

**INTERVIEW WITH JUSTICE STEWART POLLOCK
JULY 18, 2017**

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PART 1 OF 7

A Legal Mind Takes Shape: Early Influences, Exploits & Education

Justice Pollock discusses his childhood growing up in Brookside, a community within Mendham Township, New Jersey, through the Great Depression and the Second World War. He then talks about grade school, his education at Morristown High School (1946- 50) and his decision to attend Hamilton College (1950-54).

Illingworth: This begins an oral history interview with Justice Stewart Pollock on July 18, 2017, in Morristown, New Jersey, with Shaun Illingworth of the Rutgers Oral History Archive for the New Jersey Supreme Court Oral History Project, and thank you very much for sitting down with me today.

Justice Pollock: Happy to be here.

SI: To begin, I just want to comment on this wonderful facility that we're doing the interview in. It's kind of unique. It's within sight of your high school, the office where you started your law career and the chambers where you sat for--well, no, the chambers that you established during your time as Associate Supreme Court Justice, right?

Justice Pollock: All true.

SI: Yes.

Justice Pollock: Thoreau said he had "traveled a good deal in Concord." I have traveled a good deal in Morristown. [laughter]

SI: Well, why don't we start there? Can you tell us where and when you were born?

Justice Pollock: I was born December 21, 1932, in East Orange, New Jersey, in my grandparents' home.

SI: And what were your parents' names?

Justice Pollock: My father's name was James Ford Pollock and my mother's name was Helen Glasson Pollock.

SI: And, if you know, on both sides of the family, but starting with your father's side, how did the families come to settle in this area?

Justice Pollock: Well, my father's grandmother came over from Scotland and originally was in Brooklyn, and then, came to Newark. My mother's father came from England and her mother came from Syracuse, New York, and they lived in Rocky Hill.

SI: That's down near Princeton.

Justice Pollock: Yes, exactly so. And her, my grandmother's maiden name was Robbins and I think there are still a lot of Robbins Family down there.

SI: So, do you know how your parents met?

Justice Pollock: I think they met in church. This goes back into the [early 20th Century], around 1920, and I think that's how it was.

SI: What brought the family to the East Orange area?

Justice Pollock: My grandfather had his own business. He was quite an enterprising man, came over from England traveling steerage. He founded a company and they did asbestos lining on the pipes, which, at that time, was state-of-the-art and, subsequently, turned out to be not such a good idea.

SI: Having these grandparents who immigrated to the US, did you ever hear any stories from them about what their lives had been like before coming [here]?

Justice Pollock: Well, I remember hearing my--it would have been my great grandmother's father--my great, great grandfather had been a maker of golf clubs and golf balls in Scotland and, before that, he'd been a sailor. And, apparently, it was common for sailors, when they got tired of the sea, to start making golf balls, because they were used to stitching sails and, in those days, golf balls were stitched together by hand. And they were called "featheries," because, in each golf ball, there would be a hatful of feathers that got soaked in water, stuffed into the leather pouch and sewed up. Unfortunately, the manufacture of golf balls became a little more modernized, [laughter] but my great, great grandfather continued to stuff feathers into leather pouches, which I think led to the immigration to the United States.

SI: So, your parents were married in the '20s.

Justice Pollock: Right.

SI: And you have an older brother.

Justice Pollock: Older brother and a younger sister.

SI: Okay, what are their names?

Justice Pollock: Donald is my older brother and my sister's name is Polly.

SI: Okay, and when did the family relocate to Mendham?

Justice Pollock: 1934. I was a little over a year old and my grandfather very kindly built a house for my parents in Brookside, New Jersey, which, in those days, was just an ordinary house. I'm now told it's worth a million dollars, which is hard to believe, but times change.

SI: Brookside is a part of Mendham, or is it a separate community?

Justice Pollock: Brookside is the eastern end of Mendham Township. Mendham Township is like a horseshoe around Mendham Borough, with the eastern end being here and the western end being Ralston.

SI: Now, this house that was built, was it kind of off by itself? Was it part of a neighborhood?

Justice Pollock: I think you could safely say it was part of a neighborhood. It was right next to my uncle's house, my mother's brother. And it was two houses up from the center of town, which consisted of a general store--in one building, there was a post

office, general store and two gas pumps. There was a school, a four-room school, which had eight grades in it, two grades in a room, one teacher teaching everything to both grades. There was a community house, where exotic functions like the firemen's turkey dinner and square dances occurred. And then, there was one church, the Brookside Community Church, and the firehouse next to the church. That was it.

SI: And what did your father do for a living?

Justice Pollock: He was a salesman and he sold pipes, you know, long-distance transmission pipe.

SI: For, like, oil or gas?

Justice Pollock: I think the biggest thing they had was a gas line, but I'm not too sure about that, whether--I don't think they did any oil.

SI: So, as a salesman, would he be on the road often or did he work mostly in the area?

Justice Pollock: Most of the time, he worked out of an office in New York and in, I would say, in the Metropolitan Area, but, every now and then, he would take a trip somewhere, yes.

SI: And did your mother work outside of the home?

Justice Pollock: She didn't. She was a homemaker and I think that was typical of that era.

SI: So, describe for me kind of what you would do growing up in the '30s, in this kind of idyllic small town that you described. What would you do for fun? What was your daily routine like when you were a school-age child?

Justice Pollock: Well, of course, it changed over time, but I think every kid in town had a shotgun, every boy at least, and so, there was hunting, fishing. Brookside had a baseball diamond that was our one athletic facility. I don't think there was a basketball standard in town, and so, I think, pretty much, those were the sorts of things we did. From an early age, my parents encouraged me to work. So, I had a lot of different jobs starting at an early age and one of them was working in the Brookside store after school, which was quite an experience. I mean, you got to know everything about everybody in town, the good, the bad and the ugly.

SI: Did you have to write out everything on a bag? I've heard that from other people who worked in general stores.

Justice Pollock: No, I don't recall doing that.

SI: Or add up all the items?

Justice Pollock: Oh, yes. You did that. You figured out what people had bought, and then, you would write it out on a piece of paper or a bag or something. But, it was quite an experience and particularly growing up during the Depression, when some folks were hard-pressed and the storekeeper had to carry them from one week to the next. You got to know, as I say, everything about everybody in town, who was having a hard time, who was drinking too much, all that sort of thing. But, it was [interesting]. So, it was quite a window on the world.

SI: So, talk a little bit more about the impact of the Great Depression on, you know, your community, but, also, if it had any effect on your family.

Justice Pollock: Well, you know, I think everybody was in the same boat, so, you really didn't think too much whether times were hard or not. And I think my parents had limited educations, so, they knew that education was important. And we grew up knowing two things--one, we were going to go to college and, two, we were going to pay for it ourselves--and those were two guiding principles.

SI: Now, before your generation, had anybody gone to college in your family?

Justice Pollock: No.

SI: Okay. Where do you think that drive to have the children go to college came from?

Justice Pollock: I think they realized that there were opportunities that they had missed because they didn't have an education and, without putting any overt pressure, they simply communicated to us that this was important.

SI: Now, you described the first school you went to as four rooms and two grades in each room.

Justice Pollock: Yes.

SI: Is that right? Tell me about that experience. You know, that's something that you don't really see today, but how did that impact your early education?

Justice Pollock: Well, my first teacher was Janet Lange, into whose home I moved in the 1990s. There were only eight kids, I think, in my class. You got to know everybody and you got to know their families. I admired the teachers who taught us, because they must've had their hands full, teaching two grades. They would work with one grade during [a time], for a couple hours, then, shift over to the other. Somehow, it seemed to work, but I don't have any, too clear, recollection. We started off every day with the Pledge of Allegiance and a Bible reading, then, moved into the studies.

SI: Well, I just mentioned that because a number of people I've interviewed who were in multi-grade schoolhouses say you would pick things up faster, because you would hear it twice, essentially, or more times. Do you remember that at all?

Justice Pollock: I don't, I don't, but it makes sense.

SI: Now, you talked about the job in the general store. Were there other jobs that you would do around town?

Justice Pollock: Oh, yes. Well, from an early age, I started off cutting lawns, raking leaves, shoveling snow. The job in the store is what took a lot of time, I would say. I don't know whether I started in the sixth or seventh grade, the sixth, seventh or eighth grades. I faced the first ethical dilemma of my life while working in the store. One winter, there'd been a huge snowstorm. Power lines were down. I think, in those days, it was Jersey Central that provided the power. And a group--this is during World War II, when you had to have ration stamps or tokens to get anything with meat--and there was a crew from the power company working in town. And they came in to buy a can of baked beans that had pork in it. They were going to heat it up and eat it for lunch. I was in the store alone and they came in. They plunked down the can of beans on the counter and I said, "Well, do you have any tokens?" and they said they didn't. So, I had to decide whether to give them the pork and beans without the tokens or take a hard line and insist on the tokens.

SI: What did you wind up doing?

Justice Pollock: Well, what would you have done? [laughter]

SI: Well, they were hungry; I guess you would give them the food.

Justice Pollock: Well, that was about the level of sophistication that I brought to the analysis. I gave them the beans, but, for weeks thereafter, I expected to hear a knock on the door and see an FBI agent saying, "Are you the kid who sold the pork and beans and didn't get the token?" But, you know, those things form who you are, those experiences.

SI: Did religion or church activities shape your life early on?

Justice Pollock: Yes, they did. This is before television and the nearest movie house was here in Morristown, which was six miles away. So, church was important and it was a community church. I don't know if this is of interest to you or anyone else, but it does recall to mind, we sometimes at the church had a student minister, who went to Drew University down the road in Madison. One year, they had a big barrel in the middle of the store and the idea was, if you bought something, buy something extra and

throw it in there for a needy family. Every time Mr. Matot, who was then the minister, came in, he would put something in the barrel. On Christmas Eve, the committee came, picked up the barrel and delivered it to him, but that was the sort of thing that happened. It really was a sort of "Norman Rockwell" existence.

SI: Was it largely, you know, one ethnicity or was it somewhat diverse?

Justice Pollock: Very little diversity. My introduction to diversity came when I left the eighth grade in Brookside Grammar School and came to Morristown High School.

SI: Well, before we get into high school, I did want to go back to World War II. What impact did that have on the community?

Justice Pollock: Well, I learned how to identify German and Japanese airplanes, none of which I ever saw in the sky. And, you know, the young men in service. Some of the young women went into military service--some didn't come back. Everyone knew about that. And, you know, there was the rationing and everybody had a victory garden, but I can't really say we suffered. We were very much aware of, obviously, of the fact that there was a war on. Everybody did his or her part, but that was pretty much it.

SI: Would you say in your family, you know, current events were discussed often, or the other way around?

Justice Pollock: I'm sure they were discussed, but there was not a lot of lively discussion within the family.

SI: Or things like politics? You know, what did your family think about FDR, for example?

Justice Pollock: I'll tell you the clearest relevant recollection I have about the role politics might play. The economy didn't shift an awful lot between the Depression and World War II and my father ran for tax assessor one year. I don't know what the tax assessor made, a couple of hundred dollars. My father was--everybody liked my father and I can understand why that would be so. One of the big events in town was the Fourth of July celebration, where the volunteer firemen would march and they would have prizes for contestants and that sort of thing. Anyway, I remember, coming up from the parade with my father, we walked past the store. On the right-hand side was a shed, which is still there. As we walked by, there were two men in the shed and they shouted to my father, "Come in." He went in and I stood out on Woodland Road waiting for him. He came out--he was visibly upset. What they had done was offer him a hundred dollars to drop out of the race and he knew that was wrong. Now, this was a man with very little education, but he had a good sense of right and wrong and a high sense of integrity. I often remember that, that you don't need a lot of education to know what is the right thing to do, and that's a lesson worth keeping, so that that was about the extent of the political discussion in our family.

SI: Wow. Did he stay in the race?

Justice Pollock: He did and he won.

SI: Okay.

Justice Pollock: [laughter] By not very many votes, but he won.

SI: Did he get involved in other public official roles?

Justice Pollock: My father?

SI: Yes.

Justice Pollock: Well, everybody [tapped him]--he was on the board of the church, he was on the school board, which was kind of interesting, because he never finished grade school--but people liked and trusted him, and for good reason.

SI: Was your mother involved in community activities?

Justice Pollock: I know she was the treasurer of the church, and she was not a great joiner. There was something called the Ladies' Aid Society. I have no idea what they did, but she was part of it. But, I think she limited herself, I think, to the activities in the church.

SI: Well, between work and school, did you have time for other extracurricular activities, like Boy Scouts or anything like that?

Justice Pollock: Well, we had a Boy Scout troop that came and went from time to time, but, when it was there, I was part of it. We played baseball and we had [sports]. And then, I would often--one of my closest companions growing up was my dog. So, at the end of the day, he and I would often go off, sometimes go fishing, sometimes go hunting, whatever. And there was one part of my life of which I'm not now proud, but it happened--I also had a trapline as a kid. I couldn't do it today and I wouldn't do it today, but I did it then. And so, that took [some time]; that was several miles you had to walk every day.

SI: Would you sell what you caught?

Justice Pollock: Yes.

SI: Okay.

Justice Pollock: Yes. There was a fellow over in Gladstone who'd buy [them], bought the pelts, yes.

SI: I'm curious, going back to the Depression again, were you aware of people coming through town, you know, what we might call transients today, looking for food or work?

Justice Pollock: No. Brookside was pretty much a self-contained little community. The only folks who came through, during World War II, the Army came up on a training maneuver and they marched through Brookside. I remember my mother said, "Here, take them some cookies." I went out to give these fellows some cookies and the officer [said], "No, they're not allowed to do it; they're in training for war. You might be the enemy." So, I took the cookies back. [laughter]

SI: So, jumping ahead to going into Morristown High School, you would have--that would have been about 1945 or so?

Justice Pollock: I started in '45 [1946], that's correct, yes.

SI: Okay. That must have been at least a somewhat large change in your life, having to travel and being exposed to new people.

Justice Pollock: It was wonderful. I mean, I was tremendously excited by it, but it was the first time you got introduced to diversity and you see folks of different races, different religions. And I loved it.

SI: What interested you the most in high school?

Justice Pollock: I guess there was one teacher who took pity on me. I was terrified of speaking in public when I went to high school. I knew I had to overcome it, and so, I signed up for the debate club. There was a wonderful man, T. M. Cowan, who took me under his wing and exposed me to debating, to public speaking. I'll be forever grateful to him, because it was something I knew I had to do and we did it.

SI: So, do any of those debates stand out in your head, or maybe trips related to the debate team--not so much the actual debates, but experiences?

Justice Pollock: Well, the first time I got exposed to a debate, I had--he said, "Look, go watch and see how it's done." And the unfortunate part was, the debate was on a subject of which I had never heard, euthanasia. So, I, never having heard of euthanasia, I thought they were talking about young people in the Far East and they were all dying. [laughter] It wasn't until about halfway through the debate I realized it was something else. That gives you some idea of the level of sophistication that I brought to the process.

SI: So, describe the high school a little bit, what it was like. It must have been quite different from the two grades in one schoolroom.

Justice Pollock: Oh, yes. We had a homeroom, to which we reported every day, and then, you went from room to room for your classes. And there [were] always lots of, you know, pushing and shoving and shouting and all the good things that teenagers do, which is quite different from going to one room for two years and sitting at a desk.

SI: You know, I'm also curious, I know in those years after World War II, there were a lot of veterans who went back to high school. Were you aware if they had a presence at the high school at all?

Justice Pollock: Well, I graduated from Morristown High School in 1950 and I [recall] there was an occasional veteran who came back, but there were very, very few, very, very few.

SI: So, you know, with the travel and your work and all, again, were you able to get involved in any extracurricular activities, other than the debate club?

Justice Pollock: I did. I played on a state championship tennis team. And, in my senior year, I had done enough so that my classmates picked me as "most likely to succeed," which was--[laughter] I don't know on what they based their judgment, but that's the way it turned out. I had done other things. I'd been the editor of the paper. I can't [recall what else]--also, again, I worked after school. So, that somewhat limited what I could do.

SI: Were you still at the store?

Justice Pollock: No. I worked at a lot of places here in Morristown. One place was--well, it's now Century 21 and it was Bamberger's in those days. Then, there used to be stores out along here on Speedwell Avenue. I worked in a couple of those. There were stores on South Street, where I worked in a couple of those. So, oh, and then, in the evenings, I worked in the YMCA, where the YMCA is no longer in town. So, I kept busy.

SI: So, you spent a lot of time here in Morristown as a youth?

Justice Pollock: Yes, I did, and I would hitchhike back and forth. The kids did that in those days. They don't do it anymore, but you would hitchhike back and forth to Morristown.

SI: So, any experiences from working at that early age that stand out? Were you working as a salesman or a stock boy?

Justice Pollock: Well, whatever, you got it. It was all of that and more, started out as a stock boy. And then, in my senior year of high school, I worked parking cars at Bamberger's, because, by that time, I had a driver's license, and then, I worked inside the store over the Christmas holidays.

For some reason, I'm recalling there used to be a dog show in Madison on what was called, in those days, the Dodge Estate. It was where Mrs. Hartley Dodge [Ethel Geraldine Rockefeller Dodge] lived and it's now called Giralda Farms, which is what the name [became], the name she gave it. Anyway, it was the largest dog show on Earth and you could--you used to see it. If you went to the movie theaters, there would be newsreels that would include Mrs. Dodge's Dog Show. And it had, one of the descriptors they used for it was, that it had "more canvas in it than the Barnum & Bailey Circus." Anyway, I went down one year and worked at that and I had the weighty responsibility of helping the handlers get the chow chows into the ring. [laughter] And, at the end of the day, I remember the judge, who was from Kentucky, came up and said, "Here, young man," and he gave me a five-dollar tip. That was pretty fancy pay for a day's work, but that was just one of the things you did.

SI: So, before you went off to college, had you really had any opportunity to travel much beyond the Mendham-Morristown area?

Justice Pollock: Only to this extent and I'll [explain]--there's a man to whom I'll be forever grateful. Dr. [Ralph] Perry was the principal of the Morristown High School and he and two other men had a summer camp in Vermont. During World War II, the young men who would ordinarily be counselors there, the college students, were in service. So, my brother, who preceded me, was asked to be a counselor and I ended up going up, initially starting out as a waiter--no, I started out doing odd jobs up there and got promoted to being a waiter, and then, to being a counselor.

But, that summer camp experience was a tremendous [boost], was great, because it introduced me to a world not only outside Brookside, but outside New Jersey. There were students there, or campers, I should say, who were from different parts of the country, went to private schools. This was a phenomenon to which I hadn't previously been exposed. And that was where I learned how to play tennis and I really got hooked on it. Up until then, baseball had been the big sport in my life, but it didn't take long for me to realize, in tennis, you were always at bat and you never had to go out in the field. [laughter]

SI: So, you graduated from Morristown in '54.

Justice Pollock: In '50.

SI: Oh, yes, I'm sorry, '50, and you went off to college at Hamilton.

Justice Pollock: Yes.

SI: How did Hamilton come on your radar?

Justice Pollock: Oh, well, it goes back to this summer camp. The religious advisor, whatever you called him, was a counselor, had gone to Hamilton. As I say, my brother was two-and-a-half years older than I and Don had pretty much decided he wanted to be a doctor. And Hamilton had then, as I trust it has now, a superb premed program, and so, my brother went there. When it came my turn, I was determined to go anywhere but where he was. And, again, finances [were] relevant. I remember, on the same venture, I went to Amherst. I remember telling the admissions counselor that, the admissions officer, that I would need financial aid and he said, "Oh, that's difficult." Ultimately, they did offer me a very nice scholarship. But, when I went to Hamilton, I met the Dean of Admissions and told him, I said, "Look, I'm going to need a scholarship." His response was, "Oh, Stew, we can take care of that," and I felt like I had found a place where I belonged. And so, that was the big choice, the big reason for going there.

SI: At that point, did you have any ideas in mind of what you might do in your life?

Justice Pollock: No, I really didn't. I really didn't know and, unfortunately, that was a condition that obtained down to my senior year. Hamilton had an honor system and I had been on the Honor Court all four years. I was chairman my fourth year and we dealt with academic issues only, academic discipline. We had a couple of very hard cases in my senior year. And I remember walking past the administration building one day and the Dean was walking out and he said, "Stew, what are you going to do next year?" I said, "I'm not sure," and he said, "Well, I think you ought to go to law school." So, I started looking into that and there was--by this [time], I had had a lot of jobs in college also, some of them unusual. I knew finances were going to be important and NYU had a very generous scholarship plan, which paid room, board and tuition. And I applied, went into the contest for it, was lucky enough to get one of the scholarships and that's where I went to law school.

SI: Well, when you were at Hamilton, what course of study did you take?

Justice Pollock: I was a philosophy major and I thought there really were answers to the big questions in life. By the time I left, I realized there weren't, but at least I learned something about how to analyze issues, and so forth.

SI: [Do] any professors stand out in your memory or courses?

Justice Pollock: Yes, two of the best teachers I ever had in my life. In those days, Hamilton had a program, it was called the Freshman Seminar. In those days, classes met six days a week and the Freshman Seminar met six days a week. Everybody had to take a required English course for three [hours], but, if you qualified for this seminar,

it was six days. And, fortunately, I qualified for it and there were only--I think there were only, like, ten or twelve students in the class--and we had two professors, two superb, gifted teachers with very different styles. Tom Johnston was the first semester teacher, professor, and then, the second semester, we had George Nesbitt, who was the head of the department. These were terrific men and terrific professors.

INTERVIEW WITH JUSTICE STEWART POLLOCK
JULY 18, 2017
PART 2 OF 7

Entering the Legal Arena: College, Law School & Early Law Career Experiences

Justice Pollock describes his years at Hamilton College and details his early relationship with his future wife, Penny, whom he met while attending an American Friends Service Committee work camp program in Mexico. He relates how he came to study at NYU School of Law (1954-57) as a Root-Tilden Scholar. He then discusses his early law career as an Assistant U.S. Attorney for New Jersey and in the Schenck, Smith & King firm, Morristown New Jersey, where he engaged in general practice and made the transition from litigation to banking law.

Illingworth: Well, yes, what was student life like at Hamilton then?

Justice Pollock: Well, it was an all-male college, which by definition means there were no women. And it's now coed and, as much as I loved the school, and I did like it very, very much, I think it's a much better place even [today]--it's even better now. So, there were things that happened that didn't bother me at the time that should have and do now. There were--the basic social units were fraternities and I think over ninety percent of the students [were] in a fraternity. What didn't trouble me at the time and should have and does trouble me now, what about the other five to ten percent, whatever the number was? But that was it. You went, you got up, you went to class and I had [jobs]. I waited on table in a fraternity, and then, I had a job driving a milk truck for a dairy, which was [good]. That was a good experience, too, and the dairy was on the far edge of the college campus. And I delivered to, I don't know, I'll say ten of the, whatever number it was, of the fraternities.

SI: Which fraternity were you in?

Justice Pollock: It was called Psi Upsilon and Hamilton no longer--I guess they still do have fraternities--but the whole social complex is different. They're not the entities they used to be at all and I know the fraternity house is--now, I think it's now a dormitory. I lived, the last three years, in the home of the secretary of the college, who traveled a lot. He was sort of, at that time, the alumni contact and he wanted somebody in the house while he was away. So, I got a free room by staying there.

SI: So, during the summers, you were working at this camp still.

Justice Pollock: I did for the first summer. Then, I taught tennis down here at--what is it?--The Morristown Field Club. I was the pro, and I couldn't hold a candle to the pros they've had in recent years. [laughter] But, I did that for one summer, and then, oh, this is a major event. At the end of my [junior year], by the time I finished my junior year of

college, I had everything in place financially for my senior year. I was the steward of the fraternity, so, I had free board. I was living with the secretary of the college, so, I had free room. I had a scholarship that paid my tuition and I had the dairy, which gave me spending money. I realized there had to be more to life than work. So, I went to one of the professors, who was a Quaker, and I asked him if he had any ideas of what I might do with the summer. And he said, "Why don't you sign up for one of these American Friends Service Committee work camps?" a Quaker work camp, which I did. And I went with two other people, two other students from Hamilton. We flew out to--I'm sorry, we drove out and camped out, going across country to California--flew down to Mexico, which is where we were assigned. And they had a conference for all the people in the program at the beginning, in a place in Cuernavaca called Los Canarios Motel, and that's where we met. And that's where I met the woman who became my wife.

SI: Oh. Where was she from?

Justice Pollock: She was from--well, her family moved a great deal--but their primary residence was Swarthmore, Pennsylvania. And she had gone to a Quaker boarding school, the George School, which is across the Delaware River in--I think it's in Newtown, Pennsylvania. But, what happened was, I had bumped into a fellow from Mexico and, somehow, racquet sports came up. And he said, "Do you want to play a game?" I think it was called tennis fronton or something like that. It was like handball, only you played it with a tennis racquet against a backboard. And, at that time--I'm not so sure I've ever improved--I had a short attention span for meetings. And I got up to leave to go play this game with him--turns out that Penny suffered from the same deficiency [laughter] and she was going swimming. And she walked by in a black bathing suit and I was sunk. [laughter] That's what happened.

SI: So, was there--you said there was a conference--was there, like, a work project after that?

Justice Pollock: There was.

SI: What did you do?

Justice Pollock: I went out to one camp, Penny went to another, and I had the weighty responsibility of digging latrines. I was out in a little mountain village and there was one stream, about so wide, that came through the town from down the mountain. And that was the one you drank out of, you bathed in and did--relieved human waste in. And we were trying to show them the benefits of modern sanitation. That involved my digging privies. That's what I did.

SI: So, how did you, you know, keep in touch with your wife after that, being from different areas? Was it all through letter?

Justice Pollock: Well, what happened, she started off in college. I went back to my senior year at Hamilton, she was starting at Mount Holyoke. And, in January, one of my good friends, a fellow who was with me on the Honor Court, said he was--he had a date with a girl from Mount Holyoke--did I want to go over with him? And I remembered Penny, so, I got in touch with her and we set it up and had a date. We went to one of those New England roadhouses where you danced to a jukebox, ate pizza and drank beer.

SI: Were you involved with the tennis team at Hamilton?

Justice Pollock: I was and I started off my freshman year. My sophomore and junior year, I really didn't have time for it. My senior year, by that time, I had, as I said, I had things pretty well organized. So, I went out and played on it again. We had a good team for that league.

SI: Who would you play against?

Justice Pollock: Oh, we played Hobart--I think we played what pretty much were the NESCAC [The New England Small College Athletic Conference], what is now the NESCAC schools. And then, I've had kids and grandchildren and others, and children, go to Hamilton and, also, go to some of the other NESCAC schools, Williams, for instance. But, we played Cortland State. They had a good team. I think Alfred, we played, Rochester, so forth.

SI: I'm also curious, because of interviewing other folks who graduated around the same time at different schools around the Northeast, I know McCarthyism sometimes comes up in different contexts.

Justice Pollock: Yes.

SI: Any memories of that impact on the campus or your thoughts?

Justice Pollock: What I do remember was, the speaker at our commencement was [news reporter] Edward R. Murrow, who had taken on McCarthy. I was the president of my class, so, I was given the responsibility of escorting Edward R. Murrow around the campus on the Sunday morning before commencement. I was so ill-informed, I'm sure he came away wondering, "What the devil did they do at this college anyway?" But, it was quite an experience to escort him around and he really was a hero. He was something, because there were not a lot of people willing to take McCarthy on at the peak of his power, but Murrow was one who did. [Editor's Note: U.S. Senator Joseph McCarthy's accusations of Communist infiltration in the U.S. government led to a nationwide witch-hunt in the 1950s to unearth alleged Communists. Edward R. Murrow, on the March 9, 1954 episode of his CBS series *See It Now*, criticized McCarthy's Red Scare, contributing to a shift in public opinion against McCarthyism.]

SI: So, tell me a little bit about being the class president. What did that entail?

Justice Pollock: It was virtually nothing, [laughter] but I was also, as I said, the chairman of the Honor Court and I was chairman of the Chapel Board, which, if I were to do it over again, I would do fewer things and focus more on the academic side of life.

SI: What did the chapel board do?

Justice Pollock: We invited in speakers and I don't think we did very much at all, but it was there to coordinate the activities between the chapel and the students.

SI: Do any of the speakers that came through stand out in your memory?

Justice Pollock: Oh, there was one; I wish I could think of his name. He came up from a divinity school, actually, Union Theological Divinity School, and he was terrific. And, actually, I actually went down there for an [interview], spend a weekend in my senior year, when I wasn't sure what I was going to do. I decided that that was not the life for me. I thought it would be too restrictive, among other things--ended up doing something even more restrictive than being a minister. [laughter]

SI: So, you went to NYU after graduating from Hamilton. How did that opportunity come about?

Justice Pollock: Well, they had--there was a competition for the scholarships and I remember, either there were ten, twenty scholarships, two from each of the ten federal circuits. And, being from New Jersey, I was in the Third Circuit, and so, I came through the interviewing process in New Jersey, was chosen to be one of the people representing New Jersey at the finals down in Philadelphia. I remember, at the final interview, I had typed my application myself. I was not then and am not now a terrific typist. Of course, in those days, you didn't have computers and, when you typed, you were typing the final copy. So, my application had a lot of erasures on it. I remember one of the men participating in the judging said, "How do you explain this slovenly job of typing?" Operating on the premise that, if all else fails, tell the truth, I said, "I did it myself." [laughter] I thought he was going to fall out of his chair laughing.

So, I got the scholarship, went to law school. And then, I was able--I developed a longstanding relationship with the Law School. I've been on their board a long time, so long that I'm now an *Emeritus* Trustee, which means I don't do anything. But, I also was on the board of the Institute of Judicial Administration there and they were kind enough to invite me back to speak occasionally.

That law school has--it's probably the biggest success story in legal education in the last fifty years--and the folks in New Jersey might be interested in this, that I think the prime mover behind taking NYU from essentially a New York City law school and converting it into a national law school was a man named Arthur T. Vanderbilt. Vanderbilt was a New Jersey lawyer and he had taught there in the evenings for many years. In New Jersey history, he is one of the dominant [figures], if not *the* dominant figure. He was an eminently successful lawyer. He was the head of the Republican Party in Essex County, at a time when that was the dominant county in the state, certainly in Republican politics. He was the Dean of the Law School at NYU [1943-1948], he was the President of the American Bar Association [1937-1938] and it was he who looked at the New Jersey Court System, and others, saw that it was a terrible system. There were multiple courts and it was a very inefficient system and Vanderbilt got the idea that there should be a unified court system. [Editor's Note: The Honorable Arthur T. Vanderbilt served as Chief Justice of the New Jersey Supreme Court from 1948 to 1957. He had chaired the New Jersey Judicial Council from 1930 to 1940. In the early 1940s, he served on the New Jersey State Constitutional Revision Commission and assisted the New Jersey Attorney General in defending the proposed constitution until its adoption in 1947.]

And, as many people have said, he took the worst court system in the United States and converted it into the best and it was a long, hard road. He said that judicial reform is not for the short-winded and he tried through the '30s and '40s to get a new constitution with a new court system. Finally, in the 1940s, after a couple of failed efforts, he and Alfred Driscoll were able to get a new constitution through. And Driscoll ran for Governor and he and Vanderbilt, they had had a falling out at one point, but they worked together to get this new system through. [Editor's Note: Alfred E. Driscoll served as Governor of New Jersey from 1947 to 1954.] So, Vanderbilt, while he was doing that, he was also-- he had wanted to vastly improve New York University. He started major fundraising and raised the funds for the Law School building, which is still there today and, appropriately, is known as Vanderbilt Hall.

He really was the one who [had the vision]. He saw that for the Law School to achieve greatness, it had to improve its student body and improve its faculty. That's taking nothing away from the students and faculty who were there, but he saw, in order to meet the criteria by which people judge a law school, there had to be change. So, he founded this scholarship plan. [Editor's Note: In 1951, with support and guidance from Chief Justice Vanderbilt, NYU School of Law created the Root-Tilden Scholarship Program, which continues today as the Root-Tilden-Kern Scholarship Program.] The Law School has been blessed with a series of positively superb Deans since then and is today variously rated as one of the top ten or top five law schools in the country. He deserves a lot of credit for that. When I left law school, I went with his former law firm here in New Jersey and his two twin sons were there, Bill and Bob Vanderbilt, both of whom have just since died.

SI: I was curious--I want to ask more about that later, because Vanderbilt and his ideals will come up a number of times in this interview, I'm sure--but did you ever actually get to meet the Justice?

Justice Pollock: I did. [laughter] He was a tough old bird, I mean. He came over and spoke to those of us on the scholarship plan, and we had worked very hard in preparing for and taking our exams. His opening line in his remarks to us were, "Well, I've looked at how you've done and life must be pretty easy over here." [laughter] But, that's just who he was.

SI: Well, tell me about that first year in law school, what that adjustment was like and what you recall of the courses and professors.

Justice Pollock: Well, those of us on the scholarship plan lived together and I lived at a building that no longer exists, called 50 Sullivan Street. I did something that no law student should ever do, and certainly no first-year law student. In the summer between graduating from college and starting law school, that's when I fell in love with Penny Morrow. That's not a good thing to do when you're a law student. But, we [the scholars] lived together, they had special programs for us.

In terms of the professors, one of the really good ones was a fellow named Robert Leflar, who had been the Dean at the University of Arkansas Law School, but I can pretty much recall all of them. There was one Delmar Karlen, taught Procedure, Professor [Laurence P.] Simpson taught Contracts and Elmer Million, who was probably the best teacher, taught Property. Yes, you had to crank up a few notches, but I was fortunate enough to do well enough to come back the next year.

SI: How competitive was the school then, particularly among the scholarship recipients?

Justice Pollock: Pretty competitive, pretty competitive. And I think one of the great things that's happened, not only at that law school, but at other law schools as well, is that there is--the relationship between the faculty and the students has changed and the faculty is much more open to students, much more amenable to students. When I went there, there was sort of an antagonistic relationship between the faculty and the students. I know I have several [lawyers in my family], I have children, grandchildren who are lawyers, and they've had a very different experience and that's a good thing.

SI: Did you have to work while you were in law school?

Justice Pollock: I fell into a sinecure in my second year, taking attendance in the evening school. I didn't have to. That was just something that I did.

SI: Any memories of--as you said, you were living with the other scholarship students--any memories of that little cohort within the school?

Justice Pollock: Well, unfortunately, my first-year roommate has since died, and as has one of my second-year roommates. My third year, by my third year, Penny and I were married and we lived in a trailer in Bayonne, New Jersey. But, one of the interesting features the second year was that every person on the Root-Tilden Program would live with a student on the [program] from the Inter-American [Law] Institute. The Inter-American Institute brought students in from Central and South America, many of whom were already lawyers in their countries, but the idea was to give us a broader perspective on the world and introduce us to folks whom we wouldn't ordinarily meet. And I did that; I had two roommates my second year. One fellow was a lawyer--he became a lawyer--and now lives in New Zealand. The other, who was Louis Supervielle, who was on the Inter-American Institute Program, he unfortunately has died.

SI: So, was there a particular aspect of law that you enjoyed or really found fascinating?

Justice Pollock: You know, there really wasn't. In fact, when I graduated, I wasn't sure I wanted to practice law. I didn't know whether to go to graduate school. I wasn't quite sure. A lot of good things have happened to me; one of the good things was going to work at Toner, Crowley, Woelper & Vanderbilt. In those days, you had to clerk for nine months before you could take the bar, and so, I did. I had to clerk nine months. It was a terrible system. It was a way of getting young lawyers for very little pay. [laughter] But, there was a wonderful group of people in that firm who were extremely nice to me, Willard Woelper, I recall, Bill Vanderbilt.

After I passed the bar, I remember, I was sitting in the library doing research, because that's really all I did as a clerk, and then, as an associate. Bill came in and I asked him, I said, "How long do you think it'll be before I get to try a case?" And he said, "Do you mean in the Superior Court or the U.S. District Court?" and I said, "Yes." He said, "Probably seven or eight years," which sounded like an awfully long time to me. Bill, kindly--Bill was in the New Jersey Assembly at the time [1954-1958]--and he said, "Look, let me call Chet Weidenburner, the U.S. Attorney, see if they're hiring." So, he did and I went down, had an interview with Chet Weidenburner. He offered me a job. And so, a couple of months later, I started down at the U.S. Attorney's Office, which was a terrific experience. [Editor's Note: Chester A. Weidenburner served as U.S. Attorney for New Jersey from 1956 to 1961.]

SI: So, you started there in '58.

Justice Pollock: I started--that's right--I started, graduated '57, couldn't take the bar until '58, and then, I took the bar in June or July, was sworn in in August. And then, in October, I went down to the U.S. Attorney's Office.

SI: And where was that located?

Justice Pollock: Right in--well, in those days, it was in the U.S. Courthouse in Newark. Now, I think there's a whole separate building. The office is much more sophisticated than--today--than we were, but that was an experience where you get thrown into the deep end and either you swim or sink. I remember, I hadn't been there only a couple of weeks when one of my predecessor's cases was on for trial. I had never argued a motion, taken a deposition, tried a case. We went in ahead of time to meet with the judge and my adversary and I thought they ought to know what a treat they were in store for. So, I said, "Judge," I said, "there's something I've got to tell you." And he says, "What's that?" I said, "I've never tried a case before." No, I said to him, "I've never been in court before." He said, "Oh, what you mean is, you've never tried a jury case in federal court." I said, "No, what I mean is, I've never been in court before." And he looked on me with pity and said, "Well, I have." So, we went forward and everybody survived.

SI: What kind of cases would you be working on in that position?

Justice Pollock: Civil. I was in the Civil Division and they were everything. We had cases--I remember an injunction case involving a plant down in Central New Jersey that was using a heat sealing device that was radiating on the same frequency as the communication tower from the Colts Neck Airport and it was fouling up the airplanes coming in. So, we had to go get that shut down; had an immigration case, tort cases, contract cases. It was pretty much the gamut. I was thinking about shifting over to the Criminal Division when Penny became pregnant with our first child and I thought I ought to start in private practice and start making a better living.

SI: Well, any of those cases, experiences with those cases, stand out in your memory before we go to private practice?

Justice Pollock: Well, let me see--what stands out is my relationship with the judges. They were terrific. After I'd been there for a while, at least in those days, they got to know the lawyers, and I'm sure it's true today. And I had a wonderful experience in that the Chief Judge was a man, the initial Chief Judge, was William Smith and, for some reason, he took an interest in me. [Editor's Note: The Honorable William F. Smith served as Chief Judge of the United States District Court for the District of New Jersey from 1959 to 1961.] I remember, one day, he called me up and he said, "Stewart, I want you to come down and see what's going on." There was a lawyer, he was a legendary trial lawyer in New Jersey at that time, John McGeehan. He was a big, handsome Irishman with a terrific voice and extraordinarily talented. Judge Smith said, he said, "I'm not running the courtroom--he is." Well, believe me, nobody ran Judge Smith's courtroom but Judge Smith. Anyway, I went down and saw John McGeehan in action. That was a nice thing for Judge Smith to do. I remember, when I decided to

leave to come to private practice, Judge Mendon Morrill, who, curiously, had been involved in the McCarthy-Army Hearings down in Trenton, on the good side, he very nicely said to me, "Stewart," he said, "I'll give you a piece of advice." He said, "You're going out to the suburbs to practice." He said, "In addition to trial work, you're going to have to do real estate closings." He said, "At your first closing, bring a pocketful of change. The other side's going to question how you've computed taxes. Put the change on the table and tell them to take what they want." [laughter] But, that was the sort of relationship you could develop with the judges down there. [Editor's Note: The Army-McCarthy Hearings, which ran from March to June of 1954, were televised nationally. The witch-hunt tactics Senator Joseph McCarthy displayed in pursuing alleged Communists in the U.S. Army led to the demise of his political career.]

SI: Well, how did you get settled into your private practice here? You joined a firm, right?

Justice Pollock: Yes. What happened was, I was getting to the point where I realized, actually, now that I had a wife and a child, I started to have to make a living. And, just coincidentally, a fellow, Cliff Starrett, who is now deceased, who had gone through the Root-Tilden Program ahead of me, called me up and said, "Look, we need a trial lawyer. Would you like to come out and talk about joining the firm?" So, in those days, Newark was the legal and financial center and I had always just assumed I would practice in Newark. But, I came out and the name of the firm was Schenck, Price, Smith & King and, in those days, it was Schenck, Smith & King, because Judge Price was still a judge. Anyway, I came out, had an interview and liked them. And so, that's where I went and where I started.

What I couldn't have anticipated was that, in a very short period of time, law firms, major law firms, such as Riker Danzig, would be leaving Newark to come to Morristown and that the banks would be leaving Newark to come to Morristown, or Princeton, and so forth. And so, I remember, when I came out, Bob Matthews, who had been at Toner Crowley--he ultimately became the Chief Judge of the Appellate Division--but Bob told me, he said, "Stewart, if you ever leave Newark, you'll never be able to come back." And he did that in good faith and for good reason, but what neither he nor I realized was, Newark was going to come to Morristown. And that's what happened.

SI: That was a result of the '67 riots. [Editor's Note: The Newark riots lasted from July 12 to July 17, 1967. They began after the police arrested an African-American cab driver and rumors spread that he had been killed in custody. The riots resulted in over two dozen deaths, over seven hundred injuries, fifteen hundred arrests and property damage exceeding ten million dollars.]

Justice Pollock: That had--that was one of the influences, that and the Interstate Highway System. And I think one of the big things was, in those days, banks could only branch in their home county. So, if you were a bank in Newark, you could not have a branch office in Morris County. That law changed in the 1960s or '70s, so that if you

could--they divided the state into three banking districts--and, if you were within your banking district, you could branch, subject to regulatory approval. And then, now, of course, it's statewide banking, international banking, and so forth. But, that, I think the riots were one of the things that drove folks out, but there were other forces at work.

SI: You mentioned in the interview with Eagleton that banking took up a lot of your time.

Justice Pollock: It did, yes.

SI: Was that true before the banks and the firms came out here or was that as a result of that?

Justice Pollock: It was sort of a result of that. What happened was, banks started to expand, in part because of the change in the banking law and part because of underlying economic forces. And, if Bank "A" wanted to get into the area where Bank "B" was, there frequently would be a contest before whomever was the relevant regulatory authority, the Comptroller of the Currency or the Commissioner of Banking in New Jersey. And our firm represented--we represented all three of the major banks in town--and so, when these contested hearings came up, the partner who had been doing the banking work would ask me to do the contested hearing and I did. And I did a lot of that throughout the '70s.

Then, what happened was, when these banks, after the growth through mergers--I'm sorry, through expansion, through branch banks--they then started growing through mergers and acquisitions. Some of the banks whom I had represented on the contested hearings were kind enough to come back to me and ask me to represent them on the mergers. That was when I really shifted out of trial work into doing banking and corporate work. That--this leads into something we'll get into at some point--but I knew I needed to supplement my knowledge with knowledge of securities law and antitrust law, because those are relevant concepts in banking growth. So, I went up and signed up, had to be in the early '70s, I'll say '71, for a course at the Harvard Law School, taking antitrust law and securities law.

Lo and behold, who should be up there taking a course in criminal law? was Judge Brendan Byrne, who had been sitting in Essex. So, we bumped into each other at a coffee hour and struck up a conversation. A couple of weeks later, he was named the Assignment Judge for the vicinage that included Morris, Sussex and, at that time, Warren Counties. And, through happenstance, I was the President of the county Bar Association that year and I also had some trials, some cases, before him and that was the beginning of my friendship with him, but that was just part of the serendipity of life. [Editor's Note: Governor Brendan T. Byrne served as Governor of New Jersey from 1974 to 1982.]

INTERVIEW WITH JUSTICE STEWART POLLOCK
JULY 18, 2017
PART 3 OF 7

Making a Difference, Making a Justice: The Road to the NJ Supreme Court

[Justice Pollock chronicles his experiences in community, political and professional circles while in private practice (1960-74), including his work as U.S. Commissioner for northwestern New Jersey. He goes into detail about his influences regarding public service and politics. [Justice Pollock served as Chief Counsel to Governor Byrne from 1978 to 1979.] He recounts his nomination by Governor Brendan Byrne to the New Jersey Supreme Court in 1979, his experiences with Chief Justices Richard Hughes and Robert Wilentz and the New Jersey Supreme Court's procedures.]

Illingworth: I want to go back and talk a little bit about some of your activities during this period between '60 and '74 or so, when you were basically in private practice.

Justice Pollock: Right.

SI: You were getting involved in other activities in the area, the Bar Association. You became a Republican. Were you active in party politics?

Justice Pollock: I was, I was. I was very active for a time. I was a County Committeeman and I was in the Young Republicans. I even managed Jim Mitchell's campaign in Morris County. I never told Chief Justice Hughes this. [laughter] But, Morris County, being a Republican county, Mitchell won in Morris. He lost in other [counties] and Hughes became the Governor. [Editor's Note: Governor Richard J. Hughes served as Governor of New Jersey from 1962 to 1970 and Chief Justice of the New Jersey Supreme Court from 1973 to 1979. Governor Hughes defeated Former U.S. Labor Secretary James P. Mitchell in the 1961 gubernatorial race.]

I was also [active in volunteer work]. I became President of the Occupational Training Center for the Handicapped, which has a different name now. I was counsel for the local New Jersey Association of Retarded Children. I was on the board of my church, the Presbyterian church here in Morristown. Ultimately, I got on the, was on the editorial board of *The Law Journal*. I can't remember some of the others.

SI: *The New Jersey Law Journal?*

Justice Pollock: Yes, and I suspect there were other things, but I can't recall them.

SI: You must've been very busy, between your outside activities, your practice and your growing family. All true, because we had four children in six years and Wendy was

born in '58, Stew in '59, Jeff in '61 and Jenny in '64. So, we had a lot going on, yes.
[laughter]

SI: So, do any of those activities, anything that you got involved in, stand out, like any [professional activities]? Were you involved in any committees through the Bar Association that were working on issues in the county?

Justice Pollock: Yes. At some point, I became a Trustee of the State Bar and I remember testifying in support of a bill that, at that time, didn't get passed, The Administrative Procedure Act, testifying on behalf of the Bar Association. And, later, when I was Counsel to the Governor, we got the bill through and that gave rise to the Office of Administrative Law.

But, going back to that period, I didn't--I remember one of the things I learned from that, particularly, it was dealing with the New Jersey Association of Retarded Children, was how supportive family members were of children who had learning problems or other disabilities and the effect that that could have on the family. And I know that popped up in, that notion, popped up in a case. You know, judges, I think, at least this judge, inevitably was a product of the experience you have along the way, and that was one that affected me. The other thing was, with the Occupational Training Center for the Handicapped, I gained an appreciation of something that I think blossomed more fully while I was on the Court and that is the inherent dignity of every person and every individual. So, those were two of the things.

Oh, one other thing that happened, when I left the U.S. Attorney's Office, in those days, there was a system--it was not a very good system at all--of U.S. Commissioners. It's since been replaced by the federal magistrates, but, when I left, the then Chief Judge, [Anthony Thomas] Augelli, called and said, "I need a U.S. Commissioner for Northwestern New Jersey." The federal Chief Judge got to make the appointment and he said, "I'd like you to do it." Well, when the Chief Judge asks something like that, there's only one answer. So, anyway, I became the U.S. Commissioner for Northwestern New Jersey, which gave me jurisdiction over, I had [jurisdiction] over Picatinny Arsenal, the National Park here in Morristown and preliminary jurisdiction over, essentially, Northwestern New Jersey.

And my weighty responsibility was to post bail for people who were arrested or hold them over, issue search warrants. And then, I actually had hearings on minor offenses, and I forget how minor was defined, but it had something to do with, I'm sure, the period of incarceration or the size of the penalty here, for offenses arising out of the National Park or on Picatinny. I did that for a few years, and then, I can't remember when I stopped. But, that was my introduction to judging.

SI: Do you remember what kind of folks you would see before you, what they had done? A lot of FBI agents and, you know, if there [was] a bank robbery and

they found the suspect, the culprit, they would bring him in and I would advise him of his rights. An awful lot of these events occurred on a Friday night and I've got--I wondered why. It might've had something to do with the fact there was no federal judge available until Monday. But, I remember sitting down with my family and having dinner Friday night. The phone would ring and the FBI would say, "We've just made an arrest," and so forth. I would come down to my office and advise the person of his right to counsel, and so forth, but that, that was just one of the things. Going back to your earlier comment, yes, it was a very happy, busy time.

SI: So, we're getting into a period that is covered very well in the October 2010 interview that was conducted by Michael Aaron at Rutgers for the Eagleton project regarding your time working in the Byrne Administration. So, I don't want to go over all that, but there are a couple issues I want to pick over a little bit.

Justice Pollock: Sure. [Editor's Note: From 1978 to 1979, Justice Pollock served as Chief Counsel to Governor Brendan T. Byrne. On October 25, 2010, the Center for the American Governor at the Eagleton Institute of Politics, Rutgers, the State University of New Jersey, conducted an oral history with Justice Pollock on his experience in the Byrne Administration. Their interview can be accessed at: <http://governors.rutgers.edu/video-library/individual-interviews/interview-with-stewart-pollock/>]

SI: First, I wanted to kind of get into the notion of public service that you have touched on, that it tied in with the scholarship that you received at NYU. Can you kind of explain that a little more in depth?

Justice Pollock: Sure. One of the tenets of the program was that if a public [need], if the opportunity to serve the public, arises, you should do it and that was something Vanderbilt strongly believed. Vanderbilt had five functions of a lawyer. I'm not so sure I can remember all of them, but one of them was that a lawyer should accept an opportunity to serve the public. And that, that did surface and was my [motivation], was part of the motivation, to leave private practice and to join the Byrne Administration.

SI: Were there other times, earlier than that, that you felt this call, either that panned out into something or [did not]?

Justice Pollock: Well, it may have had something to do with my going into the U.S. Attorney's Office or becoming a U.S. Commissioner, but I think--and it may have had something to do with the fact that I was active politically--but the opportunity, quite frankly, didn't arrive until Brendan Byrne offered it to me.

SI: I also wanted to ask you--at this time, there were a number of factions within the Republican Party. There was the more centrist or liberal wing, with [Nelson] Rockefeller and others, Clifford Case.

Clifford Case for sure. [Editor's Note: Clifford P. Case (1904-1982) served as a Representative from New Jersey in the U.S. House of Representatives from 1945 to 1953 and in the U.S. Senate from 1955 to 1979.]

SI: And then, there was the Goldwater spectrum. Where would you kind of define yourself?

Justice Pollock: I was lined up with Clifford Case. I pinch hit for him at some speaking engagements and I was active on his behalf.

SI: Okay, all right. Would you have any events for him in Morris County when he would run for reelection?

Justice Pollock: I'm sure I did, but I can't recall what they were. I remember becoming active in his campaign and I remember speaking at Drew University.

SI: Okay, all right. One of the things that comes up again, over and over again, when there's articles about your career or things written [about you], is how you try to bring together different sides. And, certainly, being a Republican in a Democratic administration, you'd probably have to do that a lot. Can you kind of elaborate on that? Like, what is your philosophy regarding that kind of, I don't know, consensus building?

Justice Pollock: Well, I think it's--to the extent that it's true that I do that--I think it's just part of who I am and it may start with being the middle child, I don't know, [laughter] though I wouldn't put too much weight on that one. But, I guess I think that, frequently, particularly in public affairs, no one side has a monopoly on the right position and that this may go back to the philosophy major and the search for the golden mean. Often, the right answer is the result of compromise between two extreme positions. I don't know what else I can add to that at this time.

SI: Do you think, at the time, it was easier for people to build that kind of consensus or for both sides to work together?

Justice Pollock: Well, you hear a lot about that now. I just don't--I don't know, although you certainly read a lot and hear a lot that suggests that that is true. I guess I've always operated on the premise that if you treat people openly, honestly, fairly, reasonably, you can reach a point of agreement with them. I'm sure that's not universally true, not an absolute truth, but I think it's a good operating principle.

SI: Did that have--I mean, today, that could have negative consequences for somebody, working with another party. Did that have any negative consequences for you at the time?

Justice Pollock: Sort of, yes. I had--when I came up, I guess initially, for appointment, more clearly when I came up for reappointment--one of my then [State] Senators, who was a Republican, threatened to exercise senatorial courtesy. I'm not so sure he mentioned the fact that I had been part of a Democratic administration, but he thought I had been too liberal in the opinions that I'd written and that I had joined. Ultimately, he decided not to exercise senatorial courtesy and I went forward with the nomination. [Editor's Note: Justice Pollock was granted tenure on the New Jersey Supreme Court in 1986.]

SI: Okay, well, that's something I want to ask about later on.

Justice Pollock: Sure.

SI: So, you first were active with the Byrne Administration as the head of the Department of Public Utilities.

Justice Pollock: One of the three commissioners, right.

SI: Okay, and then, you briefly went back into private practice. And then, you were Counsel for Governor Byrne.

Justice Pollock: Yes, yes.

SI: Okay, and then, in '79, he nominated you to the Supreme Court.

Justice Pollock: Yes.

SI: All right. Tell me about that experience. How did you first learn that you had been nominated? Was there any kind of hints being put in your way that this might happen?

Justice Pollock: Well, as my predecessor, Worrall Mountain [Associate Justice from 1971 to 1979], as his term, the end of his term, approached, people started to speculate about who would replace him. And, curiously, at the same time, Chief Justice Hughes' term was coming to a close. They both were approaching the mandatory retirement age of seventy, and so, the speculation began about who would replace them. And I know the press was kind enough to suggest that I might be an appropriate replacement for Worrall Mountain.

And I remember the day the Governor told me he wanted to put me on the Court. In those days--I don't know if it's still true or not--but, in those days, as you walked in the Statehouse, the Counsel's Office was on the right and the Governor's Office was on the left. And Dotty Seltzer, the Governor's secretary, called and said, "Stew, you'd better come over. The Governor wants to see you." So, I went over and he put this piece of

paper down and said, "You'd better fill this out." And I said, "Why?" He said, "I'm putting you on the Supreme Court." [laughter] And so, I filled it out.

[RECORDING PAUSED]

SI: To start again, I wanted to just ask, before we get into your confirmation hearings and that process, in your role as Counsel to Governor Byrne, had your work there brought you into contact with the Supreme Court? Do you have any memories of working with Justice Hughes, for example, before you actually joined the Court?

Justice Pollock: There were a couple of instances. I know when he would call, ask what was going on on a particular issue, and, of course, I remember once, I went over to see him. He was one of God's noblemen on Earth. He was--for a man who had done so much so well, he was a very modest person--and I remember going into his office and he had on a dress shirt, a frayed dress shirt. Beneath it was a T-shirt that said, "Sugar Daddy." [laughter] But, that was just Dick Hughes.

SI: So, you told the story of how you went into Governor Byrne's office. He had you fill out the paperwork. What happened from that point? What did you have to do to prepare yourself for the confirmation process?

Justice Pollock: Not much. I really didn't have to do much at all. I knew a lot of the Senators from having worked with them in the Counsel's Office, but I really didn't do much at all.

SI: Was there a lot of press coverage when you were named as the nominee? Do you remember if you were guided in any way through that experience?

Justice Pollock: You know, I don't recall much, doing much at all. I'm sure I did something for the initial appointment and I think it went very smoothly.

SI: Was the actual confirmation hearing all accomplished in one day or did it take longer than that?

Justice Pollock: I'm sure it was. I remember, I went before the State Bar Committee and going before the Senate, but there wasn't much of a flap about it at all. I think there were a couple of Senators who voted against me, including the Senator from Morris, but, other than that, I just don't recall much about it at all. I remember being in the Senate Chamber when the entire Senate voted, but that's about it.

SI: And then, how soon after was your swearing in ceremony?

Justice Pollock: Well, I think I was nominated in March, confirmed in May and, if my recollection is correct, I was sworn in in mid-June, mid-June or late June.

SI: Any memories of the ceremony?

Justice Pollock: Oh, lots, yes. I mean, my wife was there, my children were there, obviously, friends, family, of course, the Governor and the entire Supreme Court. No, it was a very happy day.

SI: Now, after being sworn in, when was your first conference, I guess?

Justice Pollock: Right. Okay, well, I was actually sworn in while Chief Justice Hughes was Chief Justice. So, there was a period of, like, sixty days or so when I technically was a member of his Court. They were wrapping up the work for the summer, and so, I didn't do anything. The one thing I did do, and it was a good idea, I took a course in judicial opinion writing that summer. Of course, ever since law school, I'd been reading opinions, but it's one thing to read and another to write them. And I took a course out at the University of Colorado and that was excellent. It gave me a good handhold on how to write opinions, and then, we started. Robert Wilentz was sworn in shortly after me, as Chief Justice, and he and I both started in the fall.

SI: So, you don't have many memories of how Chief Justice Hughes operated, in terms of how he ran his court.

Justice Pollock: I don't.

SI: Okay.

Justice Pollock: I don't.

SI: Any impressions, again, about him personally, as a jurist?

Justice Pollock: Well, I do recall one thing. He did something--I don't know if any other Chief Justice has ever done it--but one [time], at least once a year, he goes to visit a maximum security prison, or at least he did. I remember, after I was nominated--and it may have been after I was confirmed--he called me up and he said, "Stew," he said, "I'm going over to Rahway," East Jersey State Prison. "How would you like to join me?" So, off we went. I was still Counsel to the Governor and this is just typical of the kind of person he was. He would go in there and actually meet with people who were serving pretty tough sentences.

What I remember, I remember going with him and a call came in while I was there. I had to get back to the Statehouse for something and I had to leave just at the time when the first group of prisoners was coming in for lunch. I remember, as he was walking in, the prisoners were walking in as I was walking out. One of them spit on my shoes and I thought, "What do I do?" I quickly told myself, "You keep on walking." [laughter] But, Chief Justice Hughes was remarkable in that regard. His father had briefly been the

Warden of Trenton State and Chief Justice Hughes just naturally had an interest in seeing the prisoners, and he did.

SI: Do you think it had the effect that he intended for the people who came and visited?

Justice Pollock: I don't know, but it could not have hurt at all. He was a remarkable person.

SI: Well, I'm interested in this course that you took at Colorado. Again, in reading some of the press coverage of your time on the Court, people comment about your opinions being, you know, effective but brief, not flowery. Was that part of what you were taught there?

Justice Pollock: Yes, exactly. That was one of the points. I'm not so sure they taught this as a principle, but one of the principles that I used in writing opinions was, "State only the facts you need to support the legal principles and state only the legal principles you need to resolve the issues presented by the facts." I tried to keep my opinions tight. I tried to keep--I wanted them to be scholarly, thorough, reasonable, but I did not want to write overblown opinions, because people have to read them and lawyers have to read them and I did not want to impose on anybody by overwriting.

SI: So, when did the activity under Chief Justice Wilentz begin? Was that that September?

Justice Pollock: Robert was sworn in, I think July or August, and then, the term began in September. And that's when the work [began]; the work really began before September, because you have to read the bench memos, the briefs and the cases that you're going to hear in September. And then, you always have motions and petitions for certification coming out over the summer. So, the work really began over the summer, and then, we hit the ground running with the first arguments.

SI: Well, I've heard from some of the other justices kind of the procedure of how the conferences and the hearings would work, but I was wondering if, being somebody that was there right at the beginning, was he kind of continuing the way Chief Justice Hughes had done things? Was he coming up with his own way of doing things? Do you have a sense of that?

Justice Pollock: I have a sense that his practices were pretty much the same as Chief Justice Hughes and the prior Chief Justices, in that, you know, that the conference, they would discuss the cases heard--first, circulating opinions, then, the cases heard the preceding week. He would assign the opinions. That is a major consideration and that is a power that the Chief Justice has because the Court permits it. There's nothing in a statute or rule that says, "The Chief Justice shall assign the opinions," at least not to my knowledge. But, it's the way we've always done things in New Jersey since Arthur T. Vanderbilt. It doesn't have to be that way, but that's the way it is, and it works. So, I

really can't say too much about a comparative analysis of how Robert Wilentz worked versus other Chief Justices. I think they pretty much functioned the same way.

SI: Well, if you wouldn't mind sharing your memories of what a typical cycle would be like.

Justice Pollock: Sure.

SI: And your work, your role, in the system.

Justice Pollock: Well, it would start with the preparation for the oral arguments, which involved reading the briefs and the bench memos and relevant portions of the record. Then, you would go to the arguments on Monday and Tuesday. I would then--at the end of each day of oral argument, I forced myself, the whole twenty years I was on the Court, to dictate a memo with a tentative resolution of the case, lots of questions to be answered. But, I wanted the discipline of addressing the case while it was fresh in my mind. So, I would do that each night after oral argument. And then, when we came back to conference, I would distribute those memos to my clerks and they would come back to me with answers to the questions, on which I would base the position I was going to take at the conference the following week. And then, you would also, during the balance of the week, you would review circulating opinions from the other Justices, petitions for certifications, motions, administrative matters.

Then, the following Tuesday, there would be the conference. That was the toughest day in the two-week cycle. Those were long, hard days. And then, you'd come back from the conference, at which at least one opinion would've been assigned, and I usually would work with one clerk on each opinion. It was rare to get more than one clerk involved and I would dictate what I thought was the appropriate outcome, what the reasoning was, what the leading cases were. And then, they would go to work and try to polish it up, and then, they would come in to me with a draft. I would then rewrite it and we would go back and forth until we had something we wanted to circulate. And then, there were administrative responsibilities. The Chief, Robert Wilentz, was very much committed to discharging his administrative responsibilities and to enlisting the aid of the Court in doing it. So, that was roughly how the two-week cycle worked.

SI: Tell me a little bit about your approach to selecting clerks and you described a little bit your working relationship.

Justice Pollock: Right.

SI: Any other aspects of that relationship?

Justice Pollock: Well, I always--I wanted to make sure that I had at least one clerk from a New Jersey law school and I tried to balance it out in terms of gender, tried to balance it out in terms of race. So, I looked for diversity among the clerks. And I felt that, out of the interaction of people with different viewpoints, we had a better chance of arriving at the right result. And so, that's what I did and they remain very, very much a part of my family, a part of my extended family.

**INTERVIEW WITH JUSTICE STEWART POLLOCK
JULY 18, 2017
PART 4 OF 7**

Shaping the Law: Prominent Cases & Experiences on the Court

Justice Pollock recalls some of his notable opinions, including O'Keefe v. Snyder, Vasquez v. Glassboro Serv. Ass'n, Inc., Pierce v. Ortho Pharm. Corp., Francis v. United Jersey Bank, Schroeder v. Perkel and Procanik v. Cillo. He also describes his relationship with his colleagues on the Court, his judicial philosophy and his committee work in revising professional rules.

Illingworth: So, you know, I have a list of memorable cases to go through, and one of the earliest ones is the *Georgia O'Keefe* case [*O'Keefe v. Snyder*, 83 N.J. 478, 416 A.2d 862 (1980)] from 1980.

Justice Pollock: Yes.

SI: But, before that, you know, [in] those early experiences of dealing with cases, anything stand out from those processes?

Justice Pollock: Well, one I thought about that you may not recall--over the weekend, I saw [Lin-Manuel Miranda's Broadway play] *Hamilton*, with, "Immigrants, we get the job done." And there was a case, one of the first opinions I wrote, was *Vasquez v. Glassboro Farm Services* or something like that [*Vasquez v. Glassboro Serv. Ass'n, Inc.*, 83 N.J. 86, 415 A.2d 1156 (1980)], involved migrant workers in South Jersey. The underlying facts were that the owner of a farm had fired a worker and told him he had to leave immediately with his family. He said, "I have no place to live," and the reply was, "You have to leave." The issue that came before us, "Was the migrant worker entitled to the same protections as a tenant in terms of eviction?" We held that, yes, the migrant worker was, but that was one of the early opinions that I wrote. That drew on an earlier opinion by Chief Justice Weintraub [1957-1973], *State against Shack* [*State v. Shack*, 58 N.J. 297, 277 A.2d 369 (1971)]. I guess the point is that I think that the New Jersey Judiciary, at least as of that time, demonstrated some sympathy for migrant workers, some understanding of their plight. But, that's just one illustration of a case that preceded the *O'Keefe* case.

SI: Well, tell me a little bit about the *O'Keeffe* case. That involved somebody who had come into possession of her paintings, but they had been stolen from her or stolen from a museum.

Justice Pollock: Well, there had been a show in New York in the 1930s at--I believe it was at a gallery called An American Place. The show was assembled--it was the work of O'Keeffe--by her husband, [Alfred] Stieglitz, who was a famous photographer. Anyway, one day, three of the paintings disappeared. They reappeared in the 1970s and, if my recollection is correct, in an art dealer's shop in Princeton. And O'Keeffe said, "I want my paintings back," and the reply was, "Well, I'm a bona fide purchaser, so, I get to keep the paintings." She brought what was called a replevin action, which is an action to regain the possession of the paintings.

Up until then, this kind of case had been decided by reference to principles of adverse possession, which generally holds that if you own real estate, or, in New Jersey, we extended it to personal property, such as paintings, openly, notoriously, continuously for the period of limitations in the relevant statute of limitations, you would get title to the property. We took a different approach and said, "No, the way you look at it is not through the conduct of the possessor, but through the conduct of the true owner, to see if that person had been reasonably prudent and diligent in trying to regain possession of the property." What we did was, we remanded it to the trial court under the principles that we had announced in the case.

And then, curiously, I saw a newspaper article some years later that the parties had resolved the matter in just the way you would think they would have if you knew nothing about law. Each one took one painting, they sold the third and divided the proceeds. [laughter] But, that, that case, has become one of the cases that's taught in an awful lot of courses on property across the country.

SI: I'm curious, do you have any thoughts on how opinions were assigned during the Wilentz Court?

Justice Pollock: Generally, yes. Oh, one tiny thing, if anybody has an interest in the *O'Keeffe* case--if they go into the justice complex, the Hughes Justice Complex, and look in the far corner, you'll see a statue of a judge with two lawyers and the judge is holding a book. And the book is opened to the opinion *O'Keeffe v. Snyder*.

But, I thought I had some idea of how Chief Justice Wilentz assigned cases, but, then, every now and then, he'd do something that was inconsistent with that. One of the principles is, to us, that many Chief Justices follow is, to assign the opinion to the person least likely to write it. And the underlying notion is, that will demonstrate the impartiality of the Court, because if that person thinks that this result is good, then, it must be right. And the other thing is, frequently, you'll assign an opinion to somebody who's on the fence, the idea being, if that person can persuade himself or herself that

the result that others think is correct, then, the credibility of the opinion is enhanced. But, every now and then, [laughter] he would surprise me by doing something different.

And then, you know, the other thing the Chief Justice has to do is, you have to parcel out, with some notions of fairness and equity, the big opinions. The Chief Justice normally would take the major opinions for himself or herself, but not always. And so, there are a bunch of rules. None of them is rigid. None of them is necessarily dispositive, but it's just among the operating principles that I think a Chief Justice applies.

SI: Well, let me apply that to this case. Why do you think you were the least likely person for the opinion for *O'Keefe*?

Justice Pollock: [laughter] I don't know why. I don't know why the Chief assigned it to me. I know I was very interested in the case and that may have had something to do with it. My wife was a children's book author and, also, she had a master's degree in fine art. I'm sure that had nothing to do with the assignment of the opinion. I don't know, I don't know. You know, it could've been it was a big case, I was a young Justice and Robert wanted to give me a shot at writing a big opinion. I never talked to him about it--or it could be that the Court was divided. I know there were a couple of separate opinions. So, it may be the pool of people available to write was small or it could be he thought I would work well with the folks who were going in the same direction he was. I just don't know.

SI: Tell me a little bit about your colleagues at the time that you joined the Court. It would change fairly quickly, but what do you recall about the Court you joined?

Justice Pollock: Oh, yes. Well, the senior member was Mark Sullivan, who was a wonderful judge. Mark was a person of very few words. He had fine analytical skills. If you think my opinions were short, you should see his. There's not a wasted letter in his opinions. He had a good sense of fairness, just a wonderful, wonderful man. And the next one, I think, was Morris Pashman and I think most people would say Morris was probably the most liberal member of the Court--[laughter] didn't matter what Court you were looking at. He was a lovable person, full of energy, full of enthusiasm, so forth.

Then, I think Bob Clifford would've been next and, Bob, I had known from when we both practiced law in Morristown. And we had chambers in the courthouse together, separate chambers, but both in the courthouse. There was Sid Schreiber, who was one of the best lawyers I've ever met, and Sid was at Riker when I came here. Sid was terrific, among the more conservative members. There was Alan Handler, who I always thought was extremely talented and became one of my best friends. Have I mentioned six of them? And there was the Chief, Robert. And then, they changed over time. Mark was the first to retire, then Morris, then Sid, and so forth. Others came onboard.

SI: You know, there's obviously a lot of talk in the media about this justice being conservative, this [one] being liberal. How does that actually play out in--not to get into the nitty-gritty of deliberations--but, like, do you think those titles are valid or invalid when you're actually in the work?

Justice Pollock: I always thought that a computer would have a nervous breakdown trying to predict exactly how people would vote. There certainly was no [partisanship]--never, never, never was any vote along party lines. As time passed, you got to know these folks pretty well and you got to predict, with some degree of accuracy, how they might come out on a case. But, I never had any doubt that any member of the Court was doing anything but bringing his best effort to decide a case appropriately.
[RECORDING PAUSED]

SI: Let me get out just a couple documents--I can't remember cases off the top of my head, like you can. [laughter] One of the cases that comes to mind is *Pierce v. Ortho* [*Pierce v. Ortho Pharm. Corp.*, 84 N.J. 58, 417 A.2d 505 (1980)].

Justice Pollock: Sure.

SI: What do you recall about that case?

Justice Pollock: When I wrote it, I did not realize it was going to create a cottage industry. But, it was an interesting case, because it involved a corporate employee and these are white-collar workers, and so, there's generally no union involved. The issue was, "Under what circumstances may an employer fire an employee?" What we ended up holding was that an employer had wide latitude, obviously, in firing employees, but that it could not--an employer could not--fire an employee for a reason that violated a clear mandate of public policy. Then we had to figure out what a mandate of public policy was.

Some things are clear--statutes, administrative regulations, judicial decisions--but, in the *Pierce* case, what I wrote was that it also included the codes of ethics relevant to professional employees, in that case, a doctor, or, as it would be the case with lawyers, the Code of Professional Responsibility. So, what it did, it gave a lot of protection to corporate employees from being fired for the wrong reason, for an improper reason. And those cases, the number of those cases, has just mushroomed ever since that opinion came out.

There was a later opinion that Robert Wilentz wrote, *Woolley* [*Woolley v. Hoffmann-La Roche, Inc.*, 99 N.J. 284, 491 A.2d 1257 (1985)]. *Woolley* takes the basic principle of *Pierce* and says that you--what it does is, it talks about the role that employee handbooks have in the termination of employees, what the employer has to set out in the handbook in order to fire the employee. But, that, those cases, have generated a lot of work.

SI: I'm curious, did that lead into your work with the Committee on Professional Ethics or vice versa? Were you more interested in this because of that?

Justice Pollock: No, it didn't. At least, I don't know why they asked me to chair those committees, but I doubt it, I doubt it.

SI: All right. When did you start--again, this is something we might get into in another session--but you were very active in other committees during your time on the Court. When did that begin? Did it begin right away in the early '80s or was it something you eased into?

Justice Pollock: Well, actually, what happened, one of the things the Court [does], one of the Court's responsibilities, is the discipline of lawyers and judges. It's not true that in every state the Supreme Court has that power, but it does clearly in New Jersey. So, frequently, we would hear disciplinary cases, often on a Tuesday afternoon, on the days we had oral argument. So, every member of the Court had the opportunity to write opinions in disciplinary matters. Usually, they're done *per curiam*, which means that a Justice does not sign his or her name to the opinion. But, so, I had that exposure.

And then, while I was on the Court, we adopted a revision of the rules based on recommendations from something called the Debevoise Committee, which was a committee chaired by Dick Debevoise, who was a federal judge whom Robert Wilentz asked to chair the Committee on the Revision of the Rules of Evidence back in the 1980s. When I [retired], after I retired, Chief Justice [Stuart] Rabner [2007-Present]--I think it was Chief Justice Rabner, not Chief Justice Poritz--asked me if I would chair the Committee on the Revision of the Rules in 2000. Then, it was Chief Justice Rabner who asked me to chair the standing committee that considered the rules of professional conduct on an ongoing basis. And I don't know what led them to do that, but I'm delighted they did and I enjoyed working on both projects. [Editor's Note: The Honorable Dickinson R. Debevoise sat on the U.S. District Court for the District of New Jersey from 1979 until his passing in 2015, having attained senior status in 1994.]

SI: Let me go to another case, which I think kind of related back to some of your work with the banking industry from private practice, the *Francis v. United Jersey Bank*[, 87 N.J. 15, 432 A.2d 814 (1981)] case.

Justice Pollock: Oh, sure. Yes, well, I had been on--before I went on the Court--I'd been on several corporate boards, you know, New York Stock Exchange companies, NASDAQ, private family companies, non-profits, charities, and so forth. And that's why I had some feelings about how a corporate director should behave. And *Francis* has a poignant set of facts, the *Francis* case, but it was the director involved, in fact, had been derelict in not watching over the work of the corporate officers or the other directors who had misappropriated funds of the corporation. And so, I thought it provided an opportunity to set out what, as of that time, would be the appropriate rules that a

corporate director should follow and that's what I tried to do. Since then, the law, the secondary authorities, the restatement texts have moved beyond that point, but what I really wanted to do was point out that a director should not be simply an ornament, but actually has responsibilities and should discharge them. And that's what that opinion does, I think.

SI: Did it actually set out what they should do or just say that those things have to be defined?

Justice Pollock: No, I think I tried to give some guidelines on what you should do. For instance, minimally, it seems to me a director ought to read the financial statements of the company and either understand them or ask questions so that he or she does understand them. In short, the director can't simply show up at the meeting and not really know what he or she is doing.

SI: Another case was the *Schroeder v. Perkel*, 87 N.J. 53, 432 A.2d 834 (1981)] case.

Justice Pollock: Oh, yes. That sort of ties in with another case. There was *Schroeder v. Perkel*, and then, there was another one.

SI: *Procanik v. Cillo*, 97 N.J. 339, 478 A.2d 755 (1984)].

Justice Pollock: Yes, right. *Schroeder* was the wrongful birth case. These are agonizing cases in which you just try to do the best you can to reach a fair and reasonable result consistent with the law. They generally are common law cases. *Schroeder* involved a family, I should say, in which the wife had given birth to a baby with cystic fibrosis. There was a high probability--well, there was a noteworthy probability--that if a couple have one child with cystic fibrosis, that another child will suffer from the same disease. The allegation was that the doctor had failed to inform the mother of that and, indeed, the second child was born with cystic fibrosis.

And so, the question was, "What's the appropriate legal response?" And we said that the parents could recover the expenses that they would incur attributable to the birth of the second child with cystic fibrosis. *Procanik* was a so-called "wrongful life" case, in which a woman had rubella and the allegation was that the doctor had failed to inform her of the consequences, that she would give birth to a child with handicaps. That isn't what happened and we held there was a cause of action in which the child could recover the extraordinary [costs], the cost of the extraordinary medical expenses during its infancy.

Those are tough, heartrending cases. There were separate opinions in both cases. Some people thought we hadn't gone far enough, some thought I'd gone too far, but it was one of those ones where you just do the best you can. But, they were hard and there was room for more than one reasonable opinion.

SI: So, do you think, as you alluded to earlier, that your experience with, like, serving on the board of ARC and others, kind of shaped your thinking in this?

Justice Pollock: You know, quite frankly, I hadn't thought of that, but it could be. It could well be, it could well be.

SI: Well, there are other cases that I want to discuss, and a lot of your work in these committees and the others, but that might be best covered in a session tomorrow. But, I did want to end today's session with kind of another question about your methods and your thoughts on judicial philosophy. Again, the press really went into great detail about how a lot of our opinions were from unanimous Court decisions and they attributed that to your, again, consensus building and that sort of thing. Do you think that's a fair assessment, or what was your feeling on the need to bring everybody around, and so forth?

Justice Pollock: Right. Well, I tried, I certainly tried, to do that, in both my majority opinions and in the separate opinions. I tried to work with the other members of the Court to address their concerns. Sometimes, it involved touching up some legal principles. Sometimes, it involved adding language here, taking language out there. And, on the dissents, I'd really tried to work out my differences with the author of the majority opinion, so [that] there wouldn't be a dissent, and, often, it worked. Sometimes, it didn't work, but that was one of the things I tried to do. I tried to work with my colleagues, whom I liked and respected, to address their concerns, to see if we couldn't come up with a unanimous Court.

SI: All right. Well, thank you very much for your time today. I appreciate it and I look forward to continuing tomorrow.

INTERVIEW WITH JUSTICE STEWART POLLOCK
JULY 19, 2017
PART 5 OF 7

A View from the Bench: Notable Opinions in Civil and Criminal Cases

*Justice Pollock continues his reminiscences regarding his opinions, including *Right to Choose v. Byrne*, *Newburgh v. Arrigo*, *State, Dep't of Env'tl. Prot. v. Ventron Corp.*, *Spring Motors Distribs., Inc. v. Ford Motor Co.*, *Dairy Stores, Inc. v. Sentinel Publ'g Co.*, *Greenberg v. Kimmelman*, *State v. Martin*, and *State v. Harvey*. He also reflects on his 986 reappointment proceedings and his opinion on the notion of judicial activism.*

Illingworth: This begins the second oral history interview session with retired New Jersey Supreme Court Associate Justice Stewart Pollock in Morristown, New Jersey, on July 19, 2017, with Shaun Illingworth for the Rutgers Oral History Archives, New Jersey Supreme Court Oral History Project. And, Justice Pollock, thank you so much for sitting down with us again.

Justice Pollock: Once again, I'm delighted to be here.

SI: All right, wonderful. Today, I would like to start by getting into some of the biggest cases that you wrote opinions for during your tenure on the Supreme Court. To begin, the *Right to Choose v. Byrne*[, 91 N.J. 287, 450 A.2d 925 (1982)] case became one of your most notable cases. Can you tell us a little bit about your involvement in that case?

Justice Pollock: Well, the case concerned the constitutionality of New Jersey's version of Medicaid for pregnant women. The statute, as it came before us, provided healthcare benefits for women who carried a child to term or who terminated the pregnancy to protect their life, but not their health. Our Court ruled that the statute was unconstitutional under the New Jersey Constitution to the extent that it eliminated protection to protect the health and life, the health of the mother.

There were several significant features about the case. One, we went farther than the U.S. Supreme Court had in protecting the health of the mother, of a pregnant mother, and this led to a discussion in the opinion of principles of federalism and to what extent states can grant rights greater than those granted under the U.S. Constitution. And then, it also involved an interpretation of the New Jersey Constitution and rights that had been found in that constitution, although not expressly stated, most notably, the right of privacy and a right of equal protection of the laws. Then you're quite correct, the opinion was controversial. It did attract a lot of attention. There were two separate opinions. Again, one said that we had gone too far and the other said we hadn't gone far enough.

SI: Now, this was also dealing with the Hyde Amendment [a federal provision denying the use of federal funds for abortions, except in limited circumstances.]

Justice Pollock: Yes.

SI: How did the outcome of this case affect that? Did that circumvent it in New Jersey?

Justice Pollock: Well, all the case did was to say that New Jersey, in protecting the rights of pregnant women, was not limited by the Hyde Amendment, that under our Constitution, we could grant greater protections than were accorded under the U.S. Constitution and under federal law. That had implications for cases that arose in other areas, where the issue of the extent to which state courts could go in protecting fundamental rights of people [was concerned], in criminal law with search and seizures, and so forth. But, you're quite correct, it did attract a lot of attention across the country, for the principles that I've mentioned.

SI: I'm curious, also, in your work, you dealt with, obviously, some lightning rod issues, like, in this case, abortion. Did that ever result in any, you know, volume of disagreeable mail or any kind of public backlash that you had to deal with?

Justice Pollock: Understandably, there were people who disagreed with the opinion. These are issues that touch very sensitive nerves, quite understandably, for people. The most notable example of disagreement surfaced when I came up for reappointment and at least one group came and testified against my reappointment, primarily because I'd written this opinion.

SI: But, as a sitting judge, you wouldn't be receiving hate mail or things like that, or would you be aware of that?

Justice Pollock: I can't remember. I suspect I did. [laughter] I know Justice Harry Blackmun, who wrote *Roe against Wade* [*Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973)], received basketsful of hate mail. And, through a series of happenstances, I developed a fairly close relationship with him, and with Justice [William J.] Brennan, [Jr.]. Just as a footnote, Justice Brennan had delivered a speech at the New Jersey Bar Association, which later became the basis for a famous article in *The Harvard Law Review*, where he urged state courts to look to their own law, their own constitutions and other forms of state law, to grant greater protection than was granted under the U.S. Constitution. But, I know I didn't get anywhere near the volume of mail that Justice Blackmun did because of *Roe against Wade*.

SI: Now, another case from that year, 1982, was *Newburgh v. Arrigo*[, 88 N.J. 529, 443 A.2d 1031 (1982)], which dealt with the responsibilities of divorced parents to pay for college educations.

Justice Pollock: Yes, yes, and that was another one that I think remains controversial and remains the constant--the subject of constant attention. What I said was that depending on the [circumstances]--what the Court said and I wrote the opinion--was that, in appropriate circumstances, the obligation of parents to support their children did not end when the children attained the age of majority, but that it could include an obligation to pay for college. And I know the law has changed since then, I think there've been some statutory amendments, and so forth, but you're quite correct. That was another opinion that quite understandably attracted attention and, in some instances, disagreement.

SI: Now, for a decision like that, going back to an issue we raised yesterday, the idea of bringing other justices around, can you kind of use that as an example? Like, did you have to do that kind of convincing on an issue like this?

Justice Pollock: I don't think I did in *Newburgh v. Arrigo*. I think the Court was unanimous. I may be wrong on that. That was not true with the Right to Choose against Byrne case. But, it's quite understandable that on these very sensitive issues, not only will members of the Court have different views, but members of the public will also.

SI: Now, you wrote the opinion in the *Department of Environmental Protection v. Ventron* [*State, Dep't of Env'tl. Prot. v. Ventron Corp.*, 94 N.J. 473, 468 A.2d 150 (1983)] case.

Justice Pollock: Yes.

SI: Which has had a big impact on environmental work in this state and nationwide. Tell us a little bit about that case.

Justice Pollock: Well, what it held was that the--it held a couple of things--it held that under the Spill Act [Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24], liability to clean up the environment could be imposed on prior owners who owned the property involved at a time when pollution occurred. In short, it gave retroactive application to the Spill Act. It also introduced into New Jersey law, or at least recognized in New Jersey law, that under common law principles, as distinguished from a statute, such as the Spill Act, that a property owner could be liable for the cleanup of land even though the property owner had divested itself of the property. And it generated a lot of litigation.

The environmental lawyers in the state were very gracious and, when I left the Court, they created an inn of court, which they named after me--maybe because I generated a lot of work for them, I don't know. [laughter] But that, that case, I had a line in that case that one of my clerks wanted me to take out. He said it was hokey and I said, no, I wanted one line that summarized what I think was a thirty-two-page opinion. And the

line was, "Those who poison the land must pay for its cure." And I left it. It stayed in and, when the opinion came out, *The New York Times* made it the quotation of the day. And that opinion also has attracted some attention across the country.

SI: Now, you had obviously had involvement in environmental issues earlier in your career, before going on the Supreme Court. You worked on the Pinelands issues during your time in the Byrne Administration. Again, just as an example, how does--does something like that, your past experience, come to bear on a case like this?

Justice Pollock: Well, you know, the Pinelands had a different issue, but I really don't think I had much exposure to polluted land before I went on the Court. The Pinelands, I think, was Brendan Byrne's finest hour. And that, there's a whole story that goes along with that, but, I mean, that was not so much a case of pollution of land as it was of the development of a very valuable natural resource. And the Governor, Governor Byrne, quite correctly perceived the risk and stepped in and controlled it.

SI: Now, you had a very important case revolving around liability law, the *Spring Motors v. Ford Motor Company* [*Spring Motors Distribs., Inc. v. Ford Motor Co.*, 98 N.J. 555, 489 A.2d 660 (1985)] case. Tell us a little bit about that.

Justice Pollock: Well, to understand *Spring Motors*, I must refer to an earlier opinion, the *Henningsen* case [*Henningsen v. Bloomfield Motors, Inc.*, 32 N.J. 358, 161 A.2d 69 (1960)] by Justice [John J.] Francis [1957-1972], which recognized an implied warranty of fitness and merchantability in the sale of a car to a consumer. And that was--what that did was--it eliminated the notion of privity, so that an injured consumer could sue not just the retailer, the dealer that had sold the car, but could go back to the manufacturer. This today is familiar law, but, at the time, it was astonishing. One of the prominent scholars in tort law, [William] Prosser, described it as, I think, the most astounding transition--I can't recall his precise words--in the history of tort law. So, that was the background.

Now, *Spring Motors* involved not a consumer, but someone [on the retail level], a truck dealer, and the car, the truck, rather, had a defective transmission. There was one other opinion I should mention. That is *Santor v. Karagheusian* [*Santor v. A & M Karagheusian, Inc.*, 44 N.J. 52, 207 A.2d 305 (1965)], which took the principle of *Henningsen*, which involved personal injuries, and applied it to the sale of a carpet where there was only property damage. And, while the New Jersey Court was deciding *Henningsen*, *Santor*, California courts were similarly addressing those issues and those issues really were at the forefront of product liability.

Our court and the California court parted company when it got to the issue of property damage as distinguished from personal injuries. And we--one of the points that *Spring Motors* did was point out that when you're dealing with commercial entities, as they were in *Spring Motors*, that the appropriate vehicle, appropriate set of legal principles, to

decide those matters was not necessarily tort law, but the Uniform Commercial Code, which applied to transactions between commercial parties. So, that was one of the points that *Spring Motors* decided. And, in doing it, it brought us, on the issue of damage to property, more in line with the California court, the view of which really had become the majority view in the country. But, it gave me a chance to revisit all those principles and try to fine tune the New Jersey law in that regard.

SI: And tell me a little bit about the *Dairy Stores v. Sentinel Publication* [*Dairy Stores, Inc. v. Sentinel Publ'g Co.*, 104 N.J. 125, 516 A.2d 220 (1986)] case.

Justice Pollock: Yes, that involved a newspaper that had said that--I think it was a convenience store, it was certainly a retail store--it questioned whether they were selling actual bottled spring water or whether the water was tap water, and so forth. And the question was, "Under what set of legal principles can you hold a newspaper, its reporter and an expert that it had retained?" And we decided the case not on constitutional grounds, but on the common law of New Jersey. A principle of judicial process is that if you can decide a case without involving a constitution, that's a good thing to do. That's what you should do, decide it on a non-constitutional basis.

That's what we did in *Dairy Stores*. We looked to the common law and said that it's in the public interest that newspapers and the journalists be able to make a fair comment on matters of public interest. And, of course, nothing, or very few things, are of greater public interest than the quality of water. So, that's what we did in that case and we also said that this common law notion of fair comment applied not just to matters of opinion, but to matters of fact. So, we gave the media some latitude in which to comment on matters of public interest, which we thought was in the public interest, that they have that latitude to do that.

SI: Now, around this time, 1986, was when you had your reappointment proceedings. That became controversial. It was talked about quite a bit in the media, and your Senator from Morris--I think his name was Dorsey? [Editor's Note: John H. Dorsey served in the New Jersey General Assembly from 1976 to 1978 and in the New Jersey Senate from 1978 to 1994.]

Justice Pollock: Yes.

SI: Yes, was one of the leading voices, again, as you said, citing the *Right to Choose* case as one of the cases he disagreed with you on. Tell us, from your perspective, what that process was like.

Justice Pollock: Well, I've always operated on the principle that if you do the right thing or what you think is the right thing, you need not worry about the consequences. That pretty much was the principle that guided me through that. I had no doubt about my faith in the opinions I'd written and I was fully prepared to defend them. I remember, to get myself psyched up when I drove down to the Senate Judiciary Committee

hearing, I put on--I had a videotape playing--and there's a great old hymn, "Once to every man and nation/Comes the moment to decide." By the time I arrived at the Statehouse, I felt sorry for my opponents. [laughter]

Whether that was prudent or not remains to be seen, but Governor Kean was the Governor at the time I came up for reappointment. Governor Byrne's term had ended and Governor Kean was very kind in reappointing me and supporting the nomination. [Editor's Note: Republican Thomas H. Kean served as Governor of New Jersey from 1982 to 1990.] And, I remember, I had a call from Mike Cole, who was his Counsel, saying, "There's going to be some opposition and you'd better get some witnesses here to testify on your behalf." [Editor's Note: Michael Cole was Chief Counsel to Governor Kean from 1986 to 1989.] I made three phone calls and all three witnesses agreed and actually came down and testified. It was a pretty good set of witnesses and it turned out all right. I can't remember, there were some Senators--I can't recall the number, but it was five or seven or something like that--who voted against my reappointment, but it ended okay.

SI: Going through a process like that, how does that make you feel, particularly, you know, you're a Republican and it's mostly Republicans leading this opposition?

Justice Pollock: You know, it really didn't bother me. I felt quite secure in what I had done and was prepared to defend it, and so, I don't think I lost any sleep over it.

SI: Now, in, again, the media coverage, and what the opponents to your reappointment were saying, kind of continues on to this day, the idea of activist judges, in their opinion--what do you think of that concept and its use as a pejorative?

Justice Pollock: What I'm about to say may sound excessive--I think it's a phony issue. Judges make law. That's what we do for a living and the question is not whether a judge is--at least so it seems to me--is activist in making law or something else, but whether you agree with the law that judge makes.

I mean, when a judge relies on the original intent of the Constitution or the plain language of a statute, I suggest you ought to see to what that leads, because judicial decisions, particularly those that affect public interests, are inevitably pragmatic. It seems to me that people who select concepts such as original intent or literal language of a statute like those doctrines because [of] where they lead. That sounds to me as if it's activist, but so be it. So, again, I think the key is not so much to get tied up in the nature of the analysis, but to what results that analysis leads, and it need not lead to a particular result in every case, just in most of the cases.

SI: Another case I wanted to discuss was the *Greenberg v. Kimmelman*[, 99 N.J. 552, 494 A.2d 294 (1985)] case. Tell me a little bit about that case.

Justice Pollock: Well, that, in a sense, that's a sequel to Right to Choose against Byrne. It involved the state's--it involved the power, if you will, to control the conduct of a judge and a judge's spouse. I think the issue was whether the judge's spouse could work for a casino. We have some restrictions on what judges [can be affiliated with], on the relationship of judges and casinos. The legal principle that was involved in that case was equal protection and, as I mentioned earlier, there is no express doctrine of equal protection in the New Jersey Constitution, unlike the Fourteenth Amendment of the United States Constitution. But, we've always had notions of equal protection in the first--I think it's Article I, Section I, of the New Jersey Constitution. And so, Greenberg against Kimmelman provided the opportunity to explain that and what the nature of equal protection of the laws was under the New Jersey Constitution.

SI: In that case, Greenberg was a spouse of a judge down in South Jersey.

Justice Pollock: Right, yes, yes.

SI: And her right to work in the casino industry was below the right of the public to have [a separation of the judiciary and that industry].

Justice Pollock: Yes, I think we said it was not a fundamental right.

SI: Okay.

Justice Pollock: That's my recollection.

SI: All right. The next case I want to discuss is *State v. Martin*[, 119 N.J. 2, 573 A.2d 1359 (1990)], which dealt with felony murder and its definition, I believe. You know, a lot of the cases we've been discussing have been more of a corporate nature.

Justice Pollock: Civil cases.

SI: Civil. This was a criminal case. Can you talk about that side of the law?

Justice Pollock: Yes. Were it not for the prescription against discussing publicly the inner workings of the Court, there's an interesting story behind it, but I'm not going to get into that. Martin was a young man who went to a party where one of the guests had passed out. I think there was excessive use of drugs and alcohol. He decided to leave--and there was a fact issue. A fire developed and, in the fire, this young woman was asphyxiated and died. Martin had started the fire and there was a different [set of views], disagreement between his position and that of the state. The state said, I think, he had done it intentionally. He said it happened accidentally.

And, in any event, the notion, the underlying question, was, "To what extent can you hold someone responsible for a resulting death from a fire when that person did not

intend to cause the death but intended only to start the fire?" Felony murder is a fascinating legal doctrine, the contours of which have changed over time. Originally, in the early common law, if someone committed a felony and somebody died, that was the end of the analysis. The accused was liable for both the death and the underlying felony. As time went on, and particularly in the 1930s with the American Law Institute, people began to question the justness of holding someone responsible for a resulting death when that person did not intend to cause the death but to commit another felony.

There were a couple of examples that I remember that came out from the ALI. One was, somebody intends to rob a bank, walks in and says to the teller, "Stick 'em up." The teller pushes the alarm button and gets electrocuted. The underlying thought was, in those circumstances, the robber should not be liable for the death, because it was so far beyond the foreseeability of the robbery. Then I know there was another example--I think a man intends to kill his wife, invites her away for a weekend. She goes horseback riding. The horse throws her and she's killed. Again, the idea is that this is not something that he would've foreseen and it was too unrelated.

But, what we did in *Martin* was, we got away from notions of proximate cause, which is a legal doctrine that exists in both criminal and civil law, and what we said was that the test should be whether it's--whether the connection between the two events, the death and the underlying felony--was so remote that it would not be just to attribute the death to the defendant who had committed the underlying felony. So, what we did, the charge in that case had not recognized those principles, so, we remanded it to the trial court for a new trial under a charge consistent with our opinion. And I don't know what happened on remand. That's one of the regrettable facts of being an appellate judge, is, often, you write an opinion setting forth legal principles, sending it back to the trial court to redo the matter, but you never hear what happened on remand.

SI: Now, another big change in criminal law during, I think it was the early 1980s, [was] when the death penalty was reinstated.

Justice Pollock: Yes.

SI: How did that impact your work on the Supreme Court?

Justice Pollock: My position was that, personally, I did not like the death penalty. I thought it didn't work and I thought the state should not be in the business of taking human life. I also thought, as a judge, as a Justice, that the Legislature had the right to have a death penalty as long as it functioned within constitutional limits. The death penalty cases, to me, were the hardest that we had that came before us. I wrote opinions sustaining the imposition of the death penalty. I have no doubt that the defendants had committed the crimes of which they were charged, but, nonetheless, I did find it very difficult to do. And I was relieved when the Legislature repealed the

death penalty. [Editor's Note: Capital punishment was reinstated in New Jersey in 1982 and abolished in 2007.]

SI: Now, one of your later cases, I believe, dealt with using DNA evidence.

Justice Pollock: Right.

SI: Yes, yes, *State v. Harvey* [151 N.J. 117, 699 A.2d 596 (1997)]. What do you remember about it?

Justice Pollock: Well ...

SI: Which was also a capital case, I believe.

Justice Pollock: Yes. What I remember about that was, Justice Handler, I think Justice Handler dissented from every [case], from the affirmance of every case involving the imposition of the death penalty. He and I had to address, from our very different perspectives, the admissibility of the DNA evidence in that case, because that was key to the imposition of the conviction and of the death penalty on *Harvey*. I have not kept up with the current status of DNA evidence--one of the problems with DNA evidence as of that time was, it was constantly evolving and becoming more refined. But, the question we had to face was whether, in the criminal context, the DNA tests as applied in that case satisfied the relevant standard under criminal law. The majority and its opinion, which I wrote, said yes and Justice Handler took a different position, but it got me more deeply into DNA evidence and statistical analysis than I had previously.

SI: I mean, there were a lot of changes, obviously, in technology and what science could bring into the courtroom. And, also, at this time--we're talking about the 1990s--issues of race and other factors were being more brought to the fore in these cases. You know, do you recall any of the Court's reactions to these new, newer ideas, I guess, being introduced in the cases?

Justice Pollock: I think that our Court was sensitive to the role of race in the law. I know we had an opinion, *State* against *Gilmore*--I did not write it, I think Justice Garibaldi wrote it--which talked about the use of preemptory challenges by the prosecution to exclude African-Americans and *Gilmore* pretty vigorously rejected that exercise.

SI: Was that Justice Coleman who wrote that?

Justice Pollock: I think, at that time, Justice Coleman was on the Appellate Division.

SI: Okay.

Justice Pollock: And he had written the Appellate Division opinion, and then, I think when it came to us, I think Justice Garibaldi wrote it.

SI: Okay. Well, both of those figures were historic figures in the history of this Court and the state because of Justice Garibaldi being the first woman on the Court and Justice Coleman being the first African-American on the Court. Within the Court itself, did they bring new perspectives in general?

Justice Pollock: What I remember most clearly is that their arrival on the Court was welcome and everybody felt comfortable with both Justice Garibaldi and Justice Coleman from the moment they arrived. Fortunately, I had known them both beforehand. I had the honor of speaking recently at a proceeding in Hudson County where a courtroom and a portrait were dedicated in the honor of Justice Garibaldi and Justice Coleman remains a good friend to this day.

SI: And I would imagine the two of you were part of the tennis culture on the Court.
[laughter]

Justice Pollock: Well, we both liked tennis and we were part of a regular tennis group. We had a doubles group that involved--well, the best tennis player among the three of us was Burrell Ives Humphreys and our fourth, I think, changed from week to week--but we would regularly play. I had the great pleasure of sponsoring Justice Coleman's membership here in the Morristown Field Club when he decided to join.

SI: It sounds like the spirit of congeniality and camaraderie continued regardless of, you know, who came on, what party they were from, and so on.

Justice Pollock: I think we did get along, but, if you take seven intelligent, dedicated, motivated people and give them controversial issues, it's inevitable there are going to be differences. But, I think I can safely say that those differences were primarily intellectual differences and did not affect personal relationships on the Court. I know in my opinions and in my relationships with the other Justices, I strove to be polite, even when I was wound up and ready to dissent or ready to respond to a dissent, because there's always tomorrow and it is a closely-knit group. So, no, I think even though we may have disagreed with each other vigorously, we made a point of getting along.

INTERVIEW WITH JUSTICE STEWART POLLOCK
JULY 19, 2017
PART 6 OF 7

Trenton and Beyond: Improving the Legal Profession through Service Education

Justice Pollock discusses the transition from the Wilentz Court to the Poritz Court. He shares his memories regarding his opinions in Ivaldi v. Ivaldi, Smart SMR of N.Y., Inc. v. Borough of Fair Lawn Bd. of Adjustment, Sica v. Bd. of Adjustment of Twp. of Wall, Landrigan v. Celotex Corp. and Snyder v. American Association of Blood Banks. He outlines his committee and board work, including his service as chair of the Appellate Judges Conference of the ABA, chair of the committee that created and oversaw the Seton Hall University Health Care Master's Program, the Professional Rules of Responsibility Committee, the Ethics 2000 Revision Committee, The Effects of Drug Cases on Courts Committee and the committee charged with organizing the computerization of the judiciary's operations. He also details his later experiences regarding legal scholarship, from his pursuit of his master's at UVA (1988), his service on the boards at the NYU School of Law and the Institute of Judicial Administration to several law review articles he penned.

Illingworth: [You] obviously spent a number of years serving under Chief Justice Wilentz, and then, you were spending, not quite as many years, but a good number of years, under Chief Justice Poritz. Any comments on differences in style or did it seem pretty much like a continuity of practice?

Justice Pollock: They were different people, and so, there were differences. One of Robert Wilentz's most striking characteristics was the intensity that he brought to his work. Chief Justice Poritz had, I would say, a kinder, gentler approach. They both were excellent Chief Justices and I enjoyed working with both of them.

SI: But, there were no major differences in the way they approached the work of the Court.

Justice Pollock: I would focus more on the similarities than on the differences. I'm sure there were differences, but I think each was committed to preserving the Court and its reputation.

SI: You mentioned Chief Justice Wilentz's intensity. Can you--which has come up in other interviews--any examples spring to mind?

Justice Pollock: None spring to mind, [laughter] but I know they're there. He was a very intense person and he had two major problems while he was on the Court, but, because of his self-discipline, they did not affect his performance. One was the tragic

death of his wife and the other was his own declining health, but Robert was committed to discharging his responsibilities notwithstanding those tragedies.

SI: In yesterday's interview, you talked about going to visit the prisons with Chief Justice Hughes.

Justice Pollock: Yes.

SI: Were there any sort of, you know, actions that either of the other Chief Justices you worked under tried, tried to, you know, do things like that, expose judges to different aspects of the operation?

Justice Pollock: I just don't know.

SI: Okay, all right. Again, let me refer to my list. The next case I want to talk about is the *Ivaldi v. Ivaldi*, 147 N.J. 190, 685 A.2d 1319 (1996) case.

Justice Pollock: Yes.

SI: Tell me a little bit about that.

Justice Pollock: Well, that was an unusual case. It's interesting. By the time that came to the Court, I had developed sufficient efficiency, I was able to get that out in very short order. I think if you look at the date between the [actions], the dates between the date of argument and the date of decision, it was only a couple of weeks. But, what it raised was the application of the Uniform Child Custody Jurisdiction Act[, N.J.S.A. 2A:34-28 to – 52, which was repealed in 2004 and replaced with the Uniform Child Custody Jurisdiction and Enforcement Act, N.J.S.A. 2A:34-53 to -95] to parents who lived not in different states, but in different countries. We held that the word "state" in that act included a foreign country, so that the test that was applied to determine what substantive law should apply would be the same as if the parties lived in different states in the United States and not in different countries. The intriguing part about it was that there are an increasing number of couples who live in different countries and it's just part of the, I guess, the globalization of life. And so, that's what that case stood for and, again, I think there have been changes in the law since I wrote the opinion, I'm just not familiar with them.

SI: And, again, another example of technology kind of having a role in the law, you dealt with the *Smart SMR of New York v. Fair Lawn Board of Adjustment* [*Smart SMR of N.Y., Inc. v. Borough of Fair Lawn Bd. of Adjustment*, 152 N.J. 309, 704 A.2d 1271 (1998)] case, which dealt with cell towers.

Justice Pollock: Yes, and that was at a time when cell or mobile phone communication was not as common as it is today, but it was common enough. What we said there was that the test, at least in that case, for determining the propriety of the construction of a cell tower was the test for a so-called special reasons variance under the land use planning law. We said that they were sufficiently in the public interest to constitute a special reason, but that the proponent of the cell tower still had to demonstrate that there was no adverse effect on adjoining properties or properties in the neighborhood and on the zone plan.

That probably should be distinguished from another case that I wrote for the Court called *Sica v. the Board of Adjustment* [*Sica v. Bd. of Adjustment of Twp. of Wall*, 127 N.J. 152, 603 A.2d 30 (1992)] and *Sica* involved a brain injury trauma institute and that, we said, was sufficiently in the public interest that the town in that community should approve it. The case raised the so-called NIMBY issue, "not in my backyard," where people recognize the need for a facility, but don't want it in their neighborhood. And, here, we said that this was sufficiently imbued with the public interest that it ought to be approved.

SI: I want to leave the cases for a minute and talk a little bit about your administrative activities.

Justice Pollock: Sure.

SI: You served as chair of the Appellate Judges Conference of the American Bar Association.

Justice Pollock: Yes.

SI: When did that begin?

Justice Pollock: Well, I served--it was right around 1990. Before that, I'd been active in the Appellate Judges Conference and I was chair, I would guess, in the late '80s or right around 1990. That was a fairly significant commitment. It involved--I went down, I testified before Congress, travelled around the country. I think I'm the only person ever to have done that from the New Jersey Court, but I liked it very much, because it permitted me to meet federal and state appellate judges from outside New Jersey. It kind of broadens, at least broadened for me, my perspective, to see how other people were addressing the same issues you had and to see how they functioned, and so forth.

An unfortunate consequence of that was, I think I got myself sufficiently run down that I ended up taking some--I got some sort of virus, some sort of bug--ended up taking antibiotics, one of which, to one of which, I had an allergic reaction, ended up with toxic hepatitis, which was no fun. But, I met an awful lot of wonderful people through that and I think it did broaden my perspective and, I hope, made me a better judge.

SI: Do you remember any of the issues you had to deal with during your tenure there?

Justice Pollock: No, I don't. [laughter]

SI: Okay, all right.

Justice Pollock: I do remember one and that, I remember, one dealt with the funding-- there was a federal program for funding criminal law projects and there was some money in there for the state courts. I remember going down to Washington and testifying before a Congressional committee about that. But, one of the things the Conference did was sponsor continuing legal education programs for judges and I had chaired the Education Committee before becoming chairman of the whole conference. I think I probably organized one of the least well-received programs. I had become interested in the relationship between law and economics, primarily because we had a course in law and economics in the master's program at UVA. So I organized a conference on that and I think many of the judges wished I had organized a conference about something else. [laughter]

SI: You had been in the master's program. I think you graduated in '88. Is that correct?

Justice Pollock: Yes.

SI: Do how did that come about?

Justice Pollock: Well, that was the best educational experience of my life. The program no longer exists at UVA. They closed it down and it's now at Duke. But, it was a two-year program and you went down and spent, I think it was six or eight weeks, in the summer, and you would take regular law school courses from UVA faculty, with blue book exams, and wrote a thesis. What motivated me was, I wanted to be the best Justice I could be and I began to think that maybe I ought to find out if I couldn't find some sort of matrix that would help me see a connection as we went on the Court from one case to another. And so, that's what we did.

It was a fantastic program and I ended up writing my thesis on the relationship between law, medicine and bioethics, primarily because we had an evolving body of law here in New Jersey about that. We had the *Quinlan* right-to-die case [*In re Quinlan*, 70 N.J. 10, 355 A.2d 647 (1976)], we had sequels to that on the Court while I was there, we had a case, the *Baby M* case [*In re Baby M*, 109 N.J. 396, 537 A.2d 1227 (1988)], which dealt with surrogacy. Again, I was starting to look for strands of connection as we went from one case to another. So, that's how that evolved and I think one of the principles that came through to me with increasing clarity was, and I hope it's reflected in some opinions, is the inherent dignity of every person. I think that did resonate, not only with judicial opinions, but I saw connections in my life as I'd gone from one point to another. So, that was a fantastic experience.

SI: Let me jump back into some cases, just to see how that may have played out in your opinions and your thoughts. There was *Landrigan v. Celotex* [*Landrigan v. Celotex Corp.*, 127 N.J. 404, 605 A.2d 1079 (1992)], which dealt with standards for scientific evidence. Did that--one, do you see a connection between your work in the master's program and that case and, just in general, can you tell us a little bit about that case?

Justice Pollock: I'll tell you, where I saw it more clearly was in the proportionality reviews on the death penalty cases. That was our final step in the appellate review of the imposition of a death penalty. And one of the courses that we took at UVA was law and economics and a component of that was an introduction to statistics. At the time I was taking the course, I was wondering whether this would have any utility. Where it did help was in reviewing the death penalty cases in the proportionality review, where what you do, or what we did, was, we looked at the defendant before us and the relevant characteristics pertaining to that defendant and compare them with the characteristics of defendants in other cases who either had or had not received the death penalty, to see whether this defendant was more like those who had not received it or more like those who had. So the statistical analysis in that, in those cases, was helped immensely by having had that course at UVA. *Landrigan* involved the reliability of expert testimony and it really, I think, dealt more with something else.

SI: Okay, all right. Again, to stick with the cases, can you tell me a little bit about the *Snyder v. American Association of Blood Banks*[, 144 N.J. 269, 676 A.2d 1036 (1996)] case?

Justice Pollock: Yes. Well, that case came out of the initial problem that society, and, therefore, courts, were having with AIDS and HIV and infected blood transfusions. The [plaintiff], Mr. Snyder, had--I think he had had heart surgery. He needed a blood transfusion, turns out the transfusion was HIV-positive and he contracted AIDS. The issue was whether the American Association of Blood Banks owed him a duty. They were not the ones who had provided the blood, but they were the ones who set the standards for the blood banks, and so forth. We said, yes, there was such a duty and that there was sufficient evidence that they had breached the duty to merit the case to go forward.

SI: Okay. Now, again, to go back to some of your administrative activities, you were involved in the Seton Hall Health Care Master's, which I guess kind of plays along this theme.

Justice Pollock: Yes.

SI: When did that begin? You were its first chairman.

Justice Pollock: I'm not quite sure, but I would venture to say roughly ten years before I retired. I think, by that time, some folks were aware that I had an interest in the relationship between law, medicine and bioethics. Two very wonderful faculty people from Seton Hall came out, Kathleen Boozang, who I believe is now the Dean, and John Jacobi and asked me if I would chair a committee to get their health law program started, which I did for several years, right up until the time I retired. The program is now one of the--I think it's one of the best in the country--and they've done a wonderful job with it.

SI: What would your duties be as chairman?

Justice Pollock: I know I ran the meetings of the Committee and John and Kathleen would come out, either in person or on telephone, and we would talk about organizing, what should go into the curriculum, who should be invited for speakers, all the stuff that you would do if you were trying to start a program based on health law.

SI: And you also remained heavily involved with NYU Law School.

Justice Pollock: Yes, I did. As I mentioned yesterday, I was on the board there, of the Law School and of the Institute of Judicial Administration. Both UVA and NYU invited me back to participate in their moot courts and to write articles and to give lectures. At UVA, after I left the Court, they invited me down to give a course, which was on law, medicine and bioethics. I think at NYU, I think I gave, I'm not so sure that it was the best lecture they ever heard, [laughter] but it was probably the best one I ever gave and it became the basis for a law review article, "On the Art of Judging," in which I tried to demonstrate that there, that artists and judges have experienced similarities in addressing their work.

SI: Well, you know, I've seen that article in many versions and referred to often. Can you elaborate a little bit more on that philosophy that you try to get across?

Justice Pollock: Well, to be sure, there are differences between judges and artists. I mean, artists start with a creative impulse. Lawyers don't start until somebody files a lawsuit or judges don't start until somebody files a lawsuit. But, what I tried to do was look, generally speaking, at how both artists and judges are trying to make sense of human life and human interaction. The artist does it through painting and the judge does it through trying to adjust relationships in a judicial opinion.

SI: Now, was that always your approach or was that something that evolved during your tenure on the Court?

Justice Pollock: Well, I think the latter. I don't think I knew enough to have that when I started out. Part of it, I think, may have come from the fact that my wife had a Master of

Fine Arts. She loved to paint, and so, it was something we would talk about together, from different perspectives.

SI: Okay. Now, you were also active in a number of Supreme Court committees. One of them, the Professional Rules of Responsibility Committee, can you talk a little bit about your work there?

Justice Pollock: Well, we got into that a little bit yesterday and that committee looked at the issues that arose under the Rules of Professional Responsibility, to see if it needed adjusting, fine-tuning. The larger enterprise was the Ethics 2000 Revision, and then, I did chair some other committees. When I first went on the Court, I chaired the Judicial Salary and Pensions Committee, and then, I also, when I first went on the Court---the Court, at that time, did not have its own computer. We had time on the Attorney General's computer, which was not a good arrangement. I remember, at the conference where the issue arose, the Chief Justice said, "Now, I'd like someone to chair this committee." I was the new kid on the block, so, the six other members, who didn't want to get anywhere near it, looked down at the far end of the table and I had nobody else to look to.

So, I ended up chairing that and I remember going out to California to take a course given by IBM, which was sort of an introduction course for the uninformed, to put it politely. And then, I remember we had a committee and one of the folks who was very helpful was the computer person out at Nabisco, which is here in Morris County. And he invited me out and showed me how their system worked. I remember, when I was going out to one of the ABA meetings, I think it was in San Francisco, for the Appellate Judges Conference, I went from that meeting up to Seattle to see the--oh, no, Olympia, Olympia, the capital of Washington--because Washington had the most advanced computer system among state courts. And they walked me through it. So, I tried to acquire enough knowledge, so [that] I could do the jobs, do the job, but I don't pretend to be an expert on computers at all.

SI: Did you know, particularly examining the Washington system, did you bring any of that back to New Jersey? Did they adopt anything that you found?

Justice Pollock: Oh, yes, yes, and then, the other thing we had to do was, we had to find a director, to find somebody who really knew what he or she was doing. And, as you go from one place to another, names pop up, and so, we conducted a search. And I remember, the then Administrative Director and I, Bob Lipscher, interviewed several candidates and we ended up with a fellow who did a good job until he retired. But, yes, I think going out to a place like Seattle, and so forth, helped considerably. [Editor's Note: Robert D. Lipscher served as Director of the Administrative Office of the Courts from 1980 to 1996.]

SI: The Effects of Drug Cases on Courts Committee, when did that begin?

Justice Pollock: Well, that was--what happened is, and I don't know if the Court still does this, but it used to be that at the annual Judicial Conference, there would be a program on a specific topic and Robert Wilentz asked me if I would chair a committee on the effect of drug cases on the Court. And the problem was, there was a revolving door--I don't know to what extent it still exists, but it certainly was existent at that time--where someone would be an addict, they'd be arrested, convicted, put into jail, released, arrested, convicted.

So, there was this revolving door and our committee came up with the astonishing suggestion that, "Maybe, instead of simply incarcerating these people, we ought to try to give them some drug treatment." And I think that has since been implemented. Again, I've lost track of the issue, so, I don't know how it's moving, but that was a good committee. We had prosecutors, we had public defenders, we had academicians, we had members of the public on it and I think we did some good work.

SI: Was there, you know, general consent on that idea of getting help or, you know, was it a tough sell to some sectors?

Justice Pollock: No, I think there were some dissenting views, but my understanding is that there's been increasing awareness of the need for that sort of thing. So, I think we were on the right track.

SI: Did the Committee also look at intersecting issues of race and economics?

Justice Pollock: No, not that I recall, not that I recall.

INTERVIEW WITH JUSTICE STEWART POLLOCK
JULY 19, 2017
PART 7 OF 7

Looking Back, Looking Forward: Later Episodes on the Court & Retirement

*Justice Pollock elaborates on some of the notable dissenting and concurring opinions he authored, including in *De Vesa v. Dorsey*, *Sherman v. Citibank*, *Kernan v. One Washington Park Urban Renewal Assocs.*, *Gennari v. Weichert Co. Realtors*, *Ramirez v. Autosport*, *State v. Worlock*, *Crowe v. De Gioia*, *A. v. B.*, and *Petrillo v. Bachenberg*. He relates his opinion on the intersection of politics and impartiality in the Court's operations and recalls his work speaking in Yugoslavia and Spain for the United States Information Agency on issues of federalism related to courts. He notes other lectures and law review articles he developed, including his noted "The Catcher in the Rye" piece, and his moot court participation at law schools across the nation. He concludes by explaining his decision to retire and subsequent work as a partner at Riker Danzig and describing his family and how a love of the law and community service have been passed down to later generations.*

Illingworth: Now, we've been talking mostly about cases where you wrote the opinion, but, to get into some other cases, where you either wrote dissents or concurring opinions, let's start with *De Vesa v. Dorsey*, [134 N.J. 420, 634 A.2d 493 (1993)] from 1993. What can you tell me about that case?

Justice Pollock: That involved the reappointment of Judge [Marianne] Espinosa and, if my recollection is correct, I originally administered the oath of office to her when she first became a judge. For some reason, Senator Dorsey objected to her reappointment and exercised senatorial courtesy, which meant that the Senate never considered her re-nomination. The case initially was filed, I believe, in the Chancery Division in Mercer. Judge [Philip] Carchman ruled that this was a political issue and, therefore, non-justiciable--so, the courts couldn't decide it.

It then came up to our Court and Robert Wilentz had spoken on behalf of Judge Espinosa's appointment, reappointment, and felt he had to recuse himself. So, the Court, it was a six-person Court. The case attracted wide attention and, after we heard the arguments and we conferenced, the Court was divided. Three of us felt that Judge Carchman had it right, that it was a non-justiciable political question, and three felt that the Court should nonetheless decide it. The implication of that is, the Court being evenly divided, the judgment of the lower court is affirmed and that's what happened.

It was particularly painful for me because Judge Espinosa was a friend and [Senator] Dorsey had questioned whether I should be reappointed and voted against it. But, it was quite clear to me that the lower court had reached the correct result, in that the appointment of a judge, that required not only nomination by the Governor, but confirmation by the Senate, was inherently political in nature. So I had to vote the way I did. I was the senior member among the three Justices who voted to affirm and, therefore, I had to write the opinion and did. I remember, there was an excellent constitutional scholar, Gerald Gunther, who later told me that he thought that the three of us who voted to abstain because it was a non-justiciable question got it right, but he said the students in the class thought that the other side had the more appealing argument.

So, that was, as far as I was concerned, it was tragic, because I thought the state had lost a good judge. I remember meeting Judge Murphy--her original [name], at one time, she'd been married to Michael Murphy, Judge Espinosa--and I just simply said to her, "That was a very hard opinion for me to write." And she very graciously said to me that she understood fully. And then, an interesting footnote is, thereafter, she was re-nominated by a different Governor. I just--I can't remember who it was--and, at that time, I was chairing the Judicial Appointments Committee for whoever was Governor. I did it over several years and for several Governors.

But, when her reappointment came up, I, with a light heart and total confidence, wrote an enthusiastic report that, yes, she should be reappointed and she was. She served with distinction, most recently on the Appellate Division. She's written a letter announcing her intention to retire shortly, but, for me, it was a drama laden with lots of personal considerations. But, I have no doubt we did the right thing.

SI: Well, that kind of leads me to another issue that we like to talk about in these interviews, the idea of [recording] your thoughts on the system overall. You know, New Jersey is kind of [unique], and you touched on this the other day, when talking about Vanderbilt's reformation in '47, but, you know, going to an appointed rather than an elected group, a more concise group, you know, administration--what are your thoughts? Because, obviously, politics do play a little bit of a role, particularly at reappointments, and so on. What do you think about the, I guess, impartiality and effectiveness of the court system as it exists?

Justice Pollock: Of the appointment process or of the system as a whole?

SI: I guess both, yes, or whatever you'd like to comment [on].

Justice Pollock: Well, as a product of the existing system, I think it's okay. [laughter] As someone once said, "A judge is a lawyer who knew a Governor." So, the process is inherently political and we've been fortunate in New Jersey, certainly with the Governor for whom I served, Brendan Byrne, to have Governors who take the process seriously. I

know Brendan Byrne took the appointment of judges and prosecutors, because he'd been both, very seriously and we spent a lot of time on it. As long as you have a Governor who is committed to preserving the integrity and impartiality of the judicial system, I think the system is secure. And, of course, the Senate has an important role in confirming.

I question the validity of senatorial courtesy. I think it has no role, or should have no role, on the reappointment of a judge. At that point, I think a sitting judge is entitled to have his or her performance considered by the entire Senate and the necessary effect of senatorial courtesy is to prevent the entire Senate from considering the merits of the candidate. I mean, I would go further and rid the system of senatorial courtesy on initial appointments, but that's a matter for the Senate to decide. I think, I think it's still true, that there is a Senate rule that precludes the exercise of courtesy on a sitting judge up for reappointment. I may be wrong on that, but I think after Judge Espinosa's experience, I think the Senate adopted such a rule. Whether they still have it, I just don't know and that's a matter for them to decide. It's a political issue and it's for that branch of government to decide.

I think our system has worked pretty well. It's inevitable there will be political considerations, but, as long as you look for qualified candidates, as long as Governors look for that and the Senate looks for that, I think the system's okay.

SI: Well, let's talk about the *Sherman v. Citibank*[, 143 N.J. 35, 668 A.2d 1036 (1995)] case, which came back to something that you had dealt with quite a bit earlier in your career, the banking industry.

Justice Pollock: Yes.

SI: Tell us a little bit about that case.

Justice Pollock: Well, that, the underlying issue was whether the term "interest" in the relevant federal statute included late charges on credit cards, and it also involved the notion of preemption, that federal law preempts state law, or can preempt state law. In that case, there was a countervailing state statute, I believe, which said that interest, the term "interest," did not include late charges. So, somebody had failed to make a credit card payment. The credit card company imposed a late charge and the litigants were off and running.

And it was pretty clear to me that federal law did include late charges as interest and that that law preempted the state law that said, "No, interest did not include late charges." And so, to me, it was very clear from the get-go. A majority felt the other way. I wrote an opinion; I don't know if anybody joined it. Justice Garibaldi may have joined it, somebody else may have joined it. But, that issue had arisen in another state as well. Both the New Jersey case and the other case went up to the U.S. Supreme Court. U.S.

Supreme Court wrote an opinion saying, "Hey, look, this is federal law. Interest includes late charges and the federal law is supreme. It preempts the state law," and that's what happened. I tried very hard to work out my differences with the author of a majority opinion, but had no luck on that instance.

SI: Tell me, please, about the *Kernan v. One Washington Park Urban Renewal* [*Kernan v. One Washington Park Urban Renewal Assocs.*, 154 N.J. 437, 713 A.2d 411 (1998)] case.

Justice Pollock: Oh, yes. That involved a lawyer's obligation of candor to the court. My recollection is that it came out of a slip-and-fall case in Newark and the issue arose whether the defendant property owner was liable. And the defense lawyer had failed to disclose a relevant fact to the court and to his adversary, so that the plaintiff, I think, had let a statute of limitations expire, and I simply wrote a concurrence in that case. The Court agreed to grant relief to the plaintiff, but I simply wrote a concurrence, pointing out the importance of the lawyer's obligation not only to the client, but to the Court to be candid in the disclosure of facts.

SI: Now, there were two cases that were quite a distance apart in terms of time, but you kind of link them together, the *Gennari v. Weichert* [*Gennari v. Weichert Co. Realtors*, 148 N.J. 582, 691 A.2d 350 (1997)] case and the *Ramirez v. Autosport* [, 88 N.J. 277, 440 A.2d 1345 (1982)] case.

Justice Pollock: Yes. They both involved consumers. The *Gennari* case had very involved facts and what we said, the bottom line of what we said was, that realtors were subject to certain provisions in the Consumer Fraud Act. And, in *Ramirez*, *Ramirez* involved a couple who had gone down to an outfit that sold trailers. They agreed to buy a trailer. I thought they'd been treated pretty shabbily and the trailer, when it was delivered, had some scratches and things were missing, and so forth. What the Court did, and what we did in the opinion, was recognize a rule called the Perfect Tender Rule. And that was a rule that had come up through the common law, had been incorporated in the Uniform Commercial Code and said that when somebody agrees to buy something, the buyer is entitled to it in perfect condition, if it's new. And a corollary has developed in the [present], particularly in this age of mass production, that that rule exists, but the buyer has to give the seller a chance to correct whatever the problems were.

And so, what I said in the opinion was, "We're going to retain the Perfect Tender Rule. You're entitled to something--you're entitled to a car that doesn't have a scratch, you're entitled to a TV set that doesn't have a knob missing--but the consumer should really give the seller a chance to correct the condition before calling off the deal." And I remember, I put a line in the opinion that said something along the lines of what I just said, that, "In this era of mass production, we're accustomed to products with scratched surfaces, knobs missing," and one of the newspapers said, "Tragically, that's right, but we wish it weren't so." [laughter]

SI: Another case, *State v. Worlock* [117 N.J. 596, 569 A.2d 1314 (1990)] ...

Justice Pollock: Yes.

SI: If I'm pronouncing that correctly, *Worlock*.

Justice Pollock: *Worlock* [like "Warlock"]. Given the fact that the defendant was charged with the murder of two people, that's [fitting]--the name might ring a bell. But, what that did, it provided the opportunity to look at the law of criminal insanity, because, in that case, the defense was criminal insanity. And, like the felony murder rule, how the law views insanity as a defense in a criminal case has changed over time and from jurisdiction to jurisdiction. In New Jersey, we have what's called the M'Naghten Rule, which goes back to the 19th Century in England, which says that, in order to satisfy the defense of criminal insanity, the defendant must not be able to know the nature and quality of his act and be able--and must not be able--to distinguish right from wrong.

Worlock was convicted under that test and we affirmed the application of that test. It was quite clear to us that that's the test that the Legislature wanted to apply. And there's [a tradition]--I think, we try hard to follow the intent of the Legislature, particularly in criminal matters. But, it provided me with the opportunity to consider some of the alternative tests for criminal insanity, the Durham test, the impossibility, the irresistible impulse test, some other tests that academicians have provided, also, a test that Chief Justice Weintraub put forth, that he said criminal insanity really should not apply to the culpability determination, but to the sentencing determination. So, I considered those different concepts, but ended up saying, "The Legislature has clearly provided us with the M'Naghten test. That's the test that applies in this case and, under that test, the jury correctly found this defendant liable for the two homicides."

SI: Before we get to the end of your time on the Supreme Court, I want to go back to a case from earlier in your tenure, in the first few years, the *De Gioia v. Crowe* [*Crowe v. De Gioia*, 90 N.J. 126, 447 A.2d 173 (1982)] case.

Justice Pollock: Yes. That case, I think I can safely discuss a little bit of how that decision evolved. It was--it came to us as, in effect, as a palimony case--but that's not what the case is cited for. I initially circulated the opinion, and then, another member of the Court wrote a separate opinion. I can't remember whether it was a concurrence or a dissent, that went into the issue of the propriety of an injunction in that case, which forced me to reconsider the majority opinion and address the issue of the tests you have to meet for the issuance of an injunction. And that's what I did and that's [what it is known for]. If you were to ask ninety-nine lawyers out of a hundred what *Crowe* against *De Gioia* stands for, if they were familiar with the case, they would say, "Oh, that's the case that gives you the test for the issuance of an injunction," and not the palimony

case, not the palimony issue. It's just funny how it evolved, but, that case, I think, still is followed for the issuance of injunctions.

SI: Now, one of the last cases you wrote an opinion for was *A. v. B. v. Hill Wallack* [*A. v. B.*, 158 N.J. 51, 726 A.2d 924 (1999)].

Justice Pollock: Yes.

SI: Tell me a little bit about that case.

Justice Pollock: Well, that case involved the duty of a lawyer, of a law firm, to clients. The law firm had conflicting duties. A husband and wife had gone to see the law firm about wills. And the proposed provision in the wills said that, under a certain set of circumstances, the children of each spouse could inherit from the other. Unbeknownst to the wife, the [husband] had fostered the birth of a child through another woman. That woman came to the law firm and the law firm erred in the spelling of the names of the initial, I think it was the husband and wife, so that nobody picked up that there was a conflict.

And what we said was that the law firm could disclose to the wife the fact that her husband had fostered a child out of wedlock, but couldn't disclose the name of that child. It was a very sensitive case. And, in this era--to me, it was understandable--I mean, in a big law firm like this, every day, there are dozens of conflicts, emails that go around. And I can understand how somebody could misspell a name, particularly when a matter is coming in and it's a new matter, but that was what that case was about.

I had another case that attracted more attention, *Petrillo v. Bachenberg*, 139 N.J. 472, 655 A.2d 1354 (1995)], and that involved an attorney's obligation to a non-client. And the attorney for the seller had knowledge of percolation tests, if my recollection is correct, delivered some of those tests, but not all, to the realtor with the intent that they be delivered to the buyer. We said that there was an obligation that ran to the buyer from the attorney for the seller under these circumstances to disclose all of the tests, not just some of them. That attracted attention, because it involved the imposition of a duty on the lawyer to someone other than the lawyer's client.

SI: Well, are there any other cases that we haven't brought up that you'd like to discuss?

Justice Pollock: Oh, there was 250 of them, I think. [laughter] I think we've covered enough.

SI: Yes. Before we talk about your decision to retire, let's talk about some of your moot court activities and speaking engagements. One of the things I was interested in that

you mentioned in our pre-interview was going to speak in Europe, particularly Yugoslavia. Can you tell us about that experience?

Justice Pollock: Well, as I mentioned when we were discussing Right to Choose against Byrne, in that case, I got into notions of federalism and what is the role of the states to the federal government, particularly what is the role of the state courts to federal courts. And that became relevant at that time because, I think generally speaking, one can say that the Burger Court and the Rehnquist Court took a more conservative view on issues such as the rights of criminal defendants, which gave rise to the question of, "Should the state courts step in and render opinions more consistent with those of the Warren Court?"

So, anyway, I had written, spoken and written, a lot on federalism. And the USIA, the United States Information Agency, asked me if I would go to Europe, to two countries that were having federalism issues, the former Yugoslavia--and the fact that I'm saying "the former Yugoslavia" gives you some indication how successful I was--and Spain, which was having problems with the Basques and in Barcelona, and so forth. So, I did. Penny and I went over. I went and spoke in various provinces of the former Yugoslavia about what the relationship of that province might be under notions of federalism as applied in the United States. I think I must've been a complete failure, because, shortly after I left, they began shooting at each other.

Then, I went over to give a similar talk in Barcelona. That was the end of my European speaking engagement. In Spain, there is a law, at least there was at that time, that imposed a tax on banks, where they could either pay the tax or expend an equivalent sum to advance the arts. Whatever bank I spoke in had built an exquisitely beautiful stadium with a lovely booth with all kinds of controls and, the night that I talked, I think there had to be half a dozen translators up there. I think there were more people in that translation booth than there were in the audience. As we learned subsequently, that was the night that Spain was playing Netherlands for the Europe Cup and the Spaniards were more interested in seeing that, for understandable reasons, than they were in hearing me talk about federalism. But, it was a good trip and I enjoyed it.

SI: Well, I'm curious about your trip to Yugoslavia. The audiences you were speaking to, how receptive were they to the ideas you were putting across?

Justice Pollock: Hard to tell, because I was speaking in English, which required translation, which somewhat modifies whatever impact. But, the audiences, I think they were generally law students, people from the legal community, all of whom were very well behaved. I think things went well, but I'm--who knows?

SI: Now, you have listed a number of speaking engagements. I don't--if there's others you want to talk about than the ones I'm going to bring up, please, you know, jump in.

Justice Pollock: No, you fire away.

SI: I wanted to ask about the Brennan Lecture at NYU.

Justice Pollock: Yes, well, we talked about that a little earlier.

SI: Okay, yes.

Justice Pollock: And that, I think we've said enough about that.

SI: Okay, all right, and then, the Toledo Law School lecture, that was "The Catcher in the Rye?"

Justice Pollock: Right.

SI: Tell me a little bit about that.

Justice Pollock: What I tried, what I did, it was on the fiftieth anniversary of *The Catcher in the Rye*, so, I latched on to that and picked up a theme, that both lawyers and judges should think about acting as "catchers in the rye." You may recall the scene in *The Catcher in the Rye* where the hero is standing, visualizes himself standing, on the edge of a cliff. And, as kids play, Holden Caulfield, the protagonist, is standing there to prevent them from going over the cliff and he becomes the catcher in the rye. And I said that lawyers and judges can have a similar obligation. It's easy to perceive one for lawyers, but I thought that our court had acted as a catcher in the rye in our school finance cases and in the Mount Laurel cases, as examples. Curiously, a couple of years later, I got a call from the dean of a law school out in California, who said, "I just want to thank you for that." He said, "I'm using it as the basis for my commencement address today," which made me feel good.

SI: You were also active in moot courts. You put down UVA and Seton Hall with Justice Kennedy and Justice Alito.

Justice Pollock: Yes.

SI: What do you recall about those experiences?

Justice Pollock: Well, I mean, those, that was quite an honor. It was with Justice Kennedy while he was on the Supreme Court and with Justice Alito while he was on the Third Circuit, but I enjoyed getting around, you know, to different law schools, Michigan, Cornell, Rutgers, and so forth. It's just like the Appellate Judges Conference, like the UVA LLM program--they were vehicles for getting out, meeting and talking with people about the law outside the context of the seven of us who comprised the Supreme Court for so many years together.

SI: Any anecdotes from those moot court experiences?

Justice Pollock: Oh, boy, none that come to mind, none that come to mind.

SI: All right. Now, in 1999, you decided to retire from the Court, which was about three years before you would have been forced to by the mandatory retirement age of seventy. What, you know, can you share ...

Justice Pollock: Why? [laughter] Yes, I loved being on the Court and I was reluctant to leave it. But, I'd spent over a quarter of a century in one form of public service or another and, although from the perspective of some people, the compensation might seem more than adequate, I hadn't been able to save very much and I wanted to make sure that my wife was adequately provided for. I thought I ought to get started and that's what I did do. I came here to Riker Danzig and had a very active practice doing all kinds of things--special investigations for corporations, arbitrations, mediations, working with lawyers on appeals. Then, tragically, Penny became ill and I felt that I should be with her. In view of her death, I mean, I really need not have left when I did, but I'm glad that I did leave when I did, because it provided me the opportunity to be with her at a time when she needed me.

SI: And, just to bring us up-to-date on your family, you had four children.

Justice Pollock: Four children, yes.

SI: As you mentioned yesterday. How many grandchildren do you have?

Justice Pollock: I have twelve grandchildren and three great grandchildren.

SI: And, from what you've said, it sounds like some of them have followed in your footsteps going into the law.

Justice Pollock: Yes, let's see. My son is a lawyer here in New Jersey, Jeff. My son-in-law, Bob Gilson, is now on the Appellate Division. And the grandchildren, Shannon works for the public defender in Charlottesville, Virginia. Her brother, Stewart Ryan, is in the process of moving from San Francisco to Richmond, Virginia. My grandson, Stewart Gilson, is with a law firm in New York and he's going to start a federal court clerkship. And my granddaughter, Laura, not only went to Hamilton, as did Jeff and Bob Gilson, but she just graduated from Stanford Law School and, as we sit here, she's home studying away for the bar exam next week. So, yes, there are more members of my family who are lawyers than maybe the world needs, but there we are.

SI: Well, you talked in yesterday's interview quite a bit about the impact of your family, and also the scholarship that you got going to NYU, on your views towards public service. Do you think you've actively passed that on to your family?

Justice Pollock: I hope so. Let's see--I think we'll have to wait and see. Oh, I know that my children are very much aware of the obligation to give back. Jennifer was on the governing body of her town in Pennsylvania and served as president of her school board. Wendy is a public school librarian and is on the board of the library in her town. No, I think the kids have been pretty good.

SI: Well, looking back on your time on the Court, what do you think of as, you know, your most significant work or what you're most proud of?

Justice Pollock: I guess I would have to say that I think I took the work seriously and gave the best I had and tried to be the best justice that I could be. Whether I succeeded or not is for somebody else to say, but I know that was my undertaking, what I tried to do.

SI: All right. Well, is there anything we've skipped over, any stories that you want to share?

Justice Pollock: No, we've probably gone on longer than any viewer wants to see.

SI: No, I think people will enjoy hearing your recollections, but thank you so much for all your time today. I appreciate it and your time yesterday.

Justice Pollock: Thank you, Shaun.

SI: I think it will be a very valuable interview.

Justice Pollock: Well, I hope so.

SI: Thank you, sir.

Appendix I

During his tenure on the New Jersey Supreme Court from 1979 to 1999, Justice Stewart G. Pollock served with the following Chief and Associate Justices:

Name	Years of Service
Chief Justices	
Deborah T. Poritz	1996-2006
Robert Wilentz	1979-1996
Richard J. Hughes	1979
Associate Justices	
Robert L. Clifford	1973-1994
James H. Coleman, Jr.	1994-2003
Marie L. Garibaldi	1982-2000
Alan B. Handler	1977-1999
Daniel Joseph O'Hern	1981-2000
Morris Pashman	1973-1982
Sidney M. Schreiber	1975-1984
Gary Stein	1985-2002
Mark Sullivan	1973-1981