who was essentially grandstanding for the benefit of the several hundred union members who packed the courtroom to protest Judge Weigel's decision to hold the trustees of the union's pension fund personally liable for the losses caused by their imprudent and perhaps dubious loan transactions. There was also a sizeable demonstration at lunchtime, outside the Federal Building, to protest the Judge's decision with several hundred (probably about 200, perhaps fewer) union members carrying picket signs.

Judge Weigel was at his courtroom best on the day of the hearing in Mazzola, welcoming the many visitors to his courtroom, announcing that he was pleased that they had come to see first hand what was going on. My impression was that -- in general -- he gave Counselor Alioto a longer rein than he allowed most attorneys in his courtroom. However, on the day of this hearing, while he was careful not to interrupt Mr. Alioto, and he allowed him to go on at great length, he also took great pains to explain the statutory basis for his decision to impose penalties directly on the trustees and, in general exercised extremely tight control of the courtroom.

While Judge Weigel sat by designation on the 1st, 7th, D.C. and 9th Circuits (as well as on the Court of Appeals for Guam and the Marianas Islands), I don't recall any particularly memorable cases from those sittings.

Good luck with your interviews. I think you'll find Judge Weigel a font of information.

Yours truly,

Paul Levenson

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April 21, 1986

Michael Griffith
 Oral History Coordinator
 United States District Court for
 the Ninth District of California
 Historical Society
 P.O. Box 3612
 San Francisco, CA 94102

Dear Mr. Griffith:

Thank you for your letter of March 6, 1986, concerning the planned oral history interviews with Judge Weigel. I greatly admire the Judge, and am very happy that you are interviewing him for the oral history project.

There were few, if any, "great cases" during the year I spent in Judge Weigel's chambers, 1975-76. The closest case to such status was probably the Mitsubishi antitrust suit brought against Westinghouse, Mitsubishi Electric, and Mitsubishi Heavy Industries by the United States, No. 6-70-852 SAW. As I recall, the Judge heard the government's side of the case and then referred the matter to Prof. Jack Friedenthal of Stanford Law School as Special Master. Although the conclusion took place after I left chambers, I believe that I heard from either Jack or the Judge that the case was dismissed at the close of plaintiff's case, on the recommendation of the Special Master.

Another case that turned out to have some importance was Home Box Office, Inc. v. FCC, 567 F.2d 9 (D.C. Cir. 1977), cert. den., 434 U.S. 829, rehearing denied, 434 U.S. 988 (1977). The case is reprinted in a major Administrative Law casebook, S. Breyer and R. Stewart, Administrative Law and Regulatory Policy, 642 (2d. ed. 1985), on the issue of ex parte contacts. My co-clerk, Evelyn Frank Sinaiko (now Evelyn Frank), worked on this case.

An interesting case was Ryder v. Time, in which a person sued for libel after an unflattering story was printed about some one else of the same name. 557 F.2d 824 (D.C. 1976). I worked

Michael Griffith
April 21, 1986
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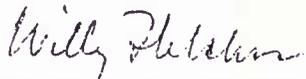
on the case, and I recall that the draft opinion I proposed wasn't quite right. The Judge worked very hard on the opinion, which in the end owed very little (if anything) to my initial draft.

The last two cases were both D.C. Circuit cases, for in those days the Judge sat by designation about once a year on the Circuit Court of Appeals for the District of Columbia. As I recall, that practice ended a year or two after I left chambers, ostensibly as a frugality measure by the Chief Justice.

If it would be helpful to you, I could dig out of my dusty files copies of the memoranda I prepared for the Judge on the various cases I worked on during the year. If you would like me to do so, please give me a call.

Good luck on your project.

Sincerely,



William A. Fletcher
Professor of Law

WAF:ds

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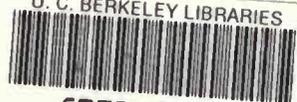
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